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Know your rights

A guide for institutional investors to the law on climate-related shareholder resolutions

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The Institutional Investors Group on Climate Change

ClientEarth

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A future in which people and planet thrive together isn't just possible: it's essential. We use the power and rigour of the law to create it; informing, implementing and enforcing legislation, training legal and judicial professionals, and proposing policy. Our programmes of work span two broad categories: climate and pollution, and protection of nature. Our climate and pollution efforts defend our rights to a healthy existence. We force governments around the world to uphold their commitment to the Paris Agreement, decarbonise energy and tackle pollution hazardous to human and environmental health. Our nature protection work fights on behalf of vital ecosystems upon which we depend: forests, oceans and wildlife. We push for ambitious new legal protections and radical reforms to industry, and hold lawbreakers to account.

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Disclaimer

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1. Foreword from the Institutional Investors Group on Climate Change

Time is running out for Governments, businesses and society to take the urgent level of action required to avoid the worst impacts of climate change. The most recent Intergovernmental Panel on Climate Change assessment[1] declared a "*code red for humanity*" – we are on the precipice of irreversible change.

Investors are looking to play their part in the transition to net-zero and are committing to align their portfolios to net-zero. Over the last two years, both asset owners and managers, together responsible for over USD 50 trillion in assets, have committed to the goal of net-zero by 2050. To achieve these ambitions, investors will need to drive changes in the real economy. They must be active stewards to ensure the companies they own take the necessary action and produce net-zero transition plans to deliver 1.5°C aligned short, medium and long-term targets.

Portfolio alignment tools such as the Net-zero Investment Framework[2] and initiatives like Paris Aligned Asset Owners and Net-Zero Asset Managers (**NZAM**) have therefore emphasised the strong role that stewardship needs to play. For example, asset managers that have signed up to NZAM have committed to "*implement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net-zero emissions by 2050 or sooner*".[3]

For investor stewardship to deliver net-zero, it must be swift and bold – time is running out. Investors have a range of stewardship tools at their disposal: from director votes to shareholder resolutions, and now "Say on Climate" votes. When dialogue fails, shareholder resolutions have been a particularly effective tool in recent years. These are increasingly securing majority support. However, for European investors there are a range of complexities, mainly relating to varying rules and regulations around filing in different jurisdictions, that have acted as a barrier to widespread use of resolutions.

It is within this context that this report provides a critical new resource for investors seeking to align portfolios with net-zero, equipping them with a roadmap to file across Europe. We hope that this will enable a step change in the effectiveness of investor stewardship, by allowing resolutions to be deployed freely when they are needed.

Stephanie Pfeifer,
CEO

IIGCC
The Institutional Investors Group on Climate Change

1. https://www.ipcc.ch/report/ar6/wg1/
2. https://www.iigcc.org/download/net-zero-investment-framework-implementation-guide/?wpdmdl=4425&refresh=6165483c374c01634027580
3. https://www.netzeroassetmanagers.org/

2. Executive summary

As the climate crisis intensifies, investors are right to be seriously concerned about the way in which many high-emitting companies are managing the myriad risks of climate change.

Yet, when investors seek to engage with companies on climate change (in the best interests of all parties involved), they face a number of difficulties. They must navigate frequently impenetrable commitments from companies, siloed conversations with Investor Relations teams, and – when it comes to exercising their rights as shareholders – complex and confusing legal frameworks.

This report seeks to assist investors to navigate those frameworks in respect of one specific tool they have at their disposal: namely, the right to file climate-related shareholder resolutions. When used properly, climate-related shareholder resolutions can be a potent driver of change at companies (and see section 5.1 for general comments in this regard).

As such, this report guides investors through the legal complexities across thirteen key jurisdictions in Europe. It explains the division of powers between shareholders and the Board under the local law of each jurisdiction, how climate-related resolutions should be framed, and the various 'process' elements to filing.

Investors will be encouraged to learn that, in twelve of the thirteen jurisdictions covered by this report,[4] there is a path to filing (or "requisitioning") climate-related resolutions. The permissible scope of those resolutions differs. In some jurisdictions (such as the UK, Ireland, Spain and Sweden), the position is relatively simple. Shareholders in those jurisdictions have an explicit right to instruct the Board – and can make use of this accordingly. In other countries (such as France, Germany and Austria), the position is more nuanced: investors must fall back on their reserved right to amend the company's Articles of Association, and they must frame their 'asks' carefully.

Even in those countries where the relevant legal framework is more complex, investors should note that the Board is usually able to put a resolution on the ballot for a vote at a shareholder meeting voluntarily, should it choose to do so. Although investors should be extremely wary of the potential for negotiated commitments to become diluted, it is conceivable that – with the right support and scrutiny from investors – this voluntary step could represent genuine corporate leadership on climate action.[5]

While there can be no guarantees of success, if there is one 'takeaway' from this report, it is that – with careful drafting and the input of local law experts – most legal concerns in respect of climate-related resolutions can be overcome. Investors are encouraged to read on – and to test the position by filing high-ambition climate resolutions at the 2022 AGM season and beyond.

4. The Netherlands being the unfortunate exception.
5. As has been the case in several negotiated climate-related resolutions in recent years, e.g. at BP in 2019.

3. Introduction

From "Aiming for A" to "Say on Climate", various initiatives from the institutional investor community have, in recent years, sought to ensure that large companies across Europe are properly managing the risks and opportunities of climate change.

Those risks are by now well-established, and can be broadly categorised as:

i physical risks (arising from both acute catastrophic and gradual onset impacts of climate change);[6]

ii economic transition risks (arising from the transition towards a net-zero emissions economy); and

iii litigation risks (arising from company mismanagement of climate change impacts, or the attribution of climate change to a company's activities).[7]

For investors (at whom this report is targeted), often the most significant risks for investment returns are likely to come from 'system-level' macro-economic and financial stability risks caused by the negative physical impacts of climate change and/or a disorderly transition which harms the entire global economy.

As these risks continue to materialise, investors are right to be seriously concerned about the pace at which many high-emitting companies in Europe are changing. Yet, when investors seek to engage with companies on climate change (in the best interests of all parties involved),[8] investors can face roadblocks.

This report seeks to clear the path in respect of one specific piece of the investors' engagement toolkit: namely, **shareholder resolutions**. When used properly, shareholder resolutions can be a potent driver of change at companies. Investor engagement on climate change can become 'stuck' in familiar patterns, either becoming a siloed conversation between investors and the companies' Investor Relations teams, or bogged down in vague or insubstantial commitments from the company in question. In our experience over the 2021 AGM season, shareholder resolutions can break that impasse, focusing the minds of the Board on the issue at hand (and the magnitude of the risk), and helping investors themselves to crystallise their expectations and demands of the company.

The question of how to file resolutions properly, or even (in some countries) whether such resolutions can lawfully be filed at all, therefore becomes ever more pressing.

This report seeks to answer that question. The report analyses the legal frameworks in respect of climate-related shareholder resolutions across thirteen key jurisdictions in Europe. It explains the division of powers between shareholders and the Board under the local law of each jurisdiction, how climate-related resolutions should be framed, and (empirically) some common arguments used by companies when faced with the threat of a resolution.

6. Losses from climate-related weather events alone are estimated to have cost the global economy US$3.54 trillion between 1999 – 2018: GermanWatch, *Global Climate Risk Index 2020*, page 4.
7. As strikingly demonstrated by the recent decision in *Milieudefensie et al. v. Royal Dutch Shell plc* (ECLI:NL:RBDHA:2021:5337) – on which, see further at section 5.1.
8. I.e. investors, their ultimate beneficiaries, the companies – and indeed the directors of those companies.

Directly following that overview for each jurisdiction, we provide answers to the key 'process' questions asked by investors when considering how to file resolutions – from basic questions such as "*how much share capital do I need to file a resolution?*" to more forward-thinking questions, such as whether it is possible to withdraw a resolution once it has been filed (for example, if a negotiated outcome with the company is reached). These 'process' pages include information on timings and costs; specific rules where shares are held by custodian (or 'nominee') institutions; and other relevant procedural points.

"The law" in this area is, contrary to expectations and the bold claims of some companies, not always crystal-clear. It is complex and nuanced, a constantly-evolving field. In some jurisdictions, such as the UK, the legal framework on shareholder resolutions is clear, or at least well-developed. In other jurisdictions, such as Germany, the law in this area remains relatively untested. Where there are grey areas, we seek to explain the boundaries of those grey areas, and help investors and (where applicable) their in-house legal teams become more comfortable with exerting the legal rights afforded to them.

We hope that this report will be a valuable resource for investors when engaging with companies on climate change in the critical years to come.

4. The scope of this report

4.1 Shareholder resolutions: one piece of the puzzle

This report focuses squarely on the law surrounding the filing and framing of climate-related shareholder resolutions at listed companies.

Investors reading the report will be well-aware that shareholder resolutions are only one of the tools in their toolkit when engaging with companies on climate change. By focusing on the law surrounding resolutions, this report is not intended to understate the importance of various other tools that investors have at their disposal, including director removal votes, votes to discharge the liability of directors, accounting or auditor-related votes, formal information or disclosure requests – or, in extreme cases, legal letters or litigation against the company.[9]

Even within the context of annual general meetings (***AGMs***), the report does not seek to cover every conceivable right that shareholders have available to them; such would be a task more suited for a textbook. It does not, for example, deal with the right of shareholders to call their own General Meeting (which is rarely necessary in the case of large listed companies). It also only tangentially covers the right of shareholders to discuss or amend items which are already on the ballot (although, in the right circumstances, such a right can also be powerful).

Rather, the report comprehensively assesses the circumstances in which climate-related resolutions can be filed (or "requisitioned") by shareholders.

4.2 What is meant by a "climate-related" resolution?

"Climate-related" shareholder resolutions may take many forms. They may range from calls for increased transparency and disclosure, to more 'action-oriented' demands, such as for companies to set certain emission reduction targets.[10] In theory, even shareholder resolutions which do not explicitly mention the word "climate" may be, or end up being, climate-related in some shape or form.

For the purposes of this report, we have focused on four broad climate-related 'asks' from investors during the 2021 AGM season:

1. **Ambition / commitment to net-zero**: that companies set an ambition / make a commitment to becoming a net-zero business in their scope 1-3 greenhouse gas emissions by 2050 at the very latest;
2. **Paris-alignment strategy / transition plan**: that companies develop, set, implement and report to shareholders on a strategy to align the business with the goals of the Paris Agreement[11] (such strategy to include metrics and short-, medium- and long-term scope 1-3 greenhouse gas emission reduction targets, and to be regularly reviewed and updated to reflect the best available science);[12]
3. **"Say on Climate"**: that companies provide shareholders with the opportunity to approve or vote down the terms and implementation of the company's Paris-alignment strategy (or "net-zero transition plan" / "climate transition action plan") by way of an annual vote, be that binding or advisory;[13]

9. See, for example, *ClientEarth v Enea SA*.
10. ShareAction provides a helpful tracker of climate-related shareholder resolutions at: https://shareaction.org/fossil-fuels/resolutions-tracker/
11. Set out in Articles 2 and 4(1) of the Paris Agreement.
12. See further: https://www.clientearth.org/latest/documents/principles-for-paris-alignment/
13. See: https://sayonclimate.org/

4. **Corporate climate lobbying**: that companies disclose details of their climate and energy policy lobbying,[14] advertising and advocacy activities – and cease such activities where they are materially misaligned with the goals of the Paris Agreement (or, in the case of activities undertaken by industry associations – cease or suspend the company's membership of that association).

These 'asks' are not necessarily intended to be exclusive or 'best-practice' (although seeking to ensure that companies have a Paris-aligned strategy or transition plan – with short- and medium-term targets – is certainly a good place for investors to start in the 2022 AGM season). For some companies, a well-targeted and well-drafted fossil fuel phase-out resolution may be more appropriate. As the climate crisis intensifies, the regulatory landscape changes, and science improves, it is inevitable that all of these 'asks' will need to be tightened and/or evolve in other ways over the years ahead.

The four concepts outlined above are, however, a good base from which the legal frameworks in each jurisdiction can be assessed.

14. To include any litigation or arbitration brought by the company.
15. See footnote 12. The "Say on Climate" initiative has also helpfully set out some essential components of any such strategy: see https://sayonclimate.org/wp-content/uploads/2021/09/How-to-evaluate-a-climate-plan_evaluation-criteria-010721_public.pdf

5. Investors' right to file shareholder resolutions

5.1 Some general comments

Before examining the legal framework in each jurisdiction in detail, we will make **four overarching (and inter-related) points** which are applicable to many of the jurisdictions covered in this report.

The **first point** is that the general power to manage the affairs of the company usually rests with the Board. In itself, that is relatively unsurprising – but in practice, it can mean in some jurisdictions that the only legally permissible way of (or at least the path of least resistance to) getting a climate-related resolution onto the ballot is to frame it as an amendment to the Articles of Association (or "bylaws")[16] of the company. This is a right explicitly granted to shareholders in almost every European jurisdiction.

To some investors, amending the Articles of the company may seem a daunting prospect – but it does not need to be. It is true that the threshold required to pass a resolution to amend the Articles of Association is almost invariably higher than that of an 'ordinary resolution', and it is also true that the effect of an amendment to the company's Articles is to alter the company's very constitution (which may be perceived as something of an 'extreme' step). But upon further examination, any concerns on these grounds are unwarranted.

With regard to the higher voting threshold: in reality, the resolution does not actually need to pass in order to be effective or to achieve investors' goals. In our experience, the very prospect of a properly drafted resolution from a well-organised group of institutional investors can result in remarkably swift concessions from the company, even where previous attempts at engagement have failed. At many companies, while Boards may not yet fully appreciate the significant and manifold risks of climate change to their business, they may be quicker to appreciate the PR and reputational damage of fighting a reasonable request from shareholders (particularly where their companies have to carefully manage their 'social licence' to continue their business activities at all).[17]

Even if concessions from the company are not forthcoming, and the resolution fails to pass at the AGM, it is still unlikely that investors' efforts will have been in vain.

Recent research from BlackRock shows that:

- "*For shareholder proposals that received 30-50% support, 67% resulted in companies fully or partially meeting the ask of the proposal.*
- *For shareholder proposals that received over 50% support, 94% resulted in companies fully meeting the ask of the proposal".*[18]

In the UK, a company is recommended to take certain actions under the UK Corporate Governance Code if a resolution achieves only 20% support against the Board's recommendation.[19] Although this is in principle an unenforceable recommendation, it has evolved to take the form of standard practice.

16. For the sake of consistency, the term "Articles" or "Articles of Association" is used throughout this report, although in some jurisdictions the equivalent governing documentation is meant.
17. In a world where society as a whole is becoming increasingly concerned about the impacts of climate change.
18. BlackRock: Our 2021 *Stewardship Expectations Global Principles and Market-level Voting Guidelines*, at page 5, accessible at: https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf
19. Section 1, paragraph 4 of the UK Corporate Governance Code.

As to altering the company's constitution, provided that the amendment to the Articles is well-drafted, there is nothing inherently 'extreme' or problematic about that. It is more a case of investors becoming sufficiently adept at, and comfortable with, using the rights which are afforded to them by law. Local lawyers or experts in this field can be instrumental to that process (and to overcoming any legal concerns with the necessary careful drafting). To that end, we set out contact details of local experts at the conclusion of each jurisdictional overview below.

The **second point** is that, as foreshadowed in the introduction to this report, there are jurisdictions where the law in this area is relatively untested. In some jurisdictions, there is a tension between the principle that Boards have general competence to manage the company, and the reserved right for shareholders to amend the Articles of the company. How these two legal concepts interact is not always clear.

This tension means that, in a few jurisdictions, there is an element of uncertainty about whether Boards will be prepared to accept even a resolution which purports to amend the Articles of Association; and it is quite possible that companies in those jurisdictions will argue that such resolutions are not lawful, on the basis that their Boards alone have the authority to manage the company's affairs.

It is important that investors are not diverted by such arguments. Just because companies make bold or unequivocal statements that the law is "on their side", does not mean that it is. Some companies may even go to the lengths of arguing that it would be "unlawful" or "illegal" for them to put the resolution on the ballot. In many jurisdictions, this wilfully ignores the fact that – precisely because the Board has the competence to manage the affairs of the company – the Board could, if it so wished, very easily *choose* to put the resolution on the ballot. There is usually no legal impediment to them voluntarily doing so (and in some jurisdictions even legislation explicitly granting them the right to do so). In those cases, any argument from companies to the contrary can be quickly dismissed. An argument that the Board is *not obliged* to put a certain resolution on the ballot may carry more force – but even there, the advice we have received from local experts suggests that, provided the resolution is properly framed, there are strong arguments in favour of shareholders.

The **third point** is not a wholly separate one: it is – precisely because of the first and second points above – that investors should not seek to be overly-prescriptive when drafting climate-related resolutions. Detail and clarity is good (the Board must be able to understand what is actually expected of them); but investors should only seek to set out a framework within which the Board must act. *How exactly* the Board reaches (for example) its short- and medium-term Paris-aligned emission reduction targets is a matter for the Board. *That* they are required to do so, can absolutely be a matter for shareholders, as crucial stakeholders in the company.

The **fourth and final point** is that investors should be wary of otherwise ambitious climate-related resolutions becoming diluted during the engagement process. They should also be aware of the wider legal, social and political contexts when considering whether to approve climate transition plans. One example is arguably provided by Shell's 'Energy Transition Plan'. Put to a vote by the Board, and approved by 88.74% of shareholders at Shell's 2021 AGM,[20] Shell's climate risk management was effectively struck down by a Dutch Court just over a week later. The Court described Shell's climate management as comprising "*intangible, undefined and non-binding plans for the long-term*",[21] and ordered Shell to reduce its group-wide scopes 1-3 CO_2 emissions by net 45% by the end of 2030.[22] That order goes considerably further than the 20% reduction in carbon intensity by 2030 approved by shareholders at the AGM. Investors should consider the risks of a disruptive transition if Courts are finding that the minimum strategy which companies must adopt as a matter of law is more ambitious than the one approved by investors.

With those general comments in mind, the following sections of this report will set out the legal landscape in each of thirteen key jurisdictions around Europe: **Austria**, **Czech Republic**, **Finland**, **France**, **Germany**, **Ireland**, **Italy**, **Luxembourg**, **Netherlands**, **Spain**, **Sweden**, **Switzerland** and the **United Kingdom**. Some further reading is provided at the end of the report, and resolution texts which are referred to in the body of the report are provided in the annexes.

20. *See Royal Dutch Shell plc – Result of Annual General Meeting 2021*, accessible at: https://www.shell.com/investors/annual-general-meeting/_jcr_content/par/textimage_d70a_copy.stream/1621348944533/e31f2aa8ff0be567ea9577b43011bac4044f0e4e/voting-results-of-the-2021-agm.pdf
21. *Milieudefensie et al. v. Royal Dutch Shell plc* (ECLI:NL:RBDHA:2021:5337), at paragraph 4.5.2.
22. Relative to 2019. In respect of scopes 1 and 2, this is an obligation of result; in respect of scope 3, a significant best-efforts obligation.

5.1.1 Overview of Legal Process

Reading instructions

Process pages are structured in the form of a "Q&A", and readers are encouraged to have regard to the full form of the questions, as set out below

a. **"Basic right to file?"** means "Do shareholders have the basic right to file a shareholder resolution of the type envisaged?"

b. **"Amendment to the Articles?"** means "Is it either required or recommended that the resolution be framed as an amendment to the company's Articles of Association?" (For more on this, see the page(s) preceding the process overview).

c. **"Ownership period / share-blocking?"** means "Are there are any rules around when or for how long shareholders must have owned[A] their shares? Are there any rules around share-blocking ahead of the AGM, i.e. must shareholders demonstrate that they have not sold any of their shares within a certain period of time prior to the AGM?"

d. **"Custodian rules?"** means "Are there any specific rules regarding the exercise of shareholder rights in respect of shares held by custodian institutions?"

e. **"Threshold to file?"** means "What is the threshold at which shareholders may file a resolution (by reference, for example, to a percentage of the company's share capital)?"

f. **"Formal requirements & supporting documents?"** means "What are the formal requirements for filing the resolution with the company (e.g. form of the request, language, recipient, delivery method)? What do shareholders need to provide with the filing (e.g. a copy of the resolution, a supporting statement, proof of ownership)?"

g. **"Key dates for filing and costs"** means "What is the date by which a shareholder resolution must be filed in order to be put on the ballot at the AGM? What is the date by which a shareholder resolution must be filed in order that the company bears the costs of giving notice of the resolution?" (noting that it is usually advisable for shareholders to check the company website and to contact the company secretary to confirm the relevant deadline).

h. **"How must company respond?"** means "In terms of process: how, if at all, must the target company respond to a resolution which has been filed in accordance with the relevant legal provisions?"

i. **"Can a resolution be withdrawn?"** means "Is it possible for shareholders to withdraw a resolution after it has been filed (i.e. either prior to or at the AGM)?"

j. **"Voting threshold?"** means "What is the voting threshold required for the resolution to pass?"

A "Owned" in this context includes where the shares are held by a custodian but the investor is the ultimate beneficial owner.

5.2 Austria

In Austria, the general principle is that the management board of a public limited company (*Aktiengesellschaft* or "AG") has exclusive competence to manage the company[23] – but there is a way forward.

As in the majority of jurisdictions covered by this report, shareholders who hold a certain percentage of nominal share capital[24] have a basic right to file a resolution for discussion and voting at the AGM.[25] Austrian law sets out various types of resolution which are explicitly permissible in that regard[26] – but outside of those explicitly permissible types of resolution, the scope of matters which can be raised by shareholders at the AGM – at least by 'ordinary resolution'[27] – is limited.

Unless explicitly set out by law, shareholders may only determine questions concerning the management of the company if the management board (or, in certain circumstances, the supervisory board) so requests.[28] In the case of the type of laggard company where it is particularly imperative that investors consider filing a climate-related shareholder resolution, that request is unlikely to be forthcoming. This means that, if a climate-related resolution with some or all of the 'asks' referred to in section 4.2 were to be filed as an 'ordinary resolution', not only would the Board not be obliged to accept it onto the ballot, it may even be void as a matter of law.[29]

The potential answer to that conundrum (as will become a common refrain throughout this report) is to revert to one of the types of resolution which is explicitly permissible under Austrian law: namely, an amendment to the Articles of Association of the company.[30]

To the best of our knowledge, the concept of using an amendment to the Articles of Association in order to get a climate-related shareholder resolution onto the ballot of an Austrian company's AGM remains untested. The general comments made in section 5.1 apply – but, framed as an amendment to the Articles of Association, there are good arguments that each of the 'asks' set out at section 4.2 would be permissible.

In particular, the 'asks' are not fundamentally incompatible with the legal nature of an Austrian stock corporation; and neither do they violate creditor protection, public interest, or shareholder protection rules.[31] The Austrian Supreme Court has also held that amendments which deal with matters not covered by the relevant Austrian legislation may be permissible (in other words, it is not fatal that the Austrian legislation does not make explicit provision for amendments of this type).[32]

As such, provided any proposed amendment to the Articles establishes a framework within which the Board retains its powers of management as to *how* to reach the desired objectives, there are good arguments in favour. As ever, investors are recommended to consult with local experts as to the precise wording of climate-related resolutions in Austria.

Local experts: Deminor [Contact: Felix von Zwehl, Country Manager Germany]

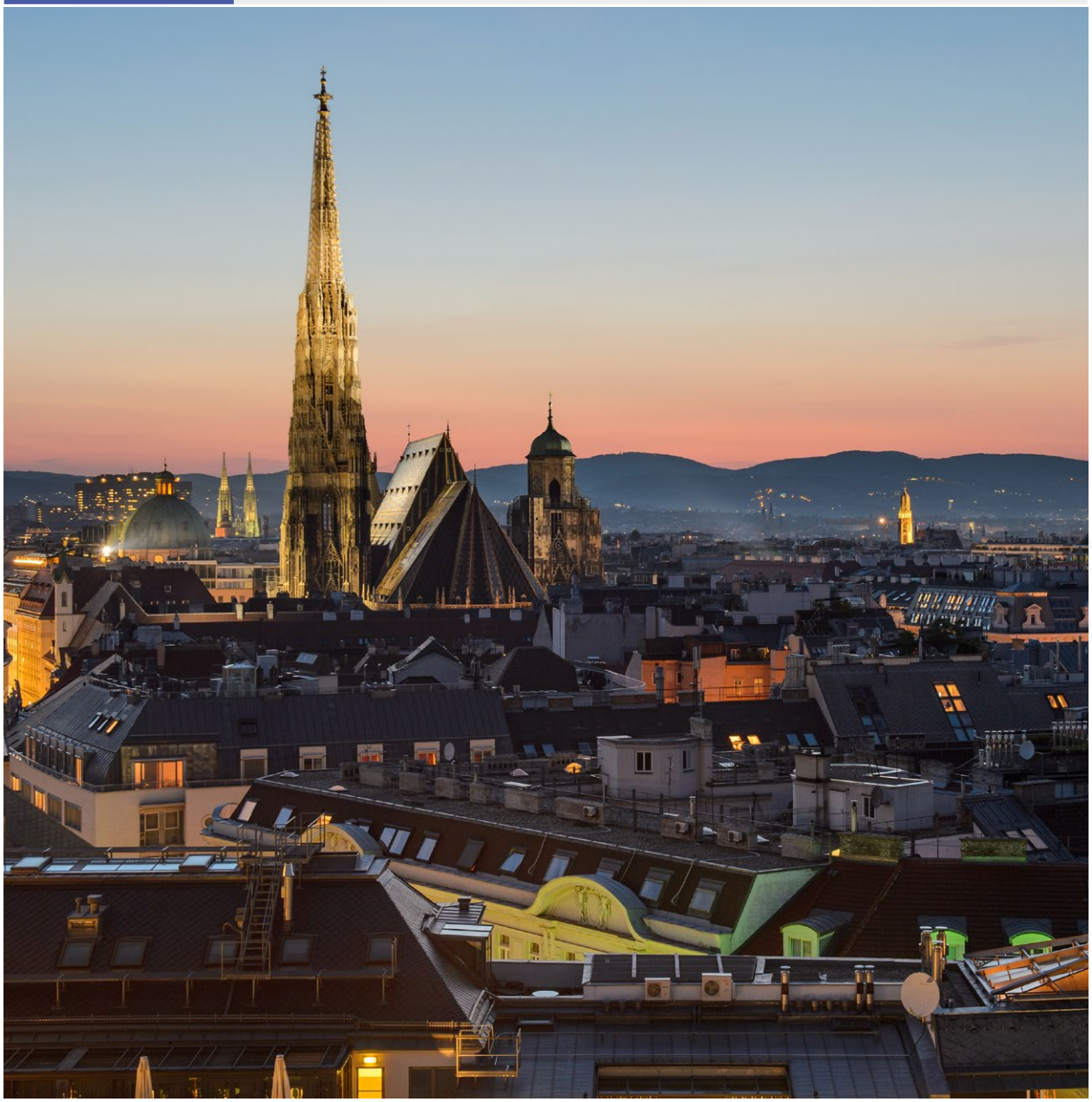
23. § 70(1) of the Austrian Stock Corp oration Act (Aktiengesetz or ***Austrian AktG***).
24. Details of filing thresholds are provided for each jurisdiction on the 'process pages' following each overview section.
25. § 109(1) of the Austrian AktG.
26. These include, for example, the appointment and dismissal of supervisory board members (§§ 87 and 88(5)); discharge of the members of the management and supervisory boards (§§ 104(2) and 211(2)); and the appointment of special auditors (§ 130, in each case here by reference to the Austrian AktG).
27. Appreciating that this is something of an English law concept.
28. § 103(1) of the Austrian AktG.
29. § 199(1) of the Austrian AktG.
30. §§ 145 and 146 of the Austrian AktG.
31. Any purported amendments to the Articles which violate these rules are void – this is a direct corollary of the Austrian 'principle of the strictness of the charter' (*Grundsatz der Satzungsstrenge*); see the Austrian Supreme Court decision, OGH 8.5.2013 6Ob28/13f.
32. ibid

Overview of Legal Process

Basic right to file?	**Yes** Shareholders have the right to file certain types of resolution. § 109(1) of the Austrian Stock Corporation Act (*Aktiengesetz or* ***Austrian AktG***)
Amendment to the Articles?	**Required** Unless the Board agrees to put it on the ballot voluntarily, a climate-related resolution of the type envisaged would require an amendment to the Articles. §§ 70(1), 103, 145 and 146 of the Austrian AktG
Ownership period / share-blocking?	**Ownership for at least three months prior to filing** The shares must be held for at least three months before the date of the request. This is evidenced by the custodian statement / deposit certificate referred to in the "Formal requirements & supporting documents?" row. § 109(1) of the Austrian AktG
Custodian rules?	**Provision of a custodian statement (see "Formal requirements & supporting documents" row)** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions.
Threshold to file?	**5% of the nominal share capital** The Articles of Association may provide for a lower threshold. § 109(1) of the Austrian AktG
Formal requirements & supporting documents?	**Form** **Form:** in writing, by reference to the relevant AGM (unless the Articles of Association provide otherwise). **Language:** German (unless the Articles of Association provide otherwise). Listed companies must accept custodian statements / deposit certificates (see below) in English. **Recipient:** addressed to the target company (in practice, the AGM notice ordinarily specifies the exact recipient). **Delivery method:** Austrian law is silent on the precise delivery method; however, this will be specified in the invitation to the AGM. **Supporting documents:** • **the draft resolution**; • **the justification** for the draft resolution (e.g. a Supporting Statement); and • **a custodian statement** / deposit certificate in written form not older than 7 days containing all the information set out at § 10(a) of the Austrian AktG. **Note** that, where a group of shareholders file together, the custodian statements / certificates must all be dated the same day. § 886 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*) §§ 10 and 109(1) of the Austrian AktG
Key dates for filing and costs?	**Filing deadline: At least 21 days prior to the AGM.** **No costs deadline** The request must be received by the company at least 21 days prior to the AGM. The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions. § 109(2) of the Austrian AktG § 105(6) of the Austrian AktG

Overview of Legal Process

How must company respond?	**The company must table the resolution** The company must either: • include the request in the original agenda; or • if this is not possible (e.g. because the agenda has already been printed), publish the request in the same manner as the original agenda no later than the 14th day before the general meeting, and (for listed companies) on the company's website. § 109(2) of the Austrian AktG § 107(3) of the Austrian AktG
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** Austrian law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution.
Voting threshold	**75% of votes cast** A resolution of the general meeting to amend the articles of association requires a majority of at least three-quarters (75%) of the nominal share capital represented at the time of the resolution. § 146(1) of the Austrian AktG



5.3 Czech Republic

In the Czech Republic, the crucial distinction when assessing the division of powers between the company's Board and its shareholders is between 'business management' and 'strategic management'. While the Board is exclusively competent in matters of 'business management', shareholders are entitled to issue instructions to the Board as regards the 'strategic management' of the company.[33]

The meaning of the term 'business management' is set out in case law,[34] and is understood to mean the organisation and management of the company's ordinary business activities. This includes, in particular, the operation of the company's premises (e.g. factories or power plants), and the related internal affairs of the company. In terms of this everyday running and management of the company, shareholders are generally not entitled to interfere.

'Strategic management', on the other hand, refers to management decisions which have the potential to affect the direction of the company's business in the longer term. This would include, for example, decisions to open or close a company establishment (e.g. a branch), or to acquire a competing company. In this regard, shareholders have the right to issue *binding strategic and conceptual guidelines* to the Board. An amendment to the Articles of Association is not required.

Although the line between 'business management' and 'strategic management' is capable of becoming blurred, Czech law provides a relatively simple path to investors wishing to file a climate-related resolution at a joint-stock company.[35] The key is that the 'asks' set out at section 4.2 can all be framed (albeit with some amendments) as strategic goals which the company should strive towards. In other words, they can be framed clearly within the realm of 'strategic management', and shareholders would then be fully entitled to instruct the Board in relation to them, without any need to amend the Articles of the company.

In order to make any resolution as robust as possible, it is recommended that:

1. **Ambition / commitment to net-zero**: the precise commitment (e.g. net-zero by when?) should be explicitly set out in the resolution – and the wording should incorporate the principle that all company activities be in line with the commitment set;
2. **Paris-alignment strategy / transition plan**: perhaps counter-intuitively, the precise short-, medium- and long-term targets should ideally be set out in the resolution, as this provides a clear avenue of recourse for investors should the Board not comply. Appreciating, however, that investors may find it difficult to calculate exactly what would bring the company into "Paris-alignment", this is not a pre-requisite. The key, as ever, is that investors do not tell the company precisely *how* it should achieve the emissions targets set (as this would interfere in matters of 'business management'), but rather set a strategic framework within which directors must act. Any report on the terms, development or implementation of the Paris-aligned strategy should be made part of the company's annual report.

33. Section 435(3) of the Commercial Companies and Cooperatives (Business Corporations) Act 2012.
34. See Supreme Court of the Czech Republic decision file No. 31 CDO 1993/2019.
35. This overview is applicable to joint-stock companies (*akciová společnost*) only, not limited liability companies (*společnost s ručením omezeným*).

3. **"Say on Climate"**: the concept of shareholders instructing the Board to present them with a report for *binding* approval is unlikely to be possible without amending the Articles of Association. This is because this would trespass into the realms of 'business management'. An advisory vote *may* be possible; and an amendment to the Articles would not be required if the 'ask' were limited to an instruction to the Board to present the report for information / discussion purposes alone.
4. **Corporate climate lobbying**: while any disclosure 'ask' in relation to corporate climate lobbying is fully permissible, a specific requirement to cease or suspend certain activities should be re-framed as a general 'ask' that lobbying activities do not materially misalign with the goals of the Paris Agreement.

It follows from the above that the Czech Republic is certainly a jurisdiction where investors can avail themselves of their right to file climate-related resolutions – and that, in the majority of cases, those resolutions will not need to be framed as amendments to the company's Articles of Association.

Local experts: Frank Bold Advokáti, s.r.o. [Contact: Martin Kornel, Managing Associate; Hana Římanová, Lawyer]

Overview of Legal Process

Basic right to file?	**Yes**
	Qualifying shareholders can require a company to include any matter on the agenda of an AGM. Section 369(1) of the Commercial Companies and Cooperatives (Business Corporations) Act 2012 (***Business Corporations Act 2012***)
Amendment to the Articles?	**Not required, depending on the terms of the resolution**
	Shareholders at an AGM have the general right to issue instructions to the Board concerning the strategic management of the company. They do not need to be entrusted with this power by the Articles of Association. Section 435(3) of the Business Corporations Act 2012
Ownership period / share-blocking?	**Ownership 7 days prior to AGM; transfer notification requirement**
	Shareholders must hold the shares on the seventh day preceding the date of the AGM.[B] All transfers of shares, at any time, must be notified to the company. Sections 269 and 275 of the Business Corporations Act 2012
Custodian rules?	**Registration requirement**
	Filing shareholders must be registered in the register of shareholders or book-entry securities register (if so determined by the company's Articles of Association). There are no (other) restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions.

B. Assuming for the purposes of this overview that the company's shares are traded on a European regulated market. This means that the "relevant date" for participation at the AGM is, by law, the seventh day preceding the date of the AGM (Section 405(3) of the Business Corporations Act 2012). This period cannot be altered by the company's Articles of Association.

Overview of Legal Process

Threshold to file?	**1%, 3% or 5% of the share capital** Three possibilities, depending on the amount of the company's registered capital: **1.** If more than CZK 500m (approx. EUR 19.25m): shareholders need 1% of the registered share capital; **2.** If between CZK 100-500m (approx. EUR 3.85-19.25m): shareholders need 3% of the registered share capital; **3.** If CZK 100m (approx. EUR 3.85m) or less: shareholders need 5% of the registered share capital. Section 365 of the Business Corporations Act 2012
Formal requirements & supporting documents?	**Form** **Form:** recommended to be in writing but Czech law does not require this. **Language:** recommended to be in Czech or accompanied by a Czech translation. **Recipient:** recommended to be addressed to the company, FAO the Board. **Delivery method:** recommended to be sent by recorded delivery. **Supporting documents:** • **the draft resolution** (referring explicitly to the relevant AGM). Neither a Supporting Statement nor a custodian statement (if applicable) are explicitly required under the terms of the Business Corporations Act 2012. However, both documents are recommended. Section 369(1) of the Business Corporations Act 2012
Key dates for filing and costs?	**Filing deadline: At least 17 days prior to the AGM.[C]** **No costs deadline** The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions. Section 369(2) in conjunction with section 405(3) of the Business Corporations Act 2012
How must company respond?	**The company must table the resolution** If the resolution submitted is incomplete or, in the Board's view, does not meet the legal requirements, the Board should notify shareholders accordingly and give them an opportunity to rectify any alleged shortcomings. If the resolution is filed after the AGM notice / agenda has already been published, the Board is obliged to issue an addendum to the agenda (i.e. by disclosing it on the company website and distributing it to shareholders at their registered addresses). Sections 369(1) and 402(1) of the Business Corporations Act 2012
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** Czech law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution. The legal literature supports this concept.[D]
Voting threshold	**Simple majority (ordinary resolution) or two-thirds majority (amendment to Arts.)** In the case of an ordinary resolution, the voting threshold is a simple majority of the votes cast.[E] If an amendment to the Articles of Association is required on the terms of the resolution, or simply preferred, the voting threshold is a two-thirds majority (66.6%) of the votes cast. Sections 415 and 416(1) of the Business Corporations Act 2012

C. Assuming for the purposes of this overview that the company's shares are traded on a European regulated market. This means that shareholders must file at least ten days before the "relevant date" set out in footnote B. This period cannot be altered by the company's Articles of Association.
D. See: Štenglová, I., Havel, B., Cileček, F., Kuhn, P., Šuk, P. Zákon o obchodních korporacích. Komentář. 3. vydání. Praha: C. H. Beck, 2020, 1316 s.
E. Subject to a different majority being required by the company's Articles of Association.

5.4 Finland

As with other Nordic countries, Finland is a relatively simple jurisdiction in which to file a shareholder resolution.

There is no requirement to hold a particular amount of shares or share capital (one single share will suffice – see subsequent 'process' pages); and shareholders have the right to add any matter to the agenda at the AGM, provided that it falls within the "competence" of the general meeting.[36]

In order to avoid arguments from the company as to whether the type of climate-related resolution envisaged does fall within the "competence" of the general meeting, it is highly advisable to frame the resolution, as in many other jurisdictions, as an amendment to the Articles of Association of the company. This is because the Articles of Association are within the sole competence of shareholders.

In 2020, WWF Finland filed a resolution at the Finnish energy company, Fortum Oyj (***Fortum***), to require a Paris-aligned business plan and annual reporting on the same. The text of the resolution is set out at Annex 1. Notwithstanding that the resolution was framed as an amendment to the company's Articles (and tabled at the AGM accordingly), the Fortum Board nevertheless came up with a rather novel objection to the resolution. The Board stated that the resolution "*would mean a deviation from the company's purpose to generate profits to its shareholders in the long-term, as required by the [Finnish] Companies Act, towards a direction of a non-profit organisation*".[37]

The implication was that the resolution was, as such, contrary to the terms of the Finnish Companies Act; and would require an amendment to the company's purpose (which is only possible with the consent of all shareholders).[38]

That argument does not withstand the slightest scrutiny. The terms of the resolution requested the Board to assess the climate risks to the company (which it should be doing in accordance with its fiduciary duties in any event),[39] and to align the business of the group to the goals of the Paris Agreement (which is, again, in any event in the best interests of the company, given the physical, transition and litigation risks of climate change).

The resolution did not, in any sense, require the Board to have regard *only* to aligning the business with the Paris goals, to the exclusion of all other corporate strategies. Still less did it imply that the objective of alignment with the Paris goals was to be the very purpose of the company, or to have priority over its other objectives (including generating value for shareholders).[40]

It is the intent of this report that investors are equipped to see through such arguments. In the event, the 2020 WWF resolution did not pass,[41] but in view of the simplicity of filing in Finland, investors may well consider that Finland remains an appropriate and viable target for a climate-related resolution in years to come.

Local expert: Professor Dr. Jukka Mähönen, Professor of Cooperative Law, University of Helsinki; Professor of Private Law, University of Oslo.

36. Chapter 5, section 5 of the Finnish Limited Liability Companies Act 2006, or ***Finnish Companies Act***).
37. https://www.fortum.com/media/2020/02/statement-board-directors-shareholder-wwf-finlands-proposal-amend-fortums-articles-association
38. Chapter 5, section 29, subsection 1(1) of the Finnish Companies Act.
39. Chapter 1, section 8 of the Finnish Companies Act.
40. Chapter 1, section 5 of the Finnish Companies Act.
41. It received 8.05 % of the votes cast and 7.69 % of the shares represented at the meeting: see "*Fortum AGM 2020 minutes of the meeting*", page 10, accessible at: https://www.fortum.com/media/25980/download

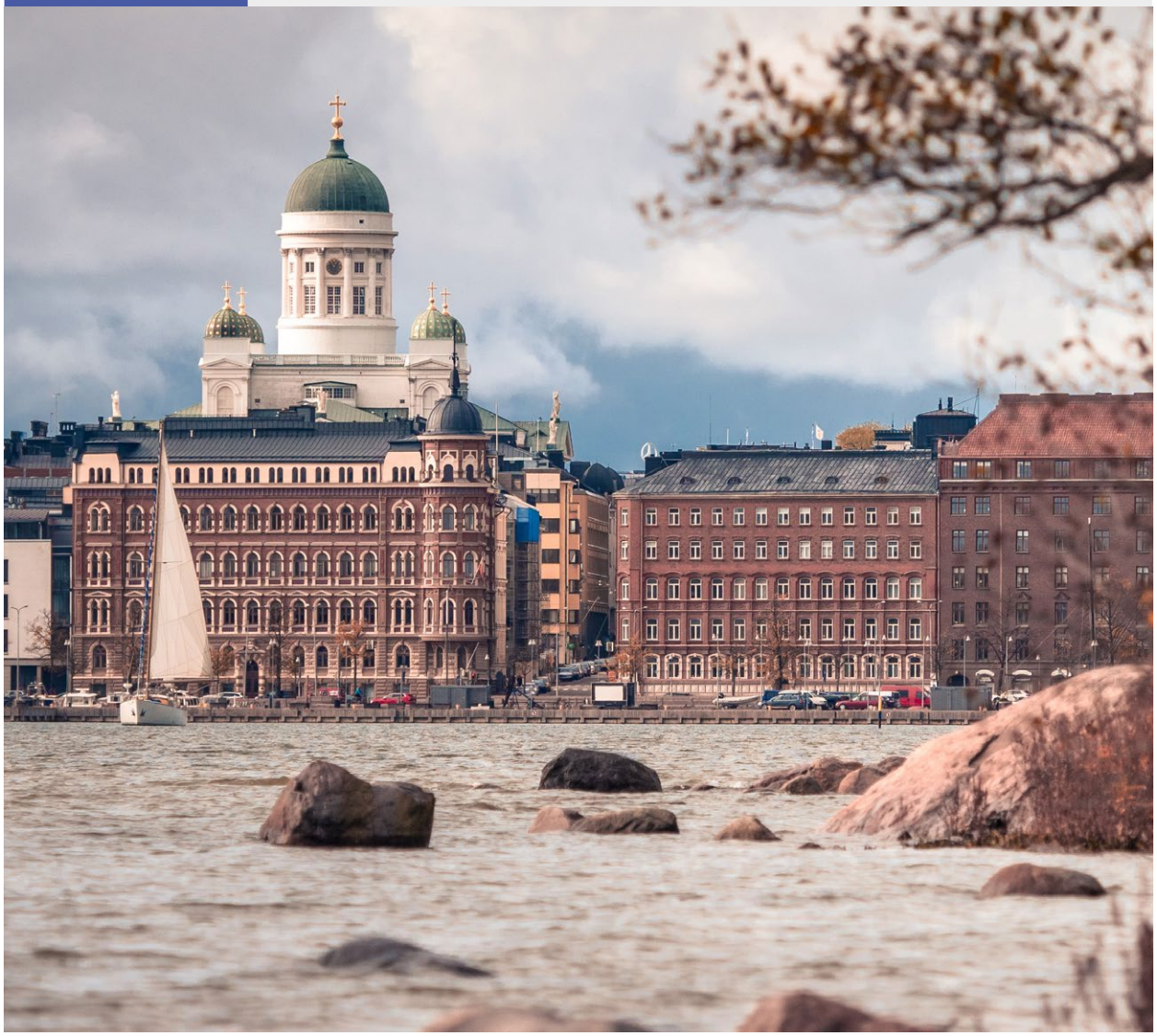
Overview of Legal Process

Basic right to file?	**Yes** Shareholders have the right to add a matter to the agenda at the AGM, provided that it falls within the "competence" of the general meeting. Chapter 5, section 5(1) of the Finnish Limited Liability Companies Act 2006, or ***Finnish Companies Act***
Amendment to the Articles?	**Strongly recommended** Unless the Board agrees to put the resolution on the agenda itself, presenting the relevant climate-related resolution as an amendment to the Articles ensures that it falls within the "competence" of the general meeting.
Ownership period / share-blocking?	**No express requirements** However, shareholders must be entered on the share register (see next row, "Custodian rules?"). It is advisable that the (co-)filer(s) continue to hold the shares until the AGM.
Custodian rules?	**Registration requirement** Filing shareholders must be registered in the register of shareholders / book-entry system eight working days before the date of the AGM. Where shares are held by a custodian, shareholders may be entered onto the register on a temporary basis. Chapter 5, section 6 (in conjunction with Chapter 3, section 2(1) and Chapter 4, section 2(2)) of the Finnish Companies Act
Threshold to file?	**One (1) share** Chapter 5, section 5 of the Finnish Companies Act
Formal requirements & supporting documents?	**Form** **Form:** in writing **Language:** recommended to be in the language of the company's Articles of Association **Recipient:** must be addressed to the Board. **Delivery method:** not specified by the Finnish Companies Act but recommended to use the address (usually) provided in the company's AGM notice and/or on the company's website. **Supporting documents:** • **the draft resolution**; • (recommended) **the justification** for the draft resolution (e.g. a Supporting Statement); • **proof of ownership** (see also "Custodian rules?") Chapter 5, sections 5 and 6 of the Finnish Companies Act Finnish Corporate Governance Code 2020, p.19
Key dates for filing and costs?	**Filing deadline: At least four weeks prior to the AGM notice.** **No costs deadline** The Board must issue the AGM notice itself no earlier than three months,[F] and no later than one week, before the AGM. The Finnish Corporate Governance Code recommends that the relevant listed company should publish the filing deadline on its website. The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions. Chapter 5, sections 5 and 19 of the Finnish Companies Act) Finnish Corporate Governance Code 2020, p.19

F. Assuming for the purposes of this overview that the company is a public company. If not, the Board must issue the AGM notice no earlier than two months, and no later than one week, before the AGM.

Overview of Legal Process

How must company respond?	**The company must table the resolution** The Board is obliged to include in the AGM notice the "main contents" of the proposed amendment to the Articles of Association. Chapter 5, section 18(1) of the Finnish Companies Act
Can a resolution be withdrawn?	**Probably yes** Finnish law is silent on this point. However, the view from the leading Finnish corporate governance academic is: • if the AGM notice has not yet been issued, the resolution could be withdrawn by a written request from the filing shareholder(s); • if the AGM notice has already been issued, the Board would have no obligation to issue a new notice withdrawing the resolution (although it may wish to). Even if it did not wish to, there is no reason why the filing shareholder(s) could not simply withdraw the resolution at the AGM itself.
Voting threshold	**Simple majority (ordinary resolution) or two-thirds majority (amendment to Arts.)** In the case of an ordinary resolution, the voting threshold is a simple majority of the votes cast. If an amendment to the Articles of Association is required on the terms of the resolution, or simply preferred, the voting threshold is a two-third majority (66.6%) of the votes cast. For our purposes, these voting thresholds cannot be relaxed in the company's Articles of Association. Chapter 5, sections 26 and 27 of the Finnish Companies Act)



5.5 France

The French law with regard to the permissible scope of climate-related resolutions is unsettled.

In principle, there is a mandatory division of powers under French law, which dictates that shareholders may not interfere in the Board's powers to set and manage the company's strategy.[42] If investors were to file a climate-related resolution which does interfere in this way, not only would the Board not be obliged to accept it onto the ballot, but the resolution could be challenged as contrary to French law. This means that any proposals from shareholders must seek to respect this mandatory division of powers.

The difficulty is in ascertaining where exactly the boundary lies: at what point is a climate-related resolution trespassing on the Board's powers to set and manage the company's strategy? This is the particular legal 'grey area' with which investors must grapple in France.

As in other jurisdictions, shareholders hold an entrenched right to amend the company's Articles of Association (or "bylaws").[43] Where a resolution is framed as an amendment to the company's Articles – and precisely because this makes use of a right reserved for shareholders – the boundary shifts to permit climate-related asks which are more expansive than those which would otherwise be permitted (i.e. without an amendment to the company's Articles). This does not mean that any and all climate-related asks are permissible; the mandatory division of powers remains in place. But it does provide shareholders with an avenue to make asks of the company which broadly comply with the French framework.

To take two examples:

1. **TotalEnergies SE (at the relevant time, Total S.A.: *Total*):** In 2020, a group of 11 institutional investors filed a resolution to amend Total's Articles of Association. The amendment required the Board's management report to contain a strategy to align the company's activities with the objectives of the Paris Agreement, including an action plan with absolute GHG emission reduction targets.[44] The text of the resolution is set out at Annex 2.
2. **Vinci S.A. (*Vinci*):** The Children's Investment Fund (TCI) filed two climate-related resolutions at Vinci's 2020 AGM.[45] The first resolution required disclosure, on an annual basis and for the three years following the AGM, of "*annual sustainability information*", including a description of a climate change transition plan consistent with the temperature goals of the Paris Agreement. The second resolution provided for an annual advisory vote, by which shareholders could approve the company's approach to climate matters ("Say on Climate"). The resolutions did not seek to amend Vinci's Articles; rather, they were framed as ordinary resolutions. The text of the resolutions is set out at Annex 3.

In 2020, both Total and Vinci argued that these resolutions were not legally permissible, on the grounds that they would violate the mandatory division of powers. Yet, the two companies took different approaches to what that argument meant: the Board at Total accepted the resolution onto the ballot (although set out in the AGM notice an array of arguments as to why it considered the resolution was inappropriate and/or unlawful);[46] the Board at Vinci, on the other hand, refused to table the resolutions at all.[47]

42. See French Supreme Court (Cour de cassation), 4 June 1946, Motte.
43. Article L225-96 of the French Commercial Code.
44. See: https://meeschaert.com/wp-content/uploads/2020/04/2020-04-16-CP-Depot-de-resolution-Total-ENG-2.pdf
45. See: https://www.vinci.com/vinci.nsf/fr/ag2020/$file/Translation-Lettre-VINCI-TCI-12-Mars-2020.pdf
46. See pages 67 – 68 of Total's 2020 AGM Notice, available at: https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2020-05/total_notice_of_meeting_2020.pdf
47. See: https://www.vinci.com/vinci.nsf/en/ag2020/$file/Lettre-VINCI-TCI-17-Mars-2020-translation.pdf

This divergence is likely to be explained by the fact that the Total resolution made use of shareholders' express power to amend the Articles, whereas the Vinci resolutions did not. This underlines the importance of framing climate-related resolutions in France as amendments to the company's Articles of Association. In the event, the resolution at Total achieved (not insignificant) 16.8% support, with a further 11.12% abstaining.[48]

As set out at section 5.1, it is important that investors carefully scrutinise arguments made by companies about the legal permissibility of resolutions. As the law currently stands (unless and until there is new legislation or case law), there are no firm legal grounds to prevent shareholders from filing climate-related resolutions in France, unless they are in conflict with the legal division of powers. The academic literature also supports the position that shareholders have the right to file (carefully worded) climate-related resolutions.[49]

Investors should also not forget that – even in France, where the mandatory division of powers is the guiding principle – Boards can table resolutions voluntarily, provided they are not a clear encroachment on management activities. For example (and in a striking about-turn from their position in 2020), both Total and Vinci decided in 2021 that shareholders should have an advisory vote on the companies' climate transition plans after all; and the Boards of both companies put management-led resolutions on the ballot to that effect. Shareholders approved the resolutions by 91.88%[50] and 98.14%[51] respectively. The texts are set out at Annexes 4 and 5.

To an extent, this represents progress: the very fact that these companies accepted that shareholders should have a 'say' in this critical area arguably strengthens investors' position to file climate-related resolutions in future. Without commenting on the specifics of the Total or Vinci transition plans, investors should – as ever – assess any such plans critically, to ensure that they really do represent the necessary ambition.

Particularly in light of the diverging company responses to the Total and Vinci resolutions in 2020, it is recommended that all future climate-related resolutions in France be drafted as amendments to the company's Articles (which also have the benefit of binding all subsequent Boards). In terms of the content of those amendments, by reference to the asks set out at section 4.2:

1. **Ambition / commitment to net-zero**: An ambition, even a commitment to net-zero, is a fairly light-touch 'ask'. Provided that it leaves significant room for the Board to decide how to achieve that ambition or commitment, it is difficult to see that there could be any real legal concern to incorporating such an ambition or commitment in the company's Articles.

2. **Paris-alignment strategy / transition plan**: Listed companies in France are already required to include an "*indication of the financial risks related to the effects of climate change and the measures the company is taking to reduce them by* ***implementing a low-carbon strategy in all components of its activity***" in their annual management report.[52] Large French companies must also include in their non-financial reporting "*the significant greenhouse gas emissions generated by the company's activities, in particular by the use of the goods and services it produces*" and "*the* ***reduction targets set voluntarily in the medium and long-term*** *to reduce greenhouse gas emissions and the means implemented to this end*".[53]

   Given that shareholders cannot give the Board specific directions that may infringe on their management powers, **investors should seek to build on this existing framework, and the company's existing climate commitments** (if any). They might do so, for example, by requesting additional information on the implementation of the company's low-carbon strategy, including the short-term (scopes 1-3, Paris-aligned) emission reduction targets the company has set.

48. See: https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2020-06/ag-2020-resultat-des-votes_en.pdf ("Resolution A", at page 4)
49. See: C. Baldon, "*Les résolutions climatiques au prisme du principe de séparations des pouvoirs au sein de la société anonyme*", la Semaine Juridique – Entreprise et Affaires - N°36, 9 September 2021.
50. See: https://totalenergies.com/sites/g/files/nytnzq121/files/documents/2021-05/AG2021_Resultats-des-votes-par-resolution_EN.pdf
51. See: https://www.vinci.com/vinci.nsf/en/ag2021/$file/vinci-result-vote-resolution-ag2021.pdf
52. Article L22-10-35 of the French Commercial Code (emphasis added).
53. Article R225-105 of the French Commercial Code (emphasis added).

3. **"Say on Climate"**: Given the 2021 Total and Vinci precedents above (and at Annexes 4 and 5), there are strong arguments that an advisory vote on a company's strategy is permissible, and could be required by shareholders on an annual basis by way of an amendment to the company's Articles of Association.
4. **Corporate climate lobbying**: Lobbying resolutions in France should broadly be limited to 'disclosure'-type asks. Such resolutions might, for example, ask the Board to explain how / the extent to which they consider that their lobbying practices (or those of their industry associations) are Paris-aligned, and how they govern them. A specific direction to the Board to cease such activities, however, is likely to fall foul of the mandatory division of powers.

It is clear that there are no guarantees of success in respect of filing climate-related resolutions in France. However, provided resolutions are carefully-worded with a view to the division of powers, and framed as amendments to the Articles of the company, there are strong arguments in investors' favour. Investors are encouraged to continue pushing companies to transition in a proportionate and timely way; climate-related shareholder resolutions can certainly be one tool to achieve this.

Local expert: Clementine Baldon, Founding Lawyer, Baldon Avocats

Overview of Legal Process

Basic right to file?	**Yes** Article R225-71 of the French Commercial Code (***FCC***)
Amendment to the Articles?	**Required** Unless the Board agrees to put the resolution on the agenda itself, a climate-related resolution of the type envisaged would require an Amendment to the Articles. Such an amendment must be passed by a vote at an Extraordinary General Meeting (***EGM***). In France, AGMs are usually run as a "combined meeting", whereby an EGM and an Ordinary General Meeting (***OGM***) are held together. Article L124-9 FCC
Ownership period / share-blocking?	**Ownership at filing date and two working days prior to AGM** Shareholders must provide a certificate of registration of the corresponding shares *both* at the date of filing *and* two working days prior to the AGM. This may be seen as a *de facto* / indirect share-blocking requirement. Article R225-71 FCC
Custodian rules?	**Provision of a custodian statement (see "Formal requirements & supporting documents" row)** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions.
Threshold to file?	**The filing threshold must be calculated based on the size of the company's share capital[G]** The filing threshold is the sum of (as applicable): • 4% of the share capital for the portion below EUR 750,000; • 2.5% of the share capital for the portion between EUR 750,000 and EUR 7.5m; • 1% of the share capital for the portion between EUR 7.5m and EUR 15m; and • 0.5% for the portion of the share capital above EUR 15m. Article R225-71 FCC

G. Assuming for the purposes of this overview that: (i) the company's share capital exceeds EUR 750,000; and (ii) a single shareholder or a group of shareholders is/are filing the resolution (as opposed to an "association").

Overview of Legal Process

Formal requirements & supporting documents?	**Form** **Form:** in writing. **Language:** recommended to be in French or accompanied by a French translation. **Recipient:** the AGM notice must specify the postal address and, "*where applicable*", an electronic address to which the request should be sent. **Delivery method:** the request must be sent by registered post with acknowledgment of receipt or, if so specified in the AGM notice, by e-mail to the e-mail address provided in that notice. **Supporting documents:** • **the draft resolution**; • **the justification for the request / a Supporting Statement**; • **a certificate of registration** of the corresponding shares in a share account (note that a second certificate of registration must be provided two days before the AGM); and • as applicable, a **custodian statement** confirming that the custodian owns the shares on behalf of the co-filing institution. Article R225-71 FCC
Key dates for filing and costs?	**Filing deadline: At least 25 days prior to the AGM but no more than 20 days after the AGM notice[H] is issued.** **No costs deadline** Companies must publish the AGM notice at least 35 days in advance of the meeting. The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions (including validly filed / requisitioned resolutions). Articles L225-73, L225-104 and L225 -105 FCC
How must company respond?	**The company must table the resolution** If filed in accordance with legal requirements, the company must acknowledge receipt within five days, include the resolution on the agenda and publish the resolution on its website. Article R225-74 FCC
Can a resolution be withdrawn?	**Probably yes** French law is silent on this point. However, the right stems from the fact that the validity of the resolution is subject to the requirement that shareholders provide a further certificate of registration of their shares two working days prior to the AGM. Filing shareholders may therefore simply choose not to meet this requirement, in which case the resolution should be removed from the agenda for the AGM. Article R225-71 FCC
Voting threshold	**66.6% of votes cast** Two-thirds of the votes cast by the shareholders present or represented is needed to pass an EGM resolution to amend the Articles of Association. Article L225-96 FCC

H. This notice (also known as the "preliminary notice") is published in the French *Bulletin des Annonces Légales Obligatoires* (BALO), typically a few weeks before the "notice of the General Meeting".

5.6 Germany

We referred at section 5.1 to the possible tension in certain jurisdictions between: (i) the principle that Boards have general competence to manage the company; and (ii) the reserved right for shareholders to amend the Articles of the company. Germany epitomises this position.

It is trite law in Germany that shareholders are not permitted to give detailed instructions to the management board of a German stock corporation (*Aktiengesellschaft*);[54] "*the general meeting may take a decision regarding matters of the management of the company's affairs only if the management board so demands*."[55]

The management board is, however, bound by the Articles of Association – and German law expressly provides that shareholders have the right to amend the Articles at a general meeting of the company.[56]

The key to unlocking the German market for a climate-related shareholder resolution is to reconcile these two principles. The weight of academic literature suggests it can be done. In the literature, cogent arguments are made that the Articles of Association can, for example, compel the management board to take into account corporate social responsibility aspects[57] (although there is an argument that climate change goes beyond 'CSR' in the traditional sense of that term, affecting so fundamentally – as it does – the very physical and economic systems in which companies operate).

Significantly, the Courts have also come down on the side of shareholders. The Stuttgart Higher Regional Court (*Oberlandesgericht*), for example, held in a 2006 ruling that:

> *"It is precisely the responsibility of the Articles of Association and thus the right of the general meeting of shareholders to determine what kind of business the company is to conduct; there is no objective reason why this should not include ideological demarcations, provided that they are otherwise within the scope of the legal system [...] [A]s long as the articles of association are limited to general stipulations in the sense of providing a general framework, they do not constitute an inadmissible encroachment on the managing boards' power to manage the company. This is also the opinion of the Senate."* [58]

This, then, is the crux of the matter. Climate-related resolutions in Germany, as so often elsewhere, should amend the Articles so as to **provide a general framework** within which Boards should operate.

54. § 76(1) of the German Stock Corporation Act (*Aktiengesetz* or ***German AktG***).
55. § 119(2) of the German AktG.
56. § 119(1) of the German AktG. German law also provides that supplementary provisions in the Articles of Association are permissible "*unless the German AktG provides conclusively for the matter*": §23(5) of the German AktG. This takes us back, then, to the need to reconcile the two relevant principles set out in the legislation.
57. See e.g. Limmer, in Spindler/Stilz, BeckOnlineGrosskommentar AktG, as of 01.07.2020, § 23 margin no. 34; Limmer, ibid.; Spindler, Müko-AktG, 5th edition 2019, § 76 margin no. 89.
58. *Oberlandesgericht Stuttgart*, decision of 22 July 2006 (file no. 8W 271/06, 8 W 272/06).

In respect of each individual 'ask' at section 4.2, this means (in each case as an amendment to the Articles):

1. **Ambition / commitment to net-zero**: this 'ask' should be permissible;
2. **Paris-alignment strategy / transition plan**: with regard to the strategy itself, there are good arguments that – provided investors do not tell the Board *how* to achieve the strategy – this too would be permissible, as setting a general framework within which the Board should operate. With regard to the reporting element, because the management boards of large public limited companies are already obliged to address environmental issues (such as greenhouse gas emissions) in the non-financial section of their annual reports,[59] this is legally less contentious, because the 'ask' is broadly in line with pre-existing law.
3. **"Say on Climate"**: this would be the most problematic of the four 'asks'. Put simply, the Board of a German stock corporation cannot be obliged to table a resolution which seeks to tie the Board to an annual, binding vote on its Paris-alignment strategy. Such a resolution would trespass on the Board's general authority to manage the company. If the amendment to the Articles is explicit that the vote could only ever be advisory, the prospects of success are higher – but this would still be uncharted territory.
4. **Corporate climate lobbying**: as it is framed in section 4.2, this ask is overly prescriptive. However, there would certainly be scope for a more general amendment to the Articles on corporate climate lobbying (e.g. introducing a more disclosure-based, as opposed to action-oriented, obligation).

Because an amendment to the Articles is necessary in each case, a careful review of the existing Articles of the company is imperative. In some cases, it may be appropriate to supplement existing provisions of the Articles; in others, it will be necessary to formulate entirely new Articles.

There will, undoubtedly, be some companies in Germany who refuse to accept this legal position.[60] Precisely because they have not yet been compelled in this way (and threatened with legal action if necessary), they are comfortable with the *status quo* as they see it: that shareholders should not interfere. While the law in this area can be pulled in different directions, and there can be no guarantee of success if investors do file a resolution in the manner suggested above, they are certain to have continued difficulty engaging with laggard companies if they do not.

It is worth repeating that all of the above applies only to the scenario where the Board has actively refused to put the resolution on the ballot. The Board is perfectly capable of putting any of the above matters on the ballot voluntarily. In fact, this takes us back to one of the legal principles discussed at the beginning of this section: that the general meeting may take a decision regarding the management of the company's affairs if the management board so demands.[61]

But – if the Board cannot be persuaded that this is in the best interests of the company, investors should now feel emboldened to pursue the matter further.

Local expert: Hausfeld Rechtsanwälte LLP [Contact: Dr. Wolf H. von Bernuth, Partner]

59. §§289b-e of the German Commercial Code (*Handelsgesetzbuch*), transposing the EU Non-Financial Reporting Directive (2014/95/EU) into German law.
60. As some have done previously, although it is not clear if the relevant resolution was framed as an amendment to the Articles of Association – see: https://www.responsible-investor.com/articles/european-investors-open-to-taking-legal-action-on-corporate-lobbying
61. That demand should, however, then take the form of an "ordinary resolution" (not an amendment to the Articles of Association) – because the Board would in this case be exercising a very specific legal power to demand a decision of the shareholders (§ 119(2) of the German AktG).

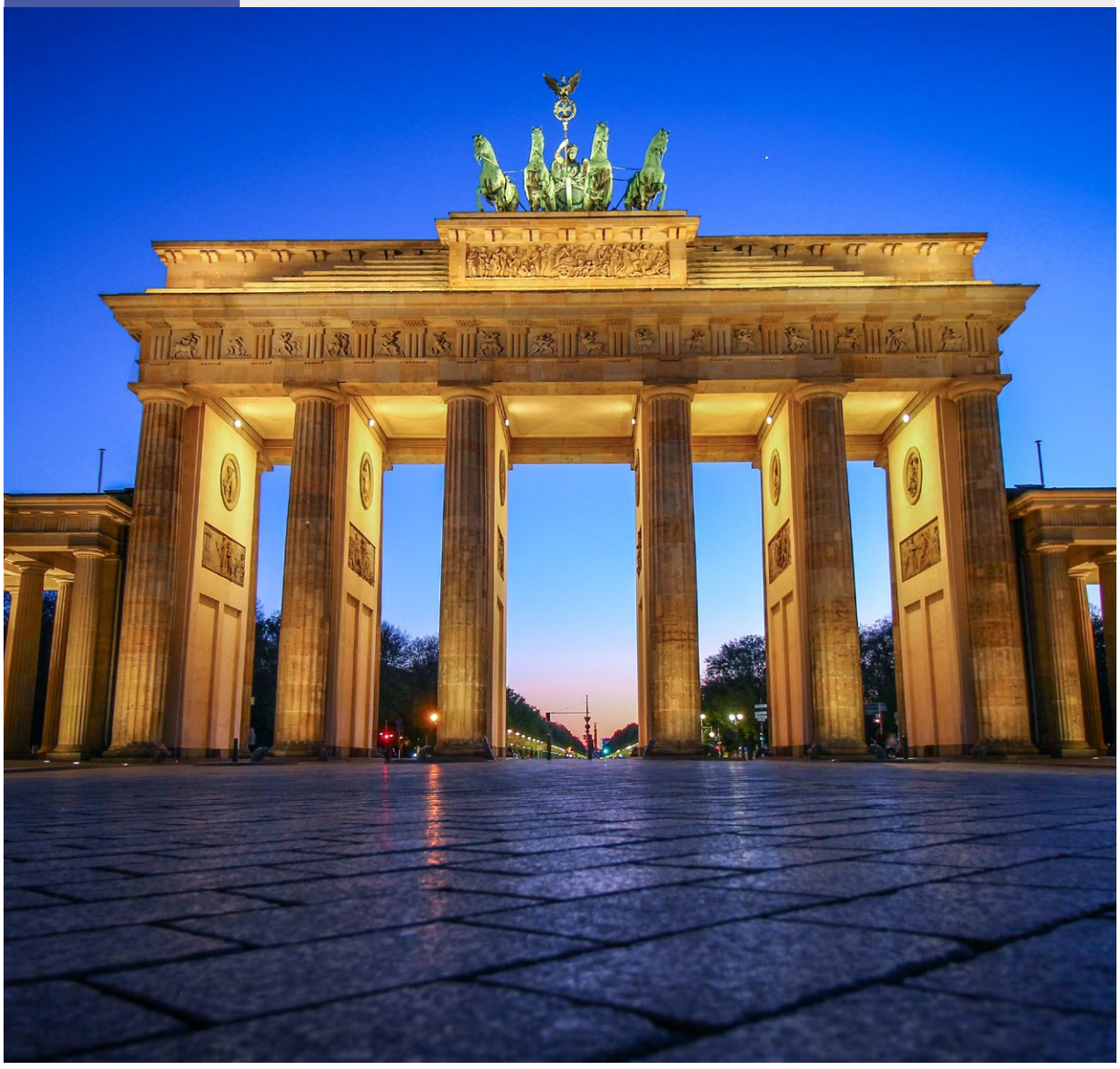
Overview of Legal Process

Basic right to file?	**Yes** § 119(1), point 6[I] of the German Stock Corporation Act (*Aktiengesetz* or ***German AktG***) § 122(2) of the German AktG
Amendment to the Articles?	**Required** Unless the Board agrees to put the resolution on the agenda itself, a climate-related resolution of the type envisaged would require an amendment to the Articles of Association. §§ 23(5), 76(1) and 119(1) and (2) of the German AktG
Ownership period / share-blocking?	**Ownership for at least 90 days prior to filing; share-blocking rules apply** Filing shareholders must submit proof that they have held the shares for at least 90 days before the date of receipt of the request by the company, *and* that they will continue to do so until the managing board decides on the request.[J] See also: "Custodian rules?" and "Formal requirements & supporting documents?" § 122(1), sentence 3 of the German AktG)
Custodian rules?	**Custodian undertaking** In connection with the ownership / share-blocking requirements, custodians must provide an undertaking that it will inform the company of any changes in the shareholding.
Threshold to file?	**5% of the nominal share capital or the pro-rata[K] amount of EUR 500,000** § 122(2), sentence 1 of the German AktG)
Formal requirements & supporting documents?	**Form** **Form:** in writing, by reference to the relevant AGM and signed by all shareholders or a lawyer duly authorised by them.[L] **Language:** German **Recipient:** must be addressed to the Management Board. **Delivery method:** standard post, courier or other means. Registered post is recommended. **Supporting documents:** • **the draft resolution** with the text of the proposed amendment to the Articles; • (recommended) **the justification** for the draft resolution (e.g. a Supporting Statement); and • **proof of ownership** (in the required amount and for the required period of time) and **share-blocking**.[M] § 122(2), sentence 2 in conjunction with §124(2), sentence 3 of the German AktG)
Key dates for filing and costs?	**Filing deadline: At least 30 days prior to the AGM.** **No costs deadline** The day of receipt by the company is not included when calculating the relevant time period. The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions.[N] §§ 122(2) and (4) of the German AktG

I. At point 5 in the latest publically available English version of the legislation.
J. If legal proceedings are subsequently commenced by the shareholders, the Court must be satisfied that the shareholders will hold the shares until the proceedings are finally concluded (§ 122(3), sentence 5 of the German AktG).
K. I.e. in the case of shares with a nominal or "par" value, EUR 500,000 in nominal share value; in the case of no-par value shares, the share capital must be divided by the number of shares.
L. In which case with the corresponding power of attorney annexed.
M. In the case of bearer shares (*Inhaberaktien*), proof can be provided by confirmation from the custodian. If the shares are still deposited, a deposit certificate with blocking notice will serve. In the case of registered shares (*Namensaktien*), a reference to the relevant entry in the share register, and undertaking to continue holding the shares for the relevant time period, will suffice.
N. In the event that, following legal action, shareholders are authorised by the Court to publish a proposed resolution themselves, the shareholders have a claim for reimbursement of costs against the company.

Overview of Legal Process

How must company respond?	**The company must table the resolution** The company must announce validly proposed resolutions either at the time the AGM is convened (i.e. in the AGM notice) or otherwise without undue delay following receipt of the request. The managing board and the supervisory board must make proposals on how to vote when announcing proposed resolutions. § 124 of the German AktG
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** German law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution. Once the AGM notice has been published, the prevailing opinion is that the resolution can only be withdrawn by a shareholder vote at the AGM itself.
Voting threshold	**75% of votes cast** A resolution of the general meeting to amend the articles of association requires a majority of at least three-quarters (75%) of the nominal share capital represented at the time of the resolution.[O] § 179(2) of the German AktG



O. In the case of an amendment to the Articles which constitutes a change in the object of the company, the company's Articles may provide for a higher voting threshold. In the case of amendments which do not go to the object of the company, the Company's Articles may provide for a higher or lower threshold.

5.7 Ireland

Ireland, like the United Kingdom (see section 5.14 below), has a legal framework which very clearly grants the right to shareholders to file resolutions of the type envisaged by this report.

While the business of an Irish company (i.e. its day-to-day management) is to be managed by the directors, this is explicitly made subject to "*such directions, not being inconsistent with the foregoing regulations or provisions, as the company in general meeting may (by special resolution) give*".[62] In other words: shareholders are fully entitled to issue directions by special resolution to the Board – and the Board must comply with those directions.

There are very few caveats to this. One is that no direction given by the shareholders shall invalidate a prior act of the directors (if that act was valid prior to the direction);[63] for our purposes, we can distil this to say that the resolution should be forward-looking. Another is where the shareholders had already delegated the power to make certain decisions to the Board – in that case, it is not then generally open to shareholders to challenge those decisions. For our purposes, this means that any resolution which might otherwise be deemed as 'delegating' power to the Board to make decisions on climate should be drafted with this point in mind.

The right to put items on the agenda of the general meeting and to table draft resolutions is set out explicitly in Irish corporate law.[64] With regard to the 'asks' set out at section 4.2, there would be no need for any amendments whatsoever. They are permissible in their current form, although it is strongly recommended that they are filed as special resolutions.

Local expert: Leman Solicitors LLP
[Contact: Dominic Conlon, Partner, Head of Corporate]

Overview of Legal Process

Basic right to file?	**Yes** Section 1104(1)(a) of the Irish Companies Act 2014[P]
Amendment to the Articles?	**Special resolution strongly recommended / required** Resolutions do not need to explicitly amend the Articles – but they should be tabled as special (rather than ordinary) resolutions. Section 158(1)(c) of the Irish Companies Act 2014
Ownership period / share-blocking?	**No express requirements** However, shareholders must be entered on the share register (see next row, "Custodian rules?"). There are no share-blocking requirements between the record date and the date of the AGM.
Custodian rules?	**Registration requirement** Shareholders must be entered on the relevant register for securities by the "record date" to participate and vote at a general meeting. The record date is a date not more than 48 hours before the general meeting. Section 1105 of the Irish Companies Act 2014

62. Section 158(1) of the Irish Companies Act 2014.
63. Section 158(2) of the Irish Companies Act 2014.
64. Section 1104 of the Irish Companies Act 2014.

Overview of Legal Process

Threshold to file?	**At least 3% of the issued share capital, representing at least 3% of the total voting rights of all members who have a right to vote at the relevant meeting** Section 1104(1) of the Irish Companies Act 2014
Formal requirements & supporting documents?	**Form** **Form:** in writing, by reference to the relevant AGM. **Language:** English **Recipient:** to the address specified by the company. **Delivery method:** electronic or postal means. **Supporting documents:** • **the draft special resolution**; • (recommended) **the justification** for the draft resolution (e.g. a Supporting Statement); and • **proof of ownership** (in the required amount and at the record date).[Q] Section 1104(1) of the Irish Companies Act 2014
Key dates for filing and costs?	**Filing deadline: At least 42 days prior to the AGM. Costs increase beyond that point** If filing shareholders miss the filing deadline, costs increase the closer that the resolution is filed to the AGM. Traded PLCs must ensure that the date of the next AGM is published on their website either: **(a)** by the end of the previous financial year; or **(b)** no later than 70 days prior to the AGM, whichever is the earlier. Sections 1104(2) and (4) of the Irish Companies Act 2014
How must company respond?	**The company must table the resolution** Traded PLCs must give notice of any draft resolution tabled by members (including by publishing them on their website as soon as possible following receipt). Where the AGM notice / agenda has already been published, traded PLCs must make available a revised agenda in the same manner as the previous agenda.[R] Sections 181, 1102, 1103 and 1104(3) of the Irish Companies Act 2014
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** The Irish Companies Act is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution.
Voting threshold	**75% of votes cast** A special resolution requires a majority of at least 75% of the votes cast.[S] Section 191 of the Irish Companies Act 2014

P. Section 1104(1)(b) if the proposed resolution relates to an item which is already on the agenda.
Q. Section 1105(5) provides: "*In relation to the subjecting by a traded PLC of a person to proof of the person's qualification as a member, that person may be made subject only to such requirements – (a) as are necessary to ensure the identification of the person as a member, and (b) then only to the extent that such requirements are proportionate to the achievement of that objective.*"
R. They must do so either: "*(a) in advance of the applicable record date […]; or (b) if no such record date applies, sufficiently in advance of the date of the annual general meeting so as to enable other members to appoint a proxy or, where applicable, to vote by correspondence*".
S. Validly cast, i.e. "*by such members of the company concerned as, being entitled to do so, vote in person or by proxy at a general meeting of it*".

5.8 Italy

In Italy, the Board of Directors of an Italian company is, in principle, the only competent body to manage the company.[65] This means that the Board is solely responsible for *fulfilling* the goals of the company, and shareholders are not permitted to give detailed instructions to the Board as to how it should carry out that function. Significantly, however, shareholders do have a role to play in *setting out* the 'goals of the company' (which are to be implemented by the Board), and in evaluating the work of the Board. The Board is also bound by the Articles of Association of the company, which shareholders have the explicit right to amend.[66]

This means that, in a similar way to Germany (see section 5.6), there is a potential tension between the basic tenet of law that the Board is responsible for the management of the company, and the right of shareholders to amend the Articles of Association. The outcome is largely similar, i.e. there is a strong argument for many of the key asks set out at section 4.2 that, *provided* these are framed as amendments to the Articles, they would be legally permissible under Italian law (and the Board would be required to put them on the ballot). Investors should only seek to set a general framework within which the Board should act, and proposed amendments to the Articles should take into account the pre-existing content and structure of the individual company's Articles.

Of the various 'asks' set out at section 4.2, the annual vote element ("Say on Climate") is again the most legally contentious. Even if the obligation to hold the vote were binding on the Board in the event of a validly-passed resolution, the vote itself could only ever have advisory effect (because of the basic principle outlined above).

One argument that has been raised by Italian companies when confronted with the idea that they should report to shareholders on their Paris-alignment strategy is that this somehow runs contrary to their existing reporting obligations under Italian law. As elsewhere in Europe, Italian companies must provide shareholders with a non-financial statement which must, under the Italian legislation transposing Directive 2014/95/EU (the Non-Financial Reporting Directive),[67] contain "*details of the current and foreseeable impacts of the undertaking's operations on the environment*", including greenhouse gas emissions.

The argument, however, that this means companies should not report to shareholders on a Paris-aligned strategy, is a poor one.

There are two possible logical consequences to it:

1. Either the Italian legislation already requires companies to set out its strategy in respect of Paris-alignment (as we understand is argued by some Italian legal academics) – in which case the company should do so; or
2. If the legislation does not require companies to do that, the draft resolutions go further than the legislation and should therefore be accepted onto the ballot (as covering new matters not already the subject of legislation).

As elsewhere, the Board is free to put resolutions onto the ballot itself, should it choose to do so. However, investors should note that it would be considerably more difficult to enforce a management-led resolution in the event of non-compliance, than it would a provision in the Articles of Association of the company.

Local expert: Deminor [Contact: Rosario Marcone, Country Manager Italy]

65 Article 2380-bis (1) of the Italian Civil Code (*Codice civile*).
66. Article 2365 of the Italian Civil Code.
67. Legislative Decree No. 254 of 30 December 2016.

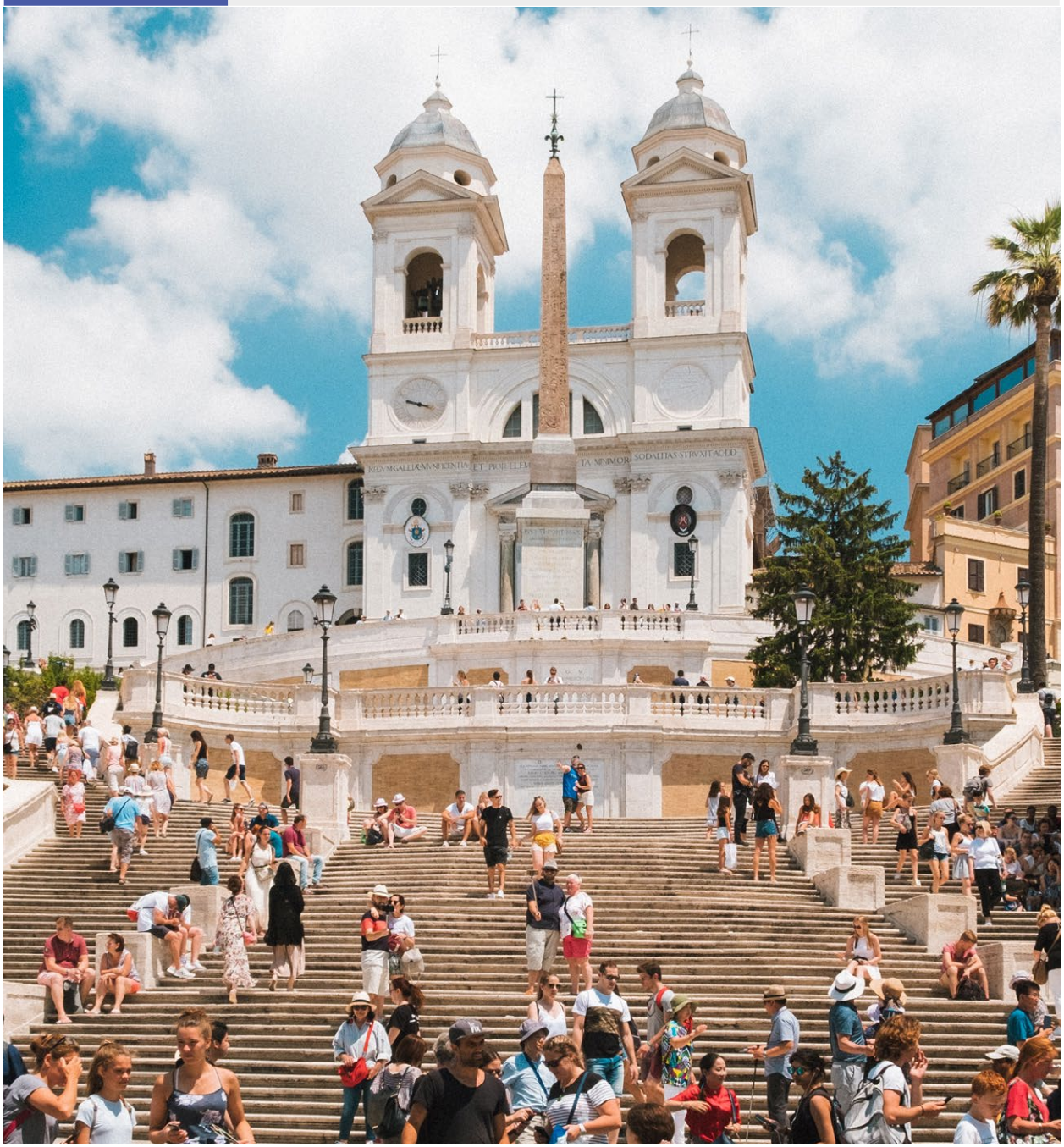
Overview of Legal Process

Basic right to file?	**Yes** Shareholders have the right to submit new resolution proposals to the agenda of the AGM. Article 126-bis of the Italian Consolidated Law on Finance (*Testo Unico della Finanza*), which is Legislative Decree ("D.lgs.") No. 58 of 24 February 1998 (***TUF***)
Amendment to the Articles?	**Required** A climate-related resolution of the type envisaged would require an amendment to the Articles of Association. The Board may agree to put a resolution on the agenda itself, but this would not have the same binding / enforceable effect as an amendment to the Articles. Article 2365(1) of the Italian Civil Code (*Codice Civile*)
Ownership period / share-blocking?	**No express requirements** However, the period of validity stated on the custodian statement should (at least) cover the time period between the filing of the resolution and the date of the AGM.
Custodian rules?	**Provision of a custodian statement (see "Formal requirements & supporting documents?" row)** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions.
Threshold to file?	**2.5% of the share capital** Shareholders who, either alone or collectively, represent at least one fortieth (2.5%) of the share capital, may file a resolution. Article 126-bis (1) of TUF
Formal requirements & supporting documents?	**Form** **Form:** in writing, by reference to the relevant AGM. For an amendment of the Articles of Association, an **extraordinary shareholders' meeting** is required. This can, but need not, be held during the AGM. **Language:** Italian **Recipient:** addressed to the Board of Directors. **Delivery method:** registered mail or certified e-mail ("*Posta Elettronica Certificata*" or "PEC"). **Supporting documents:** • **the draft resolution** with the text of the proposed amendment to the Articles of Association; and • as applicable, a **custodian certificate/statement** stating the period of validity *and* the specific right that shareholders are exercising.[T] Articles 2365(1) of the Italian Civil Code Article 83-quinquies (1 and 3) of TUF Articles 41 and 46 of the Post-Trading Regulation of the Bank of Italy (*Banca d'Italia*) and Consob
Key dates for filing and costs?	**Filing deadline: Within 10 days of the AGM Notice** The shareholders' meeting is convened by notice published on the company's website within thirty days of the date of the meeting. The company bears the costs of the AGM. This includes the costs of announcing proposed resolutions. Article 126-bis and Article 125-bis of D.lgs. 58/1998

T. I.e. participation at the AGM and right to vote.

Overview of Legal Process

How must company respond?	**The company must table the resolution** The company must acknowledge receipt of the request, and announce the proposals in the same form as the AGM notice at least 15 days before the AGM. In principle, the Board may propose formal (not substantive) amendments to the resolution (e.g. to make the resolution consistent with the content or terminology of the company's Articles of Association). Article 125-ter and 126-bis (4) of D.lgs. 58/1998
Can a resolution be withdrawn?	**Probably not** The advice we have received is that once the deadline for amendments of the agenda has elapsed and the new agenda has been published, it would be challenging to withdraw the resolution.
Voting threshold	**66.6% of votes cast** Amendments to the Articles of Association require a majority of shareholders representing at least two-thirds of the share capital represented at the AGM. Articles 2368(2) and 2369(1) of the Italian Civil Code



5.9 Luxembourg

In Luxembourg, "*the Board of Directors shall have the power to take any action necessary or useful to realise the corporate object, with the exception of the powers reserved by law or by the articles to the general meeting*".[68]

This fundamental principle of Luxembourg corporate law echoes the position we have seen elsewhere, and commends investors to frame climate-related resolutions as an amendment to the Articles of Association where possible.

The nuance in Luxembourg is twofold:

1. The local advice is that, aside from "Say on Climate", it may be permissible to frame the other asks set out at section 4.2 as "ordinary resolutions" (i.e. an amendment to the Articles, although recommended to avoid a dispute as to the legal niceties, may not actually be strictly necessary); but
2. As in Italy, an amendment to the Articles would have the advantage of making it easier under Luxembourg law to hold the directors accountable if they do not comply.

Investors are urged to test the position, and file a climate-related resolution at a Luxembourg company, preferably – as above – as an amendment to the Articles of Association of the company.

Local expert: Deminor [Contact: Stéphanie Abiraad, Legal Counsel]

Overview of Legal Process

Basic right to file?	**Yes**
	Shareholders have the right to file any type of resolution. Article 4 of the Shareholders Rights Act 2011 (*Loi modifiée du 24 mai 2011 concernant l'exercice de certains droits des actionnaires aux assemblées générales de sociétés cotées et portant transposition de la directive 2007/36/CE du Parlement européen et du Conseil du 11 juillet 2007 concernant l'exercice de certains droits des actionnaires de sociétés*, or the ***SRA***)
Amendment to the Articles?	**Strongly recommended**
	It is strongly recommended to frame a climate-related resolution of the type envisaged as an amendment to the Articles. The Board may agree to put a resolution on the agenda itself, but this would not have the same binding / enforceable effect as an amendment to the Articles. Art. 441-5 of the Luxembourg Companies Act (*"Loi modifiée du 10/08/1915 concernant les sociétés commerciales"*)
Ownership period / share-blocking?	**Ownership two weeks prior to AGM**
	Shareholders' rights to take part and vote at the AGM are determined on the basis of the shares held on the 14th day prior to the AGM at midnight (Luxembourg time). There are no rules as to how long a shareholder must have owned their shares prior to filing. There are no share-blocking rules or restrictions as to what a shareholder may do between that date and the AGM. Articles 5(1) and 5(2) of the SRA

68. Article 441-5 of the Luxembourg Companies Act ("*Loi modifiée du 10/08/1915 concernant les sociétés commerciales*").

Overview of Legal Process

Custodian rules?	**No restrictions** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions.
Threshold to file?	**5% of the share capital** Article 4(1) of the SRA
Formal requirements & supporting documents?	**Form** **Form:** in writing. **Language:** filed or at least translated into one of Luxembourgish, French or German. **Recipient:** the target company, to the recipient and address stated in the AGM notice. **Delivery method:** by post or electronically, including a postal or electronic return address to which an acknowledgement of receipt may be sent by the company. **Supporting documents:** • **the draft resolution**; • **the justification** for the draft resolution (e.g. a Supporting Statement). A custodian statement is not required under the SRA; however, it is recommended that shareholders provide some proof of ownership. Article 4(2) of the SRA
Key dates for filing and costs?	**Filing deadline: At least 22 days prior to the AGM. No costs deadline** The request must be *received* by the company at least 22 days before the AGM. The company bears the costs of putting a validly filed resolution on the agenda of the AGM. Article 4(3) of the SRA Article 3(2) of the SRA
How must company respond?	**The company must table the resolution** An acknowledgement of receipt must be sent by the company within 48 hours of receiving the resolution. The company must announce the revised agenda no later than 15 days prior to the AGM. Article 4(3) and (4) of the SRA
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** Luxembourg law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution. However, it would be at the discretion of the Board.
Voting threshold	**66.6% of votes cast** An amendment to the Articles of Association requires a majority of two-thirds (66.6%) of the votes cast (not taking into account abstentions or blank votes).[U] Art. 450-3(2) of the Luxembourg Companies Act

U. Provided that at least **half of the company's share capital is represented** at the AGM. If this condition is not fulfilled, a new AGM can be convened at least 15 days later and may validly proceed regardless of the percentage of the share capital represented.

5.10 Netherlands

The legal framework in the Netherlands is notoriously restrictive in terms of shareholder rights. Unfortunately, it is no different when it comes to submitting shareholder resolutions for a vote – and the Netherlands is the only jurisdiction covered by this report where, unless the Board agrees to table a climate-related resolution, there are no legal avenues available to shareholders to seek to compel them to do so.

The reason for this is that, although Dutch law does provide shareholders with the power to require voting items to be added to the agenda of the AGM, the matters which those items can cover is limited.[69] The proposed climate-related resolutions do not fall within that limited scope.

Anything relating to the strategy of the company is primarily within the Board's competence,[70] and the usual route of amending the company's Articles of Association is unlikely to be available. This is because the Articles of Dutch companies usually only permit the management or supervisory board to propose a change.[71]

This means that investors in Dutch companies must revert to other options:

1. Aware of the reputational and PR risks for the company that come with refusing, investors may seek to **persuade the company to voluntarily table a resolution** for a vote. Legally, there is no barrier to the company tabling the resolution if it so chooses.
2. Investors may seek to **vote against directors** who are being particularly intransigent. Director removal votes are ordinarily a potent weapon; but that weapon is again somewhat blunted by the Dutch legal framework. In principle, shareholders have the right to propose the dismissal of a director; however, in the context of climate management, this is really only an option where:

   a. the director is up for re-election (in which case shareholders are free to vote against); or

   b. there is clear evidence of climate risk mismanagement. A simple intention to influence company strategy is not sufficient, and any removal vote on that basis would be impermissible / challengeable by the company.[72]

   To make matters worse, the relevant Dutch legislation has recently been amended to grant Dutch companies a 'cooling-off' period if a shareholder proposes the dismissal of a Board member.[73] If the management board invokes this, shareholders cannot vote on a dismissal proposal until 250 days have passed.
3. Shareholders may propose that a **"discussion item"** be added to the AGM agenda.[74] Although discussion items are not voted upon, and do not result in any legally binding outcomes, there are no restrictions as to what matters may be discussed. As such, they may provide a platform to raise climate issues with the Board.[75] Shareholders are required to hold 3% of the issued capital of the company to add a discussion item to the agenda of the AGM.[76]
4. Finally, investors may **vote against discharging the Board**. It is a standard voting item at the AGM of a Dutch listed company for shareholders to consider whether they are for or against the discharge of the directors from liability in respect of the performance of their duties in the financial year just passed.

69. Article 2.114a of the Dutch Civil Code; see also the Dutch Supreme Court decision in *Boskalis v Fugro* (ECLI:NL:HR:2018:652).
70. To the point that the company may even invoke a "response time" of up to 180 days in the event that any proposed voting item concerns the company's policy or strategy: see Section 4.1.7 of the Dutch Corporate Governance Code.
71. Albeit that amendments *must be approved* by shareholders.
72. See *Elliot International LP and others v Akzo Nobel NV* (ECLI:NL:GHAMS:2017:1965).
73. Article 2:114b of the Dutch Civil Code.
74. Article 2:114a of the Dutch Civil Code.
75. As was indeed the case with a discussion item filed by CA100+ investors at the 2021 AGM for LyondellBasell Industries N.V.
76. Unless the company's Articles of Association stipulate a lower threshold. Shareholders must provide a written request for the Board to place an item on the AGM agenda and evidence of shareholdings at least 60 days prior to the AGM. See Article 2:114a of the Dutch Civil Code.

If 'soft' engagement with the Board does not bring about the desired result, it is likely that the most effective route to intervention in the Netherlands is to vote against directors when they are up for re-election – and/or to vote against discharging the Board from liability.

Local expert: Eumedion [Contact: Rients Abma, Executive Director]

Overview of Legal Process

Basic right to file?	**No** If the Board does not agree to put the resolution on the agenda itself, shareholders cannot compel them to do so.
Amendment to the Articles?	**N/A**
Ownership period / share-blocking?	**N/A**
Custodian rules?	**N/A**
Threshold to file?	**N/A**
Formal requirements & supporting documents?	**N/A**
Key dates for filing and costs?	**N/A**
How must company respond?	**N/A**
Can a resolution be withdrawn?	**N/A**
Voting threshold	**N/A**

5.11 Spain

Investors certainly have the right to file climate-related shareholder resolutions in Spain, although they should be aware of recently-enacted (and seminal) legislation which requires listed companies to meet various climate-related disclosure and target-setting requirements.

As to the right to file resolutions, the 'general meeting of shareholders' (i.e. the shareholder body at AGM) is the sovereign decision-making body. Of course, the Board has broad powers to manage and represent the company – but this is essentially subject to any decisions lawfully made by shareholders at the AGM.

Indeed, Spanish law goes so far as to explicitly provide that the general meeting of shareholders is entitled to instruct the Board.[77] Shareholders further have the right to request that new items (including resolutions) be added to the AGM agenda, or indeed to submit resolution proposals regarding items which are already on the agenda.[78] Only resolutions that are unlawful, contrary to the Articles of Association or regulations for the general meeting, or damage the corporate interest of the company for the benefit of one or more shareholders or third parties, may be refused. This is highly unlikely to be the case in respect of any climate-related resolution.

In theory, this means that a climate-related resolution could be filed without amending the Articles. In practice, however, an amendment to the Articles is recommended as the most appropriate legal mechanism by which to secure the type of obligations set out in the asks at section 4.2.

There is precedence for this type of resolution in Spain. In 2020, The Children's Investment Fund (TCI) filed resolutions at the Spanish airport group, Aena SME, S.A. (***Aena***). The resolutions required the company to publish a comprehensive climate transition action plan, to put this to an advisory vote on an annual basis, and to amend its Articles of Association accordingly. Following successful engagement with the company, Aena's Board changed its recommendation from opposing the resolutions to supporting them. The resolutions were also endorsed by the main proxy voting advisers, Institutional Shareholder Services (ISS) and Glass Lewis. They passed with near-unanimous support.[79] The advice we have received from local counsel suggests that the Aena resolutions are, legally, an excellent precedent for future resolutions (although the content of such resolutions should now reflect the recent legislation in this area – as to which, see below). The full text of the Aena resolutions is set out at Annex 6.

In 2021, shareholders at the utility company IBERDROLA, S.A. (***IBERDROLA***) approved two climate-related resolutions proposed by the Board: the first to amend the Articles of Association such that (among other things) "*the Board of Directors shall approve and regularly update a climate action plan to achieve neutrality in the emission of greenhouse gases by 2050*"; and the second to approve, on a consultative basis, the company's Climate Action Policy. The full text of the IBERDROLA resolutions is set out at Annex 7. Without commenting on the specifics of the IBERDROLA resolutions, investors should – as ever – assess the terms of any company's transition plan particularly critically (as to which, see also our fourth comment at section 5.1).

77. Section 161 of the Spanish Companies Act (*Ley de Sociedades de Capital*, Royal Legislative Decree 1/2010).
78. Section 519 of the Spanish Companies Act.
79. 98.15% of shareholders voted in favour of holding an annual advisory vote on Aena's Climate Action Plan; 96.52% of shareholders voted in favour of amending the company's bylaws accordingly.

As indicated above, there is one important development to note in respect of the Spanish legal framework. As in many other European jurisdictions, Spain has transposed the Non-Financial Reporting Directive into its domestic law.[80] However, the Spanish legislature has recently gone further. In May 2021, new Spanish legislation was enacted, which explicitly requires listed companies to include within their management report an annual "*assessment of the financial impact on the company of the risks associated with climate change [...] including the risks of the transition to a sustainable economy and the measures taken to address those risks*".[81]

Precisely what companies will be required to include in that reporting will be determined by a further 'Royal Decree', which is to be issued before May 2023. However, it will include at least the following:

a) "*The governance structure of the company, including the role of its various bodies, in relation to the identification, assessment and management of risks and opportunities related to climate change*.

b) *The strategic approach, in terms of both adaptation and mitigation, of the company to manage the financial risks associated with climate change, taking into account the risks already existing at the time of the drafting of the report and those that may arise in the future, identifying the actions required at that time to mitigate such risks*.

c) *The actual and potential impacts of the risks and opportunities associated with climate change on the company and strategy, and on its financial planning*.

d) *The processes for identifying, assessing, monitoring and managing climate-related risks and how these are integrated into its overall business risk analysis and integrated into the organisation's overall risk management*.

e) *The metrics, scenarios and targets used to assess and manage relevant climate change-related risks and opportunities and, where calculated, scope 1, 2 and 3 of its carbon footprint and how it addresses its reduction*."[82]

Eagle-eyed readers will note the "*where calculated*" caveat in the final point (e). The legislation provides that, by no later than May 2022, the Spanish Government shall establish the type of companies that must calculate and publish their "*carbon footprint*". Critically, the legislation also provides that those companies will be required to adopt a GHG emissions reduction plan with a quantified, *five-year* reduction target – and they must set out how that target will be achieved.[83]

This is a seminal piece of legislation, and arguably leads the way for other European jurisdictions to follow suit. For the purposes of this report, it means that certain reporting or disclosure-type asks which investors might otherwise include in a climate-related resolution have now been superseded by regulation in Spain. It is likely that certain target-setting asks will also be superseded, pending the further concretisation of the legislation.

As in Italy, any argument from a company that a *wider-ranging* Paris-alignment resolution is, on the basis of this legislation, unlawful, should not be countenanced. We recommend seeking expert legal advice on the scope and terms of any resolution to be filed with a Spanish company.

Local expert: Lesayra Legal S.L.P. [Contact: Rafael Sánchez Jiménez, Partner]

80. Section 49.6 of the Spanish Commercial Code.
81. Article 32, Spanish Act 7/2021 on climate change and energy transition.
82. Article 32.5, Spanish Act 7/2021 on climate change and energy transition.
83. 12th Final Provision, Spanish Act 7/2021 on climate change and energy transition.

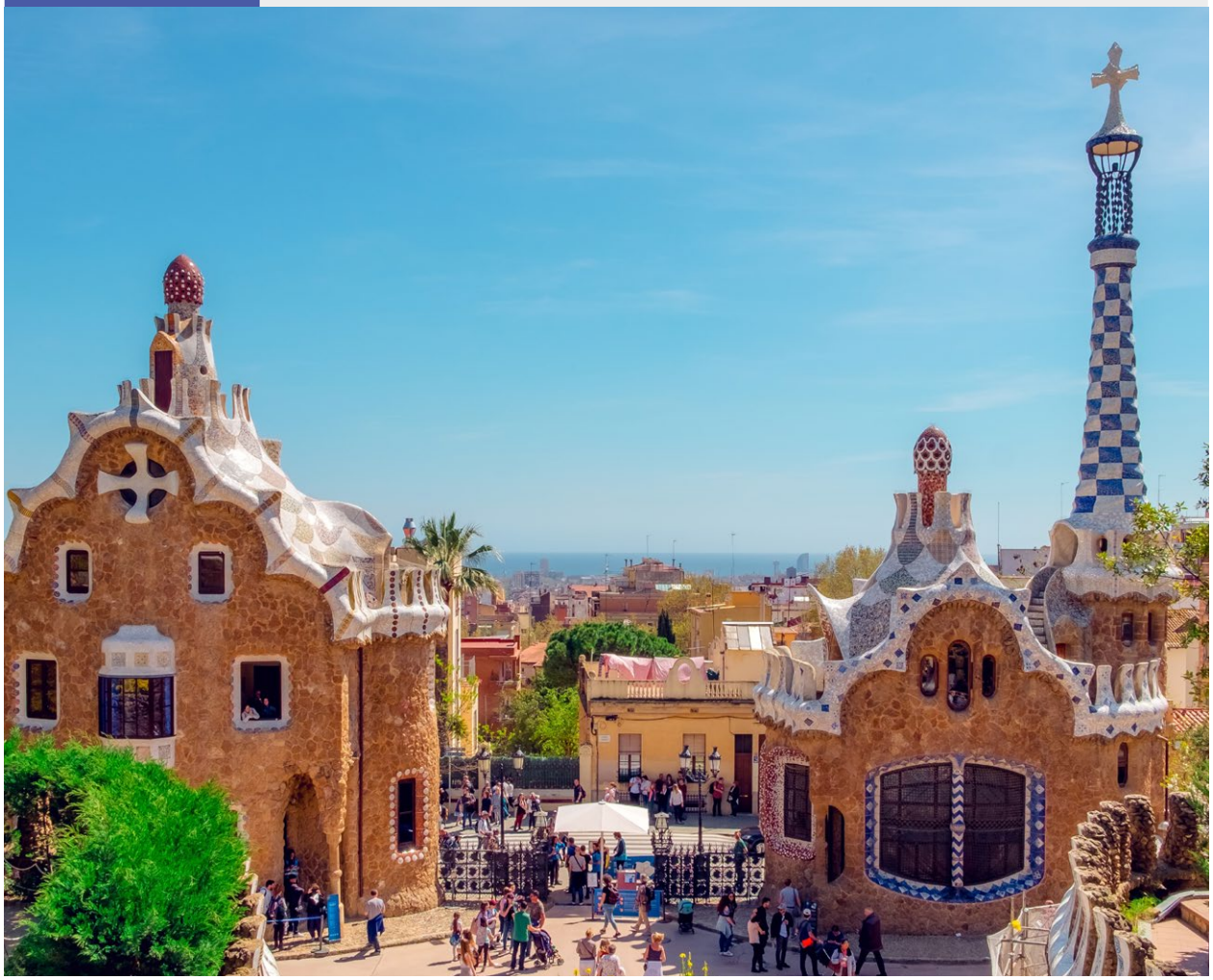
Overview of Legal Process

Basic right to file?	**Yes** Shareholders are entitled to instruct the Board. Shareholders have the right to request that new items be added to the AGM agenda, or indeed to submit resolution proposals regarding items which are already on the agenda. Sections 161 and 519 of the Spanish Companies Act (*Ley de Sociedades de Capital*, approved by Royal Legislative Decree 1/2010)
Amendment to the Articles?	**Recommended but not required** Because the Spanish Companies Act grants shareholders the general right to instruct the Board, an amendment to the Articles of Association is not strictly necessary. However, it is recommended as the most appropriate legal mechanism by which to secure the obligations set out in the type of climate-related rxesolution envisaged.
Ownership period / share-blocking?	**Ownership 5 days prior to AGM** Shareholders' rights to take part and vote at the AGM are determined on the basis of the shares held on the 5th calendar day prior to the AGM. There are no explicit share-blocking rules or restrictions as to what a shareholder may do between the date of filing and the AGM. However, it is advisable not to drop below the requisite 3% filing threshold. Section 179 of the Spanish Companies Act
Custodian rules?	**No restrictions** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions. Custodians in fact have certain obligations to facilitate the exercise of shareholder rights by their beneficial owners. Sections 520, 522 and 524 of the Spanish Companies Act
Threshold to file?	**3% of the nominal share capital** Section 519 of the Spanish Companies Act
Formal requirements & supporting documents?	**Form** **Form:** in writing, by reference to the relevant AGM, and signed by a duly authorised representative of each filing shareholder (specific Powers of Attorney are required for this purpose). **Language:** Spanish **Recipient:** the Board of Directors, FAO its Chairman or Secretary, at the company's corporate address. **Delivery method:** the traditional and indisputable method is by way of a Spanish Notary Public; however, it is likely that most if not all Spanish listed companies will themselves provide for other methods to enable the remote exercise of minority shareholder rights. **Supporting documents:** • **the draft resolution** with the text of the proposed amendment to the Articles; • **the justification** for the draft resolution (e.g. a Supporting Statement); • **Certificate of Ownership** (in the form required by section 19 of RD 878/2015);[V] and • Copies of the relevant **Power of Attorney** for each signatory. Section 519 of the Spanish Companies Act Section 19 of Spanish Royal Decree 878/2015 on clearing, settlement and registration of securities represented by means of book-entries (***RD 878/2015***)

V. According to which certificates of ownership must set out: the identity of the shareholder; the identity of the company; identification of the shares, including class, nominal value, number of shares, and any liens, encumbrances, or limitation to the shareholder's rights; date of issuance; the purpose for which the certificate is issued; and the certificate's term of validity. There are no specific provisions as to the term of validity of a Certificate of Ownership issued in connection with the exercise of a minority shareholder right. However, it is advisable that the Certificate of Ownership be valid at least until the date envisaged for the "second call" to the AGM.

Overview of Legal Process

Key dates for filing and costs?	**Filing deadline: Within 5 days of the publication of the notice of the AGM. No costs deadline** The AGM notice itself must be issued at least one month before the general meeting. The company bears the costs of putting a validly filed resolution on the agenda of the AGM. Sections 516 and 519 of the Spanish Companies Act
How must company respond?	**The company must table the resolution** Provided that the resolution is not contrary to the interests of the company (which is not the case in respect of the type of climate-related resolution envisaged), the company must table the resolution. An updated AGM agenda (to include the new item) must be published by the Board at least 15 calendar days in advance of the AGM. New resolution proposals must also be made available on the company's website. Sections 518 and 519 of the Spanish Companies Act
Can a resolution be withdrawn?	**Prior to publication of the shareholder request: probably yes** Spanish law is silent on this specific point. However, the general principle is that any right may be waived (including, in this case, the relevant minority shareholder right(s)). However, once the request has been published by the Board, it is likely to be difficult to withdraw the request.
Voting threshold	**Simple majority (ordinary resolution) or at least absolute majority (amendment to Arts.)** An amendment to the Articles of Association requires at least an absolute majority; in some circumstances, a two-thirds majority is required. Either voting threshold may be increased by the company's Articles of Association. Section 201 of the Spanish Companies Act



5.12 Sweden

In Sweden, shareholders have a general right to issue binding instructions to the Board, provided that those instructions are not contrary to the Swedish Companies Act, the company's Articles of Association or more general principles of Swedish corporate law.[84]

This means that a climate-related resolution in Sweden is, relative to some other jurisdictions, very simple. Not only are the procedural requirements minimal, with only one solitary share required to file (see Overview of Legal Process below), but there is also no strict requirement to frame the resolution as an amendment to the Articles of Association. One reason that investors may wish to do so nevertheless is, as in Luxembourg, to make it easier to hold the Board accountable if it does not comply. This, however, must be balanced against the higher voting threshold required for an amendment to the Articles to pass (see Overview of Legal Process below).

Local expert: Deminor [Contact: Jasmin Hansohm, Legal Advisor; Edouard Fremault, Chief Strategy Officer]

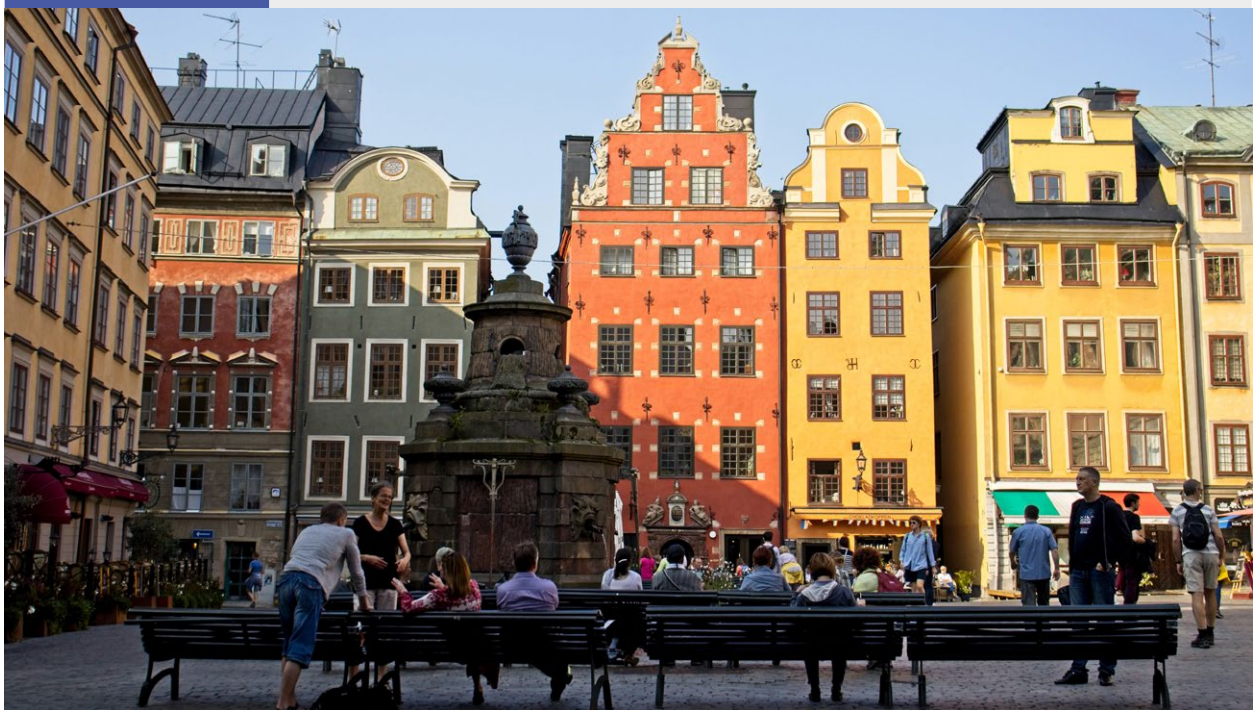
Overview of Legal Process

Basic right to file?	**Yes**
	Swedish Companies Act 2005, Chapter 7 §16
Amendment to the Articles?	**Recommended but not required**
	Shareholders have the general right to issue binding instructions to the Board, provided that these are not contrary to Swedish corporate law or the company's Articles of Association. Swedish Companies Act 2005, Chapter 8 §41
Ownership period / share-blocking?	**No express requirements**
	However, shareholders must register to attend the AGM (and must be entered on the share register for that purpose). It is advisable that the (co-)filer(s) continue to hold the shares until the AGM. Swedish Companies Act 2005, Chapter 7 §2
Custodian rules?	**Registration requirement**
	If an investor whose shares are held in a nominee-registered account wishes to participate in the AGM, they must be temporarily entered into the share register at the request of the nominee (i.e. the registration process referred to in the row above).
Threshold to file?	**One (1) share**
	Swedish Companies Act 2005, Chapter 7 §16

84. Chapter 8, §41 of the Swedish Companies Act.

Overview of Legal Process

Formal requirements & supporting documents?	**Form** **Form:** in writing. **Language:** Swedish. Companies may accept resolutions in English but they are not obliged to do so. **Recipient:** the target company at the address stated in the AGM notice. **Delivery method:** no specific legal provisions – in practice, most companies permit postal or electronic (e-mail) delivery. **Supporting documents:** • **the draft resolution**. Neither a Supporting Statement nor a custodian statement (if applicable) are explicitly required under the terms of the Swedish Companies Act. However, both documents are recommended. Swedish Companies Act 2005, Chapter 7 §16
Key dates for filing and costs?	**Filing deadline: At least 7 weeks prior to the AGM.[W]** **No costs deadline** There are no provisions as to costs-bearing, but it is to be assumed that the company bears the cost of putting a validly filed resolution on the agenda of the AGM. Swedish Companies Act 2005, Chapter 7 §16
How must company respond?	**The company must table the resolution** The item must be placed on the agenda and voted upon at the AGM. Swedish Companies Act 2005, Chapter 7 §16
Can a resolution be withdrawn?	**Prior to publication of the AGM notice: probably yes** Swedish law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution.
Voting threshold	**Simple majority (ordinary resolution) or two-thirds majority (amendment to Arts.)** Swedish Companies Act 2005, Chapter 7 §42



W. This is calculated in a roundabout way, by reference in the legislation to the date upon which the AGM notice is issued by the company. The resolution must be filed at least one week before the earliest date on which the AGM notice may be issued. The AGM notice may be issued no earlier than six weeks and no later than four weeks before the AGM.

5.13 Switzerland

The division of powers between shareholders and the Board in Switzerland follows a relatively familiar model. The shareholders' meeting is the "supreme governing body" of the company,[85] while the Board has broad management powers to take any and all decisions that have not been entrusted to the shareholders' meeting, either by way of law or pursuant to the company's Articles of Association.[86]

Certain powers, such as to determine and amend the company's Articles, to elect the members of the Board, or to discharge the members of the Board from liability, are granted exclusively to shareholders.[87] Other activities, including the overall management of the company, are the exclusive preserve of the Board.[88] In each case, these are "inalienable" rights afforded to shareholders and the Board respectively; in other words, the division of powers in respect of these activities cannot be altered.

In practice, the asks set out at section 4.2 would ordinarily fall within the Board's legal competency (not having been otherwise entrusted to the shareholders' meeting). In order to bring these matters into shareholders' remit, an amendment to the Articles of Association is required.

As above, shareholders have that exclusive right to determine and amend the company's Articles, and they have the express power to request that such an amendment (or other item) be placed on the agenda of the company's AGM.[89]

As ever, the framing of the amendment is critical: in order to avoid infringing upon the "inalienable" power of the Board to manage the company, it should set out a general framework within which the Board has discretion as to how to achieve the desired goals (e.g. emissions reductions, or Paris-aligned strategy).

In 2021, the Ethos Foundation **(*Ethos*)**[90] had successful engagements with the Swiss conglomerates, Nestlé S.A. **(*Nestlé*)** and Holcim Limited (formerly known as LafargeHolcim, here ***Holcim***):

1. Together with seven Swiss pension funds, Ethos filed a shareholder resolution for consideration at Nestlé's AGM. The resolution was rightly framed as an amendment to the company's Articles of Association, and would have required the Board to develop, publish and regularly update a Paris-aligned climate strategy. The Board would also have been required to publish a detailed annual climate alignment report on the implementation of that strategy, with that report subject to an annual advisory vote at the company's AGM (i.e. "Say on Climate"). In a demonstration of the potential effectiveness of such resolutions, Nestlé voluntarily agreed to submit its climate strategy to an advisory vote at its 2021 AGM – and the resolution was withdrawn.[91] The full text of the resolution is set out at Annex 8.
2. Following dialogue with Ethos, Holcim also agreed to prepare a climate transition report, which it will submit to an advisory shareholder vote at its 2022 AGM.[92]

85. Article 698(1) of the Swiss Code of Obligations.
86. Article 716 of the Swiss Code of Obligations.
87. Article 698(2) of the Swiss Code of Obligations.
88. Article 716a of the Swiss Code of Obligations.
89. Article 699 of the Swiss Code of Obligations.
90. A foundation for socially responsible investment and active share ownership – see: https://ethosfund.ch/en
91. The Ethos Foundation, "*Say on Climate" – Nestle meets demand of Ethos*, available at: https://ethosfund.ch/en/news/say-on-climate-nestle-meets-demand-of-ethos
92. The Ethos Foundation, "*Say on Climate" – LaFargeHolcim addresses a request from Ethos*, available at: https://ethosfund.ch/en/news/say-on-climate-lafargeholcim-addresses-a-request-from-ethos

This activity demonstrates that, provided resolutions are properly framed (and respect the division of powers under Swiss law), companies should not be taking issue with them on the basis of alleged legal concerns. Investors are recommended to consult with local experts as to the precise wording of climate-related resolutions in Switzerland.

Local experts: The Ethos Foundation [Contact: Vincent Kaufmann, CEO and Head Proxy Voting, Swiss ESG and Engagement ad interim; Matthias Narr, Head Engagement International]; Deminor [Contact: Edouard Fremault, Chief Strategy Officer]

Overview of Legal Process

Basic right to file?	**Yes** Article 699, al.3 of the Swiss Code of Obligations
Amendment to the Articles?	**Required** A climate-related resolution of the type envisaged would require an amendment to the Articles. The Board may agree to put a resolution on the agenda itself (e.g. Nestlé 2021 – see above), but this would not have the same binding / enforceable effect as an amendment to the Articles. Article 698 of the Swiss Code of Obligations
Ownership period / share-blocking?	**Ownership period set by the company; share-blocking may apply** Shareholders are only entitled to vote if their shares and associated rights are recorded with the issuer a certain number of days before the AGM. The relevant period is set out by the company in the AGM notice. Share blocking is not required by law for registered shares. For a few companies that have issued bearer shares, blocking is required; likewise, the custodian may require share blocking (e.g. if the shares are held in an Omnibus account).
Custodian rules?	**Provision of a custodian statement (see "Formal requirements & supporting documents?" row)** There are no restrictions on the exercise of shareholder rights in respect of shares held by custodian institutions (subject to the previous point on potential share-blocking).
Threshold to file?	**10% or CHF 1m of nominal share capital** **N.B. the threshold will change to 0.5% of share capital from 2023**, with the entry into force of new Swiss companies law. Articles of Association may set a lower threshold. Article 699(3) of the Swiss Code of Obligations Article 699b of the Swiss Code of Obligations (at the time of writing, not yet in force) Tribunal Fédéral 2015, 4A_296/2015
Formal requirements & supporting documents?	**Form** **Form:** in writing. **Language:** French or German, depending on the language of the company's Articles of Association (the documents should be in the same language as the Articles). **Recipient:** the Board, FAO the Chairman. **Delivery method:** Swiss law is silent on the precise delivery method; however, it is recommended to use registered mail / courier and e-mail, requesting acknowledgement of receipt. **Supporting documents:** • **the draft resolution**; • **the justification** for the draft resolution (e.g. a Supporting Statement); and • **a custodian statement** or other proof of ownership (also confirming if necessary that the shares have been blocked). Article 699(3), Swiss Code of Obligations

Overview of Legal Process

Key dates for filing and costs?	**Filing deadline: By reference to company's articles of association and/or the corporate governance section of the annual report. No costs deadline** There are no provisions as to costs-bearing, but it is to be assumed that the company bears the cost of putting a validly filed resolution on the agenda of the AGM. Article 699 II. of the Swiss Code of Obligations
How must company respond?	**The company must table the resolution** The resolution must be added to the agenda. The company must publish the AGM agenda at least 20 days before the AGM. The Board is expected to issue a proposal / recommendation with regard to each item on the AGM agenda. These proposals / recommendations are published together with the agenda. Article 700 of the Swiss Code of Obligation
Can a resolution be withdrawn?	**Yes** Swiss law is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution. There are a number of examples of shareholders having withdrawn resolutions effectively in Switzerland, where a negotiated outcome has been reached.[X]
Voting threshold	**Absolute majority** Unless otherwise stated in the Articles of Association or Article 704(1) of the Swiss Code of Obligations,[Y] resolutions at AGMs are passed by an absolute majority of the votes allocated to the shares represented. This is true for all types of resolution. Article 703 of the Swiss Code of Obligation

X. See, for example, https://ethosfund.ch/en/news/say-on-climate-nestle-meets-demand-of-ethos

Y. If the company's objects are to be amended, this would fall under Article 704(1) – and therefore require at least two-thirds of the voting rights represented (and an absolute majority of the nominal share value).

5.14 United Kingdom

English law very clearly grants shareholders the right to file climate-related resolutions.

The relevant legislation provides that shareholders have the power to require a company to give notice of a resolution to be moved at the company's next AGM.[93] That legislation also sets out so-called "model articles of association" (***Model Articles***), which apply as the default articles of a company unless the company adopts bespoke Articles of Association. Under the Model Articles, shareholders have a reserve power to direct the directors to take, or refrain from taking, a specified action.[94] Although the majority of UK listed companies do adopt bespoke articles, provision for shareholders' reserve power in those articles is virtually ubiquitous.[95]

Shareholders may use their reserve power to set the corporate objectives of the company and to define measures of long-term success. This power is far-reaching, and there are few restrictions as to what action shareholders can direct the Board to take.[96] As in Ireland, shareholders will not be permitted to invalidate anything which the directors have done before passing the resolution;[97] but otherwise, assuming there are no relevant restrictions in the company's Articles of Association, shareholders' reserve power could be used to direct the company to achieve any of the aims set out in section 4.2.

To exercise this reserve power, shareholders must pass a special resolution. Special resolutions are binding on the company if passed with at least 75% of the total voting rights of eligible shareholders, and have the effect of amending the company's broader constitution.[98]

A company may only refuse to table a shareholders' resolution if it would be:

(i) ineffective (e.g. because it is inconsistent with the law or the company's constitution);

(ii) defamatory of any person; or

(iii) frivolous or vexatious.[99]

Exceptions (ii) and (iii) will not apply: climate-related resolutions of the type envisaged, filed in good faith and in the best interests of the company, could not be considered defamatory, frivolous or vexatious. Whether a resolution might be "ineffective" (exception (i)) would depend on the exact terms of the resolution and (for example) the company's Articles of Association – but this is also unlikely to apply. To date, no climate-related resolution filed in the UK has been challenged by target companies under any of these exceptions.

To our knowledge, all shareholder-proposed resolutions on climate change in the UK have, to date, been presented in the form of special resolutions.[100] These have been broad-ranging in subject matter (including each of the 'asks' at section 4.2), and they have been filed at companies in a wide range of sectors.

93. Section 338 of the Companies Act 2006.
94. Model Articles, article 4(1).
95. Although, as elsewhere, the Articles of Association should be reviewed for each target company.
96. One would be, for example, if the request would, or might realistically, lead to the insolvency of the company.
97. Model Articles, article 4(2).
98. Note that, unlike other jurisdictions, an amendment to the Articles of Association is not required. While the special resolution will form part of the company's broader constitution, the provisions of the company's Articles of Association will remain the same.
99. Section 338(2) of the Companies Act 2006.
100. See, for example, ShareAction's *European Tracker: Shareholder Resolutions on Climate Change*, accessible at: https://shareaction.org/fossil-fuels/resolutions-tracker/ ; and the ShareAction *2021 Shareholder Resolution Tracker*, available at: https://shareaction.org/resolutions-2021/

Notable recent examples include:

- **Ambition / commitment to net-zero:** in 2021, ShareAction co-ordinated the filing of a resolution at HSBC Bank plc (***HSBC***), which would have required the company to publish short-, medium- and long-term targets to reduce its exposure to fossil fuel assets. This resolution used HSBC's commitment to "*reduce financed emissions from [its] portfolio of customers to net-zero by 2050 or sooner*" as the basis for its request. The text of the resolution is set out at Annex 9. In the event, the request was voluntarily withdrawn by the co-filing institutions, as HSBC agreed to put an alternative resolution on the ballot concerning its net-zero alignment.[101]
- **Paris-alignment strategy:** in 2021, Follow This proposed a resolution at BP plc (***BP***), which would have required the company to set and publish targets that are consistent with the goals of the Paris Agreement. If it had passed, BP would have been required to set quantitative short-, medium- and long-term reduction targets for its scope 1-3 greenhouse gas emissions. The text of the resolution is set out at Annex 10. The resolution was tabled at the company's 2021 AGM, and gained 20.6% support from shareholders.
- **"Say on Climate":** Say on Climate resolutions were placed on the ballot voluntarily by various companies this year, including Glencore plc,[102] Shell,[103] and Unilever plc.[104] While shareholders have not requisitioned a Say on Climate vote in the UK, these resolutions provide a strong precedent that they are able to do so. There are no known legal barriers in the UK to shareholders using their reserve power to require the company to hold a one-off or annual Say on Climate vote.
- **Corporate climate lobbying:** in 2019, a group of investors spearheaded by the Australasian Council on Corporate Responsibility (***ACCR***) filed a lobbying resolution at BHP, an Anglo-Australian mining company.[105] Although the resolution was filed under Australian law, the resolution was put on the AGM agenda of the company's UK registered entity and would have been equally permissible under English law. The resolution would have required the company to suspend memberships of industry associations that undertake lobbying, advertising or advocacy activities that were inconsistent with the Paris Agreement. The text of the resolution is set out at Annex 11. The resolution was listed on the 2019 AGM agenda, and gained 27.7% support from shareholders.

It is no exaggeration to say that the UK has often led the way in terms of climate-related shareholder resolutions. As demonstrated by the examples above, there is a well-established right, and practice, of shareholders filing such resolutions. As ever, investors are encouraged to continue filing – and supporting – high-ambition resolutions.[106]

Local expert: ClientEarth [Contacts: Paul Benson, April Williamson and Sophie Marjanac]

101. See HSBC's 2021 Notice of AGM, at pages 23 and 36 – 38, accessible at: https://www.hsbc.com/-/files/hsbc/investors/annual-general-meeting/2021/210322-agm-notice-en-2021.pdf?download=1
102. See Glencore's 2021 Notice of AGM, at pages 2 and 12, accessible at: https://www.glencore.com/dam/jcr:c4d5f186-9011-4b17-8da8-585718baab06/20210322_AGM%20Nom_Final.pdf
103. See Shell's 2021 Notice of AGM, at page 5, accessible at: https://www.shell.com/investors/annual-general-meeting/_jcr_content/par/textimage_d70a_copy.stream/1619711756022/3b46f95118374a334947d6ac4c7122684be9d195/notice-of-meeting-2021.pdf
104. See Unilever's 2021 Notice of AGM, at page 5, accessible at: https://www.unilever.com/Images/unilever-plc-nom-eng-2021-final_tcm244-561437_en.pdf
105. BHP is composed of BHP Group Limited, which is Australian listed, and BHP Group plc, which is registered in the UK.
106. Investors should also familiarise themselves with the content of the Government's "*Greening Finance*" policy document, which came too late to cover in any meaningful way in this guide. It is accessible at: https://www.gov.uk/government/publications/greening-finance-a-roadmap-to-sustainable-investing

Overview of Legal Process

Basic right to file?	**Yes** Shareholders have the right to file any type of resolution unless: **1**. It would, if passed, be ineffective; **2**. It is defamatory of any person; or **3**. It is frivolous or vexatious. Exception (1) is subject e.g. to the terms of the company's Articles of Association but is most unlikely to apply to the type of climate-related resolution envisaged. Exceptions (2) and (3) do not apply. Section 338 of the Companies Act 2006
Amendment to the Articles?	**Special resolution strongly recommended / required** Framing the resolution explicitly as a special (as opposed to "ordinary") resolution is strongly recommended, and may even be required under the terms of the company's Articles of Association.
Ownership period / share-blocking?	**No restrictions** There are no ownership or share-blocking restrictions. Shareholders must hold the requisite number of shares at the time that they file the resolution.
Custodian rules?	**Provision of a custodian statement (see "Formal requirements & supporting documents?" row)** Section 153(2)(c) of the Companies Act 2006
Threshold to file?	**At least 5% of the total voting rights of eligible members[Z] or at least 100 members representing an average of at least £100 each.** In practice, indirect investors have used both routes in recent years to file climate-related resolutions. Section 338 of the Companies Act 2006
Formal requirements & supporting documents?	**Form** **Form:** in writing. **Language:** English **Recipient:** the request should be made to the company. **Delivery method:** in hard copy (by registered mail to the company's registered address) or electronic form (e-mail). **Supporting documents:** • **the draft resolution** (which must be authenticated by the persons making it); • **evidence of the co-filing institution's shareholding** (ordinarily a "requisition form");[AA] and • as applicable, **a custodian statement** confirming the shares held on behalf of the co-filers. Sections 153 and 338 of the Companies Act 2006
Key dates for filing and costs?	**Filing deadline: At least 6 weeks prior to the AGM.[BB]** **Costs deadline: 31 December in the year preceding the AGM** In order for the company to bear the costs of adding the resolution to the AGM agenda, resolutions must be filed by 31 December in the year preceding that of the AGM (although some companies may set a later deadline in their Articles of Association). Sections 338(4)(d)(i) and 340(1) of the Companies Act 2006

Z. Excluding voting rights attaching to any treasury shares.
AA. Confirming the number of shares held, the shareholder registration number (SRN) and (for indirect shareholders) the various details set out at section 153(2)(c) of the Companies Act 2006.

Overview of Legal Process

How must company respond?	**The company must table the resolution** The company must put the resolution on the ballot if filed in accordance with the legal requirements.
Can a resolution be withdrawn?	**Yes** The Companies Act is silent on this point. However, if a negotiated outcome has been reached and the AGM notice has not yet been published, the Board is likely to be amenable to a request to withdraw the resolution. There are a number of examples of shareholders having withdrawn resolutions effectively in the UK, where a negotiated outcome has been reached.[CC]
Voting threshold	**Ordinary resolution – a simple majority of the total voting rights of eligible members.** **Special resolution – at least 75% of the total voting rights of eligible members** Note that if the resolution is not recommended by the Board but receives more than 20% support, the company is recommended to take certain actions under the UK Corporate Governance Code. Sections 282 and 283 of the Companies Act 2006 Section 1, paragraph 4 of the UK Corporate Governance Code

BB. Or, if later, the time at which notice of the meeting is given: section 338(4)(d)(ii) of the Companies Act 2006.
CC. See, for example, at Tesco: https://www.reuters.com/world/uk/britains-tesco-concedes-activist-shareholders-health-targets-2021-05-04/#:~:text=The%20coalition%20of%20Tesco%20activist,Wednesday%20after%20the%20company%27s%20pledge; and at HSBC, https://www.bloomberg.com/news/articles/2021-03-11/hsbc-proposes-climate-resolution-with-coal-phase-out-target

6. Further reading

Carbon Tracker *Absolute Impact: Why oil majors' climate ambitions fall short of Paris limits:* https://carbontracker.org/reports/absolute-impact/

ClientEarth *Principles for Paris Alignment:* https://www.clientearth.org/latest/documents/principles-for-paris-alignment/

ClientEarth *Accountability Emergency: A review of UK-listed companies' climate change-related reporting (2019-20):* https://www.clientearth.org/latest/documents/accountability-emergency-a-review-of-uk-listed-companies-climate-change-related-reporting-2019-20/

Climate Action 100+ *Net-Zero Company Benchmark:* https://www.climateaction100.org/whos-involved/companies/

Climate Action 100+ *Climate Action 100+ Net-zero Company Benchmark Framework*: https://www.climateaction100.org/wp-content/uploads/2021/03/Climate-Action-100-Benchmark-Indicators-FINAL-3.12.pdf

IIGCC *Net-zero Standard for Oil and Gas*: https://www.iigcc.org/download/iigcc-net-zero-standard-for-oil-and-gas/?wpdmdl=4866&refresh=6140cea4a40a01631637156

IIGCC *Investor expectations for Paris-aligned accounts:* https://www.iigcc.org/download/investor-expectations-for-paris-aligned-accounts/?wpdmdl=4001&rfresh=61434151d81691631797585

IIGCC *Investor expectations on corporate lobbying:* https://www.iigcc.org/resource/investor-expectations-on-corporate-lobbying/

Race to zero *Get Net-zero Right: A how-to guide for spotting credible commitments and those that miss the mark:* https://racetozero.unfccc.int/wp-content/uploads/2021/07/Get-Net-Zero-right-2.pdf

Say on Climate *Guides to proposing Say on Climate resolutions at AGMs:* https://sayonclimate.org/guide-to-filing-resolutions/

ShareAction *Shareholder Resolutions Tracker 2021:* ShareAction's Shareholder Resolutions Tracker 2021

ShareAction *European Tracker: Shareholder resolutions on climate change:* European Tracker: Shareholder resolutions on climate change – ShareAction

Transition Pathway Initiative *TPI State of Transition Report 2021*: https://www.transitionpathwayinitiative.org/publications/82.pdf?type=Publication

United Nations Environment Programme Finance Initiative *Guidelines for Climate Target Setting for Banks*: https://www.unepfi.org/publications/guidelines-for-climate-target-setting-for-banks/

7. Annexes

Annex 1

Resolution filed by WWF at Fortum (2020)

Proposed new § 17

The Board of Directors shall assess the climate risks of the operations and set up a scheduled science-based plan for aligning the operations of the Company and the group with the Paris Agreement maximum warming limit of 1.5 degrees Celsius.

Climate risks, the alignment plan and its implementation shall be reported annually, for the first time at the Annual General Meeting in 2021.

Annex 2

Resolution filed by a coalition of shareholders at Total (2020)

Resolution A: Amendment of Article 19 – Financial Year – Financial Statements of the Articles of Association

The Shareholders, voting according to the quorum and majority conditions required for Extraordinary Shareholders' Meetings, after having reviewed the information contained in the description of the reasons included with the draft resolution and the report of the Board of Directors, hereby decides to amend Article 19 – Financial year- Financial statements of the by-laws and adding a 3rd paragraph specifying the context of the management report prepared by the Board of Directors to the attention of the Shareholders' Meeting, with the first two paragraphs remaining unchanged.

Article 19 – Financial year – Financial statements shall now be drafted as follows:

- The financial year begins on January 1 and ends on December 31. At the end of each financial year, the Board of Directors draws up an inventory, an income statement and a balance sheet, as well as the notes supplementing them, and establishes a management report. It also establishes the Group's consolidated financial statements.
- The management report will contain, in addition to information on the situation of the Company and its operations during the past financial year, and the other elements required by the provisions of the laws and regulations in force, the strategy of the Company as defined by the Board of Directors to align its operations with the objectives of the Paris Agreement, and in particular with Articles 2.1(a) and 4.1 thereof, specifying (i) an action plan with interim milestones to set absolute reduction targets for the medium and long term that incorporate direct or indirect greenhouse gas (GHG) emissions from the Company's operations relating to the production, processing and purchase of energy products (Scopes 1 and 2), and the end-use by customers of products sold (Scope 3) and (ii) how the Company intends to achieve these objectives.

Annex 3

Resolutions filed by TCI at Vinci (2020)

Shareholder resolution n°1: annual disclosure of environmental information by the Company

The General Meeting, voting under the quorum and majority conditions required for Ordinary General Meetings, requires the disclosure by the Company, on an annual basis and for the three years following the present General Meeting, at reasonable cost and without disclosing proprietary information, of annual sustainability information, including a description of its climate change transition plan, consistent with the goals of Articles 2.1(a) and 4.1 of the Paris Agreement and the goals of Article L. 100-4 of the French Energy Code (together, the 'Climate Transition Goals'), and consistent with the Task Force on Climate-related Financial Disclosure recommendations.

Such disclosure shall be posted to the Company's website no less than thirty days prior to its annual meeting of shareholders (save in respect of the Combined General Meeting of Shareholders to be held on 9 April 2020 where such disclosure shall be posted as soon as reasonably practicable) and shall address, at a minimum:

1. **Metrics and Targets:** the Company's principal metrics and relevant targets or goals related to Scope 1, Scope 2 and Scope 3 greenhouse gas emissions (GHG) over the short (1 to 3 years), medium (3 to 5 years) and long-term (10-30 years), consistent with the Climate Transition Goals, together with disclosure of: a. the Company's targets to promote reductions in its operational greenhouse gas emissions, to be reviewed in line with changing laws and protocols and other relevant factors; b. the estimated carbon intensity of the Company and its progress on reduction in carbon intensity over time; and c. direct linkage between the above targets and executive remuneration;
2. **Capital Expenditure:** how the Company evaluates the consistency of each new material capex investment with (a) the Climate Transition Goals and separately (b) a range of other outcomes relevant to its strategy, including the cost of meeting its GHG reporting and targets commitments; and
3. **Progress reporting:** an annual review, beginning in respect of 2020, of progress against (1) and (2) above.

Shareholder resolution n°2: inclusion on the agenda of annual general meetings of an advisory vote on environmental information

The General Meeting, voting under the quorum and majority conditions required for Ordinary General Meetings, requires, for the three years following the present General Meeting, the inclusion by the Board of Directors of a specific resolution on the agenda of each Annual General Meeting, by which it submits to the vote of the shareholders on an advisory basis, and not to diminish the role and responsibilities of the Board of Directors, the approval of its approach to climate matters as disclosed in the annual sustainability information described in shareholder resolution n°1.

Annex 4

Total "Say on Climate" (2021)

14th Resolution (Opinion on the Company's ambition with respect to sustainable development and energy transition towards carbon neutrality and its related targets by 2030)

Voting under the conditions of quorum and majority required for Ordinary Shareholders' Meetings, the shareholders, after having reviewed the report of the Board of Directors regarding the ambition of the Company with respect to sustainable development and energy transition towards carbon neutrality and its related targets by 2030, included in the notice of meeting, hereby issue a favourable opinion on the Company's ambition and targets.

Annex 5

Vinci "Say on Climate" (2021)

Advisory opinion on the Company's environmental transition plan

In the eleventh resolution, the Board of Directors requests that the shareholders provide their advisory opinion on the environmental transition plan developed by the Company, which is set out on pages 54 to 58 of this Notice of Meeting.

Annex 6

Resolutions filed by TCI at Aena (2020)

Ten. Approval, where appropriate, of the principles for climate change action and environmental governance.

The Ordinary General Shareholders' Meeting has approved, within the framework of governance in environmental matters and, in particular, within the framework of Aena's Sustainability Strategy, the decision to entrust the Board of Directors with the preparation of a Climate Action Plan was approved. The plan will be multi-year or pluriannual depending on what it establishes and will include actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with:

1. Aena's "Sustainability Objectives on Climate Change", updated appropriately by taking account of Spanish and European regulatory requirements.
2. The recommendations of the Task Force on Climate-Related Financial Disclosure (TFCD) to establish the Risks, Opportunities and Financial Impact of Climate Change.
3. Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014/95/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues.

Likewise, the Ordinary General Shareholders' Meeting has approved the delegation to the Board of Directors of the design, management and monitoring of said Plan was approved, as well as the preparation of the documents it deems appropriate for the purpose of keeping the General Shareholders' Meeting informed in a timely manner on issues relating to environmental governance, the content of the Climate Action Plan, its evolution and degree of progress.

Eleven. Instructions to the Board of Directors to present the Climate Action Plan in the Ordinary General Shareholders Meeting occurring in 2021 and Climate Action Update Reports in the Ordinary General Shareholders Meetings that may take place as from 2022 (inclusive), and request a shareholders advisory vote regarding such documents as a separate item on the agenda.

The Ordinary General Shareholders' Meeting has approved, without prejudice to the resolution passed regarding item Ten of the agenda, with the aim of allowing shareholders' engagement in connection with the Climate Action Plan and as the minimum disclosure obligations for the Board of Directors, the shareholders direct the Board of Directors:

- (i) to present in the Ordinary General Shareholders Meeting occurring in 2021, the Climate Action Plan, setting out the actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with: (i) Aena's "Sustainability Objectives on Climate Change ", which shall be updated appropriately by taking account of Spanish and European regulatory requirements and which shall meet or exceed the goals of (a) Articles 2.1(a) and 4.1 of the Paris Agreement, (b) the Declaration of Environmental Emergency on 21 January 2020 by the Spanish Government, and

Annex 6

Resolutions filed by TCI at Aena (2020)

(c) the National Integral Plan for Energy and Climate 2021-2030 or such other plan that may be in force from time to time; (ii) the recommendations of the Task Force on Climate-Related Financial Disclosure (TFCD) to establish the Risks, Opportunities and Financial Impact of Climate Change; and (iii) Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014/95/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues; and request a shareholders advisory vote as a separate item on the agenda; and,

- (ii) to present in each of the Ordinary General Shareholders Meetings that may take place as from 2022 (inclusive), specific detailed annual reports, drawn in accordance with the Task Force on Climate-related Financial Disclosure recommendations, on the progress made by the Company toward the goals set out in the Climate Action Plan and reasoned explanation about any significant variations adopted or to be adopted in the Company's Climate Action Plan and request a shareholders advisory vote as a separate item on the agenda.

Twelve. Amendment of the corporate byelaws to include a new Article 50 Bis.

The Ordinary General Shareholders' Meeting has approved to amend the byelaws of the Company to include a new Article 50 Bis, which shall have the following wording:

"Article 50. Bis. – Climate Action Plan and Climate Action Update Reports.

1. The Company's Board of Directors shall draw up, publish and maintain up-to-date a multi-year or pluriannual Climate Action Plan setting out the actions to mitigate the effects of climate change, as well as monitoring the indicators established for the fulfilment of the decarbonisation objectives in line with: (i) Aena's "Sustainability Objectives on Climate Change", which shall be updated appropriately by taking account of Spanish and European regulatory requirements and which shall meet or exceed the goals of (a) Articles 2.1(a) and 4.1 of the Paris Agreement, (b) the Declaration of Environmental Emergency on 21 January 2020 by the Spanish Government, and (c) the National Integral Plan for Energy and Climate 2021-2030 or such other plan that may be in force from time to time; (ii) the recommendations of the Task Force on Climate-Related Financial Disclosure (TFCD) to establish the Risks, Opportunities and Financial Impact of Climate Change; and (iii) Law 11/2018 on non-financial information and diversity, as well as the guidelines derived from the European Commission's supplement on climate-related information, of Directive 2014195/EU of the European Parliament and of the Council, which establishes a description of the performance and risk policies linked to environmental issues. Exceptionally, the Climate Action Plan shall not cover the financial year 2020.
2. The Company's Board of Directors shall draw up and publish annually with effect from 2022 a specific detailed annual report on the progress made by the Company toward the goals set out in the Climate Action Plan in force at the time (the "Climate Action Update Report"), which shall be drawn in accordance with the Task Force on Climate-related Financial Disclosure recommendations.

Annex 6

Resolutions filed by TCI at Aena (2020)

Twelve. Amendment of the corporate byelaws to include a new Article 50 Bis.

3. If the Climate Action Plan expires, the Company's Board of Directors shall draw up, publish and maintain up-to-date a new Climate Action Plan as per paragraph 1 of this Article 50 Bis. However, if during the validity period of a Climate Action Plan, the Company has or wishes to adopt significant variations in the same, said variations shall be disclosed in the Climate Action Update Report presented to shareholders at the Ordinary General Shareholders Meetings, including the reasons for any such change.

4. The Climate Action Plan in force at the time and the Climate Action Update Reports shall be published by the Company and, in respect of the Climate Action Update Reports, simultaneously with the annual corporate governance report and the report on Directors' compensation.

5. The Climate Action Plans and the Climate Action Update Reports shall be voted upon on an advisory basis, and as a separate item on the agenda, by the Shareholders' Meeting."

Annex 7

Resolutions placed on the ballot by IBERDROLA (2021)

Item number nine on the agenda
Amendment of Article 32 of the By-Laws to include the approval of a climate action plan.

Resolution

Amendment of Article 32 of the By-Laws to include the approval of a climate action plan. Said article shall hereafter read as follows:

"Article 32. Powers of the Board of Directors

1. The Board of Directors has the power to adopt resolutions regarding all matters not assigned by law or the Governance and Sustainability System to the shareholders acting at a General Shareholders' Meeting.

2. Although the Board of Directors has the broadest powers and authority to manage and represent the Company, as a general rule of good governance, the Board of Directors shall focus its activities, pursuant to the Governance and Sustainability System, on the definition and supervision of the general guidelines to be followed by the Company and the Group, attending to the following matters, among others:

a) Establish, within legal limits, the policies, strategies and guidelines of the Group, entrusting to the decision-making bodies and the management of the head of business companies of the Group the duties of day-to-day administration and effective management of each of the businesses.

b) Supervise the general development of the aforementioned policies, strategies and guidelines by the country subholding companies and by the head of business companies of the Group, establishing appropriate mechanisms of coordination and exchange of information in the interest of the Company and of the companies belonging to the Group.

c) Decide on matters of strategic importance at the Group level.

3. The Board of Directors shall generally entrust to its chairman, to the chief executive officers and to senior management the dissemination, coordination and general implementation of the Group's management guidelines, acting in furtherance of the interests of each and every one of the companies belonging thereto.

4. The Board of Directors shall design, evaluate and continuously review the Governance and Sustainability System, shall approve the Purpose and Values of the Iberdrola group and shall pay special attention to the approval and updating of the corporate policies, which further develop the principles reflected in these By-Laws and in the other provisions of the Governance and Sustainability System and codify the guidelines that should govern the activities of the Company, its shareholders and the Group. In particular, the Board of Directors shall approve and regularly update a climate action plan to achieve neutrality in the emission of greenhouse gases by 2050. This plan shall set out the intermediate objectives, the strategy and the investment plan designed to meet these objectives and shall define the methodologies used to assess the implementation thereof.

5. The Regulations of the Board of Directors shall specify the powers reserved to such body, which may not be entrusted to the representative decision-making bodies or to the senior management of the Company."

Annex 7

Resolutions placed on the ballot by IBERDROLA (2021)

Item number twenty seven on the agenda
Climate Action Policy

Resolution

Approve, on a consultative basis, the Climate Action Policy of IBERDROLA, S.A. (the "Company"), which was amended by the Board of Directors on 19 April 2021 and is published on the corporate website (www.iberdrola.com).

This consultative vote forms part of the company's engagement with shareholders in order to know their opinions and concerns, which are taken into account by the Board of Directors in preparing the agenda for the General Shareholders' Meeting.

The Climate Action Policy is the framework defined by the Board of Directors to guide the strategy and business model of the Iberdrola group in a manner consistent with its commitment to combating climate change, which is one of the biggest challenges on the international agenda for states and multilateral agencies as well as for the Company's institutional investors and shareholders.

To face this challenge, the Climate Action Policy sets out the long-term objective of neutrality in greenhouse gas emissions, as well as the Company's major principles and positions in this area, but does not set its strategy or the specific content of the climate action plan, which will be regularly approved and updated by the Board of Directors.

Given its consultative nature, the purpose of this vote is to obtain the opinion of shareholders on this new Climate Action Policy to be taken into account in the ongoing update of the Governance and Sustainability System, and particularly in future amendments of said policy, by the Board of Directors.

Annex 8

Resolution filed by Ethos Foundation at Nestlé (withdrawn) (2021)

Changes in the Articles of Association related to Nestlé's climate change strategy (Say on Climate)

Proposal

Amendment of the Articles of Association as follows:

– **New letter to Article 18:**
the preparation of a multi-annual climate strategy and a climate alignment report in accordance with Article 21

– **New title:**
Climate Strategy and Climate Alignment Report

– **New article:**

Article 21 Principles

1. The Board of Directors develops, publishes and regularly updates a multi-annual climate strategy setting out measures to reduce the company's impact on the climate in alignment with the objectives of the Paris Agreement on Climate Change, in particular to limit global warming to 1.5°C.

2. The Board of Directors prepares and publishes a detailed annual climate alignment report describing the implementation of the climate strategy. This report is prepared in accordance with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and provides, in particular, the following information:

a) consistency of the company's strategy and significant investments with the climate strategy;

b) consistency of the company's public policy engagement and communication with the climate strategy;

c) the Board of Directors' approach to oversee senior management in terms of climate strategy, in particular the alignment of executive compensation with the climate strategy;

d) the company's approach to assess and minimize the impact of its climate strategy on its employees, as well as on the communities and other stakeholders with which the company is interacting, with a view to a just transition to carbon neutrality;

e) confirmation that the climate alignment report is consistent with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD);

f) summary of the framework, methodologies, CO_2e reduction targets, timelines, and key assumptions used; and

g) progress of the company in implementing the requirements set out in paragraphs (a) to (f) above.

3. The Board of Directors submits the climate alignment report to the Annual General Meeting for a consultative vote.

4. The provisions concerning the communication and publication of the annual report apply equally to the climate strategy and the climate alignment report.

Annex 9

Resolution filed by ShareAction at HSBC (withdrawn) (2021)

To promote the long-term success of the Company, given the risks and opportunities associated with climate change, and in accordance with the Company's ambition to "reduce financed emissions from [its] portfolio of customers to net-zero by 2050 or sooner", the Company and the Directors be authorised and directed by the shareholders to set and publish a strategy and short-, medium- and long-term targets to reduce its exposure(1) to fossil fuel assets on a timeline aligned with the goals of the Paris agreement (the "Paris goals")(2), and starting with coal.

The Company should report on progress against its targets and strategy in its annual report on an annual basis, starting from 2022 onwards, including a summary of the framework, methodology, timescales and core assumptions used. Disclosure and reporting should be done at reasonable cost and omit proprietary information.

(1) Exposure in terms of provision of financial services, particularly project finance, corporate finance and underwriting.

(2) As set out by Article 2.1(a) and Article 4.1 of the Paris Agreement.

Annex 10

Resolution filed by Follow This at BP (2021)

Resolution 13 – Special resolution:
Follow This shareholder resolution on climate change targets

Shareholder resolution

Shareholders support the company to set and publish targets that are consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.

These quantitative targets should cover the short-, medium-, and long-term greenhouse gas (GHG) emissions of the company's operations and the use of its energy products (Scope 1, 2 and 3).

Shareholders request that the company report on the strategy and underlying policies for reaching these targets and on the progress made, at least on an annual basis, at reasonable cost and omitting proprietary information.

Nothing in this resolution shall limit the company's powers to set and vary their strategy or take any action which they believe in good faith would best contribute to reaching these targets. You have our support.

Annex 11

Resolution filed by a coalition of investors at BHP Group (2019)

Item 22 Lobbying inconsistent with the goals of the Paris Agreement

Shareholders recommend that our company suspend memberships of Industry Associations where:

a) a major function of the Industry Association is to undertake lobbying, advertising and/or advocacy relating to climate and/or energy policy (Advocacy); and

b) the Industry Association's record of Advocacy since January 2018(1) demonstrates, on balance, inconsistency with the Paris Agreement's goals.(2)

Nothing in this resolution should be read as limiting the Board's discretion to take decisions in the best interests of our company.

(1) This resolution takes January 2018 as its starting point, given that our company undertook a review of industry association memberships, published in December 2017 *BHP: Industry Association Review*, 19 December 2017 https://www.bhp.com/-/media/documents/ourapproach/operatingwithintegrity/industryassociations/171219_bhpindustryassociationreview.pdf?la=en.

(2) "Lobbying positively in line with the Paris Agreement" is Principle 1 of the Investor Principles on Lobbying, set out in IIGCC's *European Investor Expectations on Corporate Lobbying on Climate Change*, October 2018. https://www.iigcc.org/download/investor-expectations-on-corporate-lobbying/?wpdmdl=1830&refresh=5d52233%20df01791565664061

ClientEarth

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