

Call for Evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain

Fields marked with * are mandatory.

Responding to this Call for Evidence

ESMA invites comments on all matters in this paper and in particular on the specific questions therein presented. Comments are most helpful if they:

- (1) respond to the question stated;
- (2) indicate the specific question to which the comment relates;
- (3) contain a clear rationale; and
- (4) describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 November 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Open Consultations'.

Publication of responses

All contributions received will be published following the close of the Call for Evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this Call for Evidence

All interested stakeholders are invited to respond to this Call for Evidence. In particular, ESMA considers this Call for Evidence will be primarily of relevance to investors, issuers whose shares are listed in Europe, intermediaries and proxy advisors. In addition to the general questions (Section 3), specific questions (Sections 4-5-6-7) are addressed to these types of stakeholders.

Other market participants, such as consultants and service providers in the investor communication and voting industry, are invited to express their views by responding to any general questions (Section 3) they would like to provide input on and in particular to the two catch-all questions (Q15 and Q25).

1. Executive Summary

Reasons for publication

As foreseen in Articles 3f(2) and 3k(2) of the Shareholder Rights Directive, as amended by Directive (EU) 2017/828 ('SRD2'), the European Securities and Markets Authority ('ESMA') is expected to support the European Commission ('EC') in the elaboration of a report assessing the implementation of Chapter Ia and Article 3j of the SRD2 across the Union. The purpose of this Call for Evidence is to gather information on how market participants perceive the appropriateness of the scope and the effectiveness of the SRD2 provisions on the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as on transparency of proxy advisors. The responses obtained from this exercise will form the basis for ESMA's input for the elaboration of this report.

Contents

Section 2 sets out the background to ESMA's review exercise and explains the structure and the purpose of the Call for Evidence in more detail. Section 3 presents general questions intended for all stakeholders while sections 4-7 include questions targeted at specific stakeholders, *i.e.*, investors, issuers, intermediaries and proxy advisors.

Next Steps

Responses to this Call for Evidence are requested by **28 November 2022**. ESMA intends to provide the Commission with its input by **July 2023**.

2. Introduction

2.1. Background and legal mandate

The Shareholder Rights Directive, as amended by the SRD2, lays down a common regulatory framework with regard to the minimum standards for the exercise of shareholder rights in EU listed companies. The SRD2 was supposed to be transposed by Member States into their national law by 10 June 2019, with the exception of Articles 3a to 3c in Chapter Ia, which, together with the Implementing Regulation, entered into application on 3 September 2020. By facilitating the involvement of shareholders in the corporate governance of investee companies, the SRD2 aims to encourage their long-term engagement in EU companies and thereby to enhance sustainable long-term value creation in EU capital markets.

In the context of the review of the SRD2, the EC is required to submit a report assessing the implementation of Chapter Ia (Articles 3a to 3f) and Chapter Ib (Articles 3g to 3j) of the SRD2 to the European Parliament and to the Council, also involving ESMA. In particular:

- i. As per Article 3f(2) of the SRD2, the EC, in close cooperation with ESMA and the EBA, is required to submit a report on the implementation of Chapter Ia of the SRD2 providing an assessment of its effectiveness and difficulties in practical application and enforcement of the relevant Articles included

in this Chapter, while also taking into account relevant market developments at the EU and international level. In addition, the report should specifically address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries.

ii. As per Article 3k(2) of the SRD2, the EC, in close cooperation with ESMA, is required to submit a report on the implementation of Article 3j of the SRD2, providing an assessment of the effectiveness and appropriateness of the scope of application of the same provision, and taking into account relevant Union and international market developments. It is also envisaged that the report shall be accompanied, if deemed appropriate, by legislative proposals.

In September 2020, based on the recommendations from the final report of the High Level Forum on CMU [1], the EC adopted a new CMU action plan[2] which included an action aimed at facilitating investor engagement. In particular, as part of Action 12, the EC committed to “assess: (i) the possibility of introducing an EU-wide, harmonised definition of ‘shareholder’, and; (ii) if and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate actions’ processing can be further clarified and harmonised.”[3] The CMU action plan indicated that this assessment would be carried out as part of the EC’s evaluation of the implementation of the SRD2 due to be published by Q3 2023.

On 3 October 2022, ESMA received a mandate from the Commission to provide input on the implementation of the aforementioned SRD2 provisions, also in connection to certain targeted elements relating to Action 12 of the CMU action plan. With regards to proxy advisors (*i.e.*, Article 3j), ESMA is also requested to assess the need for further regulatory requirements.

[1] *Final report of the high-level forum on the Capital Markets Union ‘A new vision for Europe’s capital markets’* https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.

[2] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Capital markets union 2020 action plan: A capital markets union for people and businesses, COM/2020/590 24.9.2020.*

[3] *The CMU action plan further clarified that “the Commission plans to investigate in particular the following: (i) the attribution and evidence of entitlements and the record date, (ii) the confirmation of the entitlement and the reconciliation obligation, (iii) the sequence of dates and deadlines, (iv) any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and (v) communication between issuers and central securities depositories (CSDs) as regards timing, content and format.”*

2.2. Scoping of the exercise

The implementation assessment covers a wide spectrum of topics in the SRD2, namely regarding areas such as identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as the transparency of proxy advisors. An indicative scope is provided in the table below.

<i>SRD2 provision</i>	<i>Topical Area</i>
Chapter Ia	Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights
Art. 3a	Identification of shareholders
Art. 3b	Transmission of information
Art. 3c	Facilitation of the exercise of voting rights
Art. 3d	Non-discrimination, proportionality, and transparency of costs
Art. 3e	Third-country intermediaries
Article 3j	Transparency of proxy advisors
Art. 3j(1)	Transparency on code of conduct
Art. 3j(2)	Transparency of information related to the preparation of research, advice and voting recommendations
Art. 3j(3)	Transparency of conflicts of interest
Art. 3j(4)	Third-country proxy advisors

2.3. Purpose and structure of the Call for Evidence

ESMA believes that a Call for Evidence is necessary for the collection of information from market participants in order to obtain a comprehensive overview of how stakeholders perceive the appropriateness and effectiveness of the current regulatory framework, to learn about the possible difficulties encountered in the course of its application and to understand relevant market developments. The findings obtained from this exercise will allow ESMA to take action to fulfil its obligations under the SRD2, in accordance with the mandate provided by the EC. Moreover, these responses will help understand and therefore prioritise the SRD2 areas where stakeholders feel there is a need for improvement of current practices.

ESMA encourages respondents to share the practices currently put in place by market participants across different jurisdictions, as well as any difficulties they might have experienced in the practical application of SRD provisions.

In terms of structure, this Call for Evidence focuses on the six Articles that are included in the scope of this assessment, namely covering four main topical areas of the aforementioned Directive: (i) identification of shareholders; (ii) transmission of information; (iii) facilitation of exercise of shareholder rights and (iv) transparency of proxy advisors.

Section 3 (Q1-Q25) of the Call for Evidence presents a set of questions which are common to all categories of stakeholders and aimed at (i) investigating their general views on the effectiveness of the relevant SRD2 provisions, and (ii) seeking their input on certain specific issues listed under Action 12 of the CMU Action Plan.

Each type of stakeholder will be invited to answer the questions included in Section 3. Furthermore, the questionnaire includes two catch-all questions (Q15 and Q25), where all stakeholders are welcome to raise any concerns or remarks they may have.

Based on the selection of your stakeholder type under Q1, you may be invited to answer to the ensuing targeted sections designed specifically for the following groups of stakeholders:

- Section 4 (Q26-Q41): Investors (in particular, shareholders of EU listed companies);

- Section 5 (Q42-Q58): Issuers;
- Section 6 (Q59-Q71): Intermediaries;
- Section 7 (Q72-Q78): Proxy advisors.

Each section is introduced separately and provides a brief summary of the goal of such questions and the type of evidence that ESMA is seeking. The questions aim to understand the practical impact as well as supervisory implications of the relevant SRD provisions.

Additionally, to ensure that the questionnaire keeps track of market developments, certain questions also seek the views of stakeholders on the current trends in financial markets, namely on recent technological developments, environmental, social and governance ('ESG') or sustainability-related aspects and institutional investors' practices, both in the EU and at the international level.

Finally, ESMA would like to emphasize the importance of answers being factual and, to the widest possible extent, supported by clear Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on in the previous sections.

2.4. Next Steps

Responses to this Call for Evidence are requested by 28 November 2022. ESMA will provide the Commission with its input by July 2023.

3. General questions

3.1. Introduction

This section sets out questions of a general nature which ESMA invites all interested stakeholders to respond to, regardless of the role they play in the financial markets. The questions aim to provide a general understanding of the practices currently put in place and the difficulties that may arise from the practical application of SRD2 provisions. This section also sets out a few targeted questions on facilitating shareholder engagement as set out by the CMU action plan (Action 12 of the CMU action plan). In addition to this section, sections 4 - 7 outline questions which are targeted at specific groups of stakeholders (*i.e.*, investors, issuers, intermediaries and proxy advisors).

In connection with this first set of questions, ESMA would like to reiterate the invitation for respondents to provide factual answers which are supported by reasoning, as well as clear evidence and examples to the widest possible extent. Furthermore, ESMA invites associations representing specific groups of stakeholders to select, in Q1, the group of stakeholders they represent or to select option 'other'.

3.2. Questions

3.2.1. Background

* **Q0:** Please indicate if you agree to have your answer made public.

- Yes
 No

* Please indicate your name and contact information.

2000 character(s) maximum

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* **Q1:** What is the nature of your involvement in financial markets?

[More than 1 option allowed]

- Individual (retail) investor;
 Institutional investor (such as a pension fund or an insurance undertaking);
 Asset manager (investing on behalf of individual clients or institutional investors);
 Issuer (in particular, EU companies whose shares are listed in the EU);
 Credit institution;
 Investment firm;
 Central securities depository - CSD;
 Proxy advisor (*i.e.*, a legal person providing research, advice or voting recommendations);
 Other.

* To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in the financial industry.

2000 character(s) maximum

Computershare (ASX: CPU) is a global market leader in transfer agency and share registration, employee equity plans, mortgage servicing, proxy solicitation and stakeholder communications. We also specialise in corporate trust, bankruptcy, class action and a range of other diversified financial and governance services. Computershare is renowned for its expertise in high integrity data management, high volume transaction processing and reconciliations, payments and stakeholder engagement. Many of the world's leading organisations use us to streamline and maximise the value of relationships with their investors, employees, creditors and customers.

Computershare is represented in all major financial markets and has over 14,000 employees worldwide. Within the EU, we provide share registry and shareholder meeting services located in Denmark, Germany, Italy, the Netherlands, Republic of Ireland, Spain and Sweden.

Georgeson, part of the Computershare group, is the world's original and foremost provider of strategic services to corporations and investors working to influence corporate strategy. We offer advice and representation for annual meetings, mergers and acquisitions, proxy contests and other extraordinary transactions. Our core proxy expertise is enhanced with and complemented by our strategic consulting services, including solicitation strategy, investor identification, corporate governance analysis, vote projections and insight into investor ownership and voting profiles.

* **Q2:** Please specify if you are a non-EU or EU actor, and in the latter case, in which Member State you (or, if you are an association, your members) are based/most active in.

- EU Actor Non-EU Actor

* Please specify:

2000 character(s) maximum

Computershare (ASX: CPU) is a global market leader in transfer agency and share registration. Within the EU, we are located in Denmark, Germany, Italy, the Netherlands, Republic of Ireland, Spain, France and Sweden.

3.2.2. On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q3: Do you consider that shareholder identification, within the meaning of Article 3a, has improved following the entry into application of this provision and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

SRD2 has improved ID from institutions for issuers. Previously, depending on the Member State, issuers either had no visibility of shareholders or ID processes were cumbersome. We have seen improvements in speed, quality and level of disclosure but implementation is ongoing and full benefits have yet to materialise. Remaining barriers include:

- Member State option to set thresholds reduces access to comprehensive shareholder information, inhibiting issuer engagement and complicating ID administration
- Late transposition by Member States and implementation of technical standards by some CSDs & intermediaries has delayed access to ID
- Varying Member States transposition of required data elements (eg: tax residence, citizenship, date of birth) has resulted in data inconsistencies, especially cross-border
- Data inconsistency between Member States also occurs due to the varying definition of 'shareholder'
- National transposition (eg: Italy) that mandates responses to either be passed through the chain of intermediaries or sent via the CSD increases issuer costs and adds delays, and is not compliant with SRD2 on issuer choice
- Some CSDs issued rules requiring that they be used as the issuer's response agent (eg: Iberclear), or do not routinely allow access to records so that full disclosure requests must be initiated via their platform (eg: Euronext Copenhagen, Euroclear Sweden). We have also heard anecdotally of CSDs charging issuers higher fees if the issuer appoints a 3rd party rather than using the CSD as response recipient
- Intermediary fees to issuers vary considerably across and within Member States and there is little transparency. Issuers cannot estimate costs in advance or adequately validate fees invoiced after an ID event
- ISO 20022 compliant standards have not yet been universally embraced, reducing STP
- Some CSDs imposed burdensome documentary requirements on issuers eg: forms of authorisation, POA which cause delays and increased costs.

Q4: Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders.

2000 character(s) maximum

The centrality of 'shareholder' to Art. 3a causes difficulties due to varying Member States' definitions and reduces the benefit of standardisation. This impacts harmonisation of entitlement to receive shareholder rights and adds compliance complexities for stakeholders. Yet harmonising the definition, often deeply embedded in local corporate law, risks creating new complexities, potentially upsetting established local concepts of ownership and requiring analysis of the flow-on impacts to corporate law.

A pragmatic approach to reconcile these concerns could be to focus on identifying which party in the ownership chain should be subject to the specific provisions, without needing to define that party as the 'shareholder'. A revised SRD may for example determine that the entitled party in the chain is the economic owner of the securities but preclude passing rights through derivate-style interests such as via funds or ADRs etc., which create ownership of a new asset based on the underlying securities (one factor which causes uncertainty in applying SRD2 as it stands). This determination could also accommodate the scenario where the investor chooses to appoint a 3rd party to receive communications and/or exercise certain rights on their behalf, with that delegation being included as a data field in the data flow.

A reformulation of who is the relevant party for the purposes of Art.3a should be accompanied by addressing emergent issues with intermediary charges. Issuers in various markets, including Germany, Italy and Spain, have faced opaque and un-verifiable charges for shareholder ID requests, for transmission of shareholder communications and for facilitating exercise of rights. The broad scope created by SRD2 on fees also creates an opportunity for transferring fees to issuers for functions previously seen as inherent to the intermediaries' role in servicing investor-clients, which is inappropriate.

Q5: In your opinion, who should be regarded as 'shareholder' for the purposes of the SRD if this definition was to be harmonised across the EU?

- The natural or legal person on whose account or on whose behalf the shares are held, even if the shares are held in the name of another natural or legal person who acts on behalf of this person (beneficiary shareholder);
- The natural or legal person holding the shares in his own name, even if this person (nominee shareholder) acts on behalf of another natural or legal person;
- Other.

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Please refer to our comments above at Q4. While we fully appreciate the complexities in implementation of SRD2 driven by the varying Member State definitions of 'shareholder', we do not agree that the solution is to harmonise the definition of 'shareholder'. Instead, we suggest Art. 3a be re-framed to define the relevant party that is the subject of the various provisions. A harmonised definition risks disrupting long-standing local concepts of securities ownership, legal and beneficial, and would likely require extensive analysis of the potential flow-on impact for each Member State's corporate law.

Additionally, any discussion about fully harmonising the rights of investors, over-riding local law and long-standing practice for some Member States, should also consider in a consistent fashion how the standardised extension of rights should be funded. SRD2 should not create new revenue streams from issuers for intermediaries and CSDs for actions inherent to servicing each of those party's clients, nor should issuers face unpredictable and unverifiable charges for new requirements which impinge on their engagement with investors. Art. 3a should require Member States to determine which party is responsible for paying the costs involved in complying with the various provisions and ensure that any such charges are sufficiently transparent that they can be estimated in advance of an event, and verified when applied to an event.

In Ireland e.g., 'shareholder' is the party recorded in the register of members, which for CSD holdings is the nominee of Euroclear Bank. If SRD defines 'shareholder' as beneficial owner there would be significant new obligations and costs, which would need careful calibration between issuers, the CSD, intermediaries and investors.

Q6: Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3b and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

We have observed some improvements from standardisation vs previous processes. However there remain inconsistencies which delay access to the full benefits for stakeholders, including:

- Delays in implementation of message standards that are compliant with the Implementing Regulation (e.g., in Germany and Spain)
- Gaps in the message content, e.g., for Notices of Meeting, should be addressed and a review of the minimum data elements is recommended to ensure comprehensive coverage of all Member State requirements
- As noted above for ID, variance in transposition of required data elements across Member States has resulted in data inconsistencies, especially from a cross border perspective
- We have observed significant charges being applied by some CSDs e.g., Euronext Denmark have imposed €2,000 per announcement on issuers for passing on meeting notices.
- Some CSDs, including in Denmark and Sweden, require transmissions to be initiated by approved Issuing Agents, fully admitted to CSD participation, and do not allow system access by 3rd party issuer agents. This creates barriers to transparency and restricts issuers' ability to direct who will administer exercise of rights on their behalf.
- Some CSDs apply different fees to issuers for transmission of communications to intermediaries if the issuer has appointed another party as their agent rather than the CSD
- In Italy, some intermediaries are not passing on all the meeting announcement information to downstream clients (resolutions data is removed and replaced with hyperlinks to the relevant information)

Q7: Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3c and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

SRD2 required adaptation from previous localised arrangements to a new STP process. The relatively brief period since SRD2 came into force, plus delays in implementation by some stakeholders and Member States, make it difficult to comprehensively assess the full impact of the changes as yet. For example, many intermediaries that previously transmitted votes by varying processes are now submitting all votes in STP and based on SRD2 standards, which is a positive change. However, there are still areas that would benefit from further effort, including:

- Some parties have not yet implemented the required international standards compatible with the Implementing Regulation.
- Not all Member States currently require that electronic voting be available for investors, for example Germany, Sweden and Italy. This should be a harmonised requirement to achieve full benefits of STP processing.
- CSDs in markets such as Italy & Spain have issued rules that mandate that shareholder ID responses be routed via their CSD system by intermediaries, which results in unnecessary transmission delays and additional costs to all affected parties, in addition to inhibiting opportunities for direct issuer engagement.
- CSDs in some markets such as Denmark and Italy have experienced changes of corporate ownership resulting in related adaptations to market practice, connectivity and technical message routing. In addition to the delays caused by such adaptations, when implementing new functions, we have observed a tendency for CSDs to promote routing of instructions via their own infrastructure, and not facilitate 3rd party issuer agent connectivity.

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights (*i.e.*, in compliance with Article 3d) have improved following the entry into application of this provision?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, providing examples of the jurisdictions you are most familiar with.

2000 character(s) maximum

We have not seen any improvement in transparency of charges to issuers. We have no visibility of charges to investors. Art. 3d and Member State law have not created clear guidance on how fees should be disclosed or addressed how and when charges can be applied. We have seen several very concerning market practices:

- Where intermediaries are permitted to charge issuers for Art. 3a actions, issuers are unable to estimate costs in advance of any event e.g., an ID request. The opaque shareholding structure, where issuers cannot readily see how many layers of intermediaries will be engaged in an event; and varying practices applied to disclosure as well as to when, how and who to charge has proven extremely challenging.
- Art. 3d has effectively provided scope for CSDs & intermediaries to apply charges to issuers for any aspect of SRD2 requirements, including for continuing functions that were not previously charged.
- Issuers are routinely receiving invoices from intermediaries relating to services provided in other territories (e.g., German intermediaries charging Italian issuers fees per German market practice and inconsistent with Italian standards) and are unable to limit application of these charges, which has in some instances resulted in exponential increases in issuer costs. One German client of ours was invoiced €45,000 for a single shareholder ID which exemplifies the risks issuers face from lack of clarity in SRD2 on fees.
- Where charges are invoiced, intermediaries should at the very least be obliged to provide documentary evidence to support claims, that allow reconciliation and validation by the issuer before payment. Intermediaries should be prohibited from charging issuers and investor-clients for the same services.
- Anecdotally we have heard of intermediaries applying different charges dependent on the source of the request (CSD or other issuer agents).

Q9: Do you consider that the practices of third-country intermediaries (*i.e.*, intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response and specify any significant differences you may be aware of as regards the application of this Chapter by third-country intermediaries vis-à-vis EU intermediaries.

2000 character(s) maximum

In our capacity servicing EU issuers with respect to SRD2-related services, we have limited visibility of the practices of 3rd country intermediaries but have seen some improvement.

However, in other capacities we have had exposure. For example, we administer global employee share plans for EU issuers and act as 'last intermediary'. We have had to engage with sub-custodians to comply with SRD2 requirements. We have observed a degree of confusion driven by the varying applications of SRD2 by Member States, particularly based on who is the 'shareholder', which complicates efforts to standardise compliance. We perceive that stakeholders are increasingly dealing with the requirements to implement solutions, and that this will continue to progressively improve overall compliance. However, 3rd country intermediaries would benefit from resolution of the uncertainties considered in this Call for Evidence to allow further standardisation, similar to EU counterparts.

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia (*i.e.*, shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, explaining if/how improvements could be made.

2000 character(s) maximum

The delayed transposition by some Member States (e.g., Italy and Spain), coupled with delayed technical development by a number of stakeholders has impeded implementation. It is therefore not possible as yet to fully assess the effectiveness of processes to comply with SRD2 and the Implementing Regulation.

Where intermediaries have embraced the new requirements there is generally a view that the processes are working in line with SRD2 provisions.

Q11: Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (*e.g.*, regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect information regarding shareholder identity)? Please specify your response in relation to the following topical areas:

a) Shareholder identification;

- Yes
- No
- Don't know

b) Transmission of information;

- Yes
- No
- Don't know

c) Facilitation of the exercise of shareholder rights;

- Yes
- No
- Don't know

d) Costs and charges by intermediaries;

- Yes
- No

Don't know

e) Non-EU intermediaries.

Yes

No

Don't know

* Please explain and provide evidence to corroborate your response, clarifying whether encountered obstacles or difficulties relate to cross border elements (both within and outside the EU).

2000 character(s) maximum

Please see our responses to questions 3 – 9 above.

Q11.1: If you have answered positively to at least one of the points listed in *Q11*, please specify if it was in relation to the following:

a) The attribution and evidence of entitlements (incl. as regards the record date position);

Yes

No

Don't know

* Please explain and corroborate your answer.

The process for confirmation of entitlement envisaged by the Implementing Regulation needs to be reviewed. It currently requires that, on request, last intermediaries confirm the entitled position appearing in their records to the shareholder, or to the third party nominated by the shareholder. However, it mandates that a formatted electronic instruction is used, in accordance with Table 4. Many investors, particularly retail investors, are unable to receive such a formatted message. Further, there are serious questions as to how such a formatted message can be presented to the issuer at the meeting without any possibility of it being modified. In consequence, the confirmation of entitlement envisaged by the Implementing Regulation has not yet been used in practice.

b) The sequence of dates for corporate actions and deadlines;

Yes

No

Don't know

* Please explain and corroborate your answer.

Tables 3 & 4 should be reviewed and amended to ensure accommodation of all Notice of Meeting /Participation variances across Europe, including for example slate vote requirements for Board appointment.

c) Any additional requirements (e.g., requirements of powers of attorney to exercise voting rights);

Yes

No

Don't know

* Please explain and corroborate your answer.

A harmonised approach for powers of attorney and standardisation of authentication would be very beneficial and requirements for physical powers of attorney should be removed. In the Spanish market the requirements of powers of attorney to exercise voting rights have proven a burdensome process. In Denmark, the recent removal of the requirement for powers of attorney for voting instructions has resulted in a significant increase in participation.

d) Communication between issuers and central securities depositories (CSDs);

- Yes
- No
- Don't know

* Please explain and corroborate your answer.

Some CSD systems (e.g., Euronext Securities in Denmark) do not facilitate access by 3rd parties and only accept ID requests & announcements from Issuers or Issuing Agents (Banks). Issuer agents act directly on behalf of their issuer-client and should be afforded equal treatment and access to fulfill these actions for the issuer (subject to agreed mechanisms to reasonably evidence that they have been appointed for this purpose).

e) Any other issue.

- Yes
- No
- Don't know

* Please explain and corroborate your answer.

n/a

Q12: If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter Ia (also relating to cross border elements - both within and outside the EU - and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please explain and provide evidence to corroborate your response in relation to:

a) Shareholder identification;

2000 character(s) maximum

We would recommend the following improvements, each of which is elaborated in our comments above:

- Removal of the Member State disclosure threshold for shareholder ID. While issuers may at times elect to apply thresholds (e.g., to reduce costs), a mandatory threshold reduces the opportunity for engagement).
- Prohibit or over-ride CSDs rules that prevent issuers using 3rd party agents to engage with the CSD or imposing discriminatory fees when this occurs. CSDs, like other intermediaries, must comply with SRD2 which provides optionality to the issuer in this regard.
- A comprehensive analysis of intermediary (including CSD) charging practices, to support a standardised approach that provides real transparency, verifiability, and fairness for issuers and investors.
- Many entities are simply providing their internal client code as a unique identifier when providing shareholder information. Such codes are effectively useless for identification purposes as they are not universally unique. It would be beneficial if it were obligatory for legal entities to provide their LEI.
- The variance in required data elements across Member States, e.g., granular elements concerning the identity of the owner, such as tax residence, citizenship, date of birth should be addressed, either by harmonising to an agreed standard, or by enhancing the ID request to include parameters detailing market specific data elements.

b) Transmission of information;

2000 character(s) maximum

- Remove variance in required data elements across Member States.
- A comprehensive analysis of intermediary (including CSD) charging practices, to support a standardised approach that provides real transparency, verifiability, and fairness.
- Non-discriminatory access for issuers' appointed agents to CSD systems to initiate the STP transmission.

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

- Require availability of electronic voting across all Member States to achieve full benefits of STP processing.
- Prevent CSDs enforcing rules, contrary to the spirit of SRD2, that require instructions to be routed via CSD systems

d) Costs and charges by intermediaries;

2000 character(s) maximum

An examination of the charging practices of intermediaries and CSDs is necessary to ensure consistent, transparent, non-discriminatory and verifiable application of fee structures to issuers and investors. Unfair practices that are emerging in the implementation of SRD2 must be prohibited. A comprehensive review in this area is necessary to consider impacts and agree a more effective approach. This should include preventing intermediaries charging issuers and investors for the same activity.

We have heard examples of intermediaries charging different fees for passing on an ID request, depending on whether the request is initiated via the CSD vs other actors, or applying differential fees for cross border services vs domestic services. It is essential that all such costs are non-discriminatory, fully justified and are made more transparent. Any fees applied to an issuer should be in accordance with the issuer's Member State law and market practice so that issuers are not presented with varying fees depending on location of the intermediary, that also may conflict with their local law (e.g., which may prevent intermediaries charging for ID responses).

e) Non-EU intermediaries.

2000 character(s) maximum

No comment.

Q13: Overall, do you consider that Chapter Ia provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the Directive?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement.

2000 character(s) maximum

In our view, the implementation thus far has likely resulted in incremental improvement in shareholder engagement. However, it is likely too early to effectively judge this, with delayed transposition by some Member States and delayed technical implementation by some stakeholders. Differences in data elements has caused some inconsistencies, further impacting the value of shareholder identifications as a driver of engagement at this juncture. We do anticipate that as implementation is more fully achieved, greater benefits will emerge. However, as highlighted in our comments on various questions above, further steps to address deficiencies in the current requirements would be beneficial to achieve greater improvements.

Q14: Do you believe that rules on the following points should be further clarified and/or harmonized:

a) Attribution and evidence of entitlements (incl. as regards the record date position);

- Yes
- No
- Don't know

b) The sequence of dates for corporate actions and deadlines;

- Yes
- No
- Don't know

c) Possible additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);

- Yes
- No
- Don't know

d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents).

- Yes
- No

Don't know

* Please explain and, in case your answer is *yes*, please specify what actions could be put in place.

2000 character(s) maximum

- a) The issues associated with the application of confirmation of entitlement requirements should be addressed. In current form, it cannot effectively be transmitted to issuers, raising questions regarding its relevance. We note that this requirement was absent from the Directive and was only introduced within the Implementing Regulation. In the absence of it being a useful instrument, it may be appropriate to remove it entirely.
- b) Improve flexibility to accommodate general meeting requirements and voting arrangements across all Member States.
- c) Remove requirements for physical powers of attorney and replace with electronic POAs.
- d) Remove variance in required data elements across member states.

Q15: For elements that are not explicitly covered by the above questions but that are still related to Chapter Ia or the Implementing Regulation, do you have any other issue that you want to raise?

2000 character(s) maximum

Difficulties in the administration of shareholder rights that Ch. 1a addresses are largely driven by complex and often opaque ownership chains, particularly cross-border. Investors that hold directly in their name and disclosed on the issuer's register do not experience any barriers to access shareholder rights.

We note that CSDR Article 3 preserved the right of issuers to continue to operate registers of book entry securities outside of CSD record-keeping systems, requiring only that securities be recorded in the CSD before intended settlement date. Some Member States however require that issuers of transferable securities issue all such securities into their local market CSD. This hinders issuer and investor choice regarding securities record-keeping. It also creates significant barriers to issuers seeking to raise capital cross-border, requiring unduly complex ownership chains and structures to facilitate cross-border record-keeping. This in turn impacts the effective facilitation of shareholder rights.

We accordingly suggest that ESMA and the European Commission consider the impact of record-keeping requirements on EU issuers' ability to efficiently access international capital markets, and the concomitant provision of effective shareholder rights to their investors.

3.2.3. On proxy advisors

Q16: Is the definition of proxy advisors^[4] in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?

[4] As per Article 2g SRD, 'proxy advisor' refers to "a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights".

- Yes
- No
- Don't know

* Please explain and suggest any need for change.

2000 character(s) maximum

In our experience all the relevant players have been identified under SRD2. We have not come across issues with relevant players avoiding scrutiny.

Q17: Has the definition of competent Member State (set forth in Article 1 (2) (b) of the SRD) provided a common EU framework for proxy advisors covering EU listed companies?

- Yes
- No
- Don't know

* Please specify any doubt or ambiguity you might have had in assessing which Member State is competent over proxy advisors, providing evidence to corroborate your response and explaining what changes could be made, if any.

2000 character(s) maximum

In our experience this has not been identified as an issue of concern.

Q18: Are you aware of proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through establishments located in the Union and that may be subject to two or more Member States' legislation or no Member States' legislation at all?

- Yes, in more Member States
- Yes, in none of the Member States
- No
- Don't know

* Please explain and provide evidence to corroborate your response, specifying whether you are aware of any practical obstacles to the application of the relevant SRD2 provisions to such proxy advisors.

2000 character(s) maximum

In our experience this has not been identified as an issue of concern.

Q19: Are you aware of any entity providing proxy advisory or voting research services with regard to EU listed companies that does not fully apply and/or fully report on the application of a code of conduct in line with the provision of Article 3j(1)?

- Yes, and the entity does not sufficiently explain either why it does not apply a code of conduct or why it departs from any of its recommendations
- Yes, but the entity abides by its obligation to sufficiently explain why it does not apply a code of conduct or why it departs from any of its recommendations, and, where appropriate, discloses information of the alternative measures it has adopted
- No
- Don't know

* Please explain and provide evidence to corroborate your response, and please indicate which code(s) of conduct you think play the biggest role.

2000 character(s) maximum

We are not aware of proxy advisors which do not apply/report against a code of conduct.

Q20: Do you consider that the disclosures provided by proxy advisors have reached an adequate level following the entry into application of SRD II? Please specify in relation to:

a) Fostering transparency to ensure the accuracy and reliability of the advice;

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

No comment

b) Disclosing general voting policies and methodologies;

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

No comment

c) Considering local market and regulatory conditions;

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

No comment

d) Providing information on dialogue with issuers;

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

No comment

e) Identifying, disclosing and managing conflicts of interest.

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

With regard to conflicts of interest, some concerns have been raised relating to how these are identified, disclosed and managed. However, we are not aware of specific cases where perceived conflicts of interest have allegedly resulted in undue advantages being obtained. Additionally, the approach to this issue has improved with the evolution of the Best Practice Principles for Shareholder Voting Research.

Some of our issuer clients are also concerned about situations where proxy advisors charge them fees to allow issuers to more fully respond to the proxy advisor's analysis and recommendations.

Q21: Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?

- Yes
- No
- Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

We are of the view that there have been some improvements, but further improvement would be beneficial. In our experience proxy advisors are not always completely transparent about the use and source of ESG-related data and assessments. Some proxy advisors use external ESG data which they may not take responsibility for. Some have their own ESG-related business segments which at times provide high-level input into the proxy advisory reports, but which are not accessible in more detail unless you become a (paying) client of those services.

Q22: Do you consider the level of harmonisation achieved under the SRD2 sufficient to ensure that investors are adequately and evenly informed about the accuracy and reliability of the activities of proxy advisors?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, specifying whether your answer is the same when considering proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

2000 character(s) maximum

In our experience there have been no major issues regarding investors being informed regarding proxy advisor accuracy and reliability. We do not see a difference in this regard when considering proxy advisors that do not have their registered office or their head office in the Union.

Q23: In your experience, and in light of developments affecting the proxy advisory market, do you consider that the EU approach to regulation of proxy advisors, currently based on the 'comply or explain' principle, sufficiently addresses any market failures existing in this area?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response, e.g., vis-a-vis the regulatory approach taken elsewhere.

2000 character(s) maximum

From our point of view the current EU approach of comply-or-explain appears to be sufficient in addressing any existing market failures.

Q23.1: If your answer to Q23 is 'Not at all' or 'To a limited extent' or 'To a large extent', please indicate what further measures should be taken:

- Further mandatory disclosures;
- More structured disclosures, incl. in terms of harmonised presentation;
- Monitoring and complaints system and/or supervisory framework on disclosures;
- Registration/authorisation and related supervision;
- Other.

Q24: Having in mind the ESG and technological changes in progress in the voting services market as well as certain investors' tendency to internalise voting research and/or to provide clients with voting options, do you consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Overall, we consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided.

Q25: For elements that are not explicitly covered by the above questions but that still concern transparency of proxy advisors, do you have any other issue that you want to raise?

2000 character(s) maximum

No further comments.

Contact

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