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.

SRD2 provision	*Topical Area*
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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EU Transparency Register No. - 20884001341-42
Lobbyregister Deutscher Bundestag No. R001339

* **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);
- [x] Credit institution;
- [ ] Investment firm;
- [x] Central securities depositary - 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

LuxCSD provides Luxembourg's financial community with services for settlement in EUR central bank money as well as with issuing and custody services for a wide variety of domestic and international securities including investment funds.

As a central securities depository (CSD), LuxCSD offers custodian banks and distributors across Europe excellent custody and value-added services as well as a highly efficient settlement process with access to many counterparties. Settlement of securities transactions in central bank money reduces risk for financial market participants.

* **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:

- ( ) Pan-European Organisation
- ( ) Austria
- ( ) Belgium
- ( ) Bulgaria
- ( ) Croatia
- ( ) Cyprus
- ( ) Czechia
- ( ) Denmark
- ( ) Estonia
- ( ) Finland
- ( ) France
- ( ) Germany
- ( ) Greece
- ( ) Hungary
- ( ) Ireland
- ( ) Italy
- ( ) Latvia
- ( ) Lithuania
- (•) Luxembourg
- ( ) Malta
- ( ) Netherlands
- ( ) Poland
- ( ) Portugal
- ( ) Romania
- ( ) Slovak Republic
- ( ) Slovenia
- ( ) Spain
- ( ) 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

Since the national implementation of SRD II, shareholder identification has improved (i.e. on data quality and transfer rate), it is nevertheless important that some issues still persist across EU Member States.

The implementation of the SRD directive has led to new challenges: in their national implementation, some Member States have extended the scope of assets beyond shares listed on a regulated market within the EEA. It is therefore difficult for a first intermediary from another jurisdiction to check whether a disclosure request is valid or not. Such an extended scope cannot be called nor classified as SRD2 impact.

Another complexity for first intermediaries is the “authentication” that the requests originate from the issuer, as issuers appointed 3rd parties to transmit the information via the SWIFT network. The authentication process for an ISIN is a check that must performed manually based on authorization documents, signature checks and other documents. In case, the issuer doesn’t come from the home market of the first intermediary, the information and legal details are often provided in a foreign language or are not available.

The impact of SRD II implementation on shareholder identification may differ significantly depending on the EU MS, where we have seen that some issuers are more interested on the identity of their shareholders, than other issuers:

Between January 2021 and September 2022, a total number of 3353 unique disclosure request IDs for 1173 unique ISINs have been processed within the Clearstream universe (CBF, CBL, LuxCSD).

LuxCSD market specific: 55 unique request IDs have been received from 17 different Luxemburgish issuers so far.
LuxCSD is heavily negatively impacted by custodians that do not comply with market standards, as these custodians sending requests to all customers instead of customer with a holding in the ISIN. More than 90% of the received notifications are irrelevant.

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

Yes, the introduction of a harmonised “shareholder” definition will help reduce differing interpretations and increase alignment, processes and efficiency throughout the custody chain. Because capital markets currently rely on various definitions of “shareholder” across EU Member States, the identification of shareholders is a complex process and one that may unintentionally raise barriers for shareholders seeking to exercise their rights, particularly in a cross-border context. An EU-harmonised definition would support a coherent legal framework across all EU Member States and would be consistent with Action 12 of the European Commission's action plan for the Capital Markets Union, which called for an EU-wide harmonised definition of the term “shareholder.”

Action 12 of the European Commission's action plan for the Capital Markets Union already called for an EUwide harmonized definition of the term “shareholder” which we support. A harmonized definition of “shareholder” would simplify processes of identification of shareholders.

The lack of an EU definition of “shareholder” makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security. As a result, shareholders continue to face significant difficulties in exercising their rights, especially in a cross-border context, making it a strong case for an EU harmonised definition of shareholder.

While the benefits of having a harmonised definition of shareholder are significant, the implications of such a definitionon EU laws, national laws (in particular securities laws and corporate laws), and more generally on security rights and market practises shall not be underestimated and would have to be thoroughly analysed.

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

We support the selected definition.

For avoidance of any further doubts. An investment fund is an independent legal subject and therefore the investment fund can be classified as an Ultimate Beneficial Owner (UBO). Investors in an investment fund or any other collective investment schemes are not to be considered as UBO.

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

The question intends that the forwarding of information along the chain of intermediaries did not work adequately before SRD2.

This assumption is incorrect for General Meetings and Corporate Actions. Even before SRD2, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD2. The challenge, even under the application of SRD2, is the communication from the issuer into the chain of intermediaries and from the last intermediary to the end investor.

Issuers who are the source of the information according to the SRD2 must be legally obliged to use formats that fulfil security and interoperability with the first intermediary and to do so with the same quality and timeliness as intermediaries should forward this information to the end investors.

The transmission of information along the chain of intermediaries works very well for Shareholder Identification Disclosures, once the first intermediary can authenticate that the request originates from the issuer. As per the regulation every intermediary could be the first intermediary. The authentication is even more complex if the request comes from an issuer of another jurisdiction and legal documents are provided only in the issuer's national language.

The STP process is disturbed by the possibility for issuers to partially provide table 3 and 8. The issuer as the initiator must always provide a complete and high-quality data set for automated processing.
Mostly in some MS the actual improvement was observed since the implementation at national level of securities codes and/or laws prescribing sending the shareholder identification request throughout the intermediaries chain.

We consider that the use of ISO 20022 format across the intermediaries chain would improve the transmission of 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
- [x] To a limited extent
- [ ] To a large extent
- [ ] Fully
- [ ] No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Since September 2020 investors with an account at a bank in Europe receive information about General Meetings from all EEA member states. Beforehand, the most bank customers, especially retail-investors, have just received meeting information of securities from the country of their bank.
The exercise of shareholders rights on General Meetings has still some difficulties due to special requirements of the company law in each member state.

Regular retail-investors expecting a cost-free service to exercise their shareholders rights, otherwise the costs are disproportionate to their dividend income after tax. As the issuer has interest to receive votings from their investors, it should be considered that issuers must offer a cost free solution that allows such investors to pass on their votes. Such a solution should be harmonized across Europe in technical aspects and shouldn't be unique for individual issuers. Issuers often have just their own meeting in scope instead of a harmonized experience for investors that holding shares from multiple issuers.

An improvement in digitalisation and harmonisation could make the difference.

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

There is a lack of transparency across Europe and thus for us it is not possible to even being able to assess whether a reimbursement of costs is applicable or proportional. Furthermore, although the Directive and the respective National transpositions allow to charge issuers for a service, it is in practice very difficult to apply and especially for the cross-border disclosures. In this context, we support also the position of the European CSD Association (ECSDA), in that the directive made it easier to send invoices, but actually harder to validate and pay them.

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

Yes, LuxCSD has noticed a high interest from bank customers from outside of Europe to receive Shareholder Identification Disclosure messages from us as their depository to comply with European regulation and the national transposition.
Even before SRD2, all bank customers have received Corporate Actions messages.
Even before SRD2, bank customers acting as a global custodian have received all general meeting messages. We have noticed that several European banks have extended their reporting to receive meeting information from additional markets. We have also noticed less interest from intermediaries outside of Europe to receive General Meeting information from European issuers.

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 new Shareholder Identification Disclosure process based on ISO20022 formats has been well established by the industry. The authentication at first intermediary level requires manual efforts to ensure afterwards STP across the chain of custody. These efforts shouldn't be underestimated as they guarantee to the intermediaries that the request is valid and can be answered (sensitive data will be shared), finally the issuer benefits from this trusted process as well.

Even before SRD2, all bank customers have received Corporate Actions messages and can execute their rights via the chain of custody. As cash and securities proceeds are processed on the bank accounts, it is imperative that the issuer and their appointed agent also consider issuer-CSD/ intermediary rules and dependencies to ensure the interoperability and security of the information transmitted to the intermediaries.

European retail investors do receive more General Meeting messages, but there are still limitations for such investors to execute voting rights across borders. Issuer should be obliged to cover instruction costs as they have an interest to hear the voice of their investors.

There are varying interpretations of the Directive across markets and intermediaries; however, the volume of participating intermediaries and information distribution across the chain has increased as a result of intermediaries intending to delivery SRDII compliant services.

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

a) In markets where the issuer-CSD is acting as issuer agent to collect shareholder information special requirements or barriers are set for third party agents and often the processing of their request is delayed by several days. Such issuer-CSDs also trying to misuse the usage of new ISO20022 formats and STP processes for securities which are not in scope of the implementing regulation. This led into additional checks at following intermediary levels to avoid the disclosure of data that are not covered by SRD2. agents also define market specific fields to be used in the response, which is not in line with the regulation (funds classification, salutation, gender, tax id, account numbers,..). In our role as first intermediary we have noticed a lot of invalid or incorrect disclosure requests addressed to LuxCSD. Some issuer agents do not comply with market standards. The supporting material to authenticate that the request originates from the issuer is often not sufficient or provided in time.
b) When transmitting information, the timeline of article 9 IR, which are not tailored to the requirements of national company law, create unnecessary additional efforts and avoidable costs. There is limited benefit for (retail) investors to receive the information about a mandatory action or partial information about an upcoming event several months before the Record-Date,
c) A pre-requisite for an efficient shareholders rights execution is a binding and fully reliable information from the issuer to the intermediaries.
d) Beside the fact that the costs and reimbursement processes in each jurisdiction are different, information like the invoice address of the issuer is not transmitted in a machine-readable format. The entire reimbursement process for intermediaries against the issuers is not automated.

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 record date for meetings within the same country may differ, depending on the type of security. There is even more complexity for investors to understand the differences across the different jurisdictions.

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

- ( ) Yes
- (●) No
- ( ) Don't know

* Please explain and corroborate your answer.

N/A

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.

There is no harmonized General Meeting process across Europe.

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

- (•) Yes
- ( ) No
- ( ) Don't know

* Please explain and corroborate your answer.

Some markets in Europe do not have an infrastructure where the issuer-CSD is directly connected to issuers or their agents for this business purpose, but other well established and functional processes. To establish such a process requires a lot of effort and costs that shouldn't be solely with the issuer-CSD. The issuer is the initiating party to distribute information to their investors. It should be considered that an authentication that the information originates from the issuer and the content follows market standards (T2S/CASJ/CAJWG /ScoRE/local requirements, national company law) as well as the issuer-CSD minimum requirements can only ensure a fully automated process without negative impact to any party in the process.

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

A central database published by ESMA where the ISINs are listed that are in scope of SRD2 – ESAP could be a way forward. This avoids any misinterpretation or self-established rules by markets or issuers and their agents.
No national country can decide to go beyond the clear definition of "shares which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State."
If the disclosure response is the basis for following processes like the participation/voting at a general meeting or a corporate action (e.g. dividend payment), this should be clearly communicated by the respective markets.

b) Transmission of information;

2000 character(s) maximum

The post-trade process at intermediary level does not differ much between asset types or countries. SRD2 defined rules for a limited number of assets (tradable equities on a regulated market), resulting a split process at all intermediaries for same countries and between European and non-European assets.
When transmitting information, the timeline of article 9 IR, which are not tailored to the requirements of national company law, create unnecessary additional efforts and avoidable costs. There is limited benefit for (retail) investors to receive the information about a mandatory action or partial information about an upcoming event several months before the Record-Date, especially when there is a media-breach to the end investor. Not all investors want to be bombarded with information at a very early stage.

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

The expectations and processes for retails and institutional investors are far apart from each other. As long as investors have to pay for the execution of their shareholders rights, not many retail investors are willing to participate.
ISS: The expectation that all intermediaries would be able to interpret and implement service delivery in compliance with the guidance of SRD II by the 2020 deadline was not realistic. While many intermediaries have since tailored services based upon their interpretation of the deadline, there are still others which have not yet been able to do so. More time is needed to determine whether there will be additional improvements throughout the chain as more intermediaries adapt their standards. However, without direct requirements being set across all markets, interpretation of guidance will continue to pose a challenge to harmonization across the chain.

d) Costs and charges by intermediaries;

2000 character(s) maximum

There is a lack of transparency across Europe and thus it is not possible to even being able to assess whether a reimbursement of costs is applicable or proportional.
Further, CSDs are neutral in that context, however, we note that the incoherent transposition of the SRD II at the national level does not contribute to the efficiency of the processing and high responsiveness.

e) Non-EU intermediaries.

2000 character(s) maximum

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

The Directive has created a lot of new challenges. A harmonized process across Europe cannot be reached by a directive where 27 different countries must adopt changes in multiple national laws, mainly corporate law.

The definition of strict rules for tradable equities on a regulated market is a good starting point, but intermediaries cannot develop ever new special processes for some kind of assets held in custody. Every adoption requires a lot of changes to avoid interruption of existing services: e.g. the distribution of proceeds to an investment funds investor, an interest payment to bondholders or the dividend of an equity holder where the security is not tradeable on a regulated market or any Corporate Actions on non-European assets following more or less the same internal processes at intermediary level. This ensures the assets from investors contracted with a European bank receiving a similar service from their bank.

More shareholders are now being proactively notified of shareholder meetings for their portfolio holdings and allowed the option to participate in electronic voting through the custody chain. This may not yet have resulted in greater overall participation rates of voting at shareholder meetings; however, shareholders have more capability to choose to participate as a result of the Directive.

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) Yes, we recommend harmonizing the record-date for General meeting across Europe. Considering issuers have the wish to move the record-date as close to the meeting date as possible, the challenge will be with the notification. Distributing notifications to investors several weeks before record-date could require a constant monitoring of balance changes and post-processing of investors with a new holding in the applicable security. Additional costs will occur for issuers. A record-date about 3 weeks prior to the meeting is reasonable in our opinion.

c) Additional paperwork or special confirmation of holdings should be avoided, the same for pre-advices to the issuer that the investor may want to exercise their voting rights.

d) Some markets in Europe do not have an infrastructure where the issuer-CSD is directly connected to issuers or their agents for this business purpose, but other well established and functional processes. To establish such a process requires a lot of effort and costs that shouldn't be solely with the issuer-CSD. It should be considered that the authentication that the information originates from the issuer and the content follows market standards (T2S/CASG/CAJWG/SMPG/ScoRE/local requirements, national company law) as well as the issuer-CSD minimum requirements can only ensure a fully automated process.

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

The ESMA should publish a list of ISINs (equities of an EEA issuer that are tradable on a regulated market). Further clarification on the reimbursement of costs from intermediaries against issuers requires also a clear guideline how to address invoices and to whom.

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

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

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

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

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

b) Disclosing general voting policies and methodologies;

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

c) Considering local market and regulatory conditions;

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

d) Providing information on dialogue with issuers;

- Not at all

- To a limited extent
- To a large extent
- Fully
- No opinion

e) Identifying, disclosing and managing conflicts of interest.

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

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

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

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

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

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

6. Questions for intermediaries

6.1. Introduction

This section outlines questions directed at intermediaries, including CSDs. ESMA is keen to understand the views of this group of stakeholders on the new obligations stemming from the SRD2 transposition, in particular as regards their role to ensure proper communication and transmission of information and the facilitation of shareholders rights.

6.2. Questions

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

Q59: Have you encountered any doubt or ambiguity in assessing which Member State and NCA is competent over your activities 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, identifying what legislative changes could be made, if any.

2000 character(s) maximum

Transposition of the Directive into 27 Member State laws result a complex structure. Often not transparent or even clarified yet, which NCA is in charge.

Q60: How frequently do you receive shareholder identification requests when compared to the pre-SRD2 period?

- (●) More frequently
- ( ) With the same frequency as before
- ( ) Less frequently

* Please explain and provide specific data to corroborate your response.

2000 character(s) maximum

LuxCSD response: 55 unique request IDs have been received from 17 different Luxemburgish issuers so far.

LuxCSD is heavily negatively impacted by custodians that do not comply with market standards, as these custodians sending requests to all customers instead of customers with a holding in the ISIN. More than 90% of the received notifications are irrelevant.

Q61: Following the entry into application of the SRD2, when receiving a shareholder identification request, have you encountered obstacles in providing all the required information regarding shareholder identity to requesting issuers?

- (●) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response. Please also clarify how long it takes you to provide the requested information and if the obstacle was related to the identification of a “beneficiary shareholder” on whose account the shares are held by a nominee shareholder in its own name.

2000 character(s) maximum

LuxCSD in its role as CSD receives a lot of requests as first-intermediary and has to authenticate that the request is valid and occurs from issuer agents acting on behalf of issuers. Such additional material was not always provided in time to ensure a process before the deadline.
Validating signatures from parties (issuer) that are not contracted to the first intermediary are challenging. There should be at least a requirement for issuers to sign a Letter of Authorization (LOA) with qualified electronic signatures and to provide all supporting documents for the authentication in English or in the national language of the first intermediary.
The address fields for institutional investors shouldn’t be required when the LEI has been provided.

Q62: With reference to the previous question, can you please describe if your response would change in connection to cross-border shareholder identification, especially when involving third-country intermediaries?

- ( ) Yes, with regard to all cross-border shareholder identification
- ( ) Yes, with regard to cross-border identification involving a third country intermediary
- (●) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

No, We have established one process for all requests. But some issuer agents have additional requirements or extend the usage of the ISO20022 formats to other assets. This requires additional control steps for all requests to avoid incorrect processing and disclosure of data.

Q63: Following the entry into application of the SRD2, is the shareholder identification request and the relevant information required (*e.g.,* shareholder identity data, *etc.*) always transmitted to you in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- Yes
- (•) No
- Don't know

* Please explain and provide evidence to corroborate your response, specifying what type of standard you use.

2000 character(s) maximum

We are unable to subscribe for ISO20022 messages from some markets, because the provider of the issuer is incorrectly using the SRD2 indicator in the ISO20022 message and not following message standards. In another example the issuer agent has specific requirements to the response, which we and our customers cannot support.

LuxCSD is heavily negatively impacted by depositories that do not comply with market standards, as these custodians sending requests to all customers instead of customers with a holding in the ISIN. More than 90% of the received notifications are irrelevant.

Q64: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (*i.e.,* Article 3b) (*e.g.,* general meeting notice, notice of participation, *etc.*) in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- (•) Yes
- No
- Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *no*, please explain why and if this causes any problems in practice.

2000 character(s) maximum

Even before SRD II, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD2. The challenge, even under the application of SRD2, is the communication from the issuer into the chain of intermediaries.

Q65: Following the entry into application of Article 3b, have you experienced any improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries?

- (•) Yes
- No

- ( ) Don't know

* Please explain and provide evidence to corroborate your response, clarifying how long it took you to provide the requested information.

2000 character(s) maximum

Even before SRD II, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD II. The challenge, even under the application of SRD II, is the communication from the issuer into the chain of intermediaries and from the last intermediary to the end investor.
Since September 2020 investors with an account at a bank in Europe receive information about General Meetings from EEA member states. Beforehand, the most bank customers, especially retail-investors, have just received meeting information of securities from the country of their bank.

Q66: Following the entry into application of the SRD2, have you experienced any changes in how frequently you receive upstream voting indications from investors at any level of the chain of intermediaries?

- ( ) Yes
- (•) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The exercise of voting rights has not increased significantly. This is mainly due to the different processes in the Member States.

Q67: What type of system(s) have you put in place to communicate with shareholders in compliance with Article 2 (4) of the Implementing Regulation?

- (•) A fully-electronic system
- ( ) A mixed electronic and paper form system
- ( ) Other

* Please explain and provide evidence to corroborate your response. In case you put in place a fully-electronic system, please clarify if that is a proprietary system or a solution developed by a service provider.

2000 character(s) maximum

LuxCSD receives information from in SWIFT format and forward corporate actions and general meeting information in the same format.

The information received from issuers, or their agents is not fully automated yet.

Q68: Do you provide to your clients any electronic tools to facilitate the exercise of shareholder voting, including at cross-border level?

- (•) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, indicate whether they can modify their votes in your system ahead of the general meeting and when this is allowed.

2000 character(s) maximum

Yes, as already before SRD2 went live, LuxCSD offers their customers a SWIFT based General Meeting portal. Alternatively, customers can use a online GUI to receive meeting notifications and to submit voting instructions.

Q69: Have you experienced difficulties in complying with the timelines envisaged by Article 9 of the Implementing Regulation (*e.g.,* the cut-off date)?

- ○ Yes
- ◉ No
- ○ Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, please specify what difficulties.

2000 character(s) maximum

As we receive information is a well-structured format from our depositories via SWIFT, we can forward the received information in the given timeline.
We have noticed that the "SRD2 indicator" used in Corporate Actions and General Meeting notifications is very often incorrectly set. A fully reliable process based on this indicator is not possible.

Q70: Following the entry into application of the SRD2, in which way have you ensured that the costs you have charged for providing the services of Chapter Ia are:

a) Transparent. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

LuxCSD currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

b) Proportional. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

LuxCSD currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

c) Non-discriminatory. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

LuxCSD currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

Q71: Do you consider that Market Standards elaborated by the industry for the application of the provisions of Chapter Ia are useful to complete the regulatory framework 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.

2000 character(s) maximum

LuxCSD fully support Market Standards elaborated by the industry and was actively engaged in these working groups. As market infrastructure we see it as a key action to agree on market standards that are not limited to the benefit of the intermediaries. Issuers should be actively engaged, but we noticed that issuer agents with a limited a special scope consider just a small piece of the complexity when they contribute to these market standards groups.

Contact

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