

# 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

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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](http://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](http://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

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### 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

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### 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](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>
<b>Chapter Ia</b>	<b>Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights</b>
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
<b>Article 3j</b>	<b>Transparency of proxy advisors</b>
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

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### 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*

Association of Foreign Banks in Germany (Verband der Auslandsbanken in Deutschland e.V.)

\* **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*

The Association of Foreign Banks in Germany represents about 200 foreign banks, investment firms, fund management companies and financial services institutions in Germany. The activities of our members involve to a large extent the provision of investment services in Germany, but due to their international structure they are also facing the typical cross-border problems that arise when being integrated in the actions of an internationally positioned group.

A relevant part of our members is providing intermediary services within the meaning of the Shareholder Rights Directive II which is why we would like to respond both to the general questions and the questions for intermediaries.

\* **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:

- |   |                                   |
|---|-----------------------------------|
| <input type="radio"/> Pan-European Organisation | <input type="radio"/> Ireland     |
| <input type="radio"/> Austria                   | <input type="radio"/> Italy       |
| <input type="radio"/> Belgium                   | <input type="radio"/> Latvia      |
| <input type="radio"/> Bulgaria                  | <input type="radio"/> Lithuania   |
| <input type="radio"/> Croatia                   | <input type="radio"/> Luxembourg  |
| <input type="radio"/> Cyprus                    | <input type="radio"/> Malta       |
| <input type="radio"/> Czechia                   | <input type="radio"/> Netherlands |

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| <input type="radio"/> Denmark            | <input type="radio"/> Poland          |
| <input type="radio"/> Estonia            | <input type="radio"/> Portugal        |
| <input type="radio"/> Finland            | <input type="radio"/> Romania         |
| <input type="radio"/> France             | <input type="radio"/> Slovak Republic |
| <input checked="" type="radio"/> Germany | <input type="radio"/> Slovenia        |
| <input type="radio"/> Greece             | <input type="radio"/> Spain           |
| <input type="radio"/> Hungary            | <input type="radio"/> 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*

To our knowledge, intermediaries domiciled in Germany have been answering more than 3000 shareholder identification requests, with more than 2/3 of the requests stemming from non-German issuers. Due to the possibility of STP and industry standards for the processing of such requests, both the data quality and the speed of data transfer have improved.

**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*

In our opinion, a harmonized definition of the term “shareholder” across the EU would be central to achieving a common understanding and interpretation of the SRD II. Indeed, the current status, where different EU-jurisdictions have differing definitions of who shall be considered as shareholder under their respective national law (person listed in the register vs. beneficial owner) is one of the key issues that impede full effectiveness of the provisions and that lead to legal uncertainty.

**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*

In our understanding, the person actually entitled to exercise shareholder rights should be the ultimate beneficial owner.

**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*

Difficulties are predominantly not located within the chain of intermediaries itself. They rather arise from the fact that the information provided by the issuers to the intermediaries often lack a uniform standard and from the need to “translate” the STP-information transmitted within the chain into a format and language that is readable and understandable for retail shareholders.

To tackle the first issue, we strongly recommend that issuers should be subjected to the market standards used in the intermediary chain, too, and be required to provide complete and correct information making use of this standard.

Intermediaries should not have to transcribe the information obtained from issuers into the market standards. In particular, they should be put in a position to easily detect whether all required information has been provided by the issuer in the format necessary for STP and, should this not be the case, be able to return this to the issuer without delay and without triggering the tight deadlines for transmission.

Vice versa, intermediaries should have the right to transmit information from the shareholder to the issuer making use of the market standard. Issuers should not be able to reject information in that format.

With regard to the second issue, the legal provisions should pay regard to the factual difficulties for the last intermediary in the chain when transmitting the information to shareholders which are retail clients. These shareholders will not be able to process and understand information provided in the STP-format used in the intermediary chain. Regulation should pay regard to the fact that the last intermediary in the chain may have to transcribe the STP-information received into a format readable and understandable for retail clients. This also affects other rules and conditions, including deadlines, so that we strongly recommend that intermediaries may take this into consideration when defining the required services under SRD II.



**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*

Although there has been a considerable improvement, our member institutions nevertheless face difficulties, in particular in cross-border cases, often triggering the need for manual processes and leading to higher cost. This is mainly due to differences in the respective national company laws applicable to issuers.

**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 do not have the necessary information to fully assess this question. Intermediaries which have published their fees and charges certainly improve transparency, but due to the variety of national rules, if any, and the difficulties when trying to access information on such national rules (language of the legislation, finding of the publication place etc.), it is hardly possible to get the complete picture.

This lack of transparency enhances difficulties of intermediaries when charging issuers, in particular as the latter may not be familiar with the respective rules and with what can be considered as non-discriminatory and proportional.

We would welcome if Member States published their respective rules on charges and fees (or information on the lack of such rules) in English and if links allowing access to these rules were easily available, e.g. on ESMA's website.

**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*

To our knowledge, foreign banks have- to a large extent - supported ISO-formats.

**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*

There are well-established and harmonized standards and processes in place for the transmission of information within the intermediary chain.

**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) Shareholder identification: Due to national gold-plating in certain jurisdictions, not all requests for transmission of information are in scope of the SRD II. Furthermore, the first intermediary in the chain is subject to verification duties without there being any requirements upon the issuer to provide the necessary assistance to the intermediary (e.g. by providing the corresponding evidence).

b) Transmission of information: The strict deadlines pursuant to Art. 9 of the Implementing Regulation are not streamlined with the national company law of Member States. This can e.g. result in information being provided by issuers to the intermediary chain more than once, leading in return to legal uncertainty and to cost-intensive multiple information of retail shareholders.

c) Facilitation of the exercise of shareholder rights: Again, the lack of alignment between national company law and the SRD II can lead to difficulties. E.g. the exercise of shareholder rights can be encumbered if the confirmation of the shareholder's entitlement is not accepted under respective national law.

d) Costs and charges by intermediaries: Please refer to our answer to question 8. In addition, there are further practical obstacles, e.g. issuers not making their billing details (publicly) available.

**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 national company laws of the Member States often are quite different when it comes to the determination and documentation of shareholders' entitlement and exercise of rights. This hampers the efficient transmission of shareholders' instructions in the intermediary chain. Furthermore, the evidence of entitlement may not always be considered as sufficient.

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.

Please cf to our above answers

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

- Yes
- No
- Don't know

\* Please explain and corroborate your answer.

Issuers should be required to provide in a timely manner prior to the actual transmission of a request for shareholder identification to the first intermediary in the chain any information necessary to properly perform the verifications pursuant to Art. 10 para. 2 of the Implementing Regulation.

We would like to confer to our answer to Question 6 as far as this relates to the issues identified in relation to the format and quality requirements for the transmission of information from the issuer to the first intermediary in the chain. The information transmitted by the issuer should be such that it can be processed via STP without further ado. Ideally, such requests would meet the European market standards and not interfere with other processes (e.g. T2S, CAJWG, national corporate law) to which the intermediaries are subject.

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*

It should be required that requests for shareholder identification that are out-of-scope of SRD II due to national legislation and divergent requirements stipulated by local service providers (e.g. where the scope of application has been extended to other securities than listed shares) may not be identified as "in-scope".

b) Transmission of information;

*2000 character(s) maximum*

We would like to refer to our answer to Question 6.

c) Facilitation of the exercise of shareholder rights;

*2000 character(s) maximum*

As problems have been identified with exercise of shareholder rights due to divergent specific requirements of the national company laws, we think that a EU-harmonized definition of "shareholder" would be helpful.

d) Costs and charges by intermediaries;

*2000 character(s) maximum*

Please refer to our answer to Question 8. We would welcome consolidated information on the respective national regimes for costs and charges in the individual Member States, ideally provided by ESMA with links to the national rules. We would also highly welcome a clarification that the costs for information requests and facilitation of the exercise of shareholder rights should be borne by issuers.

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*

As stated above, there have been significant improvements due to SRD II. However, we also identified certain issues with the exercise of shareholder rights, transmission of information and costs and charges.

**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) If Art. 5 of the Implementing Regulation is revised, it should be provided for that the evidence of entitlement may be rendered implicitly with the shareholder's instruction.
- c) As a general statement, divergent national rules hampering the exercise of voting rights should not be accepted and the evidence of entitlement pursuant to Art. 5 of the Implementing Regulation should be considered as sufficient.
- d) Please cf. to our answer on Question 6

**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*

Guidance or statutory specification on the instruments in scope of SRD II would be helpful in order to put intermediaries in a better position to quickly assess whether information to be transmitted is subject to the standards and deadlines of SRD II or not.

In addition, we would like to cf. to our answer to Question 6.

### 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

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### 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*

The transposition of SRD II into the national company law has led to different approaches as regards the competent authorities. E.g. in Germany, the 16 Federal States are the competent authorities. It would be helpful to have a consolidated, easily accessible list of the respective competent authorities in the Member States.

**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*

N/A

**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*

Due to the possibility of STP via SWIFT and ISO, both the data quality and the speed of processing have, to our knowledge, significantly improved with view to the handling of requests that are in scope of SRD II.

However, national gold-plating or differing implementations in some Member States may hamper the

handling of such requests. It has been reported that e.g. some CSDs require additional data going beyond the data in Table 2 of the Annex to the Implementing Regulation, such as tax-numbers or depositary account numbers, or that individual Member States extended the scope of application of the SRD II to other securities than listed shares. Handling of such requests may entail legal risks and also lead to data protection issues.

**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*

N/A

**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*

This is due to the use of ISO 20022 based on the agreement on the Market Standards for Shareholder Identification. Please also cf. to our answer to Question 10.

**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*

STP-communication via ISO is well-established within the chain of intermediaries. However, communication between the last intermediary in the chain and the shareholder often does not allow for STP. In particular, retail shareholders can neither receive nor process ISO-messages and cannot submit their information in this format. The fact that issuers or their service providers often do not accept to receive ISO-messages, e.g. on voting, constitutes another obstacle to STP communication from shareholder to issuer. Intermediaries also face difficulties as issuers often do not communicate the confirmation pursuant to Art. 7 of the Implementing Regulation in the ISO-format.

**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*

In cross-border constellation, our members have experienced an improvement of the transmission of information on general meetings. The cross-border exercise of shareholder rights, however, still faces some difficulties. Please note that there has been no improvement for domestic constellations as shareholders have already been fully informed in Germany prior to SRD II.

**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*

There has been no significant increase with view to the exercise of voting rights.

**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*

This mix is due to the fact that STP-communication making use of ISO-formats or SWIFT is not possible with retail shareholders (and some institutional shareholders). In many cases, communication with retail

shareholders even requires the use of postal mail as they do not wish to make use of electronic communication means.

**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*

Some of our members make use of electronic tools to allow their clients voting via electronic platforms or other electronic facilities.

**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*

Difficulties arise from the fact that the strict deadlines stipulated by Art. 9 of the Implementing Regulation are not aligned with the national company laws of the Member States. But also the fact that the interface with retail shareholders does not allow for STP leads to difficulties.

**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*

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*

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*

**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*

Intermediaries have started to align their processes with the provisions of the SRD II and the Implementing Regulation and committed to common standards at a very early stage

We would like to refer to the Standards for Shareholder Identification, the Market Standards for Corporate Actions and the German Banking Association's Interpretation Guidance on Implementing the new obligations for intermediaries under Shareholder Rights Directive II and ARUG II.

## Contact

[Contact Form](#)