

**BETTER FINANCE's feedback on the Draft Implementing Regulation on minimum requirements in the transmission of information for the exercise of shareholders rights**

**BETTER FINANCE**, the European Federation of Investors and Financial Services Users, is the dedicated representative of financial services users at European level. It counts about thirty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Our organization acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry. As such its activities are supported by the European Union since 2012.

**BETTER FINANCE** is the most involved European end user and civil society organisation in the EU Authorities' financial advisory groups, with experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in the European Commission's Financial Services User Group (FSUG), and in the European Financial Reporting advisory Group (EFRAG). Its national members also participate in national financial regulators and supervisors bodies when possible.

For further details please see our website: <http://betterfinance.eu/>

BETTER FINANCE welcomes this opportunity to comment on this draft implementing regulation laying down minimum requirements implementing the Shareholders Rights Directive II as regards, shareholders identification, the transmission of information and the facilitation of the exercise of shareholders rights.

BETTER FINANCE congratulates the Expert Group on Technical Aspects of Corporate Governance Processes<sup>1</sup> for their work. The Implementing Regulation (IR) takes important steps towards facilitating cross-border voting and ensures a harmonised application of its requirements which reduces the risk of fragmentation across Member States.

---

<sup>1</sup> Please see BETTER FINANCE's press release "Shareholders Rights Directive implementing acts last chance to ensure rights of individual shareholders taken into account"  
[http://betterfinance.eu/fileadmin/user\\_upload/documents/Press\\_Releases/en/Shareholders/PR\\_-\\_SRD\\_IR\\_-\\_180418.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/Shareholders/PR_-_SRD_IR_-_180418.pdf)

Now, the information should flow faster since the IR requires intermediaries to process information between the issuer and the investor on a same-day basis<sup>2</sup>. The Regulation will also help to open the currently closed intermediary market, enhancing the competition and reducing costs for investors.

Last but not least, BETTER FINANCE welcomes that the IR does not restrict the receipt of vote confirmation that has to be provided by issuers to investors asking for it to those votes that have been cast electronically. In our view, SRD II does not foresee such a restriction for good reasons: a restriction to votes cast electronically would mainly benefit institutional investors that may use service providers/proxy agents that cast their votes electronically. Private investors on the other hand for cost reasons cannot make use of such service providers and have to choose other means to exercise their vote, for example, by postal mail.

Even though it was not within the remit of the IR to tackle the shortcomings of SRD II itself, it seeks to address some of the issues at hand. Still, BETTER FINANCE would like to underline the following points:

### **1. A lack of harmonized definitions**

Even though the IR represents important steps to facilitate cross-border voting and ensures a harmonized application of its requirements to reduce the risks of fragmentation across Member States, it does not remedy the lack of harmonised definitions such as for the definitions of shareholder or intermediaries. This lack of harmonisation in the definitions means that still no level playing field across Member States will be reached.

#### **a. A definition of “intermediaries” with loopholes**

The Implementing Regulation in its article 1(4) refers to article 2(d) of the Shareholders Rights Directive II<sup>3</sup> : “*intermediary means a person, **such as** an investment firm (...), a credit institution (...) and a central securities depository (...) which provides services of safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons*”.

Although “intermediaries” are now defined in the SRD II (article 2(d), (EU) 2017/828) it does not include service providers who are involved in the voting process and are an integral part of the information flow between the issuer and the investor.

This omission could lead to an interruption of the information flow since those providers are not directly bound by the IR.

---

<sup>2</sup> See article 9 of the Implementing Regulation

<sup>3</sup> DIRECTIVE (EU) 2017/828 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

Therefore, BETTER FINANCE calls on Member States to make use of the possibility provided by article 2 (d) of the SRD II (“such as” clause) and include such service providers in their respective definitions as intermediaries when transposing the Directive into their national legislative framework.

**b. The definition of shareholder left to Member States’ discretion**

The directive does not define the term “shareholder” but leaves the definition to Member States.

The absence of a clear definition of the term “shareholder” at EU level could be problematic for instance for shareholders in Member States who are still operating the concept of nominee (a registered owner who holds the shares on behalf of the actual owner, the end-investor, under a custodial agreement).

BETTER FINANCE therefore calls on all Member States to ensure that the necessary information reaches the end-investor as intended by SRD II. In addition, BETTER FINANCE calls on the Commission to be clearer in the IR with regard to the rights end investors have, especially how the IR ensure that the information flow does not end at nominee level but that the end investors receive the information from the issuers through the chain of intermediaries.

**2. A record date that should be harmonized across the Member States**

As defined in article 1(7) of the Implementing Regulation, a record date is “*the date set by the issuer, on which the rights flowing from the shares, including the right to participate and vote in a general meeting, as well as the shareholder identity, shall be determined, based on the settled positions struck in the books of the issuer CSD or other first intermediary by book-entry at the close of its business*”.

Although article 7 of SRD II does prescribe the conditions surrounding the set up of the record date, it does not set a uniform record date before the general meeting. Currently, the record date varies significantly between Member States. Where the record date is close to the general meeting, shareholders (especially private shareholders in a cross-border environment) may not be able to exercise their voting rights due to the long chain of intermediaries.

Therefore, BETTER FINANCE believes that the Commission should introduce a uniform record date throughout Europe which should be set at least five calendar days before the general meeting. The Commission should also harmonize the deadline set by the issuers to attend the general meeting (the deadline to which shareholders must answer to confirm or not their attendance to the general meeting).

**3. Higher fees for cross-border voting rights**

The IR aims at preventing diverging implementation of the Directive as it would increase the risks and costs of cross-border operations.

However, intermediaries will still be able to charge higher fees to shareholders exercising their cross-border voting rights.



The European Federation of Investors and Financial Services Users  
Fédération Européenne des Épargnants et Usagers des Services Financiers

**The European Federation of Investors and Financial Services Users**

76, rue du Lombard, 1000 Brussels - Belgium

Tel. (+32) 02 514 37 77 - Fax. (+32) 02 514 36 66

E-mail: [info@betterfinance.eu](mailto:info@betterfinance.eu) - <http://www.betterfinance.eu>