

Date: 7 June 2024

Shareholder Rights Directive (SRD) Evaluation – follow-up questions

Centre for
**Strategy & Evaluation
Services**

Costs and fees related to the application of the SRDs

- 1 Please describe the main actions taken by your organisation/ your association members to comply with SRD2. These could include for example, the need to purchase and implement new IT equipment, design, and adjust certain processes, and training / familiarisation for staff. This would relate to things you would not have done had it not been for the SRDs, not things you might have been planning to do anyway, and maybe the SRDs just acted as a trigger for that.

"/"

- 2 Can you estimate the one-off costs associated with the above actions for your company / a typical member, in terms of either EUR (ballpark figure) and / or staff time?

"/"

- 3 Can you estimate changes to annual recurrent costs for your company / a typical member associated with the need to comply with SRD2, in terms of either EUR (ballpark figure) and / or staff time?

"/"

One of the important aims of the SRDs was to ensure non-discrimination, proportionality, and transparency of costs – for example related to transmission of information and attendance of general meetings.

- 4 Has SRD2 led to any change in the fees charged by intermediaries to facilitate shareholder rights? If so, can you estimate these and how they might differ by service, country, or any other factor? We're particularly interested in fees charged for the exercise of rights cross-border. Can you provide examples of such fees? What problems have you encountered in this respect?

"Exercising shareholder rights, such as participating in companies' AGMs, often incurs costs at the national level. In cross-border scenarios, these costs are typically higher. Unfortunately, SRD2 has not resulted in tangible positive changes. The presence of numerous intermediaries in cross-border situations leads to higher cumulative fees, with the last intermediary (e.g. the client's bank or broker) passing on costs and potentially adding its own premium, often with little to no transparency. This turns what should be a right into a 'premium' service. In terms of costs, they can be quoted (tailored to a specific issuer/market), indicative, or part of a fee grid as a flat fee (with great variations in instances). This creates a problem of uncertainty. BETTER FINANCE & DSW (SRDII Revisited - 2022) study shows that 64% of retail shareholders were charged fees by banks/brokers (and/or including third parties within the chain) to obtain the necessary information and documents to proceed (admission card or voting card) for cross-border AGM voting. Extrapolating from our sample of individual shareholders surveyed on their voting requests, we found that when charged (payable about 64% of the time), the distribution of fees per AGM was as follows: 37% of occurrences were between €10 and €50, 13% were between €51 and €100, 19% were between €101 and €150, 6% were between €151 and €200, and 25% were between €201 and €250. Cross-border insights on voting fees include examples such as €40 for a German bank with a French issuer, €32 for a Portuguese bank with a French issuer, €150 for a Belgian broker with a Dutch issuer, and €250 for a Danish bank with an issuer in the Netherlands. The involvement of multiple intermediaries and the lack of support from certain firms (banks/brokers) exacerbate the problem, where we noted in 2022 that about half of shareholders (48%) wishing to engage and vote ultimately couldn't."

- 5 Has SRD2 led to increased transparency of fees charged by intermediaries in the transmission of information (e.g. for shareholder identity requests, or transmitting corporate information), for example, in the form of public fee schedules? Are fees considered proportionate and non-discriminatory? Can you provide any examples of the fees involved? What problems have you encountered regarding fees?

"SRD2 did not improve cost transparency of the voting process pre-general meeting. Direct fees shall be and are often published, at least by major firms (in the fee schedule of the last intermediary in contact with the client), unless it uses a 'quote system,' albeit less common (see above). This is mainly due to non-transparent 'third-party fees' resulting from intermediation within the chain, which are greatly problematic cross-border. Sometimes, the main fee is levied by the custodian bank and remains high. It can also be linked to processing share segregation from omnibus accounts to identify beneficial owners, and potentially to share recall if securities lending has occurred. Another significant development is the introduction of 'AGMs' service packages (e.g. through a Luxembourgish bank), solely to provide AGMs information, such as meeting notices – although this is to be considered a right. What is more, we encountered instances where such service packages were mandated in order to subsequently request AGM access and voting (even by proxy), where charges were levied for each request to engage with an issuer (e.g. receiving an admission or voting card). Therefore, total costs for exercising voting rights often remain a 'black box' for shareholders, and third-party fees cannot be assessed as proportionate or justified (transparency issue). In light of this, we do not consider the costs proportionate and non-discriminatory (within the chain, and cheap or free

locally vs. expensive cross-border EU voting). Moreover, these costs are prohibitively high, especially for shareholders with small amounts of shares, due to antiquated or limited technical solutions and procedures that should support automated processing of information (i.e. digitalisation or competition of such post-trade services)."

- 6 Are fees for attending general meetings proportionate, transparent and non-discriminatory? Do you have any examples of the fees in question that you can share with the study team?

"[see above and previous question]: In cross-border context we cannot state that fees are proportionate, transparent and non-discriminatory."

- 7 Has SRD2 led to any efficiency gains or savings for you/ your members? If so, please describe the nature of these, and their magnitude in terms of EUR (ballpark figure) and / or staff time. We're particularly interested in the transmission of information and facilitation of shareholder rights cross-border (e.g. speed, delays, costs).

"/"

Wider ranging questions

- 8 Has SRD2 made any difference to the ease with which shareholders can exercise their rights cross-border in the EU? If so, please explain.

"To a certain extent, SRD2 has raised awareness (mainly to savvy and interested investors) about the ability of shareholders to vote in foreign EU countries. It has also clarified certain the requirements for meeting notices and information processing (such as general meeting dates). It has also established that the last intermediary must account for the service provided to clients. However, the implementation and practical application of these provisions have not been widely adopted or consistently enforced across member states or firms (banks/brokers). As a result, many shareholders still face significant barriers and uncertainties when exercising their rights cross-border. Therefore, further improvements, process streamlining, and stricter enforcement are needed. While shareholder engagement has been made possible, it often fails. Information is only provided in about 27% of cases automatically to shareholders (AGMs notice), depending on the banks servicing them. Moreover, in certain cases, shareholders must pay to initiate the voting process, which may come with a disclaimer that the intermediary will attempt to provide the service but might not succeed. This has resulted in incomplete or failing voting service requests. Exercising shareholder rights should be straightforward and not feel like a 'full-time job,' but rather a seamless component of corporate governance facilitated by issuers and intermediaries."

- 9 What do you consider the most important remaining barriers to the exercise of shareholder rights cross-border in the EU?

"The most important barriers to exercising shareholder rights cross-border in the EU include: - Shareholder Definition & EU-Wide Form: The lack of a standardised definition of 'shareholder' across EU member states and the absence of EU-wide forms for share ownership verification and proxy representation complicate the exercise of shareholder rights. - Antiquated and Fragmented Processes: Long, complex, and outdated financial intermediary chains and omnibus accounts make it difficult and costly for shareholders to exercise their rights. - High Costs and Lack of Transparency: The high fees charged by banks and brokers deter shareholders from voting, and cost transparency before general meetings is still lacking. - Inconsistent Compliance and Enforcement: The provisions of SRD II have not been consistently enforced across Member States and intermediaries, leading to scattered liability across the chain, and impaired cross-border voting rights. - Information Accessibility: Shareholders rarely receive AGMs information automatically and therefore may often be unaware how to engage with companies, and about two thirds of those still engaging find the voting process cumbersome and difficult."

- 10 How widespread are these barriers (above)? Are they more present in some Member States than others (if yes, which)? If you were to venture a guess, what percentage of shareholders in the EU overall (EU and Third Country) would be affected by these barriers (e.g. up to 20%/ between 20-40%; 40-60%; between 60-80%; more than 80%)? Is the situation improving or not since the implementation of the SRDs?

"Taken altogether, the key barriers aforementioned would certainly impact over 80% of shareholders."

- 11 Looking ahead, what are the most important changes needed to the SRD framework? Name up to five key changes.

"1) Harmonise the definition of a 'shareholder' across EU Member States to ensure beneficial owners of the shares are properly identified and granted the rights. This should address issues related to nominee concepts and omnibus accounts – where 'a legal owner' (or vague terms such as end investors) may override that of the beneficial owner. 2) Ensure that EU issuers set the record date consistently (set a specific number of days before the AGMs) to reduce shareholder confusion cross-border by harmonising administrative practice of European listed companies as well as documentation requirements and cut-off date deadline of participation to be transmitted by the intermediary. 3) Implement cost regulation to eliminate voting fees for EU shareholders (cf. German model), ensuring exercising shareholder rights is not financially burdensome, or at least make cross-border voting fees equal to local voting. 4) Mandate further digitalisation to enhance rights and competition in post-trade voting processes: streamline shareholder identification with issuers through direct communication by removing legal uncertainties, modernising the antiquated, intermediated process. Digitalisation rules should also encompass the conduct of inclusive AGM models (both hybrid and not solely virtual) under strict fair treatment rules for all shareholders, regardless of participation method (e.g. rights to ask questions, propose resolutions, and live voting). Additionally, digitalisation should streamline the proxy delegation system while considering default (or simplified) minority shareholder representation by an independent shareholder organisation. 5) Develop a comprehensive framework for indirect shareholder (i.e. fundholders) representation and preferences consideration to enhance stewardship duty. This framework should request voting according to binding preferences by ensuring effective consultation by asset managers, ensuring minority investors/clients' interests are accounted for."