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

Martin Molko - molko@betterfinance.eu

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

[More than 1 option allowed]

- [x] 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 depositary - CSD;
- [ ] Proxy advisor (*i.e.,* a legal person providing research, advice or voting recommendations);
- [x] 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

BETTER FINANCE is a Federation of European associations representing and defeding the interests of savers and investors at EU level.

* **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

SRD2 Identification of shareholders as per Article 3a provided an established time-frame for companies to obtain shareholders data, but only partially improved shareholder identification by provisioning obligations for cooperation and communication between issuers and share owners via intermediaries. If the set framework improved national communication, in reality, shareholder identification process remains impractical at cross-border level. The intermediated securities system was not restructured with SRD II, and on a cross-border level, literally every communication between issuer and shareholder is processed through long intermediated holding chains. For instance, even though within many EU Member States (e.g. in Denmark, France, Italy or Spain) an individual ownership model is practised, on a cross-border basis, omnibus accounts (securities of several clients of an intermediary pooled in a single account) are regularly used for operational purposes. The separation of legal ownership and beneficial ownership creates additional difficulties for an effective communication between issuers and shareholder in a cross-border general meeting process. Moreover, the right of listed companies to know their shareholders in the established procedures do not prove efficient, since depositories are last in a complex chain of intermediaries which are supposed to transfer information, but without using a standardised language (delayed ISO 20022). It is therefore necessary to specify the actor responsible for overseeing the general meeting processes and to harmonise their regulatory control and monitoring regimes.

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

Shareholder identification did not improve as intended since SRD II fully entered into force in September 2020, greatly due to the term ‘shareholder’ not being understood as one across the EU. Consequently, individual investors may not receive their shareholder ID easily and swiftly via when cross-border process is involved. This lack of harmonisation is reflected in the multiplicity of applicable corporate law at Member-State level, with varying (competing) ‘shareholder’ concepts resulting in incomplete (impractical) transnational shareholder identification. This complexity also indirectly increases the cost to recognise shareholders across the EU. In addition to semantic (although basic) divergences, the ack of standardisation within post-trade services, namely a common language standard (ISO 20022) to enable tracing shareholder is not used amongst market participants and consequently hampers the communication of intermediaries. Moreover, the multiplicity of ‘intermediated’ ownership securities systems is not a conducive to levelling the playing field. At shareholder level, contractual terms can vary and provision different interpretations of the identification process as regards national corporate laws. A Europe-wide definition of the shareholder (as beneficial owner) – addressing that it is to whom identification and communication are made – is therefore a core element to overcome the barriers to shareholder engagement across the EU.

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

As regards the multiplicity of registration methods, the proper identification of the shareholder is crucial for both empowering the voting rights of end investors. This should be further considered with the harmonisation of nominee accounts regimes at national level. The end-investor concept should therefore regard as shareholder the "legal or natural person having invested his/her own money directly into a share, bears the financial risk and is entitled to dividends/corporate actions". Promptly clarifying who is the 'final shareholder' as the true beneficial owner should exempt intermediary/nominee retention within the chain in order to ensure that the information flow does not end at nominee level but that the end invetor one: the final shareholder (understood as the one who receives the information from the issuers through the chain of intermediaries and is able to exercise his/her rights flowing from the shares).
Moreover, such clear identification of beneficiary shareholder could participate in increasing the accountability and due diligence of asset managers for compliance with the voting instructions of actual asset owners delegating voting rights.

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

Individual investors are confronted with burdensome procedures and difficulties in receiving information, especially in a cross-border context. In practice, cross-border AGM information is rarely transferred to the 'end investor', but often remains in the realm of the custodian bank, or reaches the nominee only. BETTER FINANCE and DSW conducted a survey of shareholder associations and individual investors. We found that only 37% of attempts to vote cross-border during the 2022 AGM season actually translated in the shareholder receiving the meeting notice directly through the intermediary chain (depository bank/broker or issuer). In 63% of all cases, the shareholder did not receive the information or had to find it by his/her own means. Further, this is a deteriorating trend compared to a similar 2021 survey where 41% of respondents received the information. More importantly, in 2022, data collected from investors across 13 Member States showed that 45% of all their cross-border voting attempts failed. Besides, we noted the advent of 'voting information as a service', especially for cross-border procedures. Such fees are not transparent and thus challenge the intended purpose of information as a right and of proportionality (justification) of costs set by SRDII.

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

BETTER FINANCE considers that Article 3c, failed to truly facilitate the exercise of shareholder rights in the EU. By requiring that votes are cast electronically, Member States shall “ensure that an electronic confirmation of receipt of the votes is sent to the person that casts the vote" and incidentally “ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them”. Our research points that post-general meeting processes are still not working fully, nor efficiently. Eventually, only 14% of respondents have received a vote confirmation one third of the shareholders who voted cross-border and had requested voting confirmation did not receive any from the last intermediary. The current scheme does not require that shareholder automatically receive confirmation of their vote, unless it is specifically requested, but it is not always provided even upon request. Therefore, we see the need to automate this process and make it common practice.

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

Whereas SRD II stipulates that discrimination between fees charged for the exercise of shareholder rights on a national and cross-border basis should be prohibited, there is evidence of cost disincentives to vote abroad, in particular for individual investors. Participation and voting in national AGMs can be free (or low cost), for cross-border AGMs, BETTER FINANCE research identified that in 2021, the fees charged to investors (from the bank or broker) ranged from EUR 20-250. In 2022, the reported costs even exceeded EUR 250 per AGM (highest fees were in Luxembourg and Denmark). Moreover, many AGM participants could not be provided with justification of the costs incurred to vote abroad. Exemplary fee grids from certain banks/brokers are often significant to vote cross-border in the EU. There is evidence of intermediaries having a fixed rate for general meeting-related processes abroad. Some intermediaries even started to offer investors subscriptions to "AGM service packages" of up to EUR 400 for notification, and extra charges apply for proxy or attendance (up to EUR 250 and 450, respectively). Unless duly justified, shareholders should not be imposed higher cross-border fees than national AGMs. This is a strong deterrent to cross-border investments and to the functioning of the internal market. In addition, cost information is rarely readily available, or on demand only, and not easy to compare for shareholders.
Finally, some bank/broker do restrict shareholders right to proxy voting only, circumventing the requirement to facilitate physical general meeting attendance abroad. Further automation of the process is vital, both at institutional and retail level with the aim to simplify the process and harmonise regulatory oversight to tackle unjustified variations. A single reference point for intermediaries' custodial fees could be established at the European level as a first transparency step.

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
- [x] 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

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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?

- [x] 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 exercise of shareholder rights depends largely on the provision of information by intermediaries, as well as on the resources allocated to shareholder services by banks/brokers. Not all intermediaries have adapted in time to the requirements of ISO 20022 or to standardised formats. Alternative digital solutions need to be put in place to avoid continual interruptions in the request and transmission of information.

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

Shareholders can be confronted to excessive delays in processing the application and create uncertainties and insecurities for issuers about the AGM voting process. Specifically, the documentation requirement to be provided to the last intermediary differs. From the shareholder's perspective, it is not evident who requires specific information, the issuer or (any) intermediary in the chain. Although different documentation requirements may result from the nature of the share (registered or bearer share) and national laws, from the shareholder's point of view they are confusing and lead to a manual and time-consuming process instead of a process that should be as simple as possible. In some instances, shareholders are requested to provide information they do not have, or that haven't been properly transmitted within intermediaries. This therefore contradicts the provisions of SRDII as per the facilitation, transmission and identification levels.

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.

An EU-wide form to prove share ownership at record date that needs to be accepted by any intermediary in the chain, as well as by any EU issuer, could be introduced to simplify processes and foster a straight-through processing (STP) as foreseen in the Implementing Regulation.

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

- ( ) Yes
- ( ) No
- ( ) Don't know

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.

Documents such as powers of attorney, are not homogeneous and vary according to geographical areas, intermediaries and third party agents, or even issuers. This creates uncertainty from the last intermediary, can cause delays in processing a request and forces shareholders to adapt to a variety of forms which could be further harmonised. Moreover, the shareholder cannot always undertake procedures alone, either due to information retention or lack of direct access with the issuer.

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

- (●) Yes

- No
- Don't know

* Please explain and corroborate your answer.

Complex intermediaries' structures or account settings should not obstruct shareholders' rights. The current CSDR framework, however, needs to be reassessed to ensure that omnibus accounts do no longer hinder the processing of information between issuer and shareholder.

e) Any other issue.

- Yes
- No
- Don't know

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

An EU-wide form to prove share ownership at record date needs to be accepted by any intermediary in the chain, as well as by any EU issuer, to simplify processes and foster a straight-through processing (STP) as foreseen in the Implementing Regulation. In parallel, a clear definition of the term 'shareholder' at EU level would be beneficial to shareholders in terms of general meeting-related processes like voting at general meetings, shareholder identification, but also other corporate actions. Any such definition should ensure that the 'final shareholder' (i.e. the one who bears the financial risk, receives the dividend and is entitled to corporate actions) is considered as a shareholder.

b) Transmission of information;

2000 character(s) maximum

As a first step, harmonised rules for the deadline for notification of AGM participation (including cross-border) should be put in place. Second, the use of modern technologies, including blockchain technology (DLT), should be further encouraged to favour real-time information transmission and direct communication between issuers and shareholders, while considering the potential investor protection risks posed by their application.

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

The contractual arrangements together with Member States' company laws enable intermediaries to act on behalf of the shareholder when it comes to voting at general meetings.Technical platforms should serve the communication between issuers and shareholders and the chain of intermediaries should not obstruct the exercise of rights that investors have been granted. Direct communication between shareholders and issuers should be fostered to ensure a high level of shareholder engagement.

d) Costs and charges by intermediaries;

2000 character(s) maximum

Lack of transparency of potential undue costs need to be assessed. The European Commission, in collaboration with ESMA, should undertake a thorough analysis to determine whether the costs and meeting overheads claimed by intermediaries are indeed properly justified and reflect the variation in actual costs incurred in providing their services. Furthermore, the EU Commission should investigate whether there is an unduly different cost treatment of shareholders between an issuer's home country and abroad, which would be contrary to the aim of the Treaty of Rome, of the single market and of the CMU. A review of SRD II should therefore take the opportunity to review regulatory oversight of costs and charges connected to general meeting-related processes and harmonise it. As a first step, a central point of intermediaries' custody service fee schedules could be established at European level, for example at EBA. As regards harmonisation of fee disclosure, Directive 2014/92/EU could serve as a role model.

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

SRD2 has certainly provided a framework for engagement where cross-border voting is theoretically enabled, but in many cases it remains very time-consuming, burdensome and expensive for shareholders to undertake a voting exercise. Many individual investors are unaware of their rights or refrain from exercising them due to the identified barriers.
Further clarification on the scope of shareholders, transparency from market participants and process standardisation, further harmonisation of national laws and deadlines are amongst the core elements that need to be improved to brings assurance in the voting process. More digitalisation of such processes would also further encourage investors to engage with the companies in which they have invested and have the potential to remove the structural impediments linked to intermediated processes.

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

SRD II did not introduce a distinct date for the record date which therefore diverges significantly across the EU, therefore their harmonisation would bring clarity to both market participants and individual shareholders. A harmonised record date across Member States, should be set at least five calendar days before the general meeting to give shareholders sufficient time to exercise their rights.

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

3.2.3. On proxy advisors

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

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

- ( ) Yes
- ( ) No
- (●) Don't know

* Please explain and suggest any need for change.

2000 character(s) maximum

As per the definition of proxy advisor, it is a commercial basis and legal delimitation as regards SRD II can raise the question of whether any type of financial or audit firms, de facto acting as proxy advisors by providing related ancillary service, as should register accordingly and act in line with the Best Practice Principle that is common with proxy voting agencies.

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

- Yes
- (•) No
- Don't know

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

2000 character(s) maximum

In essence proxy advisors act transnationally, and common rules at national level, and EU supervision should apply when cross-border service is possible. In this respect, ESMA should co-supervise proxy advisors acting or registered in several jurisdictions, with the help of NCAs on a common and well define set of standards and code of conduct requirements.

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

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

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

2000 character(s) maximum

/

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

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

*

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

2000 character(s) maximum

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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?