BARRIERS TO SHAREHOLDER ENGAGEMENT – SRD II REVISITED

AGM season 2022 | A BETTER FINANCE & DSW REPORT

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The European Federation of Investors and Financial Services Users
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Barriers to Shareholder Engagement – SRD II Revisited

A BETTER FINANCE & DSW Report

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AGM season 2022

January 2023

https://betterfinance.eu/publication/barriers-to-shareholder-engagement-srd-ii-revisited

About BETTER FINANCE

BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation dedicated exclusively to representing the interests of European citizens as financial services users vis-à-vis legislators and the public, by promoting research, information and education on investments, savings and personal finances. Through its member organisations, BETTER FINANCE represents over 4 million private, non-professional investors and shareholders. BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Its activities are supported by the European Union since 2012.

About DSW

Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) is Germany's leading association for private investors. Its main goal is to foster an equity culture in Germany and to improve investment skills. Founded in 1947, DSW now has about 30,000 members. DSW represents its members at approximately 700 general meetings per year. Next to the representation of private investors' interests both at general meetings and at a political level, DSW acts as the head office of 7,000 investment clubs in Germany.

About the authors

Christiane Hölz is an attorney who has studied in Germany and France. She joined DSW in 1999 and has acted as managing director since 2022. She was a long-time member and vice-chair of the European Commission's Financial Services User Group which advises the Commission in the preparation of legislation and policy. She is a vice-chair of the Securities and Markets Stakeholder Group at the European Securities and Markets Authority (ESMA) and member of the EU Commissions expert group on technical aspects of corporate governance processes. Christiane graduated in Law from the University of Cologne (First State Exam) and obtained her bar exam at the Higher Regional Court in Düsseldorf (Second State Exam).

Martin Molko is Research and Outreach Officer at BETTER FINANCE, where he monitors policy issues and carries out dissemination tasks. He works on various topics, with a focus on Digital Finance/FinTech, Shareholder Rights and Financial Literacy. Martin holds a specialised master's degree in European Studies from the Free University of Brussels (ULB) and participated to university programmes on European multilateralism and economic development. He has lived in Belgium, France and Germany and worked in academia and editorial fields, where he developed a strong interest in finance.

I. Executive summary

Despite the great importance the EU attaches to corporate governance (the 'G' part of 'ESG') and to shareholder engagement, there are still considerable obstacles to the exercise of shareholder voting rights; namely the right to participate in the annual general meetings (AGMs) of listed companies and/or to cast a vote. This is especially true cross-border within the European Union, where a combination of long, complex, and antiquated financial intermediary chains and omnibus accounts make it difficult and costly for shareholders to exercise those fundamental rights. Furthermore, the multiplicity of financial intermediaries involved implies a scattered liability across the chain. Despite an EU legal framework and processes that sought to facilitate shareholder engagement, numerous are the instances where shareholders voting rights are impaired or denied. Yet, with the second Shareholder Rights Directive (SRD II) and its Implementing Regulation in force since September 2020, EU legislators sought to remove obstacles to the participation of shareholders in such intermediated corporate governance processes, notably by seeking to improve the transmission of information through the traditional, long-established, but deficient, intermediated systems.

The 2021 general meeting season was the first one completed under the full application of the new European rules that are supposed to pave the way towards greater 'shareholder engagement'. That same year, BETTER FINANCE, together with DSW, and its other member organisations, undertook a first research project to determine whether intermediaries are 'SRD II-ready' and, more specifically, to what extent shareholders would really be able to fully exercise their rights by attending and/or voting at AGMs when they held stocks of companies domiciled in a different EU Member State than that of their bank or broker. To this end, an EU-wide mystery shopping exercise was carried out to obtain a representative sample of respondents and identify, in practice, what real obstacles these European retail investors/shareholders face when trying to enforce their voting rights. In 2022 we renewed and pushed our analysis further, notably by including an exclusive case study focused on neobrokers' services related to shareholders' voting rights.

Like last year, the results of the research project remain disastrous in 2022. One reason for this was that the implementation of 'ISO 20022' – the only SRD II-compliant message format –, has been further postponed to November 2023. Since there is no common language used by intermediaries yet, processing of general meeting-related messages will remain prone to errors for at least one more general meeting "season", hampering the exercise of shareholders' fundamental rights at general meetings abroad within the EU "Single Market". In 2021, a prominent obstacle identified was the high fees charged to investors (by the bank or broker) as 50% of those surveyed had to pay to vote at AGMs (ranging from EUR 20 to 250). In 2022, for the first time, we identified costs exceeding EUR 250 per AGM, plus expensive new voting service packages, and the number of cases where shareholders had to pay increased to 64%.

In 2022, less than half (a mere 48%) of the respondents were ultimately able to vote at AGMs, an improvement of only 14 percentage points on last year's survey results. Yet, 63% of participants had first to get the information on the AGM by themselves when this should have been provided to them automatically. Likewise, 63% of shareholders perceive the voting process, if completed, as difficult – and yet many of them are deemed knowledgeable, since we recorded many second-time participations.

This 2022 study therefore reiterates the need to make the cross-border voting process simpler, more effective, and less costly for shareholders across the EU. The more easily and cheaply shareholders can vote at their companies' general meetings and the more securely they can exercise their voting rights abroad, the stronger they will be in their engagement with management and the better they will be able to contribute to enhancing companies' governance and by that support the sustainable transition of European companies.

Through this report BETTER FINANCE and DSW reiterate the urgent need to improve the shareholder engagement process by:

- **Ensuring that costs and charges no longer discriminate against shareholder voting within the single market.**
- **Enforcing intermediaries' compliance with the provisions and spirit of both the Treaty of Rome and of the SRD II**
- **Improving cost transparency pre-general meeting**
- **Fostering direct communication between issuers and shareholders, also by embracing new technologies**
- **Fostering proxy voting through independent shareholder representatives**
- **Improving the (intermediated) shareholder engagement process by:**
  - Abolishing barriers to shareholder engagement
  - Tackling problems resulting from complex, fragmented and antiquated voting chains, including omnibus accounts
- **Harmonising and simplifying documentation requirements for shareholders related to engagement processes (as planned in the European Commission's Capital Market Union Action Plan of 2020);**
  - Discarding the requirement to give advance notice for participation in a general meeting;
  - Standardised EU-wide form to prove shareownership at record date and proxy form should be introduced in national and English language.
- **Harmonising record dates and deadlines**
- **Promptly introducing an EU-wide definition of 'shareholder'**
- **Reviewing vote confirmation provisions**
- **Clarifying the actor(s) responsible for supervising shareholders' rights-related processes and harmonising their supervisory and regulatory control regime.**
- **Investigating the involvement of neobrokers in the shareholder engagement process**
- **Enforcing compliance by entrants (FinTech, such as neobrokers), and addressing the implications of their business model on shareholders' rights (i.e. securities lending issues).**

Post-trading services related to voting rights are not *per se* a financial process that should be entirely left to the banks and affiliated third parties. In the chain of intermediaries, a quasi-monopoly to arrange general meetings via processes with the issuer and/or broker proved to be detrimental.

Therefore, in the 21st century, it is time for Europe to embrace modernisation and new technologies such as blockchain/DLT to enable and foster direct communication between issuers and shareholders. The General Meetings and the shareholders' (as co-owners) voting processes are not financial ones per se, and non-financial providers should be allowed to step in. In addition, European citizens should be directly enabled to exercise their voting rights (either by themselves or by giving a proxy – for example to independent investor associations) as co-owners of EU companies, and also via their smartphones.

II. The background

This is the second edition of BETTER FINANCE's and DSW's report on 'Barriers to Shareholder Engagement'. Given the outcomes of our first edition[1] we found it important to renew the survey on the implementation of the Shareholder Rights Directive II, since the results were devastating. In the vast majority of cases, shareholders during the 2021 general meeting season were not able to fully or partially exercise their fundamental rights at general meetings abroad. In addition, there were numerous instances of high costs being charged to them, in some cases up to 250 EUR per general meeting.

The voting process on a cross-border basis must become simple, effective, and efficient but obviously has not yet proven to be. BETTER FINANCE and DSW – supported by various BETTER FINANCE member organisations and individual investors across Europe – therefore repeated their research project during the general meeting season 2022 to evaluate whether improvements have been made to the yet cumbersome and often inefficient intermediated voting processes.

'The effective exercise of shareholder rights depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts on behalf of shareholders or of other persons, especially in a cross-border context. In the chain of intermediaries, especially when the chain involves many intermediaries, information is not always passed from the company to its shareholders and shareholders' votes are not always correctly transmitted to the company. This Directive aims to improve the transmission of information along the chain of intermediaries to facilitate the exercise of shareholder rights.' Recital 8, SRD II

Well-functioning capital markets ensure efficient capital allocation across borders. The frameworks for exercising shareholder rights, however, still differ between member states and voting processes are not yet harmonised.

A general meeting process, i.e. the process from the convocation of the meeting until the voting at the general meeting, typically includes the following steps:

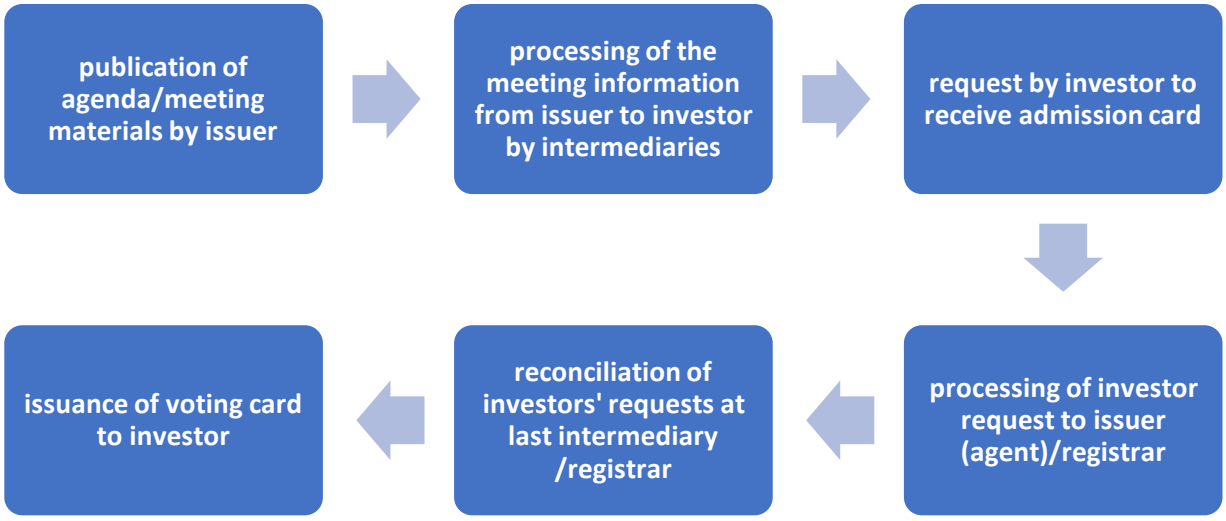


Figure 1: BETTER FINANCE 2022

While this process seems to be rather simple, in reality it is not. In the European equity markets, shares are held in dematerialised form, i.e. through electronic bookings. Unlike physical share certificates

[1] https://betterfinance.eu/wp-content/uploads/Barriers-to-Shareholder-Engagement-2.0-SRD2-Implementation-Study-20220106.pdf, accessed on 24 October 2022

where the one who possesses the share certificate is considered to be the owner, entitled to exercise the rights attached to the shares, dematerialised shares are held and processed by means of intermediation. In a cross-border context, this typically involves multiple intermediaries between the issuer and the investor, including the (national) Central Securities Depository (CSD). The CSD ensures the initial registration of the shares in a book-entry system, and/or provides and maintains securities accounts at the top of the intermediated holding chain. Contractual arrangements between intermediaries exist, though only bilaterally, as illustrated in the graph below. Given these bilateral relationships, the contracts between the intermediaries in the chain do not give rights to the shareholder.

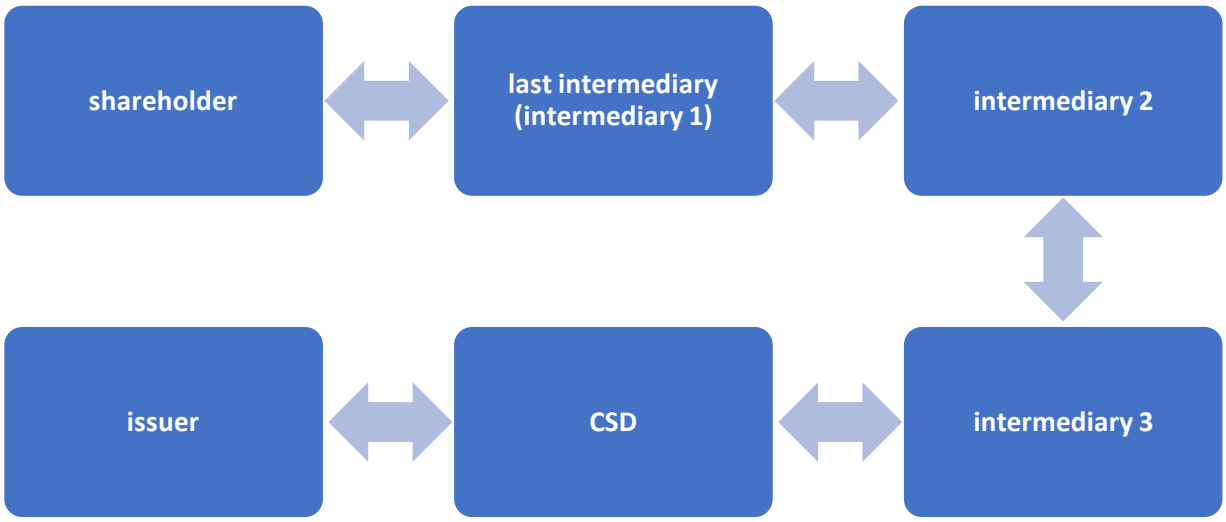


Figure 2: BETTER FINANCE 2022

It is in the interest of shareholders and issuers that the general meeting process is efficient, both in terms of time and costs, and that it includes a low risk of errors. The complexity of cross-border intermediary chains and their setup, though, cause problems in the determination of the entitlement of shareholders to exercise their voting rights, and thereby in the voting process: since such chains are likely to have more participants than a purely domestic chain but also because different national laws and market practices are involved.

While at a national level shareholders can directly register[2] their shareholding with issuers and communicate directly with them, on a cross-border level literally every communication between issuer and shareholder is processed through this intermediated holding chain – even if it concerns registered shares. One reason for this is that, by default, it is not the ultimate shareholder who is registered in the issuer's share register but an intermediary in the cross-border chain. This can be the CSD or the last intermediary, depending on the respective arrangements. Another reason is that, even though within many EU Member States (e.g., in Denmark, France, Italy or Spain) an individual ownership model is practiced, on a cross-border basis, omnibus accounts (where securities of several of an intermediary's clients are credited to the same account) are regularly used for operational efficiency.

In certain jurisdictions, an investor can obtain a member account from a CSD. In Finland, for example, the bank provides it, since the shareholder is required to remain the direct owner of its equities as to be easily identified.[3] Such an account could help overcoming certain problems resulting from omnibus accounts, since the shareholder would remain on the legal register to receive AGM-related

[2] This is possible in cases where issuers have opted to issue registered shares.

[3] This option is notably available via Euroclear Finland, Euroclear Sweden, https://www.euroclear.com/services/en/private-investor-services.html

documentation directly (and thus bypass some intermediaries). In covered countries, such a CSD account is always opened through a bank/broker, however, when it is not legally required, this can come at a cost. In this case, it is usually aimed at experienced investors who want to reduce the overhead costs they would pay for settlements. In this context, this practice does not seem to be a valid one (or even available) for individual investors across EU jurisdictions.

The effective exercise of shareholder rights, especially across borders, therefore depends to a large extent on the efficiency of the chain of intermediaries maintaining securities accounts on behalf of shareholders. However, in a cross-border context, the intermediated systems have become increasingly complex and consequently costly.

Even though the corporate action processes, in particular the cascading payment of dividends and interest down the chain of intermediaries, works well in a cross-border context, the combination of long and complex holding chains, intermediated registration and omnibus accounts makes it difficult and costly to identify proprietary interests of individual shareholders and thus often hinders the execution of the rights deriving from the shares (general meeting processes). Despite the tremendous capabilities of new technologies, cumbersome and antiquated mechanisms for voting processes still persist, especially for individual shareholders.

Moreover, in legal systems operating under Common Law, the separation of legal ownership and beneficial ownership may create additional difficulties for an effective communication between issuers and shareholder in a cross-border general meeting process.

Several EU initiatives have tried to tackle the problems of cross-border information transmission and voting instructions between shareholders and issuers in intermediated securities systems.[4] Next to the European Central Securities Depositor Regulation (CSRD) and the first Shareholder Rights Directive (SRD I), this report draws attention to the second Shareholder Rights Directive (SRD II) and its Implementing Regulation (IR).

1. Shareholder Rights Directive II (SRD II)

With SRD II, EU legislators aimed to remove obstacles to the participation of shareholders in the intermediated general meeting (and shareholder identification) process. SRD II is part of the EU Commission's Capital Markets Union (CMU), an initiative to further develop capital markets across the 27 EU member states. SRD II intended to foster an increase in shareholder activity and clear and transparent communication between companies and their respective shareholders in regulated markets across the EU. One priority was removing obstacles to the exercise of the right to vote, by improving, among others, the transmission of information and the exercise of shareholder rights through intermediated systems.

SRD II requires all intermediaries providing services (e.g. safekeeping, administration of shares, maintenance of securities accounts on behalf of shareholders) with respect to shares of EU listed companies with their office registered in a Member State, and whose shares are admitted to trading on EU regulated markets, to facilitate the exercise of voting rights: SRD II obliges any such intermediary to transmit information that enables the shareholder to exercise rights deriving from owned shares without delay from the issuer through the intermediated securities chain to the shareholder or a third party nominated by the shareholder. Consequently, where a respective intermediary receives information related to a general meeting, e.g. the convocation, it must process them without delay to

[4] For a complete overview of regulations impacting post-trade cross-border information flows between issuers and investors, see https://betterfinance.eu/wp-content/uploads/publications/FINAL_Barriers_to_Shareholder_Engagement.pdf, accessed on 24 October 2022

the shareholder. Inversely, SRD II requires intermediaries to transmit, without delay, to the issuer the information received from the shareholders related to the exercise of the rights flowing from their shares (in accordance with the shareholder's instructions). Where there is more than one intermediary in the chain, the information must be transmitted between them without delay unless it can be transmitted directly to the shareholder.

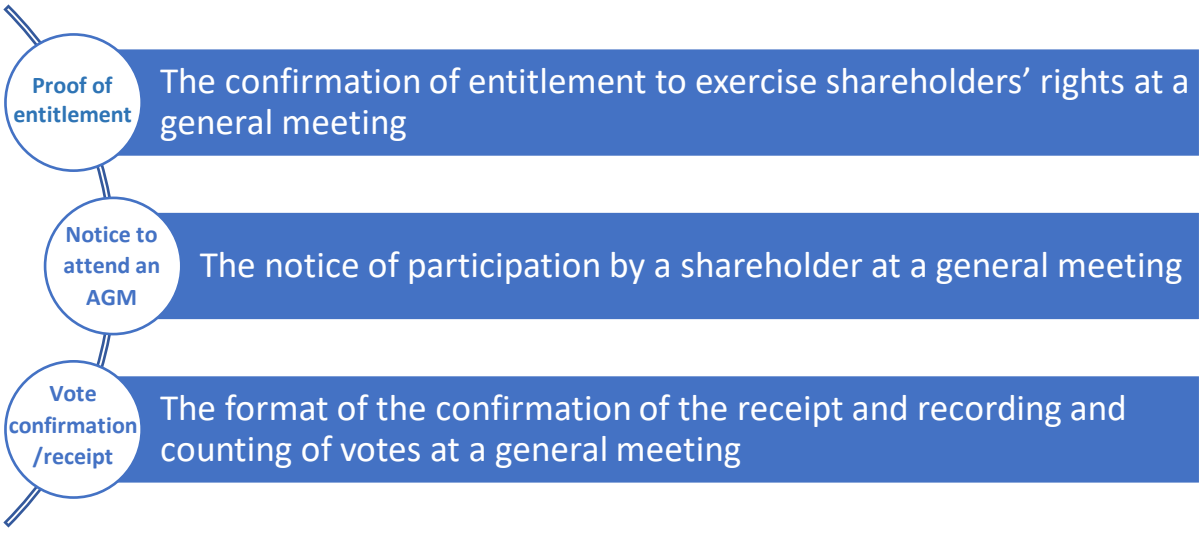
Costs and proportionality

Any charges levied by intermediaries for such services must be non-discriminatory and proportionate to the actual costs incurred. Any difference in charges between the domestic and cross-border exercise of rights is only allowed if it can be justified and must reflect the variation in actual costs incurred for delivering the services. Member States may prohibit intermediaries from charging fees for their services. Overall, SRD II does not fundamentally change the intermediated securities systems in the EU but rather aims at enhancing obligations for intermediaries to cooperate more efficiently and facilitate the communication between issuers and their owners.

2. SRD II Implementing Regulation

To prevent diverging implementations of SRD II, its Implementing Regulation[5] which entered into force on 3 September 2020, clearly describes the minimum obligations of intermediaries to facilitate the voting process. The Regulation sets minimum requirements for the transmission of information and votes in the intermediated chains, including deadlines to be complied with by issuers and intermediaries.

The Implementing Regulation covers specifically the following documents:



An intermediary shall transmit such information without delay and no later than at the close of the same business day on which it received the information. In case an intermediary receives the information after 4p.m. during the business day, it shall transmit the information without delay and no later than by 10a.m. of the next business day.

The implementation of the new rules had technological and functional impacts, since any information transmission between the different parties in the intermediaries' chain, since 3 September 2020, needs

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1212, accessed on 24 October 2022

to be made in electronic and machine-readable (ISO) formats, especially ISO 20022. Intermediaries therefore had to standardise processing procedures to ensure compliance and to facilitate the exercise of shareholders' rights as of 3 September 2020.

3. High-Level Forum on the CMU and CMU Action Plan 2020

SRD II did not put forward a definition of 'shareholder' but leaves the definition to Member States.[6] As a result, there are different definitions of the term 'shareholder' in place. Likewise, SRD II did not introduce a harmonised record date which therefore diverges significantly across the EU.[7] Pointing to this lack of standardisation and harmonisation, the High-Level Forum on the CMU in its Final Report invited the EU Commission to

> (1) Put forward a proposal for a Shareholder Rights Regulation to provide a harmonised definition of a 'shareholder' at EU level in order to improve the conditions for shareholder engagement;
>
> (2) Amend the Shareholders Rights Directive 2 (SRD 2) and its Implementing Regulation to clarify and further harmonise the interaction between investors, intermediaries (including CSDs) and issuers/issuer agents with respect to the exercise of voting rights and corporate action processing; and
>
> (3) Facilitate the use of new digital technologies to enable wider investor engagement by supporting the exercise of shareholder rights and more specifically voting rights, in particular in a cross-border context, and make corporate action and general meetings processes more efficient.

In its CMU Action Plan 2020[8], the Commission picked up on the High-Level Forum's recommendation and published the following action 12: "*To facilitate investor engagement, in particular across borders, the Commission will 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 action processing can be further clarified and harmonised. The Commission will also examine possible national barriers to the use of new digital technologies in this area.*"

The respective assessment is due to be published by Q3 2023. In October 2022, ESMA published a call for evidence 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 – as foreseen in Articles 3f(2) and 3k(2) of SRD II.[9] The purpose of the 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 (among others) the transmission of information and facilitation of the exercise of shareholder rights.

[6] Article 2 (b) of Directive 2007/36/EC

[7] The record date is the date which determines the eligibility of shareholders to participate in and vote at a general meeting. SRD I leaves it up to Member States to set a record date, article 7 (2) of Directive 2007/36/EC

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:590:FIN, accessed on 24 October 2022

[9] https://www.esma.europa.eu/sites/default/files/library/esma32-380-211_call_for_evidence_on_the_implementation_of_srd2.pdf, accessed on 24 October 2022

III. The 2022 status quo

The new European rules were supposed to pave the way for more shareholder engagement. The general meeting season 2022 was the second season with SRD II and its Implementing Regulation in effect.

While in last year's report the research focused on identifying whether intermediaries were already SRD II-ready, this year's research focused specifically on the question whether improvements could be discerned by shareholders when attempting to vote across borders, i.e. whether shareholders were able to fully exercise their rights by participating in, and voting at, general meetings in 2022.

Participants to the exercise were predominantly representatives of BETTER FINANCE's member organisations but also individual investors.[10] Participants were asked to perform the full cross-border general meeting journey: receive the information from the last intermediary, i.e. their deposit bank/broker or the issuer, request an admission card for the general meeting, vote at the general meeting and obtain a vote confirmation.

Overall, the exercise covered respondents from 13 European countries and investee companies from 11 European countries, as shown in the illustration below.[11]

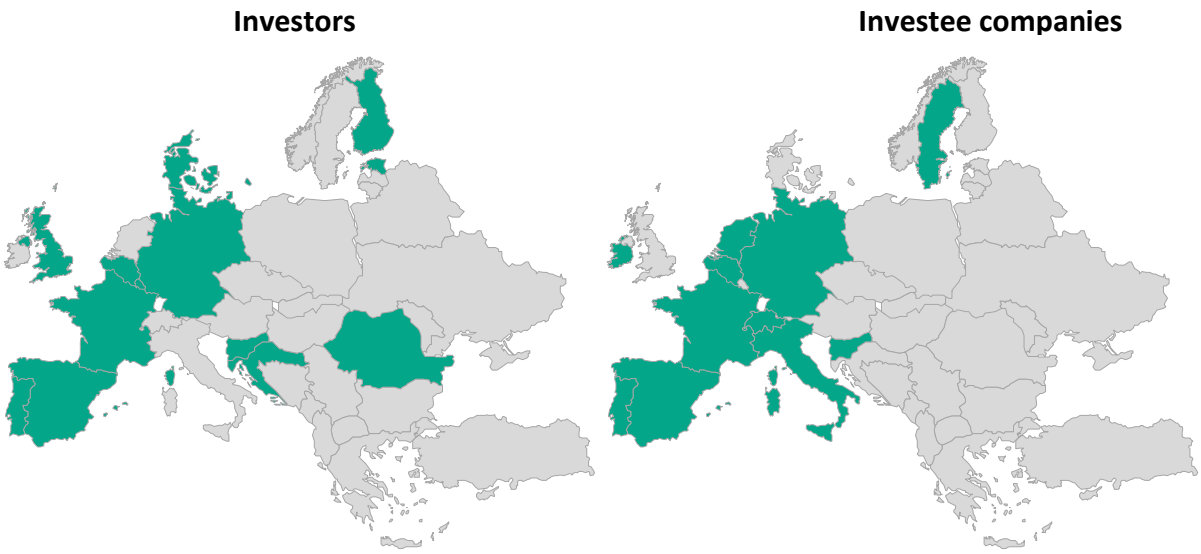


Figure 3: Source BETTER FINANCE 2022

1. Information about a general meeting

An intermediary, i.e., a deposit bank or broker, is required to transmit the information which enables an EU shareholder to exercise his/her rights at a general meeting of an EU issuer to the next intermediary in the chain or, if there is none, to the shareholder (see Article 3b (1)a SRD II, Article 4 IR) except where companies send that information directly to all their shareholders.

The research found that only in 37% of all reported cases, shareholders received the meeting notice either through the intermediaries' chain, i.e. from their deposit bank/broker, or directly from the issuer. In 63% of all cases, the shareholder did not receive this information unsolicited from the deposit bank/broker or only found it through his/her own means. This is a deteriorating trend compared to our findings in 2021 where 41% of respondents received the information either from the deposit

[10] Overall, the exercise covered 43 responses and should therefore be considered as an illustrative example only.
[11] Respondents from the UK have been included in the survey. The UK implemented the relevant provisions of SRD II and its Implementing Regulation on 10 September 2020.

bank/broker or directly from the company. We noted several cases from Belgium and Denmark where respondents even had to assist their deposit bank or broker in finding the meeting convocation or date and time of the general meeting concerned. This suggests that the information flow through the intermediaries' chain is still far from optimal, on the contrary, it seems to have worsened. **Two years after implementation of SRD II there is an urgent need to improve the information flow at intermediaries' level.**

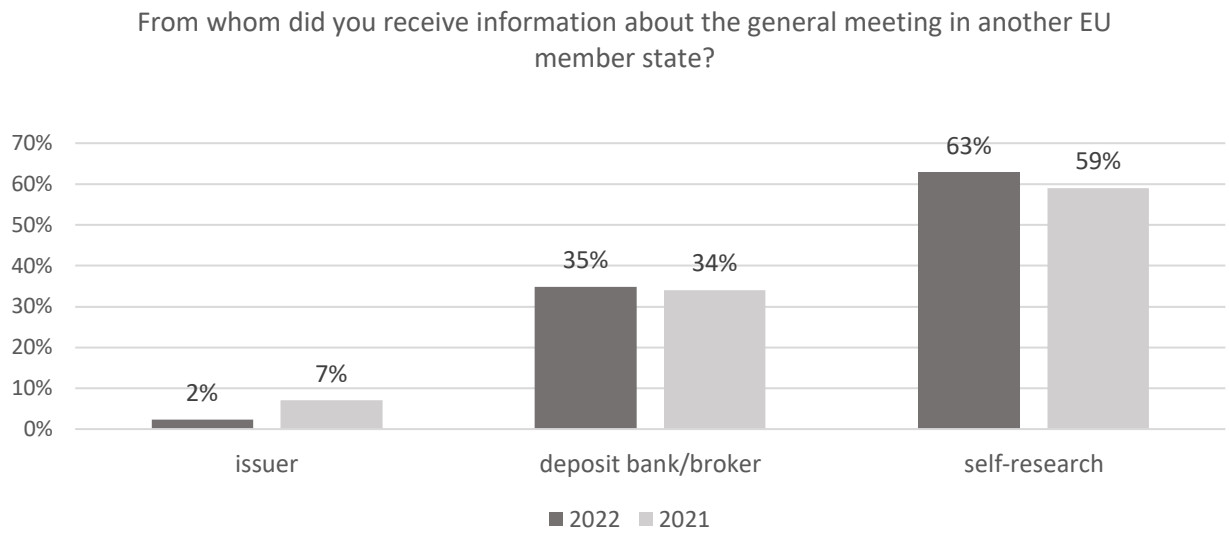


Figure 4: Source BETTER FINANCE 2022

While the notification process through the intermediaries' chain seems to work well for shareholders in Croatia, Estonia, France and Germany, shareholders in Belgium, Denmark, Finland, Luxembourg, Portugal, Romania, Spain (and the UK) already faced problems at that early stage of the general meeting process: they had to search themselves for information about the date/time or even the conditions to participate in a general meeting.

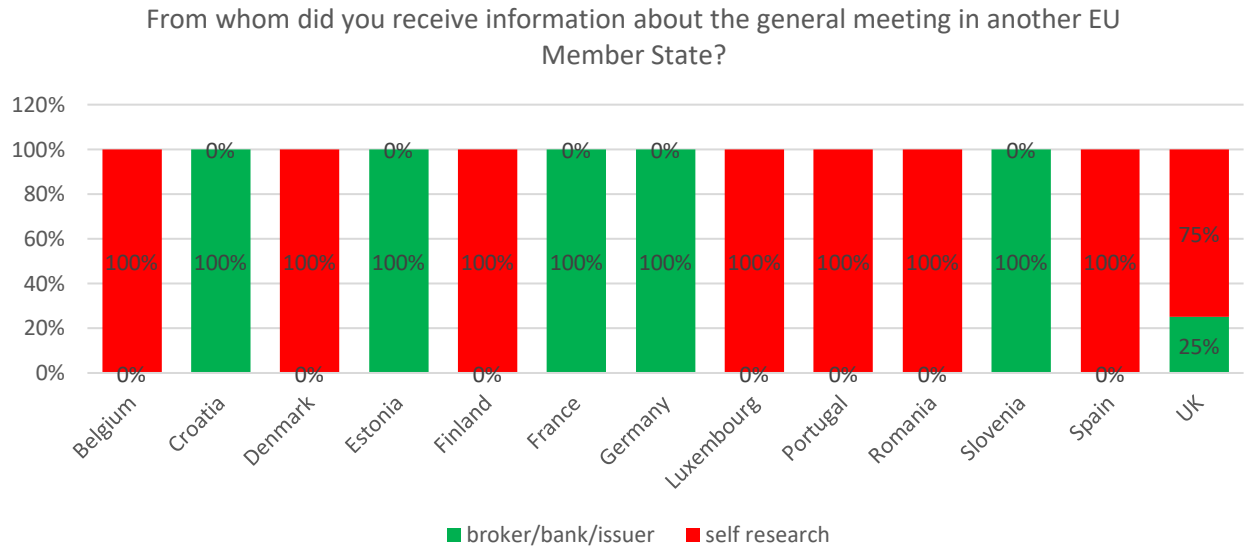


Figure 5: Source BETTER FINANCE 2022

The transmission of information between intermediaries is done in electronic and machine-readable formats, which allows for interoperability and straight-through processing. To shareholders, general

meeting-related information should be transmitted through generally available tools and facilities, unless otherwise agreed by the shareholder.[12]

In that respect, banks and brokers have various options to transmit information to their clients. Most commonly used nowadays are electronic communication channels[13], like email or in-app notifications but also communication by postal mail is still being used by a number of clients. From those respondents having received the general meeting notification directly from their bank/broker or the issuer, the vast majority consequently received this information electronically (93%), either by email or through their online web account. Only in 7% of cases, respondents received the information about a general meeting by hard copy/post. **This confirms the perception that consumers, including shareholders, are becoming more digitally savvy – a trend accelerated by the COVID-19 pandemic - and we welcome that intermediaries seem to have adapted to this trend also for general meeting-related processes.**

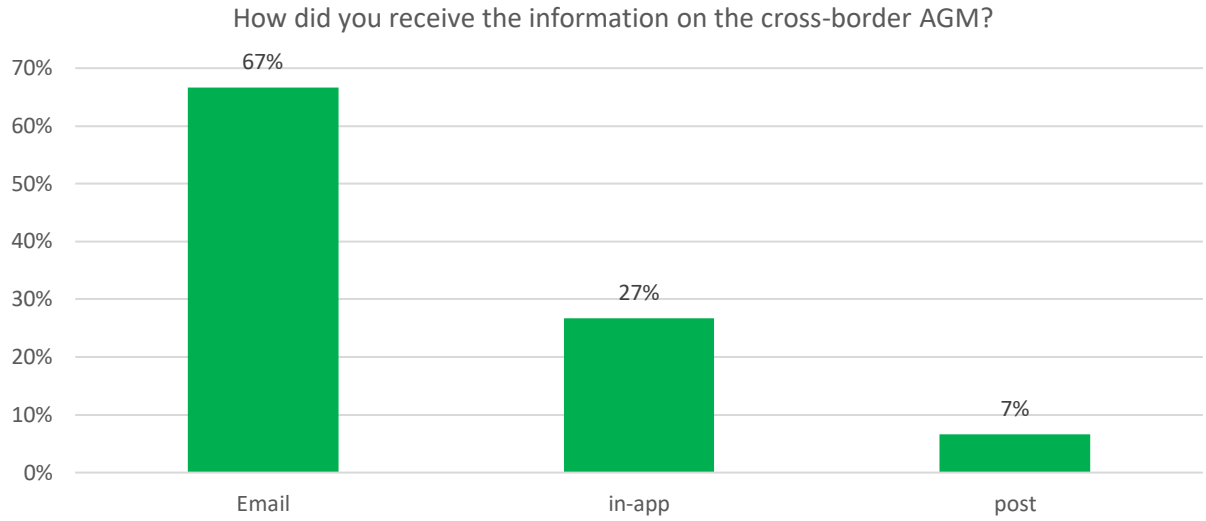


Figure 6: Source BETTER FINANCE 2022

2. Obtaining an admission card

As the highest decision-making body of an issuer, the general meeting is one of the key engagement tools for shareholders. At a general meeting, shareholders as the company's owners ratify decisions on topics determined by law and by the corporate by-laws. In addition, it serves as a forum for communication between the shareholders and the management/supervisory board.

Contrary to institutional investors who have alternative routes to engage with issuers, individual shareholders exclusively depend on the general meeting to exchange with the management. Facilitating especially individual shareholders' requests to participate in and vote at a general meeting therefore is key. To participate in a general meeting, it is generally a necessary precondition to obtain an admission card. Regardless of the format in which the general meeting is being held (on site, virtual or hybrid), shareholders will generally only be able to attend with an admission card giving them the right to speak, to ask questions, to file a motion during the meeting or to exercise their right to vote.

[12] Article 2 no. 3, 4 of Commission Implementing Regulation (EU) 2018/1212

[13] Digital adoption of consumers in Europe jumped from 81% to 95% as a result of the COVID-19 crisis. The banking sector has recorded an increase of 23% in first-time digital users since the onset of COVID-19, resulting in an adoption rate of 77%, according to a survey conducted by McKinsey: https://www.mckinsey.com/~/media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/europes%20digital%20migration%20during%20covid%2019/europes-digital-migration-during-covid-19.pdf, accessed on 24 October 2022

The admission card needs to be issued by the issuer or its registrar. The order request has to be made either through the intermediary chain or directly to the issuer, depending on the nature of the shares (registered or bearer shares). To prove the identity of the shareholder, issuers with shares listed in an EU Member State require different documentation. In most cases (~69%) a shareholder ID or an electronic ID or comparable documents, sometimes even both identification means, were requested for identification purposes. In 10% of the cases, other information was required, like for example the full address of the shareholder. **Interestingly, 21% of respondents replied that no further documentation was required by the deposit bank or broker. This suggests that these banks/brokers have implemented distinct mechanisms to link their legal identification procedures to those of the general meeting processes, which is conducive to simplifying the process.**

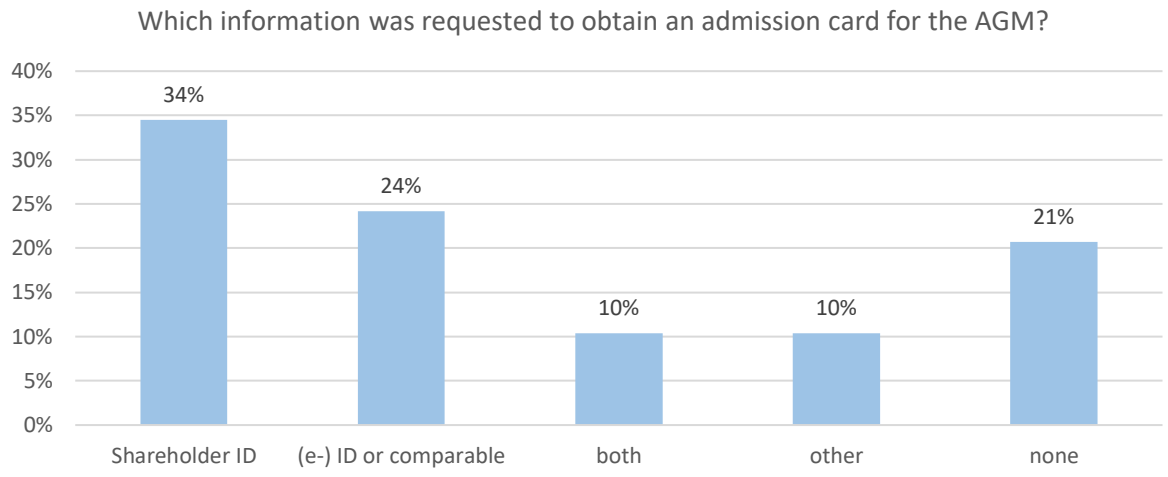


Figure 7: Source BETTER FINANCE 2022

44% of respondents could obtain an admission card and were thereby able to participate in a general meeting. This is significant progress compared to last year where only 22% of respondents obtained an admission card. **However, despite this positive trend, a significant percentage of processes have yet to reach full compliance with SRD II requirements (56% compared to 78% in 2021).**

We note, in addition, that in 7% of all cases, the successful requests to obtain an admission card were not pursued by respondents for various reasons, among them the considerable costs for pursuing these requests (see also following and points.4 [voting] and.5 [cost] of this chapter). **Where costs are charged for exercising fundamental shareholder rights, they serve as a deterrent to shareholder engagement.**

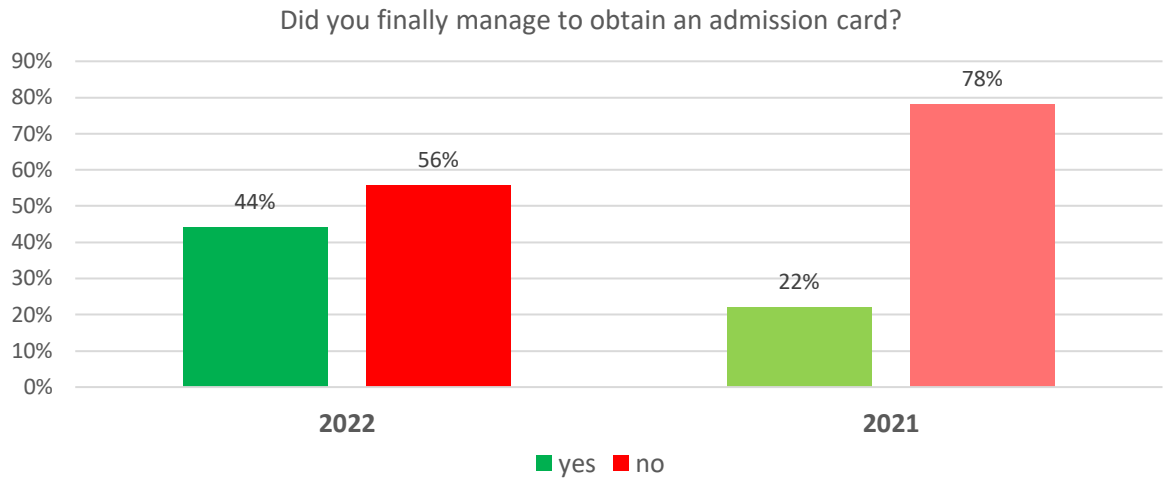


Figure 8: Source BETTER FINANCE 2022

The reported reasons for not having obtained an admission card varied but one reason was noted by more than half of the respondents: 56% reported that they received the information that should notify them about a general meeting in another Member State too late from their bank/broker, or not at all. In several cases, shareholders noted that even despite explicit requests to obtain an admission card, their bank/broker would not revert to them or would even ask shareholders to provide the information necessary to obtain an admission card to the broker/bank. Cases were also reported where banks refused to confirm the share ownership status, or where the certificate was not accepted by the issuer/registrar. All this evidence suggests that processes are still not sufficiently effective, imposing a factual barrier to shareholder engagement.

Other respondents noted that deadlines set by the intermediary, so-called cut-off dates, vary significantly from those set by the issuer. This is not only confusing for shareholders who should be able to rely on the documentation provided by issuers in line with legal requirements. Combined with a low reactivity of the last intermediary, those cut-off dates may be missed and therefore impact the shareholders' ability to exercise their rights.

19% of the respondents who were not able to obtain an admission card reported that the last intermediary had only offered them a proxy voting opportunity. This means that shareholders would be able to cast their votes through the chain of intermediaries but would not be allowed to exercise other shareholder rights at the general meeting, especially the right to speak up and ask questions to the company management. Even though proxy voting may be sufficient for institutional investors that have various opportunities throughout the year to exchange directly with the company management, it is often of less interest to individual shareholders for whom the general meeting is generally the only opportunity to meet and exchange with the management and fellow shareholders. It is therefore a positive development that this barrier has significantly decreased compared to last year, mainly thanks to the fact that COVID-19 restrictions to general meetings had been repealed in many Member States. However, the fact that intermediaries can decide on a shareholder's rights by restricting his/her option to proxy voting is concerning.

A further 19% of those respondents reported that the order of an admission card was linked to, partially significant costs. Last year, only 1% of respondents reported costs as an obstacle to obtaining an admission card. In 2022, banks/brokers in several EU countries set up a 'general meeting service' for

which a package fee is charged (see also chapter III.5 for an in-depth analysis of this concerning trend). Another 7% of respondents provided other reasons.

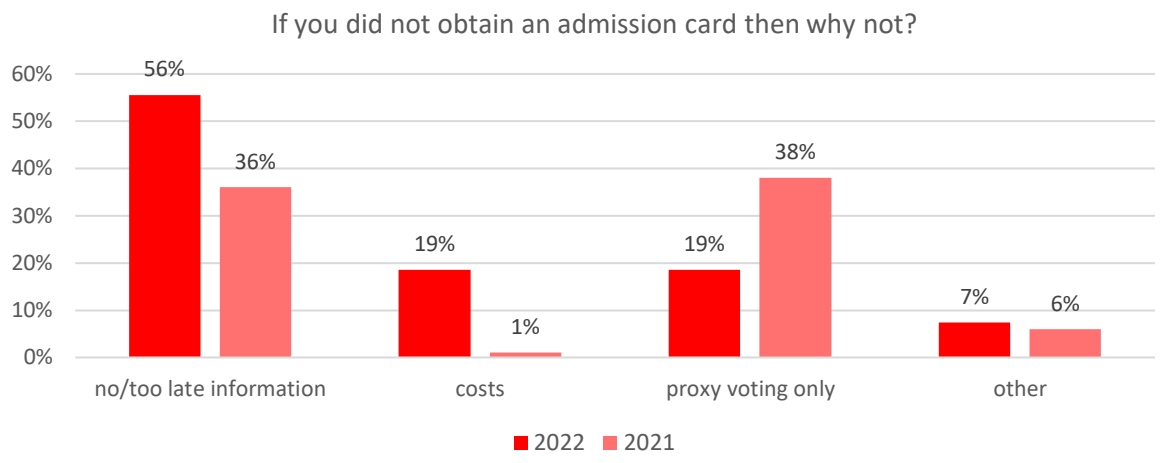


Figure 9: Source Better Finance 2022

3. Obtaining a voting card

Shareholders who invest in shares do partake in the risks linked to equity, such as the possibility of total loss. In return, they are legally enabled to exercise their ownership rights and engage with their issuer's management. The right to vote at a company's general meeting plays an important role in that respect as it allows shareholders to decide on important corporate matters, e.g. capital measures, (non-) executive compensation or the distribution of profit. The urgency of the intermediaries' legal obligation to facilitate the execution of voting rights also on a cross-border level becomes evident when considering that, from 2001 to 2021, there has been a slow but steady increase in foreign ownership, from 42% to over 47% of EU listed shares. By 2021, the EU domestic economy accounted for just 53% of its shareholding.

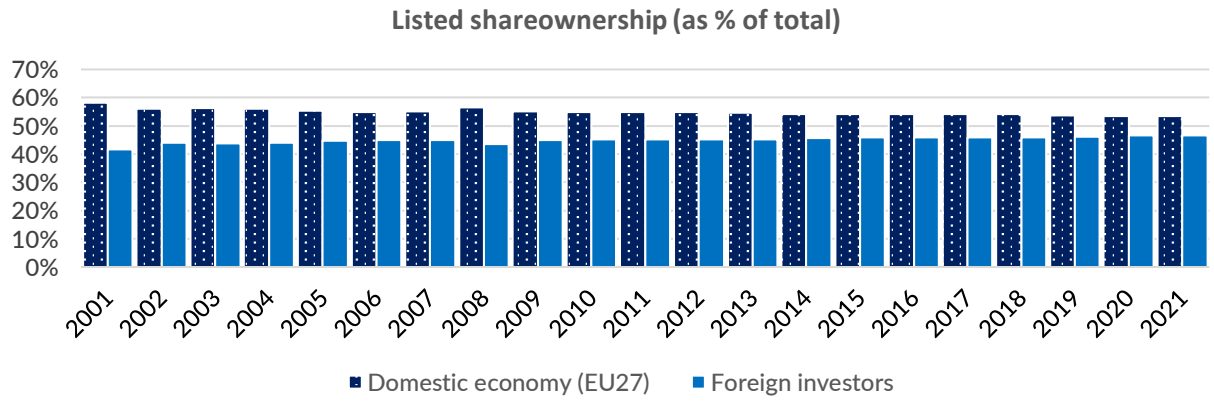


Figure 10: BETTER FINANCE 2022 (compiled from Eurostat - NASA_10_F_BS)

Today, the vast majority of European listed companies have – sometimes to a great extent – non-domestic investors among their shareholders and the majority of shareholders across Europe (must) use the intermediary chain to exercise their voting rights. The process of obtaining a voting card from a shareholder perspective should therefore work efficiently and free of charge along the chain.

Comparable to the process of obtaining an admission card, the reported cases, however, suggest that also the process of obtaining a voting card is cumbersome, lacks uniform standards and faces several hurdles in a cross-border context.

In 26% of all cases where shareholders had already received an admission card, the request to obtain a voting card was coupled with additional (identification) requirements, such as, for example, the custodian account number and sub-custodian banks, beneficial ownership details, ID card, shareholder ID, or a proof of delivery of proxy. **Where this information had already been provided by shareholders when requesting an admission card, it should be redundant. Any duplication of documentation requirements should be avoided.**

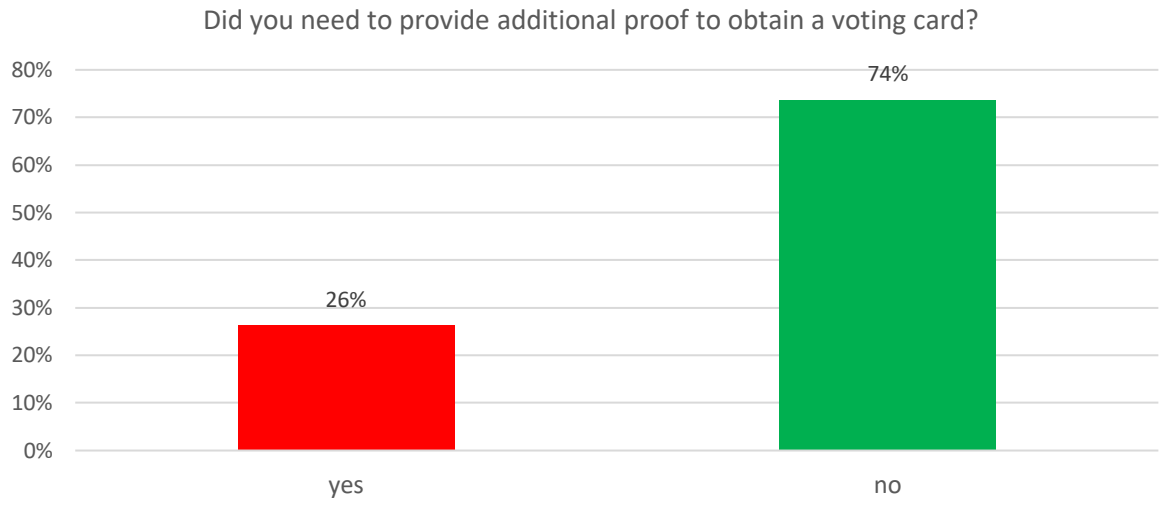


Figure 11: Source BETTER FINANCE 2022

From all respondents across Europe, only 36% finally succeeded in ordering a voting card that enabled them to vote at a general meeting. Another 12% of respondents were at least provided with the possibility to vote by proxy, which means, however, that they were not able to make use of further shareholder rights at the general meeting itself. The right to speak, ask questions or make a motion during the meeting is not linked to proxy representation (see above for more details). Furthermore, in some member states, e.g. in France, where a proxy is given to the chair of the meeting, instructions cannot be provided to the chair but will be executed under his or her discretion which is a severe obstacle to active shareholder engagement.

In 2022, 45% of all participating shareholders could not obtain a voting card for a general meeting outside their home country and were therefore unable to cast their vote. Conversely, we found that this AGM season only guaranteed the execution of voting rights for up to 48% of shareholders (36% through direct voting and 12% through proxy voting), whereas 7% abandoned the request, citing cumbersome/lengthy or inefficient procedures (communication issues with bank/broker, etc.).

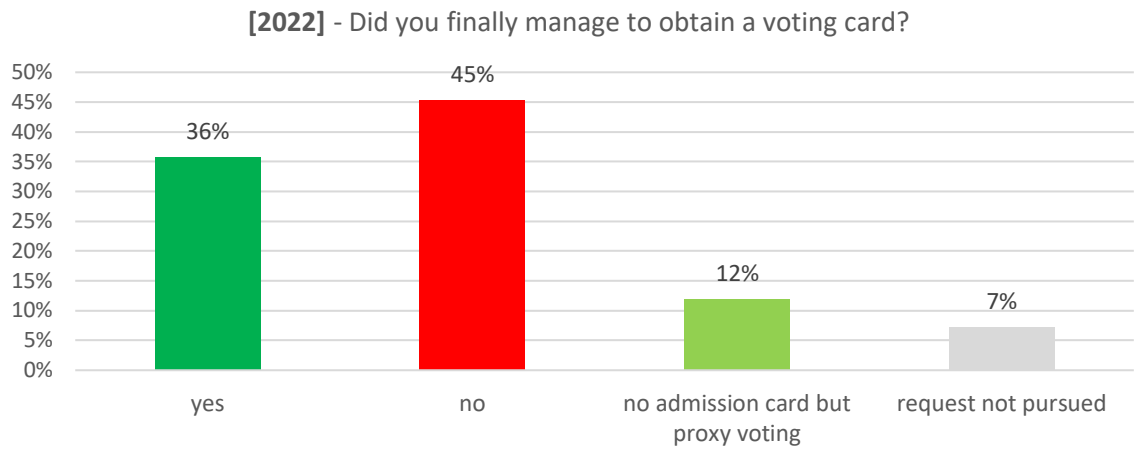


Figure 12: Source BETTER FINANCE 2022

To a similar question in last year's survey, up to 66% of respondents declared they were unable to vote at a general meeting. This year, this trend amounted to 45% of respondents; however, this is without counting the remaining 7% of shareholders who decided not to proceed with their request.

All figures taken together, we note that in 2022, more than half (52%) of our respondents did not eventually manage to secure their voting right at cross-border AGMs. In fact, the vast majority faced a lack of effective service (47%), while others suffered a process/voting fatigue (7%).

Considering only the successful voting cases (directly or by proxy) for shareholders, in the years 2021 and 2022, representing 34% and 48% of the cases respectively, an additional 14% of respondents were successful in voting at a general meeting a year later. However, of the 48% of successful voters of this last year, 12% voted by proxy and, in some cases, were still forced to do so without being offered any alternative to cast their ballot.

The apparent positive trends described above still need to be accelerated and considered against a situation that does not yet show a significant propensity to further secure shareholder voting and engagement in the EU.

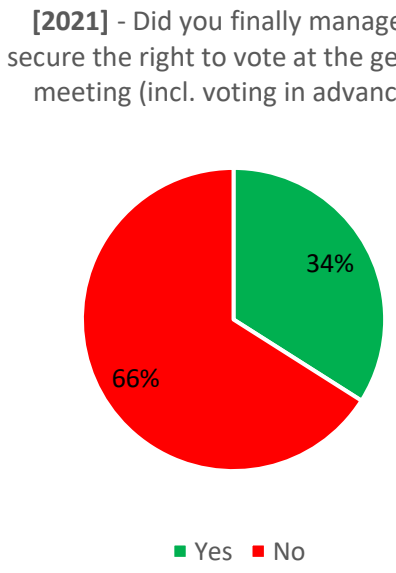


Figure 13 [2021 question]: Source BETTER FINANCE 2021

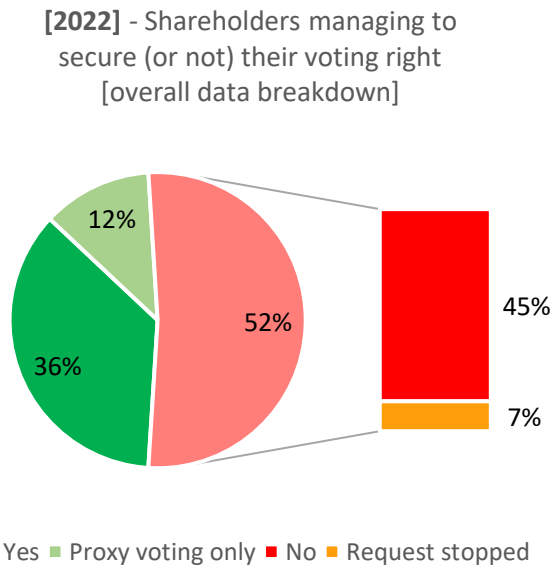


Figure 14 [2022 data]: Source BETTER FINANCE 2022

4. Vote confirmation

SRD II, furthermore, requires that when 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". [14] Especially the vote confirmation is important to ensure that shareholders who vote at a general meeting of an issuer via a proxy know whether their votes have been correctly considered and processed.

Our research suggests that also the post-general meeting processes are not yet working fully efficiently. Only 14% of respondents have received a vote confirmation, 59% had not asked for it (e.g. because they attended the general meeting physically). However, almost one-third of respondents who were able to exercise their voting rights at a general meeting in another EU Member State indicated that, although they had requested a voting confirmation, this was not provided by the last intermediary. The results of our research are confirmed by the review of an institutional investor that noted that it had not identified any markets where 'end-to-end confirmation' was the norm.[15] **While the lack of voting confirmation is of lesser importance for shareholders who physically attend the general meeting, it is of concern when intermediaries only offer shareholders the possibility of voting by proxy. Without vote confirmation, the shareholder cannot check whether his/her vote has been correctly transmitted to the issuer through the chain of intermediaries involved and eventually validly recorded and counted by the issuer.**

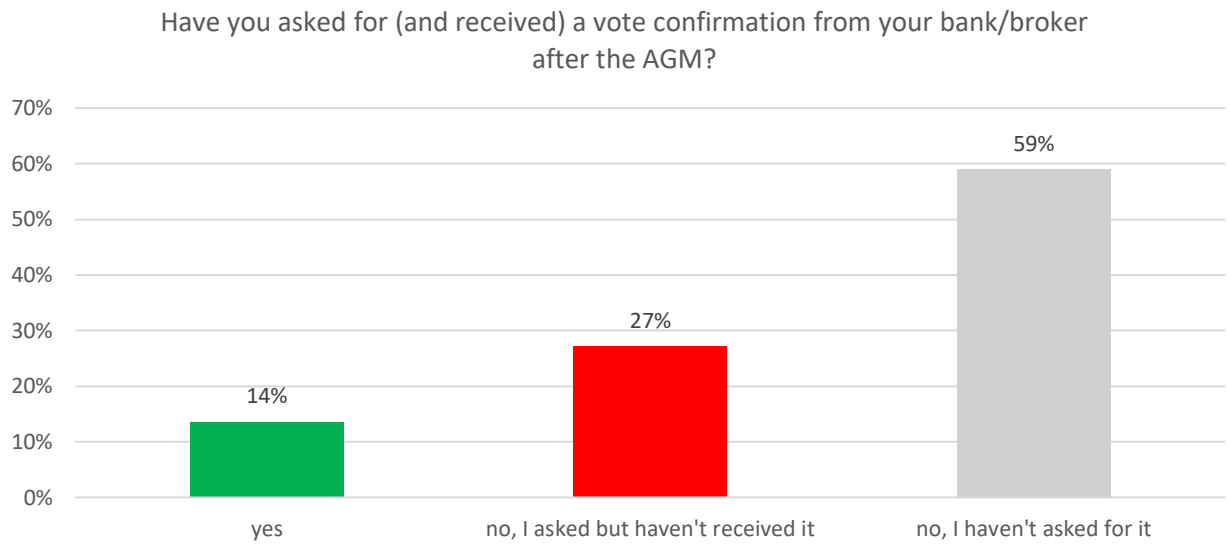


Figure 15: Source BETTER FINANCE 2022

5. Costs and charges for exercising voting rights via financial intermediaries

Voting is one of the basic rights of shareholders because they are the only company stakeholders bearing the risk of economic loss. To exercise the voting right efficiently, the cost of voting is a key determinant. Where costs are incurred by intermediaries to attend and vote at a general meeting, shareholders will be discouraged from exercising their voting right. This is especially true for individual shareholders, who, on average, hold smaller stakes in companies than institutional investors.

[14] Article 3c (2) of Directive (EU) 2017/828
[15] https://www.nbim.no/contentassets/6bfe54884e61439c976ca79db9da6000/shareholder-voting-process.pdf, accessed on 24 October 2022

In acknowledging this, SRD II states that the discrimination between the charges levied for the exercise of shareholder rights domestically and on a cross-border basis is a deterrent to cross-border investments and the efficient functioning of the internal market and should be prohibited. Any difference between the charges levied for the domestic and the cross-border exercise of shareholder rights should be allowed only if they are duly justified and reflect the variation in actual costs incurred for delivering the services by intermediaries. [16]

Within national boundaries, individual shareholders generally do not pay any fees or charges for receiving information about a general meeting or for processing their information to the issuer.

The situation still differs in the case of cross-border voting, where this year's survey revealed some alarming trends. Over a year, not only has it become more common to charge for the services, but higher cost ranges have become more frequent, on average.

While 50% of respondents in 2021 reported that the last intermediary had invoked charges to provide AGM-related services cross-border, this proportion reached 64% in 2022, marking a 28% (or 14 percentage points) increase in the occurrence of such costs for shareholders from one AGM season to the next. Furthermore, by extrapolating our 2022 data sample to include investors who might have pursued such a process but abandoned it, notably due to associated costs, the prevalence of paid cross-border AGMs voting services rises to 84%.

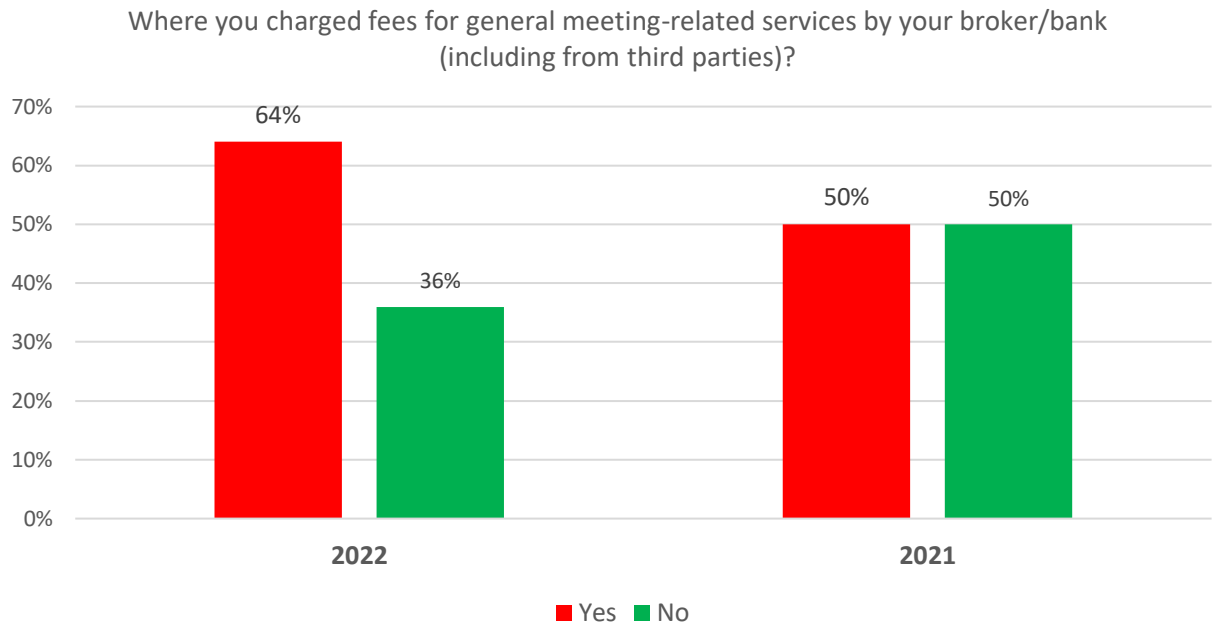


Figure 16: Source BETTER FINANCE 2022

More worryingly, this year we observed that some intermediaries have started to offer investors 'AGM service packages'. These packages include, for example, a 'notification service' for general meetings of companies covered by SRD II. For such a notification service, shareholders are invoked an annual fee of up to EUR 400 per account. The vote by proxy is not included in this service package but charged with an extra amount of up to EUR 250. The assistance of physical attendance in a general meeting is additionally charged with EUR 450. Where shareholders do not buy the 'notification service package',

[16] Recital 11 and Article 3d of Directive 2017/828 EC

the fees for proxy voting per general meeting and for assistance of physical attendance in a general meeting increase to EUR 450 and EUR 750, respectively.

Such fee levels are egregious and a severe obstacle to shareholder engagement. Even where banks did not sell packaged services to respondents, the fees incurred by the last intermediary (including third-party fees) have substantially increased compared to the previous year's research.

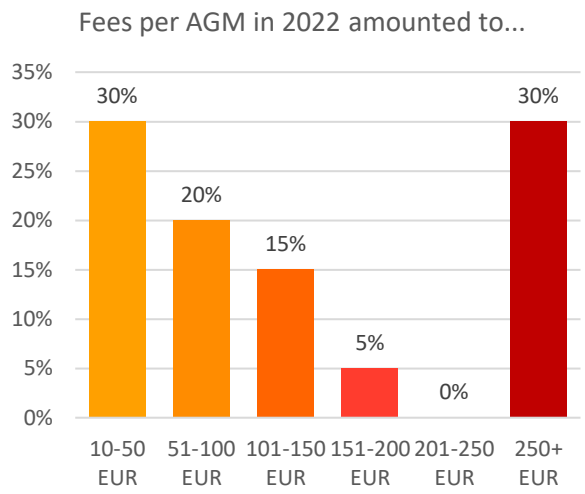


Figure 17: Source BETTER FINANCE 2022

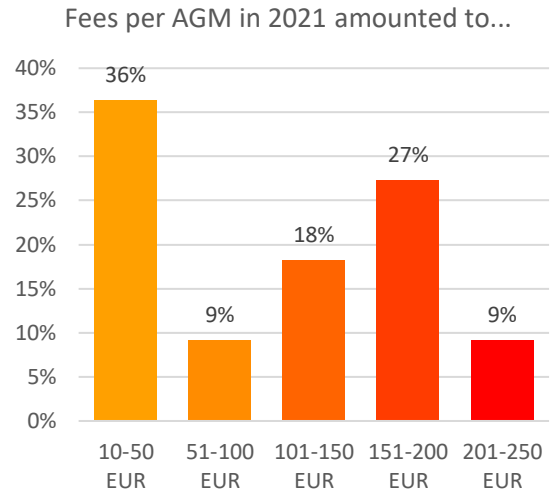


Figure 18: Source BETTER FINANCE 2021

Fees for general meeting-related services ranged from 32 EUR to more than 250 EUR across EU countries. The highest fees were reported by respondents from Luxembourg and Denmark. While in Luxemburg, packaged general meeting services were offered to shareholders[17], Danish banks/brokers in several cases charged 250 EUR plus expenses of the local custodian bank to individual shareholders. Voting at national level is often free of charge both in Luxembourg and in Denmark. **From a shareholder perspective, when fees are charged for voting abroad while this is not the case for voting nationally, this can only be qualified as discriminatory and, especially in the Danish or Luxembourg cases, cannot be considered proportionate.**

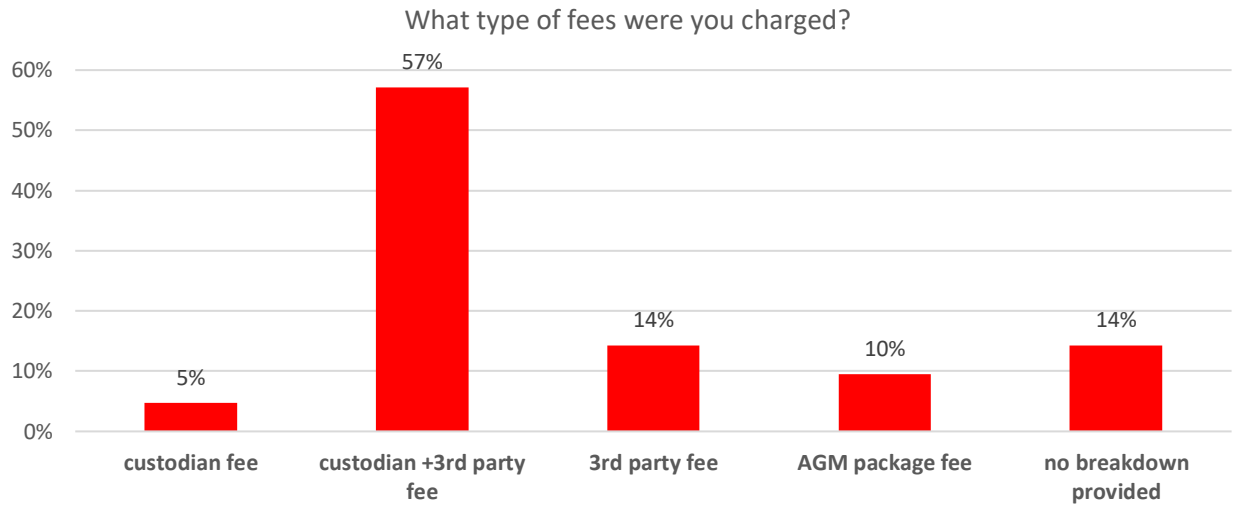


Figure 19: Source BETTER FINANCE 2022

[17] See above

Being asked what type of fees or charges were incurred by the last intermediary, a concerning finding is that in 14% of all cases no breakdown was provided by the last intermediary, even upon request. An additional 10% of respondents noted that packaged fees were demanded by the last intermediary, regardless of the number of portfolio companies of the shareholder. **While such service packages may be of interest to institutional investors, for individual shareholders they are regularly oversized, too expensive and a severe obstacle to shareholder engagement. This even more where no breakdown of fees is provided, even upon request.**

Contrary to last year's report, where respondents from Finland, France, Germany, Ireland, Luxembourg, Portugal, Spain, and the UK noted that they were not charged with any fees, this year, only respondents from Estonia constantly reported that no fees were charged by the last intermediary.

Besides these demonstrated cases, fee tables from selected intermediaries suggest that various intermediaries persist in adapting their fee structures to different Member States, invoke significant amounts of fees or even restrict shareholders rights, either to proxy voting only or by not facilitating physical general meeting attendance abroad.

"Shareholder rights" service

This service is only available for shares covered by the Shareholder Rights Directive 2 (SRD 2). It is thus limited to companies having their registered office in a member state of the European Union and whose shares are admitted for trading on a regulated market established or operating in an EU member state.

To sign up for this service, please contact your Relationship Manager, who will provide you with the subscription mandate for you to sign.

Notifications received via BILnet	EUR 100 per year and per basic contract + VAT
Notifications received by post	EUR 250 per year and per basic contract + VAT
Voting by proxy at a general meeting	EUR 250 + VAT
Administrative management of physical participation in a general meeting	EUR 450 + VAT

Exercise of certain rights of shareholders

Voting by proxy at a general meeting	EUR 450 + VAT
Administrative management of physical participation in a general meeting	EUR 750 + VAT

Figure 20: Banque International à Luxembourg fee structure as of 1 October 2022[18]

[18] https://www.bil.com/Documents/brochures/tarifs-en.pdf, accessed on 24 October 2022

Corporate and Private Customers

Including customers of Private Wealth Management & Family Office

General Meeting Services

	Denmark	Finland	Norway	Sweden	Other EEA-markets
Distribution of General Meeting Notification	0	0	0	0	0
Fee for re-registration of shares[1]	500 SEK	500 SEK	500 SEK	500 SEK	1750 SEK
Fee for attendance registration[2]	700 SEK	700 SEK	700 SEK	700 SEK	2500 SEK
Voting Fee[3]	750 SEK	1750 SEK	750 SEK	1500 SEK	2900 SEK

[1] A fee per registration of each beneficial owner
[2] A fee per registration of attendance at General Meeting
[3] Electronic forwarding of vote and re-registration of each beneficial owner when applicable

For other General Meeting voting services, price upon agreement.

All prices inclusive of VAT and other similar charges

Figure 21: SEB AB fee structure as of 3 September 2021[19]

	Net fee	Other remarks
• **Issue of voting and guest cards** - domestic - foreign, within Europe - foreign, outside of Europe	 **€ 0.00** **€ 72.67** **€ 218.01**	Per card

Figure 22: Erste Bank der oesterreichischen Sparkassen AG, fee structure as of 5 April 2022[20]

5. Other services

Income statement at customer's request — EUR 20
This price is charged for the cash account and securities account under a single branch/customer number. The income statement is issued free of charge if the following are managed under the same branch/customer number:
db PrivatDepot Flexibel, db PrivatDepot Dynamik, Wealth Management Investment Depot, db PrivatMandat Premium, db PrivatMandat Aktiv or order-based securities transactions.

Processing of withholding tax refund applications — EUR 41.65
The price is calculated per application. As part of the db PrivatMandat Premium and the db PrivatMandat Aktiv, withholding tax refund applications are processed free of charge.

Requesting an admission ticket or registering for the general meeting of a foreign stock corporation — EUR 100
The price is calculated for the respective general meeting for each branch / customer account number.
The issuing of an inventory certificate for the independent registration of the shareholder with the company is free of charge.

The above prices include the statutory VAT of 19 %.

Figure 23: Deutsche Bank AG fee schedule as of 15 August 2022[21]

[19] https://sebgroup.com/legal-and-regulatory-information/legal-notice/shareholders-rights-directive-srd2-fee-disclosure, accessed on 24 October 2022
[20] https://cdn0.erstegroup.com/content/dam/at/spk-erstebank/konditionenaushang/2.800_-_2.803.pdf, accessed on 24 October 2022
[21] https://www.deutsche-bank.de/dam/deutschebank/de/shared/pdf/List-of-Prices-and-Services-Deutsche-Bank-AG.pdf, accessed on 24 October 2022

Extra services

TYPE	FEE
Register for shareholders meeting	€ 100.00 + external costs

Figure 24: flatexDEGIRO Bank Ireland Branch, fee schedule as of 1 September 2022[22]

Overige diensten

DIENST	TARIEF
Aanmelden voor aandeelhoudersvergaderingen Nederland	€10,00
Aanmelden voor aandeelhoudersvergaderingen Buitenland	€100,00 + kostprijs

Figure 25: flatexDEGIRO Bank Dutch Branch, fee schedule as of 1 September 2022[23]

Foreign securities which are not registered with VP Securities Services	
Annual custody fee – calculated separately for bonds and shares The fee is calculated monthly on the basis of the highest market value of the asset type. The market value is calculated monthly on the highest nominal holding during the month at the price prevailing at the end of the month. We then convert the market value into Danish kroner.	
On a market value up to and including DKK 500,000	0.3% A)
On the part of the nominal value exceeding DKK 500,000	0.15% A)
Interest and dividend payments	no charge
Dividend reinvested	no charge
However, you will be charged foreign costs, if any.	
For voting cards and entry cards to general meetings of foreign companies, our charge for each card. No physical meetings.	DKK 1,875 +foreign costs

Figure 26: Dankse Bank fee schedule as of 26 February 2021[24]

– Eintrittskartenservice Hauptversammlungen	HV Inland:	je HV 42,90 €
	HV Ausland:	auf Anfrage, mind. 59,50 €

Figure 27: Stadtsparkasse Düsseldorf fee schedule as of 1 October 2022

To promote equity investment throughout the European Union and to facilitate the exercise of rights related to shares, SRD II further intended to establish a high degree of transparency regarding charges, including prices and fees, for the services provided by intermediaries. **However, it remains cumbersome, if not impossible, for individual shareholders to find out the potential level of costs being charged for attending and voting at a general meeting in advance.** Fee schedules are not easy to find on the intermediaries' websites and where they are they often do not contain third party fees for general meeting-related services and are barely comparable. **Unlike many other banking services, general-meeting-related services therefore continue to be opaque pre-general meeting. Where shareholders**

[22] https://www.degiro.co.uk/helpdesk/documents/fee-schedule/fee-schedule-custody, accessed on 24 October 2022
[23] https://www.degiro.co.uk/helpdesk/documents/fee-schedule/fee-schedule-custody, accessed on 24 October 2022
[24] https://danskebank.dk/-/media/pdf/danske-bank/dk/investeringsprodukter/charges-for-custody-accounts.pdf?rev=c5f2f8810bb3463b8be89fe2c95e746c&hash=C3EEB0F7C52FCF99E1B457544BA84F15, accessed on 24 October 2022

are interested in engagement with companies through voting, the choice of a bank/broker may be dependent on such information, though.

Moreover, individual shareholders are usually unaware of which intermediaries, and how many, are involved in the information transmission process between them and the issuer. Public websites, therefore, remain the main (if not the only) source for individual investors to retrieve cost information, as they are not clients of any intermediary in the chain beyond the last intermediary. **Consequently, individual shareholders today still lack a decent degree of transparency regarding costs and charges.**

6. The perception of shareholders

The exercise of shareholder rights is one of the cornerstones of the corporate governance model of listed companies, which is based on checks and balances between the different company bodies and its shareholders. The process of engaging with companies through general meetings including by voting shares should consequently be as simple as possible to not deter shareholder engagement.

This target has yet to be reached. Being asked whether the process of attending and voting at a general meeting abroad was considered easy, only 37% of all respondents agreed. Even though this is a considerable improvement compared to last year, the vast majority still stated that the process was not easy and provided various reasons for their perceptions. Besides, the improved results should be weighed against the fact that a majority of well-informed investors were participating in this exercise, some for the second time.

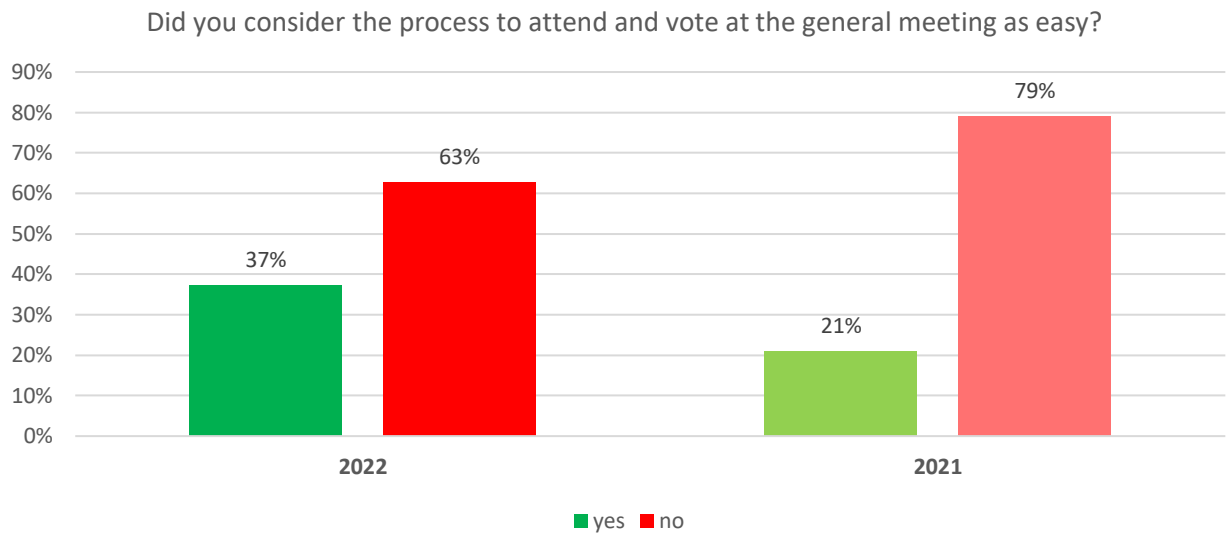


Figure 28: Source BETTER FINANCE 2022

The main concern raised by respondents was the **slow and imperfect service provided by the last intermediary**. Here, in many cases respondents added that they had the impression that the last intermediaries themselves were not completely aware of their 'new' obligations and the connected processes, or that the exchange between intermediaries was not yet working smoothly, resulting in a lot of time-consuming exchanges between shareholder and last intermediary. In several cases, respondents noted that their last intermediary informed them that he had to review the process internally or with other intermediaries, or that they were asked by their bank/broker to contact the issuer to receive process-related information. It is concerning that in some cases the bank/broker denied the obligation to facilitate shareholder engagement, either by not assisting to register shares with an

issuer or by not forwarding general meeting-related information between shareholder and issuer. Fees and charges were another main concern which deprived respondents from voting their shares abroad.

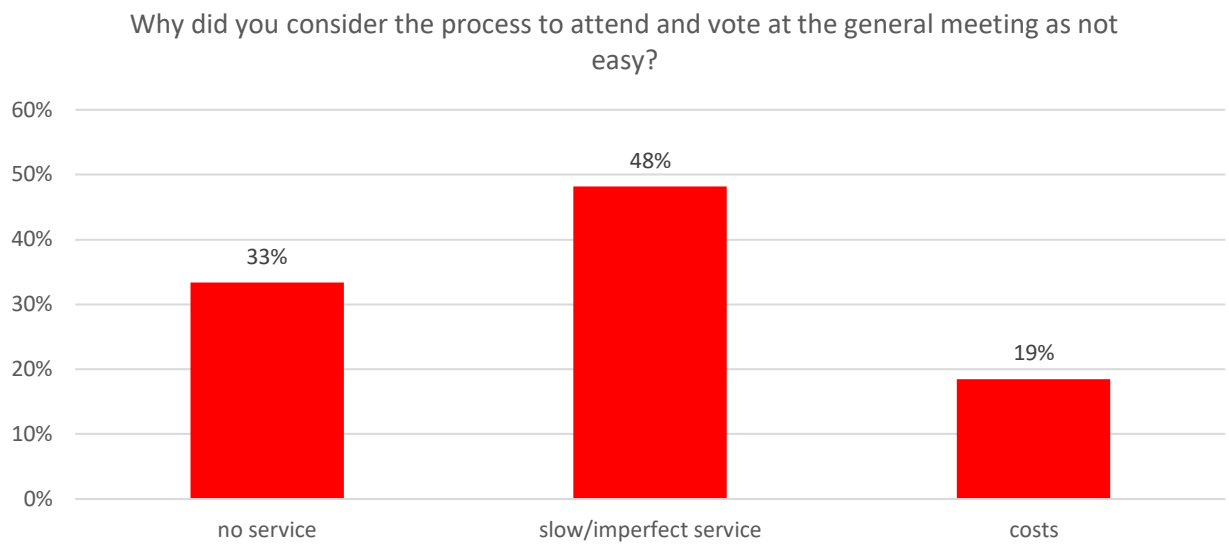


Figure 29: Source BETTER FINANCE 2022

The respondents' perceptions indicate that individual shareholders are currently the ones that bear the problems resulting from the complex and long chain of intermediaries.

IV. Shareholder voting through neobrokers

1. Introducing neobrokers

Within the FinTech family, and driven by the digitalisation of the financial services industry, neobrokers have gained traction in the capital markets as a direct self-investment tool for retail investors. Typically, neobrokers are financial entities offering low-cost brokerage or trading execution services directly to individual investors through web/application-based platforms. Regarded as disruptive entities, neobrokers are independent from more conventional financial industries and seek a broad-based accessibility strategy in direct investments. By following a trend of low to zero commissions on order executions, they have built a competitive advantage over traditional (online) brokers. However, their business model usually comes with limitations in terms of ancillary services available to clients.

A wide range of financial products can be available depending on the neobroker. From traditional equity investing in stocks and ETFs, some of them enable fractional share ownership, trading in cryptocurrencies (and even tokens), or derivatives such as CFDs, or in commodities or Forex markets. Limited are the numbers of neobrokers allowing for investing in bonds or mutual funds, whereas some offer investing schemes; ranging from (self-selected) investment automation to copy trading schemes. Certain firms running neobroker services also provide automated investment advice (i.e. robo-advisors), often as a second-tier service.

A majority of neobrokers do limit client's choice in terms of trading venues (little to no alternate option), some also offer a rather restricted array of stocks or ETFs. Their user-friendly environment, use of innovative market practices – with potential 'facilitation' in picking featured products, among others –

can raise concerns of investors being wedged into selectivity, while sometimes favouring gamification trends among the newcomers, in particular the young generation.[25]

Neobrokers operate under a variety of business models, along with the traditional fee- and/or commission-based ones (i.e. as a percentage of the transaction and/or on related services such as currency exchange, or simply as a flat fee). Two specific configurations are worth mentioning. Those applying zero commission rates often rely either on securities lending methods, or on the payment for order flow (PFOF) model.[26] In some cases, a combination of the aforementioned types of retribution may apply to neobrokers. Moreover, a zero-fee model can also make use of a "*freemium*"[27] model for specific order types (market, cutoff time and limit orders), functionalities or market/product access.

The neobrokers' market has grown rapidly in size and importance since its inception in 2005, and in Europe alone its 'assets under management' (AuM) increased 4.4-fold between 2017-2021 to reach €107.4 billion.[28] For the year 2022, however, a slight decrease of -1.07% in AuM is anticipated while the user/client base may drop from 14.14 to 13.40 million. Yet, this slowdown is deemed of transitional effect, resulting from a consolidation phase in times of market turmoil. From 2022 to 2027, the European neobroker market revenue is expected to grow at a CAGR of 5.13% to €0.84 billion, while its AuM is set to weight €127.20bn by 2027. Historically, the US market has been the largest one for neobrokers, and is expected to remain so, showing steady growth over the years, its AuM is set to reach €196.30bn in 2022.[29]

Pervasive digitisation, and in recent years, the influx of retail investors during the COVID-19 pandemic did contribute to the popularity of the neobroker model of self-directed investing. For instance, the Belgian Financial Authority (FSMA) noted that younger investors aged between 18 and 35 years old were significantly more active during the COVID-19 period.[30] Similarly, in France, the AMF noted that overall neobrokers' trades jumped from nearly 10% to 21.8% from Q3 2018 to Q3 2021, illustrating a customer base that grew 12-fold to reach over 400,000 active investors. Notably, neobrokers are now closing in on the active customer base of traditional online brokers.[31] In fact, over the course of a year (2021-2022), we have observed a large number of European neobrokers expanding their activities, in terms of offerings (products) and also in terms of geographical coverage (including EU and non-EU countries) they are now servicing. This signals that this market remains very active and anticipates further traction along its expansion. Finally, this rise of neobrokers by itself certainly favours retail investment in the EU capital markets, to the extent that it has been portrayed as an "*Americanisation of retail investors in Europe*".[32]

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[25] See also: BETTER FINANCE, "The New Investing Environment for retail investors | Expectations and challenges Ahead" (March 2022), https://betterfinance.eu/publication/the-new-investing-environment-for-retail-investors-expectations-and-challenges-ahead/.

[26] https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2021/fa_bj_2106_Neo_Broker_en.html

[27] "Freemium": derived from *free* and *premium* prescribes a business models offering basic access to a service (such as an app) to users, while additional features come at a cost.

[28] https://www.statista.com/outlook/dmo/fintech/digital-investment/neobrokers/europe

[29] Ibid.

[30] Belgian Financial Services and Markets Authority (FSMA), *Les achats et ventes d'actions du Bel20 effectués par des investisseurs prives pendant la crise du coronavirus : Étude quantitative réalisé sur la base des déclarations de transactions MiFIR* (27 May 2020), https://www.fsma.be/sites/default/files/legacy/content/presentation/etude_transactions_crisecoronavirus_fr.pdf

[31] "https://www.amf-france.org/en/forms-and-declarations/listed-companies-and-corporate-financing/retail-investors-have-grown-number-are-younger-and-increasingly-use-neo-brokers-covid-crisis

[32] Financial Times, "Inside the battle to be Europe's Robinhood", 30 September 20201, https://www.ft.com/content/d3cbfa1f-d712-46b6-8595-ebe36b6c7162

2. Reasons for investigating neobrokers

In 2022, the neobrokers were approaching maturity. They expanded, attracted millions of individuals, non-professional investors in the EU–notably the younger and digitally savvy generation–thanks to three main features: easy, low-cost model and offers, and readily available access ("fingertip investing"). The desire to take control of their finances among millennials and centennials has consequently soared as neobrokers' environment is proving attractive to consumers.[33] At the same time, many of these new entrants to the investment landscape demonstrate an interest in factoring ESG issues into their portfolio.

Although neobrokers bring many benefits, they raise several issues, and their models pose supervisory and regulatory challenges.[34] Nevertheless, neobrokers can contribute to the revitalisation of individual share ownership in Europe, notably by further democratising investment in stocks. Their new model should, however, meet all regulatory requirements in terms of investor protection and shareholder rights. With the increased focus on sustainability, shareholder engagement became a pivotal part of corporate governance, and in turn, shareholders awareness is increasing. To this extent, impact investing has attracted a growing fringe of investors. In fact, we might have expected digitalisation, such as via platforms provided by neobrokers, to have accompanied engagement processes and thus corporate governance. Attending and/or voting at annual general meetings (AGMs) can potentially coincide with the objective of conscious investors (notably from the digital savvy and younger ones), as well as socially responsible companies. However, many shareholders still need to be informed of their voting rights to activate them. In fact, if rise in the number of investors seems to mainly concern "passive" ones (only a handful make use of their rights stemming from share acquisition), it may be due to a lack of information on the subject, which in turn leads to a lack of motivation to take action.[35] Yet, shareholder engagement (or activism) is gaining momentum: early signs of increased interest and engagement from retail investors have been observed, notably in the wake of sustainable finance trends. Indeed, we are witnessing the advent of minority influence groups and other individual shareholders who are seizing topical issues such as climate resolutions that companies must pass on. These actors attend the AGMs of listed companies, notably to influence and accelerate their environmental orientation.[36]

3. Neobrokers – a compliance assessment

In essence, when neobrokers provide services such as custody, administration of securities or maintenance of securities accounts on behalf of shareholders or other persons, they are considered as intermediaries by the SRD II. Where such intermediaries provide services to shareholders or other intermediaries with regard to shares of companies having their registered office in a Member State and admitted to trading on a regulated market situated or operating in an EU Member State, they must comply with the rules of SRD II and its implementing regulation. Among others, such rules entail

[33] Deloitte Center for Financial Services, *The rise of newly empowered retail investors*, 2021, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-the-rise-of-newly-empowered-retail-investors-2021.pdf ; see also https://unitedfintech.com/blog/pay-attention-to-neobrokers/

[34] Among those, the 'The 'GameStop' saga is emblematic of questions on conflict of interests (PFOF, inducements) and of potential discrimination of retail investors – See: https://betterfinance.eu/wp-content/uploads/PR-GameStop-highlights-Discrimination-of-Non-professional-Investors-in-Stock-Markets-04032021.pdf; See also ESMA, Statement: "*Episodes of very high volatility in trading of certain stocks*", 17 February 2021, https://www.esma.europa.eu/sites/default/files/library/esma70-155-11809_episodes_of_very_high_volatility_in_trading_of_certain_stocks_0.pdf

[35] BETTER FINANCE & DSW, "Barriers to Shareholder Engagement 2.0 | SRD II Implementation Study" [2021 AGM season] (January 2022), https://betterfinance.eu/publication/barriers-to-shareholder-engagement-2-0-srd-ii-implementation-study/

[36] See, for instance: 2 Degrees Investing Initiative, 'Retail Clients Want to Vote for Paris: An Analysis of Retail Clients' Preferences Regarding the Use of Shareholder Rights on Climate Resolutions' (March 2020), available at: https://2degrees-investing.org/wp-content/uploads/2020/03/Retail-Clients-Want-to-Vote-for-Paris-1.pdf.

informing shareholders of corporate actions, as well as general meeting-related processes, including AGM dates and participation processes.

In our previous 2021 study, we examined the client's agreements and terms of services from five randomised neobrokers in Europe to check whether individual shareholders based in Europe can exercise their (cross-border) voting rights via these new digital trading platforms. At the time, many of them did not appear to offer effective shareholder services (such as voting rights) raising the issue of a lack of compliance with SRD II. Our assumption was that the low-cost model operated by neobrokers seemed to typically result in service limitations for individual investors. In light of the above and what we found in their terms and conditions, we concluded last year that, in fact, many new brokers did not necessarily offer all shareholder services linked to voting rights to their clients (if at all).

In 2022, not only did we update and refine our comparative analysis of the contracts, agreements and documentation of the same five neobrokers (based on the versions available between April and September 2022), but we also extended our investigation. For the 2022 AGM season, the research team itself undertook a practical attempt to exercise cross-border voting rights across Europe for a selection of three neobrokers (mystery shopping). This exercise was mainly carried out from March to August 2022.

First, we took a glance at the potential (mis)alignment over time from the five neobrokers sampled for our study by focusing on the interpretation of their provision of (cross-border) shareholders' voting rights across the EU. Secondly, we unveiled our practical case study (mystery shopping) to substantiate the study's conclusion by calling to the voting services of three of the five neobrokers listed below.

The table below summarises the findings regarding the stated corporate actions and/or shareholder services provided by selected neobrokerage platforms in 2022.

Table: Shareholders' Voting Provision of Selected Neobrokers Across the EU		
Neobroker	Number of EU countries serviced*	Shareholder rights' terms* / AGM voting provisions 2022
Neobroker #1	8 countries in the EU	The neobroker states that there are no obligations to inform the client about corporate actions, and that no rights can be derived from any information obtained. A client irrevocably waives its rights resulting from corporate actions, and agrees to allow the neobroker to act on corporate actions at its own discretion (which the neobroker might or might not use). However, the neobroker states that upon request, it will enable the client to attend and vote at general meetings (including for fractional shares to the nearest rounded down whole share). It further stipulates that one's voting rights are lost when a financial instrument is used (or lent) by the neobroker (to its discretion).
Neobroker #2	17 countries in the EU	For one country clients, the Q&A website clearly indicates enabling voting at AGMs, whilst the terms do make a service distinction of certain domestic shares over foreign ones. The Q&A states the fees of the registration and provides procedural distinction between registered and bearer shares. For another country clients, the terms are similar, with a clear mention of another national share voting service where the client would 'usually' be registered in the share register. For other country companies, the customer must select a registration depository so that the neobroker 'only' commits to transfer data to the stock corporation under legal requirements. Otherwise, data would 'only' be forwarded under the scope of mandatory legal obligation. However, the website Q&A does not indicate on the possibility to participate in AGMs.
Neobroker #3	22 countries in the EU	If requested by the client, the neobroker will initiate the procedure to execute client's rights to attend and vote at a general meeting. The client request has to be made no later than 20 trading days before the shareholder meeting and/or if a registration (record) date has been defined to exercise the voting rights, no later than 10 trading days before the registration date. The neobroker attests not making use of voting rights attached to the securities held on for the client without explicit consent. It also points out to the service fees (referring to its website) and that ancillary costs that may incur.
Neobroker #4	Available in 100 countries, including in the EU	The neobroker informs the shareholder about the possibility to participate in corporate actions on a best effort basis. However, timely delivery and accuracy of the information provided by the broker cannot be guaranteed. The neobroker states that it is not obliged to provide this service, but it "may" facilitate clients' participation in corporate actions. Moreover, it clarifies that for shares lent by the neobroker, voting rights will be held by the borrower.
Neobroker #5	Available in 140 countries, including in the EU	The neobroker states that it is not obliged to inform the client about a general meeting nor to arrange or facilitate the client's participation in the meeting. Participation in general meetings or the exercise of voting rights is not facilitated by the neobroker. Corporate events are carried out at the neobroker's sole discretion as per its practice's terms. Finally, it informs on its potential securities lending activity that may 'limit' the client's ability to exercise voting rights.

* Table reviewing terms/client's agreements as per versions available between April-September 2022.

Some neobrokers may operate in more EU countries indicated, or beyond EU borders. They may also provide differentiated services depending on the serviced, the execution location, the trading venue, or the issuer location. This indicative table is not exhaustive and serves as an overall comparison and therefore cannot constitute a compliance assessment.

This brief verification of neobrokers' fine prints falls short of providing strengthened and clear provisions to facilitate shareholder voting rights over time. In most cases, this is treated as a conditioned item, insofar as it is not simply a matter of excluding any voting options. In 2021, neobrokers should have already been in full compliance as the SRD II came into force in September 2020. In 2022, non-compliance thereof can be interpreted as an outright lack of compliance with the Directive's provisions as translated into national laws pertaining to shareholders' rights. Below, we elaborate on each neobroker[37] and mention any notable 2021-2022 updates, when relevant.

Neobroker #1 is the only one to have made a noticeable shift albeit timid: within a year, the terms evolved to eventually enable AGM voting participation, but in certain cases only. Participation must be requested, and it is also stipulated that no information nor disclosure obligation would stem from the use of the services. Moreover, a client is often constrained to leave his or her trading rights (on corporate actions) "irrevocably" to the discretion of the neobroker, who may use one's share to its own discretion. No information on voting fees could be obtained from the website or the client agreement.

Neobroker #2, introduced a slight update of terms and website compared to last year; however, the situation remains unclear. In fact, we observed a variation of information among different documentation (Q&A website and legal terms), and discrepancies of information/option available between countries (here Germany and France). It appears that German and French clients can vote on German shares with slight procedural differences regarding registered or bearer shares. However, voting on foreign (non-German) stocks appears conditional and solely referred to as legal requirements to transfer the information. Moreover, more information was provided on the German website, including related fees, but the French site did not mention any AGM attendance services.

Neobroker #3 is the only one that appears clearly to offer to execute clients' voting rights at general meetings. The process can only be initiated upon the client's request. However, there is no indication from the neobroker on anticipated transfer of information related to upcoming AGMs to share owners. We also note additional indications within the terms that provide with strict procedural deadlines. In this instance, mention is made to fees and where to consult the regular costs online, where a 'general' estimation is available.

Neobroker #4 provides the apparent possibility to execute shareholder rights; however, may not ensure the timely transfer or accuracy of the information related to corporate actions (on "a best effort" basis). In addition, the broker states that it has no obligations to facilitate the client's participation in general meetings. Therefore, voting rights seem to be randomly executed by the brokerage platform (without any guarantee) and the necessary information for the shareholder may not be provided in a timely fashion. It is also worth mentioning that securities lending may apply (similarly to neobroker #1 and #5) and therefore revoke any shareholder's rights in favour of the borrower.

Neobroker #5 states that there are no obligations to help clients to execute their voting rights. Therefore, the platform clearly states that no such corporate actions are available for clients as it carries them at its own discretion, according to its terms and conditions. In one instance, it however stipulates that in the case of stock lending, the client "may" be "limited" in his voting rights, while in another stance, this statement is again contradicted by plainly disallowing the voting service. In this case too, it is the lending of securities that is at stake (as for neobrokers #1 and #4).

[37] The neobrokers fine prints and documentation were reviewed (and interpreted) as per versions available online between April and September 2022, whereby the most recent version should prevail.

a. Interim Conclusions

The terms' review analysis shows significant shortcomings on the part of the sampled neobrokers with regard the execution of voting rights and the transfer of basic information for shareholders. Not only do the neobrokerage platforms not fully guarantee to offer the range of services at scope, but several publicly state that they have no obligations to inform shareholders and facilitate their voting rights. In some instances, we have not been able to correctly state the meaning of complex provisions that refer mainly to legal duty procedures, without presenting themselves as an executable service offered. In fact, even for the only neobroker sampled that seems *theoretically* compliant in allowing cross-border voting rights, doubts remain as to whether it is properly providing AGM information to the client (it omits to mention it in its terms). **Undoubtedly at this stage, four out of five neobrokers seem at odds – albeit to different degrees–with the two main requirements of the SRD II and its Implementing Regulation on the obligation to transmit the necessary information to the shareholders (Article 4) and to facilitate the execution of shareholders' voting rights (Article 5 & 6)**.

4. Neobrokers – EU voting rights in practice

Turning to our empirical shareholders' assessment of cross-border voting in listed companies across the EU, the research team acted as clients of neobrokers #1, #2 and #3. In preparation for this mystery shopping exercise, we defined a set of preliminary criteria to rule out the most plausible procedural issues. First, we intended to exercise our voting rights as shareholders of the companies issued in another EU country than our home state (or than the neobroker location). Second, for each neobroker, we bought different stocks which were carefully chosen to comply with record dates, date of the AGM and in terms of corporate exposure (no SMEs nor penny stocks). The requests have been handled at least 45 days before any shareholders' meetings of selected EU issuers.

From the outset, this concrete exercise has been an obstacle course for BETTER FINANCE and DSW. Testing the cross-border voting service offered by neobrokers to European shareholders of companies located in the EU came with cumbersome procedures, since none of the platforms tested did integrate (if any) efficient voting scenario. We elaborate each scenario below.

a. Assessment of scenarios

Neobroker #1

We contacted neobroker #1 customer services to request to vote (and to obtain more information) on a Dutch company, from Belgium. The response came stating that they do not provide any information on upcoming AGMs that relates to the client's portfolio. However, they mentioned the steps and conditions to vote: owning shares in the company on the record date of the meeting; contacting the broker to register; pay 150€ of administration fees per AGM ('charged by the custodian bank'), providing a copy of the passport/ID.

We indicated favouring virtual attendance at AGMs. Later, we had to inform on the AGM dates of companies we were interested in by also filling two Excel forms (required by the custodian bank). Surprisingly, we received both an attendance form and a generic 'passive ballot' form (proxy) – on which we were unsure who would execute the instruction (company chairman, custodian, or the neobroker itself). The process was also indicated as susceptible to fail, **despite charging €150/application**, as per our e-mails: "*Registration is done on a best effort basis, there is no guarantee as no deadline can be given and therefore registration may not be completed by the custodian in time for the general shareholders' meeting*." And later: "*we cannot guarantee that [the custodian] will process the application in time, i.e. there is a possibility to pay the amount and yet that you cannot attend the Annual General Meeting of the chosen company*".

The two forms we received were largely reliant on information the client did not have or had to investigate further to eventually request the neobroker to fill the rest. The attendance form comprised: Meeting name; ISIN; control number; Fund code; shares; passport; gender; name; address; birthdates; type of attendance; beneficial owner details and LEI. The passive ballot requested: ISIN; Company name; Custodian; Custodian Account Name; Custodian Account number; Sub-custodian; Sub-custodian Account number; Shares position; String votes; Bo details (for 'beneficial owner identification detail').

Subsequently, we received an on-site attendance card, for an AGM for which we claimed online participation instead; the neobroker never replied to our complaint. Via the 'corporate broking' website handling the AGM processes we theoretically could have, as a shareholder, indicated our voting preferences (i.e. virtual participation). However, updating our registration has proven impossible with the sole attendance certificate provided by the neobroker. Our request was rejected by the custodian bank, under the following: "*The Securities Account Number you provided is not known; Please complete the registration form on Corporate broking again and choose for your own bank or broker under Intermediary or fill in [bank name] bank Securities Account Number on which you hold the securities*." We contacted the neobroker (our intermediary) again to obtain the securities account and support to register for virtual attendance. However, we never received further support on this matter, therefore losing our voting rights capacity.

We conclude that neobroker #1 does not provide an effective nor efficient voting service to shareholders. Besides a cumbersome process (11 e-mail exchanges), which eventually led to a (partial) treatment of our request, the support did not consider our preferences to attend online or to use a proxy. The lack of guarantees, the absence of post-trade support service to rectify our AGM registration (online), and the high fees charged are detrimental for clients and testifies of obstacles to shareholders' voting right.

Neobroker #2

We received the information notice on an Italian AGM in-app in April 2022. However, the information document received clearly stated that the registration in the share register via the neobroker would only be possible for German companies. Information on how to participate in and vote at the AGM were not included in the document. We contacted the support and obtained in response that the neobroker is obliged to forward information about an upcoming AGM as soon it receives it, and noted that "*providing the information does not automatically mean that you can participate/vote*." The neobroker continued: *"The possibility of participating in non-German general meetings is currently not offered by us. However, you are welcome to contact the issuer directly for further information regarding participation in the general meeting*."

For an AGM of a Spanish company in May 2022, the neobroker seemed to have changed the procedures for cross-border voting. It stated that it would not be able to represent our voting rights at the AGM, but that it could instead undertake to order an admission card. However, the shares would have been blocked (not tradeable) until the AGM in the event of ordering an admission card (which is contrary to German law) from which we operated, therefore, we did not order the admission ticket and are unable to confirm if the process runs efficiently.

We find this neobroker to indeed provide information on (cross-border) AGMs, however, its voting procedures could be clarified with regards to local and foreign shares (and between its operation countries.) When we put its terms and the feedback of the customer service in perspective, we note quite a contradictory approach to cross-border voting. For one AGM we faced a denial to represent our voting rights, as for another it may have offered the possibility to obtain an admission card, but by breaching the requirement not to block share transaction as a consequence of such a request.

Neobroker#3

For neobroker #3, we undertook to vote at a French, an Austrian and a Dutch listed company. The securities transactions service requested us to provide more information (ISINs and AGM dates). This was then transferred to the relevant department "*to check if [we] can participate in these votes*". However, their department suggested to reach back at a later stage to verify if we could effectively vote. We did a follow-up, and again, they stated they could ask their department to vote, but that they could provide us with "share certificates" instead; for a fee of €5 per certificate to enable us to participate directly in voting with these companies. We decided to test this option for a Dutch and an Austrian company, while pursuing a regular request to exercise our voting right through them and with their assistance in registering for a French AGM. Two other demands from the neobroker followed. First, we had to indicate the date of the shareholding (on which our shares certificates should be created). Secondly, we were asked to send the notice of the shareholders' meeting for the AGM of the French company for which we wanted their full assistance to participate. We complied, and yet again they mentioned that they needed to confirm with their department, by also indicating that the vote should be processed through them only. Eventually, and after months and several confirmation requests from the neobroker, we obtained our share certificate (via a rather complicated, secure online process to be followed within 2h). This option, however, proved useless since the document did not mention any shareholder ID, nor was it legally issued as it was "indicative" of the client's position at a set date only. We did not manage to self-register with any of the two companies with the contained information. To vote with the other company located in France, we had to formulate our request twice over time. The neobroker reiterated to be waiting to hear back from their counterparty but stated they will follow up with us. However, we had to follow up before the AGM date, but never heard back from them, and the AGM date passed in September 2022.

As a result, we conclude that there is a serious lack of process, assistance, and information regarding the activation of shareholder voting rights with respect to Neobroker #3. Despite all efforts and information provided from the client (12 e-mails), the results were fruitless. The impression was that the department was stalling so to avoid dealing with the shareholder voting rights query. This contradicts the neobroker terms which clearly indicate to provide AGM voting services and causes a genuine threat to shareholders' rights.

5. Conclusions

In terms of investor engagement services, the neobrokers fall short: our sampling demonstrates that they are far from being equipped to provide certain shareholder services, especially in relation to voting at AGMs. By first analysing the terms and conditions on five neobrokers, we found that specific conditions and different processes may apply from one neobroker to another, and we reflected on how this may benefit their clients or not. As a result, we were able to preliminary identify outright denials of the right to vote in some cases, and what appeared to be gaps in others.

In our mystery shopping, we tested three neobrokers (see above scenarios) that theoretically (as per their terms) offered voting services across the EU. Our investigation concluded that cross-border (or even national) voting at AGMs is either failing, unreliable, or simply not available as a service. The cumbersome process that clients must go through seems aggravated by the cross-border challenges. Ultimately, this led to the non-execution of our voting rights, as might more generally be the case for others. In addition, the lack of guarantees disclosed by many neobrokers (and/or by their custodian bank) to register a shareholder at an AGM contrasts with high fees often required to trigger a rightful voting process with these "low-cost" digital investment platforms.

It is worth noting that such voting restriction (or barriers) can directly stem from the business model underlying the activities of some neobrokers, such as securities lending-based ones (neobroker #1). In other cases, however, it is not clear why these legally required services are not actually provided, although it is explicitly stated that they are available due to regulatory processes (neobroker #3). **Currently, this situation does not augur well for the development of digital engagement of shareholders by relying on neobrokers' (lack of) services since they seem to endorse a restrictive business practice (or model) in terms of voting rights – therefore not compliant with the requirements of SRD II.**

V. Policy recommendations

Shareholders nowadays are increasingly demanding corporate accountability on a variety of issues, including environmental, social and governance topics like reduction of CO2 emissions, board diversity or executive compensation, among others. This shareholder engagement is crucial for good corporate governance. It is therefore important for the supporting mechanism to shareholder engagement, i.e. the intermediary chain, to be up to the critical task it is meant to perform. As a matter of fact, intermediaries' chains perform valuable functions, but they also create a distance between the issuer and the shareholder which leads to a significant risk of voting rights and other important shareholder rights being compromised. **Corporate governance is thus at risk of being distorted by process deficiencies.** The internationalisation of shareholdings has not fostered greater shareholder engagement, as it makes it more complex and costly to inform and communicate with issuers abroad, as well as to cast votes and exercise shareholder rights.

From the perspective of sustainability and the several initiatives of the EU Commission on sustainable finance and zero net emissions targets, it is extremely important to facilitate individual shareholders' rights. Research[38] on retail clients' preferences regarding the use of shareholder rights estimates that around 20-40 million European citizens would be in favour of voting for the Paris Agreement with their investments and pension funds. However, due to structural barriers, it is extremely difficult for individual shareholders to exercise their sustainability preferences through their voting rights.[39]

It is therefore crucial to lift the barriers that prevent individual shareholders from exercising their voting rights, in order to create the right environment to push companies towards zero net emissions and sustainable targets. This will be an important step to facilitate the transitioning towards a more sustainable economy, allowing EU citizens as savers and investors to have a real say and impact.

In light of the findings documented throughout this report, BETTER FINANCE and DSW continue to see significant potential to improve general meeting-related processes in order to make pivotal steps towards facilitating shareholder engagement and enhancing corporate governance in European listed companies.

1. Costs and charges

a. Ensure that costs and charges do no longer discriminate shareholder voting within the single market

While at national level, participating in and voting at general meetings is generally free of charge for individual shareholders, it may become very costly when the same rights are to be exercised abroad. One reason is that at national level, issuers bear the costs of informing their shareholders about a general meeting while this does not seem to be the case for shareholders of the same issuer abroad. Another reason is that there are more intermediaries involved in a cross-border situation than in a

[38] https://2degrees-investing.org/resource/vote-for-paris/
[39] Ibid.

national process. In addition, different fees are charged by intermediaries for enabling the exercise of rights at general meetings in different member states, and usually shareholders are not provided with full cost transparency.

Costs and charges are, especially for individual shareholders, a strong deterrent to exercise their fundamental rights and this is contradictory to the stated aim of policymakers to foster shareholder engagement across, and promote equity investment in the EU.

Exercising fundamental shareholder rights should therefore be free of charge for individual investors and any costs levied by intermediaries for their services should be borne by issuers.

The EU Commission, alongside with ESMA should undertake an in-depth analysis of whether general meeting-related costs and charges invoked by intermediaries are indeed duly justified and reflect an actual variation in costs incurred for delivering their services.[40] Indeed, unequal treatment of shareholders between an issuer's home country and abroad would be contrary to the objective of the Treaty of Rome, the single market and the CMU.

b. Improve cost transparency pre-general meeting

There is still a low level of ex-ante transparency for shareholders with regard to costs that intermediaries charge for providing general meeting-related services; plus the cost information is neither easily accessible nor comparable.

The upcoming review of SRD II should therefore take the opportunity to review regulatory oversight of costs and charges connected to general meeting-related processes and establish a harmonised supervisory regime, preferable within the remit of ESMA. As a first step, a central point of intermediaries' custody service fee schedules (including fees for general meeting-related processes) should be established at European level, for example at EBA.

As regards harmonisation of fee disclosure, Directive 2014/92/EU on payment accounts could serve as a role model and be replicated *mutatis mutandis* as regards the following:

A list of "most representative services" subject to a fee by intermediaries should be designated (as per art. 3 of Directive 2014/92/EU); national competent authorities could compile and make publicly available the types of services for which costs are incurred – both domestically and cross-border, accompanied by clear and concise terms and definitions. This would de facto induce a concept of undue costs or cost legitimacy, i.e., what types of services can be charged to shareholder when exercising their rights, esp. relating to general meeting processes. As such, any service outside the most representative ones subject to a fee will always have to be duly justified by the custodian.

Also, shareholders need to be enabled to easily retrieve and access the list of prices and services on their intermediary's website. In addition, the last intermediary should be obliged to inform the shareholder before executing the general meeting-related service about the concrete costs for the service (own and third-party costs).

[40] Art. 3d(2) SRDII provisions that *"Any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services."*

2. Improve the (intermediated) shareholder engagement process

a. Severe delay of ISO 20022 proves dire need for improved regulatory oversight and enforcement of SRD II provisions

Not all participants in the intermediaries' chain are 'speaking with the same language' when it comes to general meeting-related processes. The format provided to achieve this purpose, ISO 20022, originally foreseen for 22 November 2021, had been postponed because the level of readiness was not sufficiently high enough at that time.[41] ISO 20022 'go live' is now planned for November 2023.[42] Market participants, especially intermediaries expect this ISO format to be significantly improving the general meeting-related communication between intermediaries. In addition, the Securities Market Practice Group has clearly warned participants that only the ISO 20022 General Meeting messages are compliant with SRD II IR.[43] Notably, Clearstream has determined that all clients "must prepare to receive GM messages and instruct in ISO 20022 as of November 2023",[44] seemingly taking over the task entitled to a regulator, namely to enforce existing regulation.

While the original implementing timetable had been foreseen for November 2021 – more than one year after SRD II had to be transposed to national laws –, the postponement will hamper for a further general meeting season (2023) the communication between issuers and shareholders. The reason for the delay is unclear but may have to do with the market infrastructure's complexity, a lack of financial motivation for harmonisation, or a lack of enforcement.

Neither shareholders nor issuers have any valid means to accelerate this harmonisation process and regulators are still often unable to apply the rules of SRD II and its Implementing Regulation. Those rules are de facto delayed by the late implementation of ISO 20022, at least up to four years after their transposition.

In several Member States, the national regulator (i.e. in Germany, the BaFin regulator), is not competent for enforcing general meeting-related procedures as these have been implemented in national company law (AktG). In the event of non-compliance, shareholders must therefore take their intermediary to court, which is ineffective in forcing an intermediary to comply with the obligations set out in SRD II in order to attend a distinct general meeting. Likewise, it is an unsuitable means to speed up, for example, the introduction of a harmonised language for intermediaries.

The upcoming review of SRD II should therefore review regulatory oversight of general meeting-related processes, establish a harmonised supervisory regime, preferably within the remit of ESMA, and by that ensure that shareholder rights become enforceable more effectively and easily.

b. Intermediaries should serve shareholders and issuers, not control them

The inefficiency of the intermediaries' chain can have negative consequences for financial markets as it undermines shareholder confidence. Intermediaries' chains affect securities markets at a fundamental level. Shares contain shareholders' rights towards an issuer and these rights need to be enforceable. However, nowadays, neither investors nor issuers can control the length of the chain of intermediaries, nor do they have any influence on the content of the legal (independent bilateral) arrangements that

[41] https://www.clearstream.com/clearstream-en/products-and-services/asset-services/c21050-2836120
[42] https://www.clearstream.com/clearstream-en/products-and-services/asset-services/c22002-2922248, accessed on 24 October 2022
[43] https://www.ebf.eu/wp-content/uploads/2020/07/4c_SMPG_General_Meeting_messages_MP_Final_v1.0.pdf, accessed on 31 October 2022
[44] https://www.clearstream.com/clearstream-en/products-and-services/asset-services/c22002-2922248, accessed on 24 October 2022

govern the intermediaries' chain: neither issuers nor shareholders are parties to the bilateral contracts between the intermediaries nor do these contracts normally provide direct rights to shareholders.

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. In addition, intermediaries may decide on a shareholder's right by restricting his voting options to proxy voting is concerning.

Technical platforms however 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.

c. Direct communication between shareholders and issuers should be fostered

The cross-border voting process must become simple, effective, and efficient. The easier and cheaper it is for shareholders to vote at the general meetings of their companies on a cross-border basis, the more they will exercise their voting rights also abroad. The SRD II Implementing Regulation (IR) offers minimum standards in that respect. It also enables a direct communication between shareholders and issuers. In practice, the direct communication between shareholders and listed issuers in a cross-border environment is yet still the exception to the rule.

Direct communication between issuers and its owners, however, is the best means to ensure a high level of shareholder engagement and should therefore be fostered by European legislators.

d. Complex intermediaries' structures or account settings should not obstruct shareholders' rights

SRD II IR also requires that where there is more than one intermediary in the chain, the last intermediary shall ensure that the entitled positions in its records are reconciled with those of the first intermediary.[45] Processing all votes through the chain ending with a reconciliation of votes at the upper intermediary level is yet perceived as being necessary to avoid, for example, over-voting. However, according to Article 37 CSDR, the securities settlement system verifies on a daily basis that the number of issued securities registered at the CSD equals the sum of the securities recorded in the intermediaries' accounts. This should be sufficient to secure an adequate level of accuracy.

Omnibus accounts have been introduced in particular to reduce costs for intermediaries and streamline processes. They are used by intermediaries to pool various clients' holdings. While information regarding corporate action processes (e.g., dividend payments or capital measure announcements) are flowing smoothly through the intermediaries' chain, for general meeting processes these omnibus accounts still create obstacles. Literature suggests that omnibus accounts may even lead to issuers' registrars having to disregard votes because there is no means to ascertain that votes had been validly cast.[46] These omnibus accounts also result in problems when shareholders need to be identified to proof their shareholder status to the issuer in general meeting-related processes as the information from account holders of every intermediary in the chain is needed for identification of the shareholder wanting to vote. Even though CSDR requires CSDs to keep records and accounts that enable a participant (i.e. another intermediary) to segregate the securities of any of the participant's clients, if and as required by the participant, it also requires CSDs to offer its clients at least the choice between omnibus client segregation and individual client segregation. Yet, the omnibus model still seems to be prevalent when it comes to cross-border shareholder rights execution: In 2019, the Greek ATHEXCSD was the only EU CSD providing for a beneficial ownership account for domestic participants whereas six CSDs (the

[45] Article 5 Commission implementing Regulation (EU) 2018/1212

[46] Eva Micheler, Building a Capital Markets Union: Improving the Market Infrastructure, https://www.researchgate.net/publication/295562915_Building_a_Capital_Markets_Union_Improving_the_Market_Infrastructure, accessed on 24 October 2022

Belgian Euroclear Bank, the Swiss SIX SIS, the Italian Monte Titoli, the Luxembourgish LuxCSD, the Portuguese Interbolsa and the Austrian OeKB CSD) provided mostly omnibus accounts even to domestic participants.[47] Taking into account that EU CSDs annually process around 448m delivery instructions representing 1.46q EUR[48] the reasons for the preferred account structure are obvious.

The current CSDR framework therefore needs to be reassessed to ensure that omnibus accounts do no longer hinder the processing of information between issuer and shareholder.

e. Introduce an EU definition of 'shareholder'

SRD II continues to define 'shareholder' as the natural or legal person that is recognised as a shareholder under the applicable law; and even though the Implementing Regulation sets important minimum standards to facilitate cross-border voting, it does not remedy the lack of harmonised definitions such as for the definition of the term 'shareholder'. The High-Level Forum on the Capital Markets Union in its Final Report notes that "the lack of an EU definition of 'shareholder' makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security."[49] As of today, SRD II leaves the definition of shareholder to member states. This results in varying 'shareholder concepts', two of which are predominant. One model understands the shareholder as being the beneficial owner of the shares. Contrary to that, another model divides between beneficial owner and nominee holder of the shares. A nominee shareholder holds the legal title to shares on behalf of a beneficial owner, the beneficial owner is not visible to the issuer; in its books, the issuer can only see the nominee holder. Such a nominee holder holds the share under a custody agreement and can make use of certain rights flowing from the shares. The different concepts have caused an unlevel playing field since, for example, communication from issuers to shareholders under the nominee concept may end at nominee level, or even with shareholders being deprived from exercising their rights. Consequently, intermediaries can act on behalf of the shareholders when it comes to voting at general meetings as they are considered as the legal owner of the shares.

A clear definition of the term 'shareholder' at EU level would therefore be beneficial to shareholders in terms of general meeting-related processes like voting at general meetings, shareholder identification, but also for 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 shareholder.

In addition, BETTER FINANCE and DSW call on the Commission to review the SRD II Implementing Regulation with regard to the rights, shareholders have.

The Implementing Regulation needs to be strengthened in its language to ensure that the information flow does not end at nominee level but that the 'final shareholder', i.e. the one who bears the financial risk, receives the dividend and is entitled to corporate actions, receives the information from the issuers through the chain of intermediaries.

f. Harmonise record dates

SRD II leaves it up to Member States to determine the record date, i.e. the date on which shares have to be held by a shareholder to be entitled to exercise rights at a general meeting. Where the record

[47] ECSDA, CSD Fact book, https://ecsda.eu/wp-content/uploads/2021/01/2019_European_CSD_Industry_Factbook.pdf, accessed on 24 October 2022
[48] Ibid.
[49] Recommendation 9, https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf, accessed on 24 October 2022

date is close to the general meeting, shareholders (especially individual shareholders in a cross-border environment) may not be able to exercise their voting rights due to the long chain of intermediaries. On the other hand, a record date set at a point in time relatively distant to the general meeting increases the risk of 'empty voting'.[50]

In order to simplify the processes across the EU and make them smoother, rules in SRD II should ensure a harmonised record date across member states, which should be set at least five calendar days before the general meeting to give shareholders sufficient time to exercise their rights.

g. Harmonise deadline for notification of participation

There is, furthermore, a need to harmonise the deadline for notification of participation across the EU as also this deadline may vary significantly between member states. This deadline, however, is the starting point for the so-called cut-off dates set by intermediaries.

The current process requires the last intermediary to send a confirmation of the shareholder's entitlement to participate in and vote at the general meeting through the intermediaries' chain to the issuer. Each intermediary must forward this information on a same-day basis or the next day at the latest, according to SRD II Implementing Regulation. To ensure that the information can be forwarded in due time, intermediaries set a 'cut-off' date for receiving the information (request). The ultimate cut-off date is therefore the aggregate of the cut-off dates set by all the intermediaries in the chain, extending the legal deadline by private market participants sometimes significantly.

In case of a record date being set close to a general meeting (which is the case for example in France where a record date of AGM -2 is in place) the last intermediary cut-off date (and therefore the effective deadline for shareholders to give notification of participation) may be set several days before that respective record date, depending on the number of intermediaries participating in the voting chain.

The resulting obstacles for shareholders are manifold: Shareholders need to inform the last intermediary well in advance of the record date that they intend to attend and vote at a general meeting without even knowing if they will still be enabled to vote as the record date still lies ahead in the future.

Additionally, early cut-off dates may deprive individual shareholders of the chance to make an informed voting decision where local law requires voting instructions to be processed together with the request for an admission card especially where important information becomes available only shortly before the meeting.

Furthermore, admission cards for general meetings are usually issued on receipt of the record of share ownership only. Therefore, shareholders hardly ever receive admission cards in time if their proof of shareholding is received too close to the deadline by the issuer.

To tackle these problems, the European Commission should introduce harmonised rules for the deadline for notification of participation. Market participants, on the other hand, need to ensure that the cut-off dates do not impact their obligation to facilitate shareholder engagement.

h. Harmonise and reduce the required information to the very necessary

Obstacles to shareholder voting result not only from complex voting chains discussed above but also from legal requirements that national company laws set for admitting shareholders to vote at a general meeting. Shareholders for example need to give issuers advance notice of their intention to attend and vote at a general meeting. While companies obviously are interested in receiving this information and

[50] Empty voting refers to a situation where a shareholder has voting rights in the shares to be voted, but lacks (full) economic interest in those shares.

knowing the voting intentions of shareholders in advance, technological progress that allows for remote voting no longer seems to justify such a requirement.

The number of communications required should be reviewed and scaled down to the necessary minimum, for example by abolishing the requirement to give advance notice of attendance. If the requirement of advance notice is kept, the Commission should at least harmonise the issuer deadlines for receiving this notification.

i. Review the process for shareholder verification

In addition, the process for verification of the shareholders' identity should be reviewed. Financial institutions must comply with the 'know your customer' (KYC) requirements of the Anti-Money Laundering Directive (AML) and effectively verify the identity of their customers.

Given that the shareholder's identity is known to its deposit bank or broker who can also verify the status as shareholder, further proof of identification for obtaining an admission card seems to be redundant. Any duplication of documentation requirements should be avoided.

j. Harmonise documentation requirements

As of today, shareholders have to provide various documents to their last intermediary when wanting to exercise their rights at a general meeting. Sometimes, a shareholder identification number is required. In other cases, an ID card or a proof of ownership from the last intermediary is requested. Sometimes, documentation needs to be provided as hard copy or legalised documents. From a shareholder perspective, it is unclear who does require certain information, the issuer or (any) intermediary in the chain. While different documentation requirements may result from the nature of the share (registered vs. bearer share) and national laws, from a shareholder perspective they are confusing and lead to a manual and time-consuming process instead of one that should be as simple as possible. Harmonisation should provide clarity that respect.

Evidence of shareholder status must be enabled through the introduction of an EU-wide form to prove share ownership at record date. It needs to be accepted by any intermediary in the chain, as well as by any EU issuer thereby simplifying processes and fostering a straight-through processing (STP) – as foreseen in the Implementing Regulation.

k. Standardise documentation for proxy voting

Shareholders are often overburdened by the various types of documents and/or procedures related to voting. For example, proxy voting forms and related processes differ from one member state to another and sometimes even from one issuer to another. Moreover, in many instances, we note a lack of standardisation or translation of forms to English. In fact, confusion may still arise on ways to vote depending on the (ease of) instructions provided, language options and of any national/corporate specificities impacting the voting process.

At the very least, the proxy form card needs to be simplified also for cross-border purposes by making use of a unified template. For this, the voting card should always be supplied in English, in addition to the language of the issuer's country. Standardisation should aim at fostering easy-to-follow steps linked to any vote accessibility options. This should therefore take into account the various voting means offered by the issuer, whether the shareholder opts to vote online (beforehand or at AGM upon its streaming); to give a proxy to a third party at AGM date (instead of attending on-site) or to send the ballot ahead of the AGM date (distance voting).

Therefore, a standardised EU-wide proxy form – both in local language and in English – should be introduced, enabling all shareholders to easily understand, and cast their vote, to enable sound, unified and accessible European shareholder engagement.

l. Review vote confirmation provisions

The survey results show that there is a need to also improve the regulatory regime regarding the vote confirmation. In case of distance voting or voting by proxy the vote confirmation is an important means for shareholders to verify the correct transmission of votes through the intermediaries' chain and needed to enhance shareholder confidence in the financial system. As of today, however, the vote confirmation is designed as an individual right for shareholders (on demand) and not as a market standard (by default). This results in inefficiencies in this part of the general meeting process, especially for individual investors that have no access to proxy voting platforms where such services may be included. Furthermore, the deadline set by Article 3c (2) of SRDII, i.e. up to three months from the date of the vote is too long, taking into consideration the ongoing technological improvements. Especially where shareholders want to enter (legal) actions against an issuer after a general meeting, for which their vote is a legal precondition, the deadline should be reviewed to ensure that shareholder engagement is not being hampered.

SRD II needs to be reviewed to ensure that both the confirmation of receipt of votes and the confirmation of recording/counting of votes must be provided by intermediaries and issuers through the intermediaries' chain as a default option to the shareholder, and that the confirmation of recording/counting of votes is processed in due time after the general meeting.

m. Foster (proxy) voting, also via independent investor representatives

In addition to the identified obstacles to active engagement and transparency issues when trying to vote abroad, independent proxy representation also deserves to be strengthened and clarified at European level. Where nominees are considered as shareholders that may pass a proxy to the real shareholder for voting, and this at a certain cost, the system has turned upside down. As noted in section b. above of this report: Intermediaries should serve shareholders, not control them. The introduction of a fiduciary duty, which requires the nominee to vote and to take into account the views of beneficial owners, should therefore be introduced.

In essence, the post-trade voting process should by default enable the involvement of an independent proxy to investor associations where voting instructions are not provided by the beneficial owner, and where the beneficial owner has not refused such a proxy service.

Here, especially interactive investment/shareholding systems that would be built on new technologies; like for example DLT, should be explored and–if feasible–fostered to become valid for transmitting proxy rights or information to the representation of the shareholder's choice, as they can be controlled, transparent, efficient and open/distributed for instructions.

3. Embrace new technologies to foster direct communication between issuers and shareholders

The implementation of SRD II and related Implementing Regulation in Europe has not yet shown sufficient impact. One reason for that is that SRD II does not require direct communication between issuers and shareholders, nor has it yet managed to harmonise the current intermediated systems. The passing of information and votes between issuers and shareholders is still working inefficiently. Next to adaptations of and adjustments to the existing imperfect system, modern technologies should be used to complement its shortcomings, or even to gradually replace it (modernisation).

One of the main problems is the complexity of the intermediated system. Next to unnecessary costs, this complexity generates a lack of transparency and verification of the information exchanged between issuer and shareholder. Another issue is the inequality between the institutional shareholder and the individual shareholders; with the latter having the general meeting as the only opportunity to engage with the company, unlike institutional investors who can meet regularly with the company's board members. Also, the shareholder identification is established through 'scattered' ledgers, which leads to late disclosure of information.[51]

The High-Level Forum on the Capital Markets Union in its Final Report issued a recommendation on shareholder identification, exercise of voting rights and corporate actions, in which it invited the Commission to facilitate the use of new digital technologies.[52] The Commission picked up this recommendation in Action 12 of the CMU Action Plan 2020.[53] Already before, several governments and private institutions had launched (pilot) programmes to use blockchain/DLT for shareholder voting purposes.[54]

Academic research finds that the 'permissioned blockchain solution', based on the Digital Ledger Technology (DLT) may offer shareholders "real-time transmission of the information and direct communication between issuers and shareholders" as it would make it "possible to remove all intermediaries (like Broadridge) involved in the proxy votes collection and instructions process if all ownership information from different tiers is uploaded to the distributed ledger".[55] On the contrary: a beneficial owner would be enabled to hold and record (tokenised[56]) shares issued to him/her in his/her own name thereby replacing nominee voting – intermediation would no longer be required. Blockchain enables knowledge of the precise identity of who is entitled to vote so that all actions carried out during the voting process are easily verified back to their origin.[57] Consequently, issuers could place agenda voting items on the blockchain and when a majority is reached, the voting outcome would become immutable, precise, and verifiable.

[51] Blockchain and Smart Contracting for the Shareholder community (ECGI) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3219146, accessed on 24 October 2022

[52] https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf, accessed on 24 October 2022.

[53] https://ec.europa.eu/info/sites/default/files/business_economy_euro/growth_and_investment/documents/200610-cmu-high-level-forum-final-report_en.pdf, accessed on 24 October 2022

[54] In 2016, the US state Delaware launched the Delaware Blockchain Initiative, enabling companies to issue digital shares ("smart securities") and use blockchain to provide companies with distributed registers of members: https://corpgov.law.harvard.edu/2017/03/16/delawareblockchain-initiative-transforming-the-foundational-infrastructure-ofcorporate-finance, accessed on 9 January 2023. In 2019, the Singapore Exchange (SGX) was reported to be exploring blockchain e-voting in Asia-Pacific using DLT to simplify the management of shareholder meetings. In 2020, Singapore provided the option of real-time remote electronic voting through an electronic voting system for listed and non-listed entities: https://www.suss.edu.sg/docs/default-source/media-coverage/20221019-bt---enhancing-shareholders-voting-process-through-blockchain.pdf?sfvrsn=73bc1d54_2, accessed on 9 January 2023. In 2016, NASDAQ launched a pilot program on Estonia's Tallinn Stock Exchange that uses a blockchain-based e-voting service to record and track shareholder votes: https://perma.cc/2FHE-JXPC, accessed on 9 January 2023. In 2018, Broadridge announced a successful first practical use of blockchain for investor voting at an annual general meeting: https://www.broadridge.com/press-release/2018/santander-and-broadridge-completed-practical-use-of-blockchain, accessed on 9 January 2023.

[55] Lafarre/van der Elst: Shareholder Voice in complex intermediated proxy systems: Blockchain technology as a solution? https://biblio.ugent.be/publication/8698523/file/8698524.pdf, accessed on 24 October 2022.

[56] The token would perform the same function and include the same rights as the securities that they represent.

[57] Federico Panisi, Ross P. Buckley, Douglas W. Arner: Blockchain and Public Companies: A Revolution in Share Ownership Transparency, Proxy Voting and Corporate Governance, https://www.ssrn.com/index.cfm/en/unsw-leg/, accessed on 9 January 2023.

At the same time, this technology would provide governance to address potential faults[58]: as it would enable the creation of tamper-proof audit trails for voting.

The inherent use case of DLT lies in its capacity to reduce complexity of processing of information through omnibus accounts by maintaining registries that are at the same time speedy, secure, transparent, coherent and reliable. It will enable companies to retake control of the transfer of their shares and eradicate the discrepancy between "recorded" and "beneficial" shareholders.

Blockchain or DLT technology could support shareholders in exercising their rights smoothly, while fostering a direct communication between them.[59] In addition, from a wider corporate governance perspective, the role of proxy advisors and the extent to which institutional investors follow their recommendations would become more transparent with blockchains, as these actions can be immediately visible for all parties (thanks to the constant exchange of 'nodes').

The advantage of the blockchain technology lies in the 'democratisation' of the system. Instead of traditional transactions that are centralised, in the blockchain every party detains the ledger based on a decentralised system. The application of this technology will ensure that data exchanged is verifiable and unchangeable thus no longer requiring the intervention of intermediaries. Another important advantage is that the shareholder will be able to verify if her/his vote is considered in the final results (outcome).[60]

However, blockchain also carries some risks (e.g. by erroneous coding, sensible governance, or technical shortcomings) which should not be underestimated. Even though solutions will emerge as blockchain evolves, real change should not be driven only by new technologies. Clear regulation will be needed in assisting and supporting any such change.

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.

4. Investigate further the involvement of neobrokers in the governance process and their compliance with SRD II

a. Investigate the reasons for the lack of compliance

SRD II introduced important changes with regard to the identification of shareholders and on the obligations of intermediaries to transfer information. This was meant to facilitate and thus enable the exercise of shareholders' rights. As stated in the Directive, "Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings."[61] Over two years after its entry into force, however, we clearly observe the inadequate information and enforcement of voting services from the part of neobrokers provided to clients (see part IV). Therefore, we call for the European Commission as well as national competent authorities (NCAs) to investigate further the compliance and processes in place by all actors in the intermediary chain, also by scrutinising new entrants such as neobrokers.

Our case study, both from a theoretical (terms analysis) and practical point of view (mystery shopping) concludes that there are clear violations of shareholder rights by neobrokers, albeit to varying degrees.

[58] Alexander Daniels: Blockchain and shareholder voting: A hard fork for 21st-century corporate governance, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1581&context=jbl, accessed on 9 January 2023.
[59] Ibid.
[60] Ibid.
[61] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0828&from=EN, accessed on 24 October 2022

Not only do we consider the costs of attending and/or voting at national and cross-border shareholder meetings to often be disproportionate, but even paying for such a service may not actually lead to its proper execution. In fact, neobrokers often absolve themselves with regards to the shareholder's voting rights. Although they offer innovative digital tools for online brokerage, the neobrokers surveyed did not prove to allow and facilitate shareholder engagement, in some instances even excluding this service from their legal terms, and in other cases (despite apparent facilitation) they have failed to deliver it in practice.

b. Strengthen regulatory oversight

As regards financial services providers, our assessment raises the important question whether the lack of compliance comes from the inadequate implementation of the SRD II at national level, an inadequate supervision of implementation, from the non-compliance of market participants that hampers the intermediated process, or more directly from FinTech companies (neobrokers) that may choose not to mobilise appropriate resources to foster shareholders' rights. Therefore, EU authorities should assess the compliance of online brokerage platforms, in light of their position in the intermediary chain of actors involved. Neobrokers are acting as intermediaries with the SRD II requirements, but shortcomings in the transposition of the Directive and its Implementing Regulation into national law across Member States may find various sources, also with regard to the resources they mobilise to comply linked with their business model.

Moreover, in terms of corporate governance, and in the absence of any indication to the contrary (in their disclaimer or terms of services), it remains unclear whether certain neobrokers grant themselves the right to execute (or transfer) voting rights on behalf—or instead—of the client. **It would therefore be necessary to further investigate the involvement of neobrokers in the governance of certain issuers in which it is proposed to be invested through their platforms.**

c. Improve the processes of the neobrokers

Also, the next custodian bank in the chain may be the only actor in the chain of intermediaries a neobroker may be confronted with, and certainly the only actor with which the neobroker has a contract. As noted in our report, the intermediaries' contract chain makes each intermediary (incl. the neobrokers) visibly dependent on the responsiveness of the next custodian in the chain (and thus the relationship with the neobroker's services). This gives rise to shareholders' requests that may not materialise. Furthermore, these obstructions to voting services are likely due to a lack of proper resources mobilised by neobrokers and thus, more generally, to the absence of clear processes in place to enable shareholder engagement. A lack of internal resources leading to compliance issues with legislative requirements (i.e. SRD II) cannot constitute a justification for the lack of service. As fully digital platforms, neobrokers' services relating to general meetings should be further monitored by national competent authorities (NCAs) and regulators. In addition, neobrokers could also have an incentive to offer innovative services to shareholders in the future, provided that Public Authorities clarify the associated processes by leveraging further on harmonisation and digitalisation of post-trade services in an EU cross-border framework. Ultimately, favouring digital innovation by enabling new tools as well as blockchain/DLT-based messaging could enable (even incentivise) digital-ready intermediaries to adopt compliant AGM voting services and offer shareholders innovative, transparent and more direct ways to engage with companies.

d. Investigate the effects of neobrokers' business models on shareholders' rights

Finally, we call for an investigation by the ESMA and NCAs of the detrimental consequences certain neobrokers' business model may (in)directly inflict on shareholders' rights. For instance, clients must read the fine prints to learn that securities lending is applied to their shares, which may result in the

final shareholder ('beneficial owner') losing voting (and thus control) rights at the relevant time. The ownership of securities should always remain in the realm of the client's decision and be endorsed as a right in the legislation. **A direct investor in shares should always be its rightful owner when it comes to voting rights.** Moreover, this long-lasting debate related to securities lending should be addressed by provisioning the explicit–and informed–consent from the client as it should not constitute a default option coined in contractual terms, but rather require the client's action regarding agreements in the transferring of voting right. The rights of shareholders should include the right to decide on the lending of their securities by the financial or brokerage company with which they are affiliated, including neobrokers, and regardless of the operated business model. In certain applicable cases, our experience showed the impracticality to be informed whether a particular share was lent – or if a recall was possible–, despite having to pay for the voting service. Furthermore, **the allocation of income from securities lent needs full transparency, particularly for direct investment in shares**, by also following the EU rules like those that apply to UCITS investment funds so that investors investing directly in shares also do benefit from the profits generated, in case they explicitly opt to lend their shares (see next part, recommendation 5), as equity fund investors already do.

5. Regulating securities lending practices to safeguard shareholder rights

Moving away from the direct framework of the SRD II, the implications of "securities lending" practices (specifically with respect to listed shares) on the ability of shareholders (not) to vote should be further examined, along with their consequences on corporate governance and engagement.[62] This process may entail the full and unconditional transfer of ownership of the securities in question from the "lender" to the "borrower"–including voting rights, usually excluding dividends and other distributions. Therefore, legal ownership is transferred, but economic ownership is kept, usually without explicit, direct consent nor clear notification to the shareholder, except, sometimes, for a (scarce) mention in the final clauses of the client contract since rarely do stand-alone agreements are provided to inform the client. This, however, can clearly obstruct client's preference to vote as a direct investor in shares.

As we saw, significant issues may arise from these listed shares lending facilities (see above on neobrokers' implications). Moreover, this specific practice of securities lending is not clearly regulated, but rather falls under the contractual freedom and the wide-market standard governs, where contracts usually derive from the GMSLA (global securities lending agreement).[63] Therefore, in certain member states, custody agreements (governing shareholders' ties with intermediaries) can include standard clauses delegating the power to act as a 'securities lending agent' and to enter/exit standard GMSLA-based or even *ad hoc* (non-standard) lending agreement. Typically, a depositary could provide this service as an *incidental* one to the others contracted for by the intermediary or the client.

For these reasons, we call for the investigation by ESMA and the European Commission of detrimental practices such as:

- **Short-selling and "negative" voting:** when short sellers borrow shares to vote in AGMs in what they believe will affect the market value of the share to make a profit.
- **Empty voting and record date**: a shareholder in a company may increase its voting rights right through securities lending to influence AGM decision-making, namely, to appoint/re-appoint a CEO

[62] See also: Louise Van Marcke, "Securities lending as a barrier to (or an instrument for) shareholder activism and the role of intermediaries as lending agents", Working Paper, Financial Law Institute | Ghent University, 2022, https://financiallawinstitute.ugent.be/wp-content/uploads/2022/09/2022-15.pdf

[63] The framework pertains to the 'Global Master Securities Lending Agreement' (GMSLA) as published by the International Securities Lending Association (ISLA); where the global market contract characteristics are detailed, provisioning that "*except where otherwise provided by the parties*". https://www.islaemea.org/wp-content/uploads/2019/03/GMSLA_2010_amendments_July_2012-1.pdf

or a management board or to affect important decisions, e.g. to trigger a squeeze-out. This legal maneuver can have detrimental implications for a sound and transparent corporate governance. Moreover, even if the custody agreement includes a notification clause (of ongoing securities lending), it usually happens too late for the shareholder to exercise any potential "recall clause" to be in time for the record date.

Although the GMSLA states that the securities lending agent (SLA) shall inform shareholders of such share transactions, it appears that this principle is often lacking, or might occur in practice after the event has taken place.

Therefore, and in order to safeguard individual shareholders' decision right to vote, we recommend that:

1) **The securities lending authorisation clause in custody agreements and/or between intermediaries and non-professional clients should be provided to clients and (by default) provide that**:
    a. **If the securities lending agreement is:**
        i. **'Open-ended'** (without maturity date) **It must always be ensured that the right of recall is granted to the customer;**
        ii. **'fixed-term' (under a maturity date, voiding a recall close), it must be considered an unfair term** as per Consumer Contracts Directive (Directive 93/13) and give right to:
            i. Being considered void and;
            ii. Compensation for the shareholder of all legal and economic aspects
2) **Securities lending agreements entered by the custodian or by the intermediary bear the responsibility to notify clients at least 10 business days before the record date** of an AGMs with respect to which shares have been lent, and that any "default option" should be prohibited.
3) **A duty to collect the explicit and informed (i.e. also through a clear 'voting/recall policy') consent of the shareholder whose voting rights are impacted by the lending** (no 'default option');
4) **All income generated from securities lending (net of direct operational costs), must be passed on to the client.**[64] This would make the EU rules on the attribution of income from securities lending consistent whether the investor holds securities via an investment fund, or directly in a securities account.

[64] On securities lending attribution of income and conduct of business in EU retail investment funds (UCITS), see: European Securities and Markets Authority (ESMA) Guidelines for competent authorities and UCITS management companies, regarding efficient portfolio management techniques (EPMTs): Guidelines on ETFs and other UCITS issues, of 18/12/2012 (ESMA/2012/832EN) and 01.08.2014 (ESMA/2014/937EN).; see also BETTER FINANCE "Securities lending: Income attribution & conflict of interests in EU retail investment funds", 2022, https://betterfinance.eu/wp-content/uploads/Securities-Lending-Income-Attribution-Conflicts-of-Interest-in-EU-Retail-Investment-Funds-2022.pdf

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