

EUROSIF RESPONSE TO ESMA'S CALL FOR EVIDENCE ON THE IMPLEMENTATION OF THE SHAREHOLDER RIGHT DIRECTIVE 2 (SRD2) PROVISIONS

Eurosif welcomes the opportunity to provide input to ESMA on the implementation of certain provisions of the Shareholder Rights Directive (SRD2), particularly in view of the forthcoming report by the European Commission and potential review of the framework.

Shareholder engagement is one of the principal mechanisms through which investors can exert positive influence over investee companies and encourage them to address adverse environmental and social impacts, mitigate related risks and improve their environmental, social & governance (ESG) performance overall. In recent years, there has been a significant increase in the number of shareholder proposals on ESG issues being submitted at general meetings, demonstrating the strong interest on the part of shareholders to encourage investee companies to transition and contribute to positive environmental and social outcomes.

However, the potential for shareholder engagement varies depending on the category of investor. Institutional investors have a variety of means at their disposal to engage with and influence companies. Retail investors, by contrast, have a far more limited capacity to engage in the governance of the companies of which they are shareholders. Accordingly, a robust framework is required to ensure shareholders are guaranteed effective exercise of the rights they derive from investing in a company.

The SRD2 sought to provide such a robust framework for shareholder engagement in the EU. Now, in light of experiences in implementing the framework across the EU27 and increasingly active shareholders, the time is opportune to enhance the framework by further improving shareholder identification, the flow of information between issuers, intermediaries and shareholders; and thereby facilitate the exercise of shareholder rights.

The review of the Shareholder Rights Directive will offer opportunities to accelerate both the digital and sustainable transition of the economy. Long and complex chains of intermediaries often frustrate the efficient transmission of information and create a system in which there are multiple potential points of failure. While SRD2 sought to introduce clear obligations for intermediaries, structurally the system remains cumbersome and unwieldy. Shareholders often report non-receipt of information on corporate actions, forthcoming general meetings, and advance notice of the need to apply for an attendance or voting card from issuers. Accordingly, while SRD2 may have improved the transmission of information to a certain extent, it remains inadequate from the standpoint of many shareholders. Consequently, without effective transmission of information from issuer to shareholder, the ability of shareholders to exercise their rights is severely impaired and limits their opportunities for engagement. Accordingly, while SRD2 may have led to some improvement in the market, there remains a lot of work to be done before the framework delivers on its policy objectives.

In view of the inadequacies of current market structure and practice, Eurosif recommends:

- That SRD2 be reviewed with a view to enabling the deployment of new digital technologies to improve information flows, effective communication between issuer and shareholder and the exercise of shareholder rights;
- To introduce a harmonised definition of ‘shareholder’ across the EU to simplify the process of identifying the shareholders of an issuer on a cross-border basis;
- To harmonise, to the greatest extent possible, the requirements pertaining to the attribution of entitlements (as regards record dates) and the sequence of dates for corporate actions and deadlines;
- To introduce more robust requirements around shareholder engagement and stewardship efforts with respect to climate and sustainability targets, potentially involving a review of the requirements on the approval of executive remuneration by shareholders.

BACKGROUND

Question answered – Question 1

What is the nature of your involvement in financial markets?

- a) Investor
 - i. Individual (retail) investor;
 - ii. Institutional investor (such as pension fund or an insurance undertaking)
 - iii. Asset manager (investing on behalf of individual clients or institutional investors);
- b) Issuer (in particular, EU companies whose shares are listed in the EU);
- c) Intermediary
 - i. Credit institution;
 - ii. Investment firm;
 - iii. Central securities depository – CSD;
- d) Proxy advisor (i.e., a legal person providing research, advice or voting recommendations);
- e) Other.

To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in the financial industry. [Max. 2000 characters]

Eurosif – the European Sustainable Investment Forum, is one of the leading pan-European industry associations promoting sustainable finance. Eurosif’s membership is comprised of national sustainable investment fora (SIFs) from both EU member states and EEA countries. Eurosif’s mission is to ensure an ambitious but implementable sustainable finance framework by providing substantive input to policymakers on regulation affecting sustainable investment

markets. Accordingly, we share the experience of market practitioners with policymakers in order to ensure a coherent and practicable but ambitious sustainable finance framework that enables meaningful sustainable investment.

Question answered – Question 2

Please specify if you are a non-EU or EU actor, and in the latter case, in which Member State you (or, if you are an association, your members) are based/most active in.

- [EU Actor] [Non-EU Actor]

If EU Actor is selected, please specify:

- | | |
|--|--|
| <input type="checkbox"/> [Pan-European Organisation] | <input type="checkbox"/> [Ireland] |
| <input type="checkbox"/> [Austria] | <input type="checkbox"/> [Italy] |
| <input checked="" type="checkbox"/> [Belgium] | <input type="checkbox"/> [Latvia] |
| <input type="checkbox"/> [Bulgaria] | <input type="checkbox"/> [Lithuania] |
| <input type="checkbox"/> [Croatia] | <input type="checkbox"/> [Luxembourg] |
| <input type="checkbox"/> [Cyprus] | <input type="checkbox"/> [Malta] |
| <input type="checkbox"/> [Czechia] | <input type="checkbox"/> [Netherlands] |
| <input type="checkbox"/> [Denmark] | <input type="checkbox"/> [Poland] |
| <input type="checkbox"/> [Estonia] | <input type="checkbox"/> [Portugal] |
| <input type="checkbox"/> [Finland] | <input type="checkbox"/> [Romania] |
| <input type="checkbox"/> [France] | <input type="checkbox"/> [Slovak Republic] |
| <input type="checkbox"/> [Germany] | <input type="checkbox"/> [Slovenia] |
| <input type="checkbox"/> [Greece] | <input type="checkbox"/> [Spain] |
| <input type="checkbox"/> [Hungary] | <input type="checkbox"/> [Sweden] |

ON SHAREHOLDER IDENTIFICATION, TRANSMISSION OF INFORMATION AND FACILITATION OF THE EXERCISE OF SHAREHOLDER RIGHTS

Question answered – Question 3

Do you consider that shareholder identification, within the meaning of Article 3a, has improved following the entry into application of this provision and the implementing regulation?

- [Not at all]
 [To a limited extent]
 [To a large extent]
 [Fully]
 [No opinion]

Please explain and provide evidence to corroborate your response [Max. 2000 characters]

The provisions on the identification of shareholders permit issuers to request and obtain information on the identity of their shareholders. In theory, knowledge as to the identity of

shareholders should enable issuers to establish direct communication with them, thus simplifying the transmission of information on corporate actions and general meetings, etc. and thereby facilitating the exercise of shareholder rights.

The identification of shareholders has improved since the application of Article 3a. Issuers are now able to ascertain who their shareholders are on a periodic basis. In principle, this should allow issuers to establish more direct communication with their shareholders rather than rely on a chain of intermediaries.

However, the shares of publicly listed companies are exchanged frequently on financial markets resulting in the shareholder base of companies being in constant flux. Accordingly, there may be limited value for companies in requesting the identification of shareholders for the purposes of establishing direct communication and/or transmitting information thus accounting for the continuing reliance on intermediaries – particularly in a cross-border context where documentation may have to be translated or otherwise altered.

Nevertheless, SRD2 could be enhanced to require issuers to regularly seek the identification of their shareholders, particularly in advance of the record date, to enable direct communication with shareholders in relation to general meetings and measures to enable shareholders to participate therein.

Question answered – Question 4

Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders [Max. 2000 characters]

A harmonised definition of shareholder across the EU is essential to the effective application of SRDII. The proportion of shareholders in the EU with cross-border holdings has increased significantly in recent years. However, the transmission of information and exercise of shareholder rights is challenging in a cross-border context, due largely to several intermediaries being involved.

However, the lack of a harmonised definition across the EU further complicates this process and renders it challenging for investee companies to identify their entire shareholder base, especially if a significant proportion of their shareholders are from a jurisdiction which applies a different definition of “shareholder”. The introduction of a common definition, applicable throughout the EU would provide a simple solution to this problem.

Question answered – Question 5

In your opinion, who should be regarded as ‘shareholder’ for the purposes of the SRD if this definition was to be harmonised across the EU?

- [The natural or legal person on whose account or on whose behalf the shares are held, even if the shares are held in the name of another natural or legal person who acts on behalf of this person (beneficiary shareholder)]
- [The natural or legal person holding the shares in his own name, even if this person (nominee shareholder) acts on behalf of another natural or legal person]
- [Other].

Please explain and provide evidence to corroborate your response [Max. 2000 characters]

There are different definitions of ‘shareholder’ applied across the EU. Fundamentally, this complicates and hampers the process of identifying shareholders and the subsequent transmission of information and exercise of shareholder rights for all parties and intermediaries involved, particularly in a cross-border context involving intermediary chains distributed across jurisdictions with differing concepts of ‘shareholder’.

Accordingly, a harmonised definition should be introduced that recognises the natural or legal person to which rights are attributable by virtue of beneficial ownership of shares.

Question answered – Question 6

Do you consider the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3b and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response [Max. 2000 characters]

The transmission of information along the chain of intermediaries has improved to a limited extent since the implementation of Article 3b. SRD2 established clear obligations for intermediaries to ensure the efficient transfer of information between issuers and shareholders.

However, from the perspective of shareholders, the transmission of information remains inadequate. In many instances, it is reported that shareholders either do not receive information in relation to corporate actions or general meetings or receive it too late to be actionable. This situation is exacerbated in a cross-border context where the chain of intermediaries tends to be longer and information from a non-local issuer must be processed (often involving a translation of necessary documentation) before transmission to shareholders.

Question answered – Question 7

Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3c and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response [Max. 2000 characters]

The facilitation of the exercise of shareholder rights by intermediaries and issuers has improved only marginally since the application of Article 3c. The exercise of shareholder rights is highly dependent on the effective transmission of information between issuers and shareholders. Shortcomings in the transmission of information by intermediaries thus impairs the exercise of shareholder rights.

That said, there have also been cases in which shareholders have attempted to exercise their rights more proactively by, for instance, requesting information on corporate actions or an admission or voting card for general meetings directly from issuers and intermediaries. In such cases, the response of issuers and intermediaries has often frustrated rather than facilitated the exercise of shareholder rights. Shareholders have been asked to provide information or documentation attesting to their identity as a shareholder that is not readily available or in the custody of another intermediary. This may illustrate either an unwillingness on the part of some intermediaries to facilitate the exercise of shareholder rights or poor coordination and information sharing among intermediaries.

Question answered – Question 8

Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights (i.e., in compliance with Article 3d) have improved following the entry into application of this provision?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, providing examples of the jurisdiction you are most familiar with [Max. 2000 characters]

Transparency with regard to the non-discrimination and proportionality of charges by intermediaries has improved in some EU jurisdictions. In others, however, information on the charges for services remains difficult to obtain and is not readily available.

With regard to demonstrating non-discrimination and proportionality of charges, the higher cost of managing cross-border shareholdings remains a structural feature of EU capital markets. Nationally, shareholders are not required to pay for their identification or the transmission of information by intermediaries. However, when holding shares on a cross-border basis, the cost associated with exercising shareholder rights and even simply receiving information from issuers increases significantly.

The extent of this issue is difficult to fully ascertain and varies from market to market. In certain instances, it would appear justifiable that cross-border processing and transmission of information would incur costs and imply certain delays to the delivery of information. However, the transparency on costs and charges introduced in SRDII does not yet allow for a thorough analysis.

Question answered – Question 9

Do you consider that the practices of third-country intermediaries (i.e., intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter 1a and the Implementing regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response and specify any significant differences you may be aware of as regards the application of this Chapter by third-country intermediaries vis-à-vis EU intermediaries. [Max. 2000 characters]

Eurosif is not aware of instances in which the impairment of shareholder rights has been directly attributable to failures or non-compliant practices on the part of third-country intermediaries.

Question answered – Question 10

Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter 1a (i.e., shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

- [Not at all]
- [To a limited extent]
- [To a large extent]

- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, explaining if/how improvements could be made. [Max. 2000 characters]

There are intermediaries that have put in place adequate processes to comply with the provisions of SRDII and the Implementing Regulation. However, collectively, the processes introduced by intermediaries across the chain appear to be inadequate to ensure the effective and timely identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights.

This stems partly from a market structure in which several intermediaries can be involved in the transmission of information between issuer and shareholder, creating multiple potential points of failure in the chain. This structure is outdated, needlessly complex and inefficient. The deployment of digital technologies could supersede existing arrangements and contribute to the attainment of SRDII's policy objectives.

Question answered – Question 11

Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter 1a and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (e.g., regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect information regarding shareholder identity)? Please specify your response in relation to the following topical areas;

- a) Shareholder identification;
 - [Y]
 - [N]
 - [Don't know]
- b) Transmission of information;
 - [Y]
 - [N]
 - [Don't know]
- c) Facilitation of the exercise of shareholder rights;
 - [Y]
 - [N]
 - [Don't know]
- d) Costs and charges by intermediaries;
 - [Y]
 - [N]
 - [Don't know]

- e) Non-EU intermediaries.
- [Y]
 - [N]
 - [Don't know]

Please explain and provide evidence to corroborate your response, clarifying whether encountered obstacles or difficulties relate to cross-border elements (both within and outside the EU). [Max. 2000 characters]

N/A

Question answered – Question 11.1

If you have answered positively to at least one of the points listed in Q11, please specify if it was in relation to the following:

- a) The attribution and evidence of entitlements (incl. as regards the record date position);
 - [Y]
 - [N]
 - [Don't know]
- b) The sequence of dates for corporate actions and deadlines;
 - [Y]
 - [N]
 - [Don't know]
- c) Any additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);
 - [Y]
 - [N]
 - [Don't know]
- d) Communication between issuers and central securities depositories (CSDs);
 - [Y]
 - [N]
 - [Don't know]
- e) Any other issue
 - [Y]
 - [N]
 - [Don't know]

Please explain and provide evidence to corroborate your response. [1 box per option, Max. 2000 characters]

N/A

Question answered – Question 12

If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter 1a (also relating to cross-border elements – both within and outside the EU – and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please specify your response in relation to:

- a) Shareholder identification;
- b) Transmission of information;
- c) Facilitation of the exercise of shareholder rights;
- d) Costs and charges by intermediaries
- e) Non-EU intermediaries

Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement. [Max. 2000 characters]

Communication between issuers, intermediaries and shareholders should be simplified, harmonised and digitalised to the greatest extent possible in the interest of effective transmission of information. Shareholders should receive the most relevant information with respect to corporate actions and forthcoming general meetings in an accessible, digital format that enables immediate reaction/action.

ESMA and/or intermediaries could consider developing a digital system to facilitate the identification of shareholders, transmission of information and exercise of shareholder rights. This would permit the current, outdated and largely paper-based system to be superseded.

With respect to costs & charges in relation to services by intermediaries, the issue of limited transparency largely arises due to lack of enforcement of SRDII's provisions in certain jurisdictions. ESMA should encourage NCAs to enhance their enforcement of SRDII. In addition, ESMA could consider proposing an additional requirement in the form of documentation to be prepared by intermediaries and shared with shareholders in the event costs have been incurred in the process of identifying shareholders, transmission of information and/or facilitation of the exercise of shareholder rights.

Question answered – Question 13

Overall, do you consider that Chapter 1a provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the Directive?

- [Not at all]
- [To a limited extent]
- [To a large extent]
- [Fully]
- [No opinion]

Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement. [Max. 2000 characters]

In the context of sustainable investment, shareholder engagement and proactive stewardship are fundamental. SRDII has marginally improved shareholder engagement on the part of retail investors. Significant barriers, both structural and legal, to engagement on the part of retail investors remain. For instance, in addition to the inadequate transmission of information, it is possible under SRDII for thresholds to be introduced as to the size of the holding of a shareholder that determines their rights during general meetings, etc.

Such thresholds should be removed to ensure that all shareholders are permitted to engage in the management of an issuer to which they are financially exposed. However, any review of the SRDII should envisage mechanisms for collaborative engagement on the part of shareholders – particularly with respect to climate and sustainability-related issues - to ensure that issuers are not overwhelmed by a high volume of individual and potentially inconsistent proposals.

In the case of institutional investors, shareholder engagement depends less on the provisions of the SRDII. Institutional investors, by virtue of their size and sophistication, have multiple avenues for engagement with issuers.

Question answered – Question 14

Do you believe that rules on the following points should be further clarified and/or harmonised;

- a) Attribution and evidence of entitlements (incl. as regards the record date position);
 - [Y]
 - [N]
 - [Don't know]
- b) The sequence of dates for corporate actions and deadlines;
 - [Y]
 - [N]
 - [Don't know]
- c) Possible additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);
 - [Y]
 - [N]
 - [Don't know]
- d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents)
 - [Y]
 - [N]
 - [Don't know]

Please explain and, if your answer is yes, please specify what actions could be put in place. [Max. 2000 characters]

N/A

Question answered – Question 17

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

- [Y]
- [N]
- [Don't know]

Please specify any doubt or ambiguity you might have had in assessing which Member State is competent over proxy advisors, providing evidence to corroborate your response and explaining what changes could be made, if any. [Max. 2000 characters]

N/A

Question answered – Question 18

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

- [Y, in more Member States]
- [N, in none of the member States]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response, specifying whether you are aware of any practical obstacles to the application of the relevant SRD2 provisions to such proxy advisors. [Max. 2000 characters]

N/A

Question answered – Question 19

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

- [Y, and the entity does not sufficiently explain either why it does not apply a code of conduct or why it departs from any of its recommendations]
- [Y, but the entity abides by its obligation to sufficiently explain why it does not apply a code of conduct or why it departs from any of its recommendations, and, where

- appropriate, discloses information of the alternative measures it has adopted]
- [N]
 - [Don't know]

Please explain and provide evidence to corroborate your response, and please indicate which code(s) of conduct you think play the biggest role. [Max. 2000 characters]

N/A

Question answered – Question 21

Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?

- [Y]
- [N]
- [Don't know]

Please explain and provide evidence to corroborate your response. [Max. 2000 characters]

N/A