

Call for Evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain

Fields marked with * are mandatory.

Responding to this Call for Evidence

ESMA invites comments on all matters in this paper and in particular on the specific questions therein presented. Comments are most helpful if they:

- (1) respond to the question stated;
- (2) indicate the specific question to which the comment relates;
- (3) contain a clear rationale; and
- (4) describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 November 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Open Consultations'.

Publication of responses

All contributions received will be published following the close of the Call for Evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this Call for Evidence

All interested stakeholders are invited to respond to this Call for Evidence. In particular, ESMA considers this Call for Evidence will be primarily of relevance to investors, issuers whose shares are listed in Europe, intermediaries and proxy advisors. In addition to the general questions (Section 3), specific questions (Sections 4-5-6-7) are addressed to these types of stakeholders.

Other market participants, such as consultants and service providers in the investor communication and voting industry, are invited to express their views by responding to any general questions (Section 3) they would like to provide input on and in particular to the two catch-all questions (Q15 and Q25).

1. Executive Summary

Reasons for publication

As foreseen in Articles 3f(2) and 3k(2) of the Shareholder Rights Directive, as amended by Directive (EU) 2017/828 ('SRD2'), the European Securities and Markets Authority ('ESMA') is expected to support the European Commission ('EC') in the elaboration of a report assessing the implementation of Chapter Ia and Article 3j of the SRD2 across the Union. The purpose of this Call for Evidence is to gather information on how market participants perceive the appropriateness of the scope and the effectiveness of the SRD2 provisions on the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as on transparency of proxy advisors. The responses obtained from this exercise will form the basis for ESMA's input for the elaboration of this report.

Contents

Section 2 sets out the background to ESMA's review exercise and explains the structure and the purpose of the Call for Evidence in more detail. Section 3 presents general questions intended for all stakeholders while sections 4-7 include questions targeted at specific stakeholders, *i.e.*, investors, issuers, intermediaries and proxy advisors.

Next Steps

Responses to this Call for Evidence are requested by **28 November 2022**. ESMA intends to provide the Commission with its input by **July 2023**.

2. Introduction

2.1. Background and legal mandate

The Shareholder Rights Directive, as amended by the SRD2, lays down a common regulatory framework with regard to the minimum standards for the exercise of shareholder rights in EU listed companies. The SRD2 was supposed to be transposed by Member States into their national law by 10 June 2019, with the exception of Articles 3a to 3c in Chapter Ia, which, together with the Implementing Regulation, entered into application on 3 September 2020. By facilitating the involvement of shareholders in the corporate governance of investee companies, the SRD2 aims to encourage their long-term engagement in EU companies and thereby to enhance sustainable long-term value creation in EU capital markets.

In the context of the review of the SRD2, the EC is required to submit a report assessing the implementation of Chapter Ia (Articles 3a to 3f) and Chapter Ib (Articles 3g to 3j) of the SRD2 to the European Parliament and to the Council, also involving ESMA. In particular:

- i. As per Article 3f(2) of the SRD2, the EC, in close cooperation with ESMA and the EBA, is required to submit a report on the implementation of Chapter Ia of the SRD2 providing an assessment of its effectiveness and difficulties in practical application and enforcement of the relevant Articles included

in this Chapter, while also taking into account relevant market developments at the EU and international level. In addition, the report should specifically address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries.

ii. As per Article 3k(2) of the SRD2, the EC, in close cooperation with ESMA, is required to submit a report on the implementation of Article 3j of the SRD2, providing an assessment of the effectiveness and appropriateness of the scope of application of the same provision, and taking into account relevant Union and international market developments. It is also envisaged that the report shall be accompanied, if deemed appropriate, by legislative proposals.

In September 2020, based on the recommendations from the final report of the High Level Forum on CMU [1], the EC adopted a new CMU action plan[2] which included an action aimed at facilitating investor engagement. In particular, as part of Action 12, the EC committed to “assess: (i) the possibility of introducing an EU-wide, harmonised definition of ‘shareholder’, and; (ii) if and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate actions’ processing can be further clarified and harmonised.”[3] The CMU action plan indicated that this assessment would be carried out as part of the EC’s evaluation of the implementation of the SRD2 due to be published by Q3 2023.

On 3 October 2022, ESMA received a mandate from the Commission to provide input on the implementation of the aforementioned SRD2 provisions, also in connection to certain targeted elements relating to Action 12 of the CMU action plan. With regards to proxy advisors (*i.e.*, Article 3j), ESMA is also requested to assess the need for further regulatory requirements.

[1] *Final report of the high-level forum on the Capital Markets Union ‘A new vision for Europe’s capital markets’* https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.

[2] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Capital markets union 2020 action plan: A capital markets union for people and businesses, COM/2020/590 24.9.2020.*

[3] *The CMU action plan further clarified that “the Commission plans to investigate in particular the following: (i) the attribution and evidence of entitlements and the record date, (ii) the confirmation of the entitlement and the reconciliation obligation, (iii) the sequence of dates and deadlines, (iv) any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and (v) communication between issuers and central securities depositories (CSDs) as regards timing, content and format.”*

2.2. Scoping of the exercise

The implementation assessment covers a wide spectrum of topics in the SRD2, namely regarding areas such as identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as the transparency of proxy advisors. An indicative scope is provided in the table below.

<i>SRD2 provision</i>	<i>Topical Area</i>
Chapter Ia	Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights
Art. 3a	Identification of shareholders
Art. 3b	Transmission of information
Art. 3c	Facilitation of the exercise of voting rights
Art. 3d	Non-discrimination, proportionality, and transparency of costs
Art. 3e	Third-country intermediaries
Article 3j	Transparency of proxy advisors
Art. 3j(1)	Transparency on code of conduct
Art. 3j(2)	Transparency of information related to the preparation of research, advice and voting recommendations
Art. 3j(3)	Transparency of conflicts of interest
Art. 3j(4)	Third-country proxy advisors

2.3. Purpose and structure of the Call for Evidence

ESMA believes that a Call for Evidence is necessary for the collection of information from market participants in order to obtain a comprehensive overview of how stakeholders perceive the appropriateness and effectiveness of the current regulatory framework, to learn about the possible difficulties encountered in the course of its application and to understand relevant market developments. The findings obtained from this exercise will allow ESMA to take action to fulfil its obligations under the SRD2, in accordance with the mandate provided by the EC. Moreover, these responses will help understand and therefore prioritise the SRD2 areas where stakeholders feel there is a need for improvement of current practices.

ESMA encourages respondents to share the practices currently put in place by market participants across different jurisdictions, as well as any difficulties they might have experienced in the practical application of SRD provisions.

In terms of structure, this Call for Evidence focuses on the six Articles that are included in the scope of this assessment, namely covering four main topical areas of the aforementioned Directive: (i) identification of shareholders; (ii) transmission of information; (iii) facilitation of exercise of shareholder rights and (iv) transparency of proxy advisors.

Section 3 (Q1-Q25) of the Call for Evidence presents a set of questions which are common to all categories of stakeholders and aimed at (i) investigating their general views on the effectiveness of the relevant SRD2 provisions, and (ii) seeking their input on certain specific issues listed under Action 12 of the CMU Action Plan.

Each type of stakeholder will be invited to answer the questions included in Section 3. Furthermore, the questionnaire includes two catch-all questions (Q15 and Q25), where all stakeholders are welcome to raise any concerns or remarks they may have.

Based on the selection of your stakeholder type under Q1, you may be invited to answer to the ensuing targeted sections designed specifically for the following groups of stakeholders:

- Section 4 (Q26-Q41): Investors (in particular, shareholders of EU listed companies);

- Section 5 (Q42-Q58): Issuers;
- Section 6 (Q59-Q71): Intermediaries;
- Section 7 (Q72-Q78): Proxy advisors.

Each section is introduced separately and provides a brief summary of the goal of such questions and the type of evidence that ESMA is seeking. The questions aim to understand the practical impact as well as supervisory implications of the relevant SRD provisions.

Additionally, to ensure that the questionnaire keeps track of market developments, certain questions also seek the views of stakeholders on the current trends in financial markets, namely on recent technological developments, environmental, social and governance ('ESG') or sustainability-related aspects and institutional investors' practices, both in the EU and at the international level.

Finally, ESMA would like to emphasize the importance of answers being factual and, to the widest possible extent, supported by clear Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on in the previous sections.

2.4. Next Steps

Responses to this Call for Evidence are requested by 28 November 2022. ESMA will provide the Commission with its input by July 2023.

3. General questions

3.1. Introduction

This section sets out questions of a general nature which ESMA invites all interested stakeholders to respond to, regardless of the role they play in the financial markets. The questions aim to provide a general understanding of the practices currently put in place and the difficulties that may arise from the practical application of SRD2 provisions. This section also sets out a few targeted questions on facilitating shareholder engagement as set out by the CMU action plan (Action 12 of the CMU action plan). In addition to this section, sections 4 - 7 outline questions which are targeted at specific groups of stakeholders (*i.e.*, investors, issuers, intermediaries and proxy advisors).

In connection with this first set of questions, ESMA would like to reiterate the invitation for respondents to provide factual answers which are supported by reasoning, as well as clear evidence and examples to the widest possible extent. Furthermore, ESMA invites associations representing specific groups of stakeholders to select, in Q1, the group of stakeholders they represent or to select option 'other'.

3.2. Questions

3.2.1. Background

* **Q0:** Please indicate if you agree to have your answer made public.

- ☒ Yes
☐ No

* Please indicate your name and contact information.

2000 character(s) maximum

ASSOCIAZIONE INTERMEDIARI MERCATI FINANZIARI – ASSOSIM
 Gianluigi Gugliotta - Secretary General
 assosim@assosim.it
 +39 02 86454996

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

[More than 1 option allowed]

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

* To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in the financial industry.

2000 character(s) maximum

ASSOCIAZIONE INTERMEDIARI MERCATI FINANZIARI – ASSOSIM represents the interests of the intermediaries active on the Italian financial markets, namely, Italian investment firms, investment banks and subsidiaries of foreign investment services providers. ASSOSIM carries out advocacy and advisory activities, training and organization of conferences and seminars.
 Its members account for nearly the entire amount of the transactions carried out on the Italian stock markets as from Italy, and more than 80% when considering cross border transactions. Since 2007, the membership has been extended to law firms, consulting and IT solutions development companies, and to those entities providing services to financial intermediaries.

* **Q2:** Please specify if you are a non-EU or EU actor, and in the latter case, in which Member State you (or, if you are an association, your members) are based/most active in.

- ☒ EU Actor ☐ Non-EU Actor

* Please specify:

- | | |
|---|--|
| <input type="radio"/> Pan-European Organisation | <input type="radio"/> Ireland |
| <input type="radio"/> Austria | <input checked="" type="radio"/> Italy |
| <input type="radio"/> Belgium | <input type="radio"/> Latvia |
| <input type="radio"/> Bulgaria | <input type="radio"/> Lithuania |
| <input type="radio"/> Croatia | <input type="radio"/> Luxembourg |
| <input type="radio"/> Cyprus | <input type="radio"/> Malta |

- | | |
|-------------------------------|---------------------------------------|
| <input type="radio"/> Czechia | <input type="radio"/> Netherlands |
| <input type="radio"/> Denmark | <input type="radio"/> Poland |
| <input type="radio"/> Estonia | <input type="radio"/> Portugal |
| <input type="radio"/> Finland | <input type="radio"/> Romania |
| <input type="radio"/> France | <input type="radio"/> Slovak Republic |
| <input type="radio"/> Germany | <input type="radio"/> Slovenia |
| <input type="radio"/> Greece | <input type="radio"/> Spain |
| <input type="radio"/> Hungary | <input type="radio"/> Sweden |

3.2.2. On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q3: Do you consider that shareholder identification, within the meaning of Article 3a, has improved following the entry into application of this provision and the Implementing Regulation?

- ☐ Not at all
- ☒ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The provisions of the SRD II Directive on shareholder identification has only minimally achieved the improvement objectives it set out, especially for countries, such as Italy, which had already provided for a specific discipline before SRD II was issued. Art. 3a does not identify a unique model for issuer's request and the intermediaries' response and granted member states the possibility to define their own model in the transposition of the Directive. This minimal harmonisation has generated inconsistencies between the various disciplines of the individual member states and has led to difficulties in managing the identification especially on a cross-border basis. The provision of threshold of 0.5% of the voting rights has also created a situation of inequality between states that have provided for it (such as Italy) and states that have not. Regarding the definition of information flows along the intermediary chain, the Implementing Regulation (IR) did not provide any further details on the possible alternatives provided for in Art. 3a, accentuating the fragmentation of the rules of the different member states. Nor does the definition of first intermediary in the IR help, as it can be either the CSD or an intermediary appointed by the issuer, depending on the country. Moreover, the definition of shareholder, which should be fully harmonised across national disciplines, is missing (see also responses to Q4 and Q5). Finally, no control is envisaged with respect to requests for identification by issuers, either with reference to the inclusion of the request in the scope of SRD II in subjective and objective terms or with respect to the compliance of the contents of the identification request with the minimum requirements set forth in the tables annexed to the IR. In this regard, the role of the Issuer CSD should be clarified. The main improvement of IR is related to the definition of minimum requirements, as contained in the tables annexed to the IR.

Q4: Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions?

- ☐ Not at all
- ☐ To a limited extent

- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders.

2000 character(s) maximum

The definition of shareholder is absolutely deemed as a necessary condition to ensure the effectiveness of Art. 3a, although not sufficient. The problems highlighted in the answers to questions Q8 and Q11, which depend on the regulatory options granted by SRD II and which have not been fully addressed or defined in the IR, must also be resolved.

Q5: In your opinion, who should be regarded as 'shareholder' for the purposes of the SRD if this definition was to be harmonised across the EU?

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The definition of a shareholder must necessarily be harmonised at the European level and thus it should override any definition provided by national regulations. What is important is that the definition of shareholder be as legally neutral as possible. For this purpose, different solutions may be assessed (one could be that a shareholder be defined as the person who has the power to exercise rights over shares).

What is needed, however, is a homogeneous definition armonised across all EU disciplines that refer to the concept of shareholder. The definitions referred to in Q5 seem to be linked to national definitions referring to a specific 'holding model'. That said, we believe it is important to point out, on the basis of experience to date, the effectiveness of the solution adopted in the Italian legal system, which provides an extremely clear indication in this regard, and which could constitute a point of reference to inspire possible interventions in the EU as well.

Q6: Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3b and the Implementing Regulation?

- ☐ Not at all
- ☒ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

For the transmission of information along the intermediary chain to be effectively improved, full automation of information flows along the entire intermediary chain (STP) should be achieved. To date, critical issues persist at the beginning and at the end of the intermediary chain. The transmission of information between intermediaries is not particularly problematic, while the one between issuer, CSD and the intermediary chain remains challenging. Therefore, the actual adoption of the ISO 20020 format by all intermediaries, as required by Art. 2(3) of the IR, may not necessarily lead to the overcoming of the critical issues observed, should CSDs, ICSDs and issuers be unable to handle it. ISO 20020 format is the only way to ensure compliance with the timeframes laid down in the Regulation itself and to avoid inconsistent interpretations of these terms. It would also be important to give unambiguous definitions of the various components of the intermediary chain (such as the definition of first intermediary) and to avoid different choices by the various member states. Finally, it should be provided that the CSD plays the role of certifier of flows in order to attribute them with certainty to transactions within the scope of SRD II. Some additional benefits, however, can be found in the relationship between the last intermediary and the customer/end shareholder.

Q7: Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3c and the Implementing Regulation?

- ☐ Not at all
- ☒ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Like Art. 3a, Art. 3c also left wide discretion to member states in the transposition of SRD II and this resulted in an uneven application of the provisions of Art. 3c among the different member states. Our members report that to date the situation differs between domestic and cross-border meetings. Although in Italy the application of L2 regulation will start in January 2023, a trend of increasing participation to general meetings has gradually emerged, since 2019. Regarding foreign markets, our members note their clients have now the possibility to vote also in foreign shareholders' meetings (a possibility not previously provided for). However, there are still critical issues related to the identification of securities 'within the scope' or 'outside the scope' of the regulation and to the peculiarities of individual national legal framework (please refer also to our response to question Q3), which, in practice, make participation in certain foreign shareholders' meetings too burdensome for natural persons investors. SRD II has undoubtedly generated an improvement on the technical side, but this has not translated into a functional improvement for this specific service. In general, the ways in which meetings are managed in Europe are so heterogeneous, also taking into consideration the presence of several entities offering proxy services to issuers (i.e., proxy agents), which make meetings much more difficult to manage entirely STP, as envisaged by the SRD II. Then, there is a problem on the way in which, based on the current framework, shareholders receive information on general meetings and other corporate events, even if they are interested in receiving it. To make this process more efficient and less burdensome, the flow of information to the shareholder should therefore be rationalised by providing 'opt-in' mechanisms. Such opt-in would allow shareholders to make the choice as to whether to be notified of the issuer's corporate events or not.

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and

exercise of shareholder rights (*i.e.*, in compliance with Article 3d) have improved following the entry into application of this provision?

- ☒ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response, providing examples of the jurisdictions you are most familiar with.

2000 character(s) maximum

It is the opinion of our members that the rule of Art. 3d has not been sufficiently implemented within the national disciplines of the different member states, also because there is no corresponding implementing rule in the IR. Therefore, for the fulfilment of the principles contained in Art. 3d, intermediaries usually follow the transparency rules contained in other regulations (e.g. MiFID). Furthermore, while the Directive requires transparency on the fees charged by intermediaries for the services offered under SRD II, it sets no rule guaranteeing that these fees are actually paid by the entities required to pay them. The right to payment for the service should be provided for within the European framework.

Q9: Do you consider that the practices of third-country intermediaries (*i.e.*, intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the Implementing Regulation?

- ☐ Not at all
- ☒ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

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

2000 character(s) maximum

The relationship with intermediaries from non-EU countries is complicated by the fact that these intermediaries are not strictly obliged to comply with SRD II and its IR.

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia (*i.e.*, shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response, explaining if/how improvements could be made.

2000 character(s) maximum

Intermediaries have implemented both the European discipline and its national transposition, modifying internal processes and procedures to ensure maximum compliance. However, in order to achieve the efficiency gains advocated by SRD II, it is advisable that a forthcoming revision of the discipline should aim for maximum harmonisation of national provisions and the widest possible adherence by all players in the intermediary chain to international standards on corporate action and general meetings.

Q11: Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (e.g., regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect information regarding shareholder identity)? Please specify your response in relation to the following topical areas:

a) Shareholder identification;

- ☒ Yes
☐ No
☐ Don't know

b) Transmission of information;

- ☒ Yes
☐ No
☐ Don't know

c) Facilitation of the exercise of shareholder rights;

- ☒ Yes
☐ No
☐ Don't know

d) Costs and charges by intermediaries;

- ☒ Yes
☐ No
☐ Don't know

e) Non-EU intermediaries.

- ☒ Yes
☐ No
☐ Don't know

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

2000 character(s) maximum

- a) The main obstacle encountered in responding to a request for shareholder identification lies in the difficulty of verifying, within the strict timeframe provided for in Art. 9 of the IR, the existence of the requirements for such a request to be considered valid.
- b) It is not always possible to manage the flow of information along the intermediary chain in STP mode. This is due to the presence of third parties, not always regulated, who assist the issuer in the management of corporate events and meetings and who do not use ISO messaging standards. Issuers are also not required to adopt market standards on processes and messaging, and the tables annexed to the IR, with particular reference to Table 3 and Table 8, are not sufficient to guarantee an STP information flow.
- c) As represented in our response to Q7, shareholder participation in foreign meetings is very difficult from an operational point of view and consequently too expensive for the shareholder himself. In addition, the information requirements for customers should also be reviewed, allowing customers to select the information they wish to receive and considering that not all customers are able to receive information in digital format but only in paper form. This necessarily generates delays in communication due to postal delivery times.
- d) As represented in our response to Q3, it is difficult for intermediaries to claim commissions for services offered under SRD II and especially for shareholder identifications. Since there is no specific standard guaranteeing the right to commissions' payment, commissions are very often not collected. In Italian law, there is no standard concerning fees and their reimbursement; for SHIDs, no fee is received. We also note the substantial lack of transparency in this regard.

Q11.1: If you have answered positively to at least one of the points listed in *Q11*, please specify if it was in relation to the following:

a) The attribution and evidence of entitlements (incl. as regards the record date position);

- ☒ Yes
☐ No
☐ Don't know

* Please explain and corroborate your answer.

Not available

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

- ☒ Yes
☐ No
☐ Don't know

* Please explain and corroborate your answer.

There is no consistency in the sequence of dates. Consistent with our response to question 14(b), we would like to see consistency in the sequence of key dates. Otherwise, the inconsistency of the dates raises a problem not only for the intermediaries but also for the shareholders themselves (who purchase the securities and have the right to participate in the shareholders' meeting) and, ultimately, for the entire market, in the absence of clear indications on the correct 'entitlement'.

c) Any additional requirements (*e.g.*, requirements of powers of attorney to exercise voting rights);

- ☒ Yes

- ☐ No
- ☐ Don't know

* Please explain and corroborate your answer.

A particularly problematic aspect relating specifically to the management of shareholders' meetings is the heterogeneity of (i) the requirements imposed on shareholders and (ii) the documentation required in the various EU national jurisdictions (e.g. registrations, 'power of attorney') as a condition for voting, etc. Here again, the discrepancy between the different jurisdictions is a source of delays and, very often, of additional operational activities and costs, which are not always sustainable

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

- ☒ Yes
- ☐ No
- ☐ Don't know

* Please explain and corroborate your answer.

As it will be explained in more detail in the answer to question Q14, issuers are not required to comply with ISO standards on messaging, and the tables annexed to the IR (in particular Table 3 and Table 8) are not sufficient to guarantee an STP information flow.

e) Any other issue.

- ☒ Yes
- ☐ No
- ☐ Don't know

* Please explain and corroborate your answer.

As mentioned in answer to question q11 (a) on shareholder identification, the difficulties are increased when the request does not come directly from the issuer through the CSD but from a third party that does not provide evidence of having been mandated by the issuer. The verifications carried out by intermediaries to avoid providing shareholder identification data outside the requirements of SRD II are time-consuming and not compatible with the terms of Art. 9. It would be appropriate to provide for the issuer CSD to act as a certifier of the application with respect to the requirements of SRD II.

Q12: If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter Ia (also relating to cross border elements - both within and outside the EU - and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please explain and provide evidence to corroborate your response in relation to:

a) Shareholder identification;

2000 character(s) maximum

SRD II provisions should take the legal form of a regulation in order to ensure a truly harmonised application across EU jurisdictions. They should include a common definition of a shareholder, as stated in the answer to question 4 and question 5 above.

b) Transmission of information;

2000 character(s) maximum

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

The harmonisation of the rules, in line with the answer to question 11(c) above, should provide for the removal of (i) the requirements imposed by some national laws on shareholders and (ii) the documentation required from shareholders in the form of, for example, signed 'power of attorney' as a condition for voting. This could likely contribute to (i) improving the flow of information along the custody chain and (ii) encouraging greater participation in general meetings and the casting of more valid votes.

d) Costs and charges by intermediaries;

2000 character(s) maximum

At least an intervention by the EU authorities in the form of 'soft law' acts (e.g. ESMA guidelines on costs and charges) could be a first useful step in the direction of greater harmonisation.

e) Non-EU intermediaries.

2000 character(s) maximum

Q13: Overall, do you consider that Chapter Ia provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the Directive?

- ☐ Not at all
- ☒ To a limited extent
- ☐ To a large extent
- ☐ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement.

2000 character(s) maximum

Please refer the reasons already provided in the previous answers.

Q14: Do you believe that rules on the following points should be further clarified and/or harmonized:

a) Attribution and evidence of entitlements (incl. as regards the record date position);

- ☒ Yes
- ☐ No
- ☐ Don't know

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

- ☒ Yes
☐ No
☐ Don't know

c) Possible additional national requirements (e.g., requirements of powers of attorney to exercise voting rights);

- ☒ Yes
☐ No
☐ Don't know

d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents).

- ☒ Yes
☐ No
☐ Don't know

* Please explain and, in case your answer is yes, please specify what actions could be put in place.

2000 character(s) maximum

b) The SRD II does not contain any specific requirements with respect to the timing of key dates relating to a general meeting or a specific corporate action. This affects the allocation of rights in connection with a general meeting. For example, there have been situations where the record date has been too close or even later than the deadline for sending voting instructions relating to a specific general meeting. That has effectively precluded the exercise of voting rights or lead to the rejection of votes cast. To the best of our knowledge, the aforesaid issues have not occurred on the Italian market (i.e. for securities where Monte Titoli acts as Issuer CSD) but have occurred in certain, specific national markets of EU Member States.

d) Issuers, who are the source of information according to SRD II and the Implementing Regulation, should be legally obliged to use ISO formats commonly used in the intermediary chain and with the same quality as intermediaries. Only a fully and correctly filled ISO message can be processed via STP. Furthermore, the STP process is significantly impaired by the possibility recognised by the IR to only partially fill in Tables 3 and 8. This possibility should therefore be eliminated and the filling in of all fields in the tables should instead be a legal requirement.

Q15: For elements that are not explicitly covered by the above questions but that are still related to Chapter Ia or the Implementing Regulation, do you have any other issue that you want to raise?

2000 character(s) maximum

The form of a regulation should be chosen when revising the rules, in line with what is called for in the CMU action plan, which would ensure harmonisation and possibly provide for L2 regulations that make the understanding and application of L1 rules clearer. It is also important that, in addition to proxy advisors' activities, also the activities carried out by proxy agents (especially as parties who participate in shareholders' meetings on behalf of the custodians) be regulated. A further critical issue is related to the type of financial instruments in scope of SRD II and, in particular, to the fact that each Member State has identified its own list of securities in scope. For example, some national jurisdictions included corporate bonds in the scope of SRD II, while the majority did not. In many jurisdictions, it is unclear whether depositary receipts or ETFs are in scope of SRD II or not. Overall, the above-mentioned heterogeneity of approaches has proved problematic and burdensome from a commercial, relational and operational point of view, as well as a source of legal uncertainty and compliance risk. A further point that we would consider important to bring to ESMA's attention relates to the removal of the thresholds for the shareholders' identification. The removal of this threshold, in addition to guaranteeing a more level playing field between intermediaries of different Member States subject to different requirements, could help solving the long-standing problem related to shareholder who has positions held on several intermediaries and needs to report it to let intermediaries to verify that the total shares owned exceeds the threshold. On the other hand, even if the threshold's removal would require intermediaries to report a larger number of clients positions (not only those 'above-threshold'), their verification activity would be overall simplified.

3.2.3. On proxy advisors

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

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

- ☐ Yes
- ☐ No
- ☐ Don't know

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

- ☐ Yes
- ☐ No
- ☐ Don't know

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

- ☐ Yes, in more Member States
- ☐ Yes, in none of the Member States
- ☐ No
- ☐ Don't know

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

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

Q20: Do you consider that the disclosures provided by proxy advisors have reached an adequate level following the entry into application of SRD II? Please specify in relation to:

a) Fostering transparency to ensure the accuracy and reliability of the advice;

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

b) Disclosing general voting policies and methodologies;

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

c) Considering local market and regulatory conditions;

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

d) Providing information on dialogue with issuers;

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

e) Identifying, disclosing and managing conflicts of interest.

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent

- ☐ Fully
- ☐ No opinion

Q21: Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?

- ☐ Yes
- ☐ No
- ☐ Don't know

Q22: Do you consider the level of harmonisation achieved under the SRD2 sufficient to ensure that investors are adequately and evenly informed about the accuracy and reliability of the activities of proxy advisors?

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

Q23: In your experience, and in light of developments affecting the proxy advisory market, do you consider that the EU approach to regulation of proxy advisors, currently based on the 'comply or explain' principle, sufficiently addresses any market failures existing in this area?

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

Q23.1: If your answer to Q23 is 'Not at all' or 'To a limited extent' or 'To a large extent', please indicate what further measures should be taken:

- ☐ Further mandatory disclosures;
- ☐ More structured disclosures, incl. in terms of harmonised presentation;
- ☐ Monitoring and complaints system and/or supervisory framework on disclosures;
- ☐ Registration/authorisation and related supervision;
- ☐ Other.

Q24: Having in mind the ESG and technological changes in progress in the voting services market as well as certain investors' tendency to internalise voting research and/or to provide clients with voting options, do you consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided?

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

Q25: For elements that are not explicitly covered by the above questions but that still concern transparency of proxy advisors, do you have any other issue that you want to raise?

2000 character(s) maximum

5. Questions for issuers

5.1. Introduction

This section outlines questions directed at issuers (namely, EU listed companies), with the goal of understanding their views on the practical application of SRD2 provisions, in particular as regards the identification of shareholders and the transmission of information through a chain of intermediaries provided under Chapter Ia.

With regard to the questions on the transparency of proxy advisors, ESMA is interested in assessing the views of issuers that were subject to a proxy advisor's evaluation and/or that used the services of proxy advisors.

5.2. Questions

5.2.1. On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q42: Are you aware of any questions or ambiguity in assessing which Member State and NCA is competent with regards to markets players involved in corporate actions (e.g., shareholder identification, shareholder voting, etc.)?

- ☐ Yes
☒ No
☐ Don't know

* Please explain and provide evidence to corroborate your response, explaining also what changes could be made, if any.

2000 character(s) maximum

At least with reference to the Italian market, our members, for their issuing activities, have not experienced and are not aware of questions or ambiguity in assessing the competences of Italian NCA.

Q43: Have you encountered any difficulties in identifying your shareholders and in obtaining other information regarding shareholder identity (as defined by Article 2(j) of the SRD) from intermediaries in accordance with Article 3a?

- ☐ Not at all
☐ To a limited extent
☐ To a large extent
☐ Fully

☒ No opinion

* Please explain and provide evidence to corroborate your response, specifying whether, in your jurisdiction, issuers are able to identify the ultimate beneficial owners.

2000 character(s) maximum

Our members, as issuers, have never initiated a shareholder identification procedure. This is because the 0.5 per cent threshold (introduced by the Italian legislator based on the discretion recognised by SRD II), below which intermediaries are not required to disclose evidence of their accounts, does not allow the purpose of shareholder identification to be achieved.

Q44: Provided that you have submitted a request for identification of shareholders under the SRD2 provisions, could you please specify the following elements:

a) To whom the request was made (e.g., CSD or other intermediaries);

2000 character(s) maximum

b) For what purpose the request was made;

2000 character(s) maximum

c) If and when you were provided with all the required information on shareholders' identity;

2000 character(s) maximum

d) The predictability and the proportionality of the costs incurred;

2000 character(s) maximum

e) How many shareholders [in percentage of share capital] you were able to identify:

%	Domestic	EU	Non-EU
< 90%			
[90%, 95%[
[95%, 100%]			

f) If you have noticed any improvement in the ability to identify non-EU shareholders compared to the pre-SRD II framework.

2000 character(s) maximum

Q45: Do you consider that thresholds for shareholder identification, when put in place under Article 3a(1), have been an obstacle to dialogue with your shareholders?

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response and indicate any practical issues you have encountered in association with the application of the thresholds for shareholder identification set by your Member State, *e.g.*, when the voting shares are held through two or more intermediaries.

2000 character(s) maximum

Thresholds for shareholder identification represent source of concern in many respects. In addition to the operational difficulties mentioned in our answer to Q15, threshold prevents large issuers with a widely dispersed and fractionated shareholder base from having a comprehensive view of their shareholders. This regulatory condition has effectively made it of no use for issuers to initiate a shareholder identification request. This function is fulfilled by the rules on the transparency of major shareholdings under the Transparency Directive.

Q46: Following the entry into application of the SRD2, do you always submit your request to disclose information regarding shareholder identity in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- ☐ Yes
- ☐ No
- ☒ Don't know

* Please explain and provide evidence to corroborate your response. In case the answer is *no*, please specify what type of standard you use.

2000 character(s) maximum

No shareholder identification requests have been undertaken by our members.

Q47: Following the entry into application of the SRD2, pursuant to Article 3b, have you changed the way you provide the required information to shareholders for the exercise of their rights?

a) Through the issuer CSD and the chain of intermediaries;

- ☐ Yes
- ☒ No
- ☐ Don't know

b) Directly to the investor;

- ☐ Yes
☒ No
☐ Don't know

c) Through an announcement.

- ☐ Yes
☒ No
☐ Don't know

* Please explain and provide evidence to corroborate your response, specifying the timeline under which you provide such information.

2000 character(s) maximum

Following the entry into application of the SRD2, issuers adapted themselves to the new forms provided by the Italian issuer CSD.

Q48: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (*i.e.*, Article 3b) (incl. General Meeting notice, confirmation of entitlement to exercise shareholder rights in a general meeting, notice of participation, confirmation of the receipt and recording and counting of votes and information specific to corporate events other than general meetings) in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- ☒ Yes
☐ No
☐ Don't know

* Please provide evidence to corroborate your response. In case your answer is *no*, please explain why and if this causes any problems in practice.

2000 character(s) maximum

Not available

Q49: In your experience, in addition to General Meetings, which other corporate events fall under the scope of Article 8 of the Implementing Regulation? Please explain and provide evidence to corroborate your response, clarifying if the format in Table 8 of the Implementing Regulation is able to provide the relevant information and whether further harmonisation would be needed (*e.g.*, via the SRD or its Implementing Regulation).

2000 character(s) maximum

At least on a theoretical basis, any corporate action, whether voluntary or mandatory, would fall within the scope of Art. 8: Cash Distributions, Securities Distributions, Distributions with Options, Mandatory and Voluntary Reorganisations. Clarification of the applicability of the Directive to different corporate actions would be appropriate. In fact, Table 8 is not appropriate for all corporate actions and standard formats would need to be defined at least for the most recurring corporate actions.

Q50: What documents do you require to allow shareholders to participate in a general meeting?

[More than one option allowed]

- ☒ Only a confirmation of entitlement (as under Table 4 of the Implementing Regulation)
- ☒ A notice of participation through your closest intermediary (as under Table 5 of the Implementing Regulation)
- ☐ A deposit confirmation
- ☐ Other

* Please explain and provide evidence to corroborate your response, clarifying if the format in Table 4 and 5 of the Implementing Regulation is able to provide the relevant information to participate in the general meeting and whether further harmonisation would be needed in the Directive or its Implementing Regulation.

2000 character(s) maximum

The Italian transposition regulation (LEGISLATIVE DECREE No. 58 OF 24 FEBRUARY 1998 Consolidated Law on Finance, art. 83-sexies) provides that the legitimate attendance of shareholders' meetings and the exercise of voting rights is confirmed by a statement to the issuer from the intermediary, in compliance with intermediary accounting records, on behalf of the person with the right to vote. The Italian L2 regulation defines the procedures for this communication and aligns its contents with both Table 4 and Table 5 of the Implementation Regulation. Thus, with a single communication, the functions of both confirmation of entitlement and notice of participation are fulfilled.

Q51: Following the entry into application of the SRD2, have you experienced an increase/decrease in participation at your general meetings?

- ☐ Yes
- ☐ No
- ☒ Don't know

* Please explain and provide evidence to corroborate your response, also explaining the possible reasons for such increase/decrease, including whether you believe this was due to the entry into application of the SRD2 (or possibly for other reasons, for instance due to restrictions during the COVID-19 pandemic or holding general meetings partly or fully in virtual form).

2000 character(s) maximum

In general, since the entry into force of SRD II, as also reported in the answer to question Q7, there has been a slight increase in the participation of shareholders in AGMs. With specific reference to last years, a slight decline in participation was recorded in 2020, because of COVID-19 pandemic. In 2021 and 2022, although through the "Representative Appointed by the Company", participation is again growing.

Q52: Following the entry into application of the SRD2, have you received any request by shareholders to confirm that their vote has been validly recorded and counted, as per Table 4 and 6 of the Implementing Regulation?

- ☐ Yes
- ☐ No
- ☐ Don't know

*

Please explain and provide evidence to corroborate your response. In case your answer is *yes*, please specify how many confirmation requests were received and what proportion of these requests came from non-EU investors?

2000 character(s) maximum

Not available

Q53: Do you consider that Market Standards elaborated and used by the industry for the application of the provisions of Chapter Ia (e.g., ISO 20022, Market Standards for shareholder identification, *etc.*) are useful to complete the regulatory framework in this area?

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

* Please specify which standards your answer refers to and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

5.2.2. On proxy advisors

Q54: Preliminarily, please indicate:

a) Whether proxy advisors have provided research, advice and/or recommendations on your company. Please explain and provide evidence to corroborate your answer.

2000 character(s) maximum

Yes. Before the AGM, proxy advisors send their "Issuer Data Report" (IDR) to the Issuer, that contains key data points which are of central importance to the advisor's corporate governance and remuneration analysis, such as information about a company's board of directors, including i) board composition ii) governing documents iii) independent public auditor iv) compensation practices v) summary compensation data and vi) equity plans. The IDRs sent to the Issuer do not contain analysis or voting recommendation. It is worth underlining, however, that the Issuer usually has only a few days or even no more than 48 hours to provide its feedback and references about the IDRs.

b) Whether you have used services from proxy advisors (please specify which services, e.g., research, consultancy). Please explain and provide evidence to corroborate your answer.

2000 character(s) maximum

Q55: Do you consider that the entry into application of the SRD2 has improved:

a) Fostering transparency to ensure the accuracy and reliability of the advice;

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

b) Disclosing general voting policies and methodologies;

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

c) Considering local market and regulatory conditions;

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

d) Providing information on dialogue with issuers;

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

e) Identifying, disclosing and managing conflicts of interest.

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

Q56: In your experience, do you consider that the entry into application of SRD2 transparency requirements on proxy advisors has improved your ability to assess the accuracy and reliability of proxy advisors' research, advice and/or recommendations as regards your company?

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

Q57: In your experience, following the entry into application of SRD2, do you consider that the dialogue between proxy advisors and issuers on the analysis and recommendations in research reports ahead of their distribution to investors (*i.e.*, promptness in sharing the draft report, timeframe in which comments are allowed, incorporation of these comments, detection, and subsequent amendment/correction of errors, *etc.*) has improved?

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

* Please explain and provide evidence to corroborate your response. In case you answered, "Not at all", "To a limited extent" or "To a large extent", clarify how this could be improved.

2000 character(s) maximum

Not available

Q58: Have you filed a complaint procedure under the Best Practice Principles for Providers of Shareholder Voting Research and Analysis ('BPP') framework as regards research reports?

- ☐ Yes
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, how would you describe the efficiency and effectiveness of this process? If your answer is *no*, please explain.

2000 character(s) maximum

Not available

6. Questions for intermediaries

6.1. Introduction

This section outlines questions directed at intermediaries, including CSDs. ESMA is keen to understand the views of this group of stakeholders on the new obligations stemming from the SRD2 transposition, in particular as regards their role to ensure proper communication and transmission of information and the facilitation of shareholders rights.

6.2. Questions

6.2.1. On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q59: Have you encountered any doubt or ambiguity in assessing which Member State and NCA is competent over your activities in this area?

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response, identifying what legislative changes could be made, if any.

2000 character(s) maximum

Due to the fragmentation of national transposition disciplines, intermediaries do not know the distribution of competences between authorities in each country. It would be appropriate for ESMA to set up and maintain a register updated by each authority that would clearly state the competences of each national authority regarding SRD II.

Q60: How frequently do you receive shareholder identification requests when compared to the pre-SRD2 period?

- ☒ More frequently
- ☐ With the same frequency as before
- ☐ Less frequently

* Please explain and provide specific data to corroborate your response.

2000 character(s) maximum

Even before the adoption of SRD II, requests for shareholder identification data to Italian intermediaries were very frequent. However, since there was no EU regulation requiring a response, intermediaries often did not proceed in order not to breach the privacy and the data' protection of their clients. With SRD II, the number of requests did not particularly increase, but the number of responses did. It should also be noted that, according to our members experience, roughly 15 per cent of the SID requests received did not meet the SHID requirements and were not processed.

Q61: Following the entry into application of the SRD2, when receiving a shareholder identification request, have you encountered obstacles in providing all the required information regarding shareholder identity to requesting issuers?

- ☒ Yes
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response. Please also clarify how long it takes you to provide the requested information and if the obstacle was related to the identification of a "beneficiary shareholder" on whose account the shares are held by a nominee shareholder in its own name.

2000 character(s) maximum

The main problem is the identification of the 'beneficiary shareholder' and it depends on where the intermediary is located along the intermediary chain. In the case of an "own account", it is possible to indicate the identity of the shareholder to the issuer. If, on the other hand, the reference is to a "nominee account", the answer may be provided by the next intermediary along the chain. The issuer will then have the burden of reconstructing the data by aggregating the information received.

Q62: With reference to the previous question, can you please describe if your response would change in connection to cross-border shareholder identification, especially when involving third-country intermediaries?

- ☐ Yes, with regard to all cross-border shareholder identification
- ☐ Yes, with regard to cross-border identification involving a third country intermediary
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

Q63: Following the entry into application of the SRD2, is the shareholder identification request and the relevant information required (*e.g.*, shareholder identity data, *etc.*) always transmitted to you in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- ☐ Yes
☒ No
☐ Don't know

* Please explain and provide evidence to corroborate your response, specifying what type of standard you use.

2000 character(s) maximum

As mentioned in the answers to the general questions, not all parties involved in the intermediary chain comply with market standards. This do not allow for fully STP-based flow management.

Q64: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (*i.e.*, Article 3b) (*e.g.*, general meeting notice, notice of participation, *etc.*) in a format which allows straight-through processing within the meaning of Article 2(3) of the Implementing Regulation?

- ☒ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *no*, please explain why and if this causes any problems in practice.

2000 character(s) maximum

Intermediaries are obliged to transmit information on the basis of formats that allow STP processing pursuant to Art. 2(3) of the Implementing Regulation. However, issuers and proxy agents are not similarly obliged and do not use ISO messaging. Therefore, the STP flow is often interrupted.

Q65: Following the entry into application of Article 3b, have you experienced any improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries?

- ☒ Yes
☐ No
☐ Don't know

* Please explain and provide evidence to corroborate your response, clarifying how long it took you to provide the requested information.

2000 character(s) maximum

In last years, some improvements have been made in the flow of information between the different participants in the chain: new standardization processes as well as revisions of existing standards have been initiated. However, it should be pointed out that within the intermediary chain, STP communication between intermediaries proved to be efficient thanks to ISO messaging standards and SWIFT communication channels, even before SRD II. The entry into force of SRD II, on the other hand, has focused attention on flows from the issuer to the intermediary chain and from the intermediary chain to the issuer. This is because issuers are generally unable to receive and process ISO formats causing delays and/or interruptions in communication flows.

Q66: Following the entry into application of the SRD2, have you experienced any changes in how frequently you receive upstream voting indications from investors at any level of the chain of intermediaries?

- ☐ Yes
- ☐ No
- ☐ Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Not available

Q67: What type of system(s) have you put in place to communicate with shareholders in compliance with Article 2 (4) of the Implementing Regulation?

- ☐ A fully-electronic system
- ☐ A mixed electronic and paper form system
- ☐ Other

* Please explain and provide evidence to corroborate your response. In case you put in place a fully-electronic system, please clarify if that is a proprietary system or a solution developed by a service provider.

2000 character(s) maximum

Not available

Q68: Do you provide to your clients any electronic tools to facilitate the exercise of shareholder voting, including at cross-border level?

- ☐ Yes
- ☐ No
- ☐ Don't know

Q69: Have you experienced difficulties in complying with the timelines envisaged by Article 9 of the Implementing Regulation (e.g., the cut-off date)?

- ☒ Yes
- ☐ No
- ☐ Don't know

*

Please explain and provide evidence to corroborate your response. In case your answer is *yes*, please specify what difficulties.

2000 character(s) maximum

Problems occur especially when flows are not STPs. In the absence of automated processes, it is difficult to meet the timeframes laid down in Article 9 of the IR.

Q70: Following the entry into application of the SRD2, in which way have you ensured that the costs you have charged for providing the services of Chapter Ia are:

a) Transparent. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

Please refer to the answer to questions Q8 and Q11.

b) Proportional. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

Please refer to the answer to questions Q8 and Q11.

c) Non-discriminatory. Please explain and provide evidence to corroborate your response, clarifying also what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d.

2000 character(s) maximum

Please refer to the answer to questions Q8 and Q11.

Q71: Do you consider that Market Standards elaborated by the industry for the application of the provisions of Chapter Ia are useful to complete the regulatory framework in this area?

- ☐ Not at all
- ☐ To a limited extent
- ☐ To a large extent
- ☒ Fully
- ☐ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Italian intermediaries have always been in favour of the definition and subsequent adoption of market standards. In fact, standards represent an indispensable operational complement to L1 and L2 national and EU regulatory provisions.

We believe that, as things now currently stand, there is a need for a comprehensive review of existing standards to adapt them to market developments and issuers' activities, as well as a rethinking of governance in terms of supranational bodies (made up of representatives of all parties in the intermediary chain, issuers and CSDs) delegated to review and create new standards.

Contact

[Contact Form](#)