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

Fields marked with * are mandatory.

Responding to this Call for Evidence

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

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

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

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

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this Call for Evidence

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

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

1. Executive Summary

Reasons for publication

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

Contents

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

Next Steps

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

2. Introduction

2.1. Background and legal mandate

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

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

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

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

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

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

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

[1] Final report of the high-level forum on the Capital Markets Union 'A new vision for Europe's capital markets' https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.
[2] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Capital markets union 2020 action plan: A capital markets union for people and businesses, COM/2020/590 24.9.2020.
[3] The CMU action plan further clarified that "the Commission plans to investigate in particular the following: (i) the attribution and evidence of entitlements and the record date, (ii) the confirmation of the entitlement and the reconciliation obligation, (iii) the sequence of dates and deadlines, (iv) any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and (v) communication between issuers and central securities depositories (CSDs) as regards timing, content and format."

2.2. Scoping of the exercise

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

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

2.3. Purpose and structure of the Call for Evidence

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

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

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

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

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

Based on the selection of your stakeholder type under Q1, you may be invited to answer to the ensuing targeted sections designed specifically for the following groups of stakeholders:
- Section 4 (Q26-Q41): Investors (in particular, shareholders of EU listed companies);

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

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

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

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

2.4. Next Steps

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

3. General questions

3.1. Introduction

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

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

3.2. Questions

3.2.1. Background

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

- (●) Yes
- ( ) No

* Please indicate your name and contact information.

2000 character(s) maximum

Eumedion
Zuid Hollandlaan 7
2596 AL THE HAGUE
THE NETHERLANDS
rients.abma@eumedion.nl

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

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

2000 character(s) maximum

Eumedion is the Netherlands-based, dedicated representative of the interests of 54 institutional investors, all committed to a long term investment horizon. Together our members invest over € 8 trillion of capital in equity and corporate non-equity instruments. Eumedion aims to promote good corporate governance and corporate
sustainability at the Dutch listed companies our members invest in. Since 2007, Eumedion has organised dialogues between its members (institutional investors) and boards and staff of the largest Dutch listed companies. A dialogue can be initiated by the company and by Eumedion and/or its members. Besides this, Eumedion issues so-called alerts to its members in the situation of a controversial shareholders' meeting voting item.

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

(●) EU Actor ( ) Non-EU Actor

* Please specify:

- ( ) Pan-European Organisation
- ( ) Austria
- ( ) Belgium
- ( ) Bulgaria
- ( ) Ireland
- ( ) Italy
- ( ) Latvia
- ( ) Lithuania

- ○ Croatia
- ○ Cyprus
- ○ Czechia
- ○ Denmark
- ○ Estonia
- ○ Finland
- ○ France
- ○ Germany
- ○ Greece
- ○ Hungary
- ○ Luxembourg
- ○ Malta
- ◉ Netherlands
- ○ Poland
- ○ Portugal
- ○ Romania
- ○ Slovak Republic
- ○ Slovenia
- ○ Spain
- ○ Sweden

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

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

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Before Commission Implementing Regulation 2018/1212 was effective (as per 3 September 2020), many institutional investors were approached by proxy solicitors and corporate governance consultants to find out what their holdings in a specific listed company are. After this Commission Implementing Regulation came into force, the number of requests has dramatically decreased. This implies that the shareholder identification process via custodians has become more efficient and effective.

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

In 2020, the High-Level Forum on CMU recommended to harmonise the definition of a shareholder at EU level in order to improve the conditions for shareholder engagement. The High Level Forum stated: “The lack of an EU definition of “shareholder” makes it more complex, risky and thus costly for issuers and intermediaries to identify who has to be informed and who is entitled to exercise the rights associated with the ownership of a security. As a result, shareholders continue to face significant difficulties in exercising their rights, especially in a cross-border context, making it a strong case for an EU harmonised definition of shareholder.” Eumedion concurs with this statement and would like to add that the lack of a harmonised definition of “shareholder” also complicates the possibilities to send confirmations to the shareholders that their votes have been appropriately registered and counted at the shareholders’ meeting. Although we are in favour of a harmonised definition of “shareholder”, it should not hinder recent market-led initiatives to enable investors in pooled funds to vote by themselves on shareholders’ meetings proposals (instead of the pooled fund manager).

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

See our answer to Q4.

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

Many of our members are only notified of a possible vote rejection (i.e. the vote instruction was not transmitted in an orderly way) on an ex post basis. This implies that the transmission of information, as referred to in Art. 3b paragraphs 4 and 5 of the SRD, does not take place “without delay”.

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

We have seen a further increase in the average number of votes cast at shareholders' meetings of Dutch listed companies following the entry into force of Art. 3c and the Implementing Regulation. This implies that – overall – the process to facilitate the exercise of shareholder rights by intermediaries has improved. At the same time, our members still experience many problems on exercising their voting rights: 1) the average, so-called, effective cut-off date for casting votes (i.e. the company's deadline for registering the vote + the days needed by the custodian to process the voting instruction through the voting chain) is in many EU markets ten to fifteen days ahead of the shareholders' meeting date. In EU markets that allow a relatively short period to convene a shareholders' meeting (e.g. 21 days as allowed by Art. 5 of SRD) there is hardly any room to engage with the company on specific voting items and to conduct an in-depth analysis of all voting items. This may endanger the institutional investors' commitment to vote in an informed manner. 2) it is sometimes difficult for institutional investors to receive an entry card for physical attendance at a shareholders' meeting. 3) we observe that sometimes voting instructions were incorrectly processed in the voting chain. E.g. at the 2022 NN Group AGM some 13.5 million votes (almost 6.1% of the total number of votes cast at this shareholders meeting) were mistakenly counted as 'against votes', while the shareholder concerned intended to vote in favour. We also observe some strong year-to-year variations in voter turn-out levels at the shareholders' meetings of one and the same company. This may indicate that the voting process was not flawless. 4) many markets have set detailed requirements for powers of attorney (see also our answer to Q12c). 5) certain markets do not allow 'split voting'. And last but not least, not all institutional investors receive a voting confirmation if requested.

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

At intermediary level, fee schedules differ from one provider to another. Moreover, in some countries, costs are linked to representation, powers of attorney, or physical attendance remain a strong barrier.

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

See our answer to Q7, in particular regarding the effective cut-off dates set by custodians that have their registered offices outside the EU.

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

See our answer to Q7. In particular the lack of vote confirmations leads to uncertainty for institutional investors as to whether their votes have been correctly registered at the shareholders' meeting and what the result of the voting was. We are not aware that (electronic) voting confirmations are provided as a market standard in any of the EU Member States.

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

See our answers to Q7, Q8, Q9 and Q10.

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

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

- ◉ Yes
- ○ No
- ○ Don't know

* Please explain and corroborate your answer.

See our answer to Q7 regarding early effective cut-off dates set by custodians.

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.

See our answer to Q12c regarding requirements of powers of attorney.

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

- (•) Yes
- ( ) No
- ( ) Don't know

* Please explain and corroborate your answer.

See our answer to Q8.

e) Any other issue.

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

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

a) Shareholder identification;

2000 character(s) maximum

b) Transmission of information;

2000 character(s) maximum

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

Powers of attorney often need to be submitted as hard-copy, legalised documents, requiring manual processing and physical submission. This represents a hurdle for improving the efficiency of the voting process. This requirement could be organised more efficiently without losing its validity or importance. There should at least be a possibility for electronic submission of the required documentation and electronic processing of the information. Alternatives are i) that EU Member States should refrain from setting specific requirements for powers of attorney and ii) that EU Member States should permit the required documentation to be valid over a longer period of time. This could be part of a proposal to revise the SRD II Implementing Regulation.

d) Costs and charges by intermediaries;

2000 character(s) maximum

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

The average number of votes cast at shareholders' meetings at Dutch AGMs has increased. At the AGMs of the Dutch 'large caps' this number increased from 73.2% in 2019 to 77.2% in 2022, while this number increased from 65.9% in 2019 to 72.3% in 2022 for the Dutch 'mid caps'.
The combination of the Chapter Ia provisions and the requirement for institutional investors to explain the most significant votes (Art. 3g/Chapter Ib) engagement between institutional investors and listed companies has significantly increased and board access has significantly improved since SRD2 entered into force. E.g. the number of collective dialogues between Dutch listed companies and Eumedion members (institutional investors), organised by Eumedion, increased from 49 in 2019 (so before the implementation of SRD2 in Dutch legislation) to 76 in 2020 (so after the implementation of SRD2 in Dutch legislation) and 81 in 2021. This increase is partly caused by the corona pandemic (that limited in-person access to shareholders' meetings) and partly by SRD2. The introduction of the annual advisory vote on the remuneration report and of the periodic 'renewal' of the remuneration policy (at least every four years) as a result of the implementation of SRD2 in Dutch legislation has, in particular, led to more engagement between Dutch listed companies and shareholders on – at least – these topics.

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

Explanation 14b and c: see our answers to Q7, Q10 and Q12c.
Explanation 14d: Actions that can be taken are the rationalisation of rejection and reason codes, intraday related to vote acceptance and identification of double voting rights.

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

2000 character(s) maximum

3.2.3. On proxy advisors

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

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

- (•) Yes
- ( ) No
- ( ) Don't know

* Please explain and suggest any need for change.

2000 character(s) maximum

In our experience, all main proxy advisors apply Art. 3j SRD.

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

- ( ) Yes
- ( ) No

- (●) Don't know

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

2000 character(s) maximum

For institutional investors it is important that all main proxy advisors apply the 'Best Practice Principles for Shareholder Voting Research' that were prepared in answer to Article 3j of the Shareholder Rights Directive. It is also important that the application and effectiveness of these Best Practice Principles is supervised by an independent oversight committee. For institutional investors it is not that important where the main proxy advisors are incorporated as long as they have an establishment in the EU and that they apply the afore-mentioned Best Practice Principles in which the requirements stemming from Article 3j of the Shareholder Rights Directive are incorporated. If national supervisory authorities have enough trust in the governance structure of the Best Practice Principles, there is no need for EU Member State supervision on the application of the Best Practice Principles.

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

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

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

2000 character(s) maximum

See our answer to Q17.

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

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

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

2000 character(s) maximum

We are aware that the French proxy advisor Proxinvest decided to exit the Best Practice Principles process, mentioned in our answer to Q17, even though it committed voluntarily to abide by the principles themselves (source: Annual Report 2022 of the Independent Oversight Committee of the Best Practice Principles for Providers of Shareholder Voting Research & Analysis). However, no formal monitoring of the Proxinvest practices will take place any longer.

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

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

Our members are rather positive on the quality of the proxy research conducted by the main proxy advisors, in particular following the implementation of the Best Practice Principles for Providers of Shareholder Voting Research & Analysis. They also mention that the quality has increased over the last number of years.

b) Disclosing general voting policies and methodologies;

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

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

Our members are very positive about the transparency of the main proxy advisors' process to update the general voting policies and methodologies. All stakeholders have ample room to comment on proposals to amend the general voting policies.

c) Considering local market and regulatory conditions;

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

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

We have the impression that at some points the proxy advisors' general voting policies are not fully aligned with national corporate governance codes. For instance, most voting guidelines are more stringent than the best practice provisions on independence of non-executives and the number of board memberships. However, our members do not have problems with proxy advisors' voting policies being a bit more 'strict' than local market and regulatory conditions.

d) Providing information on dialogue with issuers;

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

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

Not all main proxy advisors send a copy of its draft proxy research to the company in question to review the factual descriptions and data. This has sometimes led to frustration and irritation among listed companies. At the same time, proxy advisors are confronted with extreme time pressures in the peak of the 'AGM season', especially in markets with a relatively short period to convene a shareholders' meeting and with early effective cut-off dates set by custodians. Moreover, not all proxy advisors inform their clients about any changes in their initial research document and voting recommendations as a result of the dialogue with the company in question.

e) Identifying, disclosing and managing conflicts of interest.

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

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

The Independent Oversight Committee of the Best Practice Principles stated in its 2022 Annual Report that proxy advisor should provide as much data as possible on nature of revenue sources to enable stakeholders to assess risks of conflicts of interest. E.g. proxy advisors should disclose the comparative size and nature of revenue resources. How much of the revenues is earned by proxy research and recommendations and how much is earned by ESG advice, consultancy and/or securities class action services? If the ancillary services constitute a large proportion of total revenues, it could have a negative consequence on the perceived independence of proxy advisors and could be detrimental to the confidence clients have in the research. More transparency is, therefore, needed.

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

For example, proxy advisor ISS changed its standard voting policy for 2022 in the sense that it expected from any listed company that emits a significant amount of CO2 emissions, to have appropriate CO2 emission reduction targets be formulated and to report in detail about climate risks. Shareholders of the relevant companies that do not comply with this policy were advised to vote against the (re)appointment of the responsible directors and/or against the discharge of the board. Proxy advisor Glass Lewis announced from 2022 onwards it expects all Boards of Dutch listed companies to report on how they have overseen key sustainability issues. If that is lacking, Glass Lewis will advise their clients to vote against the (re)appointment of the chairman of the governance committee or of another committee.

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

* Please explain and provide evidence to corroborate your response, specifying whether your answer is the same when considering proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

2000 character(s) maximum

We experience a positive correlation between the quality of the proxy research and the length of the convocation period for the shareholders' meeting. If the shareholders' meeting agenda and the explanations to the proposals are published rather early (e.g. 42 days prior the date of shareholders' meeting, as is the case in The Netherlands), proxy advisors have more time to analyse the voting items, engage with companies on the specifics of the management (and shareholder) proposals and to take the company's comments into account in the final research report and in the voting recommendations. In that scenario also the proxy advisors' clients have more time to eventually engage with the company by themselves regarding any remaining questions on the proposals. As the effective cut-off date set by custodians is – at least in some EU markets, including the Netherlands – between ten and fifteen days prior to the shareholders' meeting date, we believe the minimum convocation date for shareholders' meetings in the SRD (Art. 5 (1): 21 days for regular meetings and 14 days for extraordinary meetings) needs reconsideration.
There is also a positive correlation between the quality of the proxy research and the proxy materials of the issuer. If companies are not fully transparent on the intentions, explanations and motivations of their proposals, they cannot expect that the quality of the proxy research is up-to-standard.

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

* Please explain and provide evidence to corroborate your response, *e.g.,* vis-a-vis the regulatory approach taken elsewhere.

2000 character(s) maximum

All main proxy advisors each publish annual, public-available statements of compliance, featuring detailed information on how the proxy advisors comply with the Best Practice Principles for Shareholder Voting Research (BPP). BPP signatories' reporting is overseen by an Independent Oversight Committee (IOC), which is comprised of both investor and issuer representatives, as well as independent members, including an independent oversight Chair. The IOC, among other things, conducts an annual revies process for BPP Signatories' compliance statements and publishes its findings on an annual basis to hold all Signatories accountable. These Annual Reports contain concrete examples of how BPP Signatories' annual reporting and the IOC review process has led to improvement in proxy advisor practices with respect to each of the three core Best Practices Principles. We believe this well-governed self-regulatory approach is credible, well-established, and working. In that respect it is illustrative that in 2021 the regulators in the United States chose to favour the approach of monitored self-regulation embodied in the BPP initiative and stepped back from the controversial plan of expansive rule-making for the proxy advisory industry.

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

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

If proxy advisors are providing ESG-related advice to issuers, this may indeed lead to new conflicts of interest. Such advice should be covered by the conflicts-of-interest policy that details the proxy advisor's procedures for avoiding or addressing potential or actual conflicts of interest that may arise in connection with the provision of services.

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

In our experience the accuracy and quality of the AGM agenda research by proxy advisors have a positive correlation with the length of the period between the date that the AGM agenda, the text of the proposals and the written explanations by the issuers become available and the date to send the analyses and voting recommendations to the clients (mostly 15-20 calendar days prior to the AGM date). We therefore believe that the minimum convocation period of 21 days for annual general meetings as stipulated by the Shareholder Rights Directive (Article 5) should be reconsidered. We believe the minimum convocation period should be doubled.

Contact

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