

# 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](http://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](http://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](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>
<b>Chapter Ia</b>	<b>Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights</b>
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
<b>Article 3j</b>	<b>Transparency of proxy advisors</b>
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*

Deutsche Börse Group,  
Group Regulatory Strategy,  
Sujata Wirsching,  
Senior Policy Advisor  
sujata.wirsching@deutsche-boerse.com  
EU Transparency Register No. - 20884001341-42  
Lobbyregister Deutscher Bundestag No. R001339

\* **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*

Issuer:

Deutsche Börse Group is an issuer with its shares listed in Germany/DAX-40.

Intermediary/CSDs:

Clearstream Banking AG (CBF). As a central securities depository (CSD) based in Frankfurt, we provide the post-trade infrastructure for the German securities industry offering access to a growing number of international markets. Throughout 50 years of listening to our customers and supporting global financial markets with our solutions, we have evolved to become a global player at the forefront of our industry.

Clearstream is an important player in the securities services industry with consistently high credit ratings. As an international central securities depository (ICSD) based in Luxembourg, we provide post-trade infrastructure and securities services for the international market and 59 domestic markets worldwide, with customers in 110 countries.

LuxCSD provides Luxembourg's financial community with services for settlement in EUR central bank money as well as with issuing and custody services for a wide variety of domestic and international securities including investment funds.

As a central securities depository (CSD), LuxCSD offers custodian banks and distributors across Europe excellent custody and value-added services as well as a highly efficient settlement process with access to many counterparties. Settlement of securities transactions in central bank money reduces risk for financial market participants.

Proxy Advisor:

Founded in 1985, Institutional Shareholder Services (ISS) is a premier provider of independent corporate governance, sustainability, and fund intelligence research, specialized data and analytics, and actionable insights for the world's leading capital market participants.

Where indicated, ISS' response to the Call for Evidence represents its views in its capacity as a service provider to institutional investors of governance research and proxy advice and recommendations.

\* 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 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 checked="" type="radio"/> Germany        | <input type="radio"/> Slovenia        |

- Greece
- Hungary
- 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*

Since the national implementation of SRD II, shareholder identification has improved (i.e. on data quality and transfer rate), it is nevertheless important that some issues still persist across EU Member States.

The implementation of the SRD directive has led to new challenges: in their national implementation, some Member States have extended the scope of assets beyond shares listed on a regulated market within the EEA. It is therefore difficult for a first intermediary from another jurisdiction to check whether a disclosure request is valid or not. Such an extended scope cannot be called nor classified as SRD2 impact.

Another complexity for first intermediaries is the “authentication” that the requests originate from the issuer, as issuers appointed 3rd parties to transmit the information via the SWIFT network. The authentication process for an ISIN is a check that must be performed manually based on authorization documents, signature checks and other documents. In case, the issuer doesn't come from the home market of the first intermediary, the information and legal details are often provided in a foreign language or are not available. The impact of SRD II implementation on shareholder identification may differ significantly depending on the EU MS, where we have seen that some issuers are more interested on the identity of their shareholders, than other issuers:

Between January 2021 and September 2022, a total number of 3353 unique disclosure request IDs for 1173 unique ISINs have been processed within the Clearstream universe (CBF, CBL, LuxCSD).

CBF market specific: 1094 unique request IDs have been received from 216 different German issuers so far.

**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*

Yes, the introduction of a harmonised “shareholder” definition will help reduce differing interpretations and increase alignment, processes and efficiency throughout the custody chain. Because capital markets currently rely on various definitions of “shareholder” across EU Member States, the identification of shareholders is a complex process and one that may unintentionally raise barriers for shareholders seeking to exercise their rights, particularly in a cross-border context. An EU-harmonised definition would support a coherent legal framework across all EU Member States and would be consistent with Action 12 of the European Commission’s action plan for the Capital Markets Union, which called for an EU-wide harmonised definition of the term “shareholder.”

Action 12 of the European Commission’s action plan for the Capital Markets Union already called for an EU-wide harmonized definition of the term “shareholder” which we support. A harmonized definition of “shareholder” would simplify processes of identification of shareholders.

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.

While the benefits of having a harmonised definition of shareholder are significant, the implications of such a definition on EU laws, national laws (in particular securities laws and corporate laws), and more generally on security rights and market practises shall not be underestimated and would have to be thoroughly analysed.

**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*

We support the selected definition.

For avoidance of any further doubts. An investment fund is an independent legal subject and therefore the investment fund can be classified as an Ultimate Beneficial Owner (UBO). Investors in an investment fund or any other collective investment schemes are not to be considered as UBO.

**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*

The question intends that the forwarding of information along the chain of intermediaries did not work adequately before SRD2.

This assumption is incorrect for General Meetings and Corporate Actions. Even before SRD2, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD2. The challenge, even under the application of SRD2, is the communication from the issuer into the chain of intermediaries and from the last intermediary to the end investor.

Issuers who are the source of the information according to the SRD2 must be legally obliged to use formats that fulfil security and interoperability with the first intermediary and to do so with the same quality and timeliness as intermediaries should forward this information to the end investors.

The transmission of information along the chain of intermediaries works very well for Shareholder Identification Disclosures, once the first intermediary can authenticate that the request originates from the issuer. As per the regulation every intermediary could be the first intermediary. The authentication is even more complex if the request comes from an issuer of another jurisdiction and legal documents are provided only in the issuer's national language.

The STP process is disturbed by the possibility for issuers to partially provide table 3 and 8. The issuer as the initiator must always provide a complete and high-quality data set for automated processing. Mostly in some MS the actual improvement was observed since the implementation at national level of securities codes and/or laws prescribing sending the shareholder identification request throughout the intermediaries chain.

We consider that the use of ISO 20022 format across the intermediaries chain would improve the transmission of information.

**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*

Since September 2020 investors with an account at a bank in Europe receive information about General Meetings from all EEA member states. Beforehand, the most bank customers, especially retail-investors, have just received meeting information of securities from the country of their bank.

The exercise of shareholders rights on General Meetings has still some difficulties due to special requirements of the company law in each member state.

Regular retail-investors expecting a cost-free service to exercise their shareholders rights, otherwise the costs are disproportionate to their dividend income after tax. As the issuer has interest to receive votings from their investors, it should be considered that issuers must offer a cost free solution that allows such investors to pass on their votes. Such a solution should be harmonized across Europe in technical aspects and shouldn't be unique for individual issuers. Issuers often have just their own meeting in scope instead of a harmonized experience for investors that holding shares from multiple issuers.

An improvement in digitalisation and harmonisation could make the difference.

**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*

There is a lack of transparency across Europe and thus for us it is not possible to even being able to assess whether a reimbursement of costs is applicable or proportional.

Furthermore, although the Directive and the respective National transpositions allow to charge issuers for a service, it is in practice very difficult to apply and especially for the cross-border disclosures. In this context, we support also the position of the European CSD Association (ECSDA), in that the directive made it easier to send invoices, but actually harder to validate and pay them.

**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*

Yes, Clearstream has noticed a high interest from bank customers from outside of Europe to receive Shareholder Identification Disclosure messages from us as their depository to comply with European regulation and the national transposition.

Even before SRD2, all bank customers have received Corporate Actions messages.

Even before SRD2, bank customers acting as a global custodian have received all general meeting messages. We have noticed that several European banks have extended their reporting to receive meeting information from additional markets. We have also noticed less interest from intermediaries outside of Europe to receive General Meeting information from European issuers.

**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*

The new Shareholder Identification Disclosure process based on ISO20022 formats has been well established by the industry. The authentication at first intermediary level requires manual efforts to ensure afterwards STP across the chain of custody. These efforts shouldn't be underestimated as they guarantee to the intermediaries that the request is valid and can be answered (sensitive data will be shared), finally the issuer benefits from this trusted process as well.

Even before SRD2, all bank customers have received Corporate Actions messages and can execute their rights via the chain of custody. As cash and securities proceeds are processed on the bank accounts, it is imperative that the issuer and their appointed agent also consider issuer-CSD/ intermediary rules and dependencies to ensure the interoperability and security of the information transmitted to the intermediaries.

European retail investors do receive more General Meeting messages, but there are still limitations for such investors to execute voting rights across borders. Issuer should be obliged to cover instruction costs as they have an interest to hear the voice of their investors.

There are varying interpretations of the Directive across markets and intermediaries; however, the volume of participating intermediaries and information distribution across the chain has increased as a result of intermediaries intending to delivery SRDII compliant services.

**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) In markets where the issuer-CSD is acting as issuer agent to collect shareholder information special requirements or barriers are set for third party agents and often the processing of their request is delayed by several days. Such issuer-CSDs also trying to misuse the usage of new ISO20022 formats and STP processes for securities which are not in scope of the implementing regulation. This led into additional checks at following intermediary levels to avoid the disclosure of data that are not covered by SRD2. agents also define market specific fields to be used in the response, which is not in line with the regulation (funds classification, salutation, gender, tax id, account numbers,..). In our role as first intermediary we have noticed a lot of invalid or incorrect disclosure requests addressed to Clearstream. Some issuer agents do not comply with market standards. The supporting material to authenticate that the request originates from the issuer is often not sufficient or provided in time.

b) When transmitting information, the timeline of article 9 IR, which are not tailored to the requirements of national company law, create unnecessary additional efforts and avoidable costs. There is limited benefit for (retail) investors to receive the information about a mandatory action or partial information about an upcoming event several months before the Record-Date.

c) A pre-requisite for an efficient shareholders rights execution is a binding and fully reliable information from the issuer to the intermediaries.

d) Beside the fact that the costs and reimbursement processes in each jurisdiction are different, information like the invoice address of the issuer is not transmitted in a machine-readable format. The entire reimbursement process for intermediaries against the issuers is not automated.

**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.

The record date for meetings within the same country may differ, depending on the type of security. There is even more complexity for investors to understand the differences across the different jurisdictions.

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

- Yes  
 No  
 Don't know

\* Please explain and corroborate your answer.

N/A

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.

There is no harmonized General Meeting process across Europe.

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

- Yes
- No
- Don't know

\* Please explain and corroborate your answer.

Some markets in Europe do not have an infrastructure where the issuer-CSD is directly connected to issuers or their agents for this business purpose, but other well established and functional processes. To establish such a process requires a lot of effort and costs that shouldn't be solely with the issuer-CSD. The issuer is the initiating party to distribute information to their investors. It should be considered that an authentication that the information originates from the issuer and the content follows market standards (T2S/CASJ/CAJWG /ScoRE/local requirements, national company law) as well as the issuer-CSD minimum requirements can only ensure a fully automated process without negative impact to any party in the process.

e) Any other issue.

- Yes
- No
- Don't know

\* Please explain and corroborate your answer.

N/A

**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*

A central database published by ESMA where the ISINs are listed that are in scope of SRD2 – ESAP could be a way forward. This avoids any misinterpretation or self-established rules by markets or issuers and their agents.

No national country can decide to go beyond the clear definition of “shares which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.”

If the disclosure response is the basis for following processes like the participation/voting at a general meeting or a corporate action (e.g. dividend payment), this should be clearly communicated by the respective markets.

b) Transmission of information;

*2000 character(s) maximum*

The post-trade process at intermediary level does not differ much between asset types or countries. SRD2 defined rules for a limited number of assets (tradable equities on a regulated market), resulting a split process at all intermediaries for same countries and between European and non-European assets. When transmitting information, the timeline of article 9 IR, which are not tailored to the requirements of national company law, create unnecessary additional efforts and avoidable costs. There is limited benefit for (retail) investors to receive the information about a mandatory action or partial information about an upcoming event several months before the Record-Date, especially when there is a media-breach to the end investor. Not all investors want to be bombarded with information at a very early stage.

c) Facilitation of the exercise of shareholder rights;

*2000 character(s) maximum*

The expectations and processes for retails and institutional investors are far apart from each other. As long as investors have to pay for the execution of their shareholders rights, not many retail investors are willing to participate.

d) Costs and charges by intermediaries;

*2000 character(s) maximum*

There is a lack of transparency across Europe and thus it is not possible to even being able to assess whether a reimbursement of costs is applicable or proportional.

Further, CSDs are neutral in that context, however, we note that the incoherent transposition of the SRD II at the national level does not contribute to the efficiency of the processing and high responsiveness.

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 Directive has created a lot of new challenges. A harmonized process across Europe cannot be reached by a directive where 27 different countries must adopt changes in multiple national laws, mainly corporate law.

The definition of strict rules for tradable equities on a regulated market is a good starting point, but intermediaries cannot develop ever new special processes for some kind of assets held in custody. Every adoption requires a lot of changes to avoid interruption of existing services: e.g. the distribution of proceeds to an investment funds investor, an interest payment to bondholders or the dividend of an equity holder where the security is not tradeable on a regulated market or any Corporate Actions on non-European assets following more or less the same internal processes at intermediary level. This ensures the assets from investors contracted with a European bank receiving a similar service from their bank.

More shareholders are now being proactively notified of shareholder meetings for their portfolio holdings and allowed the option to participate in electronic voting through the custody chain. This may not yet have resulted in greater overall participation rates of voting at shareholder meetings; however, shareholders have more capability to choose to participate as a result of the Directive

**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*

- a) Yes, we recommend harmonizing the record-date for General meeting across Europe. Considering issuers have the wish to move the record-date as close to the meeting date as possible, the challenge will be with the notification. Distributing notifications to investors several weeks before record-date could require a constant monitoring of balance changes and post-processing of investors with a new holding in the applicable security. Additional costs will occur for issuers. A record-date about 3 weeks prior to the meeting is reasonable in our opinion.
- c) Additional paperwork or special confirmation of holdings should be avoided, the same for pre-advice to the issuer that the investor may want to exercise their voting rights.
- d) Some markets in Europe do not have an infrastructure where the issuer-CSD is directly connected to issuers or their agents for this business purpose, but other well established and functional processes. To establish such a process requires a lot of effort and costs that shouldn't be solely with the issuer-CSD. It should be considered that the authentication that the information originates from the issuer and the content follows market standards (T2S/CASG/CAJWG/SMPG/ScORE/local requirements, national company law) as well as the issuer-CSD minimum requirements can only ensure a fully automated process.

**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 ESMA should publish a list of ISINs (equities of an EEA issuer that are tradable on a regulated market). Further clarification on the reimbursement of costs from intermediaries against issuers requires also a clear guideline how to address invoices and to whom.

### 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*

ISS recognizes that while Best Practice Principles (BPP) definition of a “proxy advisor” is compatible with the definition offered by ESMA in its 2015 “Follow-up Report on the Development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis,” it is broader than the ESMA definition. It is our view, however, that the BPP’s definition has captured the relevant market participants who are either formally BPP signatories or are informally adhering to the BPP. For these reasons, we do not see a need right now to revisit the definition.

**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*

N/A

**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*

N/A

**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*

N/A

**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*

Yes, ISS generally believes that disclosures provided by the Best Practice Principles (BPP) signatories since SRD II came into force effectively address the BPP designed to ensure the quality, independence, and reliability of the providers' research and to serve the interests of investor customers while treating issuers and other stakeholders with fairness, accuracy, integrity, and responsiveness. The BPP Independent Oversight Committee (IOC) conducts an annual independent review of the BPP signatories' compliance statements and publicly publishes its overall findings. In its 2022 annual report, the IOC found "overall good reporting practices" by the providers across the Best Practice Principles of service quality, conflict of interest avoidance and management, and communications policy.

In addition, ISS understands that at least two proxy advisors who are not currently BPP signatories have publicly stated they are adhering to the BPP. The fact that the principles have been formally and informally adopted across the industry by providers of varying sizes and research capacities testifies to the credibility and universality of the Best Practice Principles. Further, ISS believes that the strength of the BPP is that the principles foster continuous assessment of and improvement upon internal governance practices, and the disclosures thereof, by providers.

Finally, ISS agrees with the IOC's conclusion in its 2022 report that "...it [is] best for stakeholder trust of the industry as a whole if the BPP covers the maximum number of constituents, including with adherents producing annual compliance statements reviewed by the IOC."

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

N/A

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

N/A

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

N/A

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

\* Please explain and provide evidence to corroborate your response.

*2000 character(s) maximum*

Yes, from ISS' perspective, the proxy advisory industry has responded to investor demand to include ESG considerations in the preparation of their research, advice and voting recommendations. This integration has happened naturally, as recent proxy seasons have featured a diversity of ESG agenda items. As described later on, ISS too has expanded its ESG research offerings.

One concrete example supporting ISS' view are the 2022 and 2021 compliance statements of the BPP signatories, which explain – or summarize at a high-level while providing hyperlinks to detailed explanations - the providers' experience with ESG research and proxy voting operations, covering, among other things, E- and S-focused voting policies; engagement solutions; alleged corporate controversy alerts; and analyst staff training and expertise. Such information is also readily available on the providers' websites.

**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*

ISS would argue that the EU regulatory vehicle most effectively driving the harmonization of informing investors is the formation of the BPPG, the benefits of which are generally independent of a provider's registration status in the EU. The BPPG website features signatories' annual compliance statements and IOC's annual report reviewing signatories' practices and compliance statements; provides the history of the BPP and the IOC in addition to providing transparency into the membership of the BPPG and the IOC and access to the IOC open forum, which allows all stakeholders to be informed by or engage in the discussion regarding the proxy advisor industry and the BPP. The website provides valuable transparency to investors and, indeed, the public about the industry's practices and the evolution and independent oversight thereof.

In addition, ISS would like to note that while the transparency just described is helpful to investors' understanding of the industry as a whole, investors also conduct their own due diligence of the proxy advisory firms they use or are considering using. These due diligence questions and conversations are part of an ongoing dialogue between investors and their current or potential service provider(s). Indeed, it is a direct way for investors to assess the quality, reliability, and independence of the research offered by proxy research and advice providers. This is in line with investors' own due diligence and regulatory obligations to oversee their service providers.

As noted earlier, the adherence to the BPP across all providers operating in the EU would further the harmonization benefiting investors.

**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*

ISS agrees with the view that there is no market failure in the industry, as was ESMA's determination in 2013. For that reason, ISS supports the continuation of the comply-or-explain framework grounded in the comprehensive and robust BPP. The BPP are universal principles that hold merit across all jurisdictions. Indeed, the BPPG-IOC framework is an exemplary model of a well-functioning code of conduct.

**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*

New digital technologies open up opportunities for efficiency improvements across the entire trade and post-trade value chain. That could also be the case for the exercise of shareholder rights. Today, the exercise of rights such as participation in or vote at general meetings, bringing in proxy proposals or challenging the outcome of votes at general meetings can be difficult. Often it remains paper-based and requires physical attendance, which triggers considerable costs. In a cross-border context, investors, in addition, face divergent national corporate laws and longer – and hence more expensive - intermediation chains. Other costs come from data transfer, when the information relevant for the exercise of ownership rights has to be transferred along a long chain of intermediaries.

The new digital technologies such as DLT have the potential to streamline these processes and allow for a more efficient exercise of rights and transfer of information. It could lead to a more effective communication between issuers and investors and to cost reductions.

At the same time, any possible legislative action would have to remain technology-neutral, and it would need to be ensured that the security of the whole process is not impaired. There are currently challenges to the use of new technologies such as DLT. These challenges relate to:

- (i) legal and regulatory barriers in a number of EU countries regarding the acceptance of a digital or electronic vote by the issuer or their agent,
- (ii) the identification process,
- (iii) online communication during general meetings, and
- (iv) the complexity of security and trustworthiness requirements associated with the GDPR.

**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*

N/A

**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*

We are able to identify most of our beneficial owners.

**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*

Intermediaries

b) For what purpose the request was made;

*2000 character(s) maximum*

Overview shareholder base to steer investor relations activities and for internal reporting.

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

*2000 character(s) maximum*

When requested as per agreement with the service provider.

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

*2000 character(s) maximum*

High because of contractual agreements

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

%	<i>Domestic</i>	<i>EU</i>	<i>Non-EU</i>
< 90%	x	x	x
[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*

Not meaningfully

**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*

N/A

**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*

We assume so, but the request is submitted by our service provider.

**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*

N/A

**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*

In relation to AGM of DBAG: Transmission of Golden Operational Record (GOR) via WM

**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*

**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*

In accordance with article 16 (1) of the Articles of Incorporation of Deutsche Börse Aktiengesellschaft, all shareholders who have registered in due time and whose shares are entered in the share register of the Company have the right to attend and vote at the virtual Annual General Meeting.

**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*

Stable participation rate since 2019 of 73+ %

**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 to our knowledge.

**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

N/A

### 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

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

No

**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

N/A

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

N/A

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*

N/A

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*

N/A

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*

N/A

**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

N/A

**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

N/A

**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

N/A

## 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*

Transposition of the Directive into 27 Member State laws result a complex structure. Often not transparent or even clarified yet, which NCA is in charge.

As regulated entities, we have an obligation to report to our regulatory and supervisory authorities cases of non-compliance with applicable rules. But as yet, we have no clear understanding of to whom, and how, we should make these 5 reports. We believe that it is possible that many regulated entities will be under an obligation to report to twenty-seven separate national competent authorities.

**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*

Germany: Before SRD2, the identification of shareholders was only possible for registered shares. Only a few companies requested from nominees in their share register the underlying holders on annual basis.

Since SRD2 went live approx. 1094 unique request IDs have been received for ~216 different German ISINs in one year. Germany is one of the most active markets.

In 2021 and 2022 about 35% of all Shareholder Identification requests were sent for German equities.

Together with France these two market represent ~70% of all requests for equities in the EEA.

**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*

Clearstream in its role and issuer-CSD receives a lot of requests as first-intermediary and has to authenticate that the request is valid and occurs from issuer agents acting on behalf of issuers. Such additional material was not always provided in time to ensure a process before the deadline. Validating signatures from parties (issuer) that are not contracted to the first intermediary are challenging. There should be at least a requirement for issuers to sign a Letter of Authorization (LOA) with qualified electronic signatures and to provide all supporting documents for the authentication in English or in the national language of the first intermediary.

The address fields for institutional investors shouldn't be required when the LEI has been provided.

**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*

No, We have established one process for all requests. But some issuer agents have additional requirements or extend the usage of the ISO20022 formats to other assets. This requires additional control steps for all requests to avoid incorrect processing and disclosure of data.

**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*

We are unable to subscribe for ISO20022 messages from some markets, because the provider of the issuer is incorrectly using the SRD2 indicator in the ISO20022 message and not following message standards. In another example the issuer agent has specific requirements to the response, which we and our customers cannot support.

**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*

Even before SRD II, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD2. The challenge, even under the application of SRD2, is the communication from the issuer into the chain of intermediaries.

**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*

Even before SRD II, communication in the intermediary chain was organized using SWIFT and standardized format and market practices. The STP process in the intermediary chain was therefore already working before SRD II. The challenge, even under the application of SRD II, is the communication from the issuer into the chain of intermediaries and from the last intermediary to the end investor. Since September 2020 investors with an account at a bank in Europe receive information about General Meetings from EEA member states. Beforehand, the most bank customers, especially retail-investors, have just received meeting information of securities from the country of their bank.

**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*

The exercise of voting rights has not increased significantly. This is mainly due to the different processes in the Member States.

In Germany it has been noticed that additional requirements like a confirmation of holding in written form or the previous notification from investors to the issuers of about 1 week before the voting deadline result in less voting activities or rejections from the issuers.

**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*

Clearstream receives information from their depositories via SWIFT and forward corporate actions and general meeting information in the same format to their customers.  
In Germany, the information from issuers is sourced from an appointed service provider based on mandatory announcement by the issuer in public sources in the national language. Issuers or their service providers do not provide a full message incl. deadline, agenda and voting options in a machine-readable format to the CSD.

**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

\* Please explain and provide evidence to corroborate your response. In case your answer is yes, indicate whether they can modify their votes in your system ahead of the general meeting and when this is allowed.

*2000 character(s) maximum*

Yes, as already before SRD2 went live, Clearstream offers their customers a SWIFT based General Meeting portal. Alternatively, customers can use a online GUI to receive meeting notifications and to submit voting instructions.

**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*

In their home markets Germany (CBF) and Luxembourg (LuxCSD) General Meeting information from issuers is sourced from an appointed service provider based on mandatory announcement by the issuer in public

sources in the national language. Issuers do not provide a full message incl. deadline, agenda and voting options in a machine-readable format to the CSD. The process has been improved as good as possible to transmit information within the timelines of Article 9 IR.

German Issuers and their agents still following an Entrance Card model and require instructions in proprietary formats, that doesn't allow intermediaries to submit instructions upon receipt. Voting instructions are queued and sent close the market deadline.

A voluntary Corporate Actions requires often additional controls that it fits into the post-trade system to ensure STP for following cash and security transactions or customer elections. The bank must write an individual narrative with a short neutral summary of the event before this text with key dates can be sent as "the notification".

**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*

Clearstream currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

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*

Clearstream currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

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*

Clearstream currently does not request a reimbursement from issuers due to constantly negative feedback and experience from their banking customers and a missing basis on European level.

**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

Clearstream fully support Market Standards elaborated by the industry and was actively engaged in these working groups. As market infrastructure we see it as a key action to agree on market standards that are not limited to the benefit of the intermediaries. Issuers should be actively engaged, but we noticed that issuer agents with a limited a special scope consider just a small piece of the complexity when they contribute to these market standards groups.

## 7. Questions for proxy advisors

---

### 7.1. Introduction

The following section sets out questions for proxy advisors, with the goal of understanding their views as regards the mandatory disclosures and other obligations imposed by the SRD.

### 7.2. Questions

#### 7.2.1. On proxy advisors

**Q72:** Are you a signatory to a code of conduct for proxy advisors?

- Yes
- No
- Don't know

\* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, which code are you following and are you following it in full? Please explain whether your approach has changed after the introduction of Article 3j.

2000 character(s) maximum

ISS is committed to the highest principles and standards in conducting its business, evolving its practices and policies to retain the trust of its clients. As a founding signatory to the Best Practice Principles (BPP) for Providers of Shareholder Voting Research & Analysis of the Best Practice Principles Group (BPPG), ISS believes in the quality and credibility of the BPP and adheres to the BPP and related guidance. ISS' latest compliance statement (17 February, 2022) can be found here.

ISS' annual BPP compliance statements reflect the changes adopted in response to the introduction of Article 3j of SRD II, which can be described as follows:

- Annual public disclosure by each BPP signatory of its commitment to the code of conduct and of how the BPP signatory applies and complies with the code of conduct;
- Annual public disclosure relating to the accuracy and reliability of a signatory's research activities;
- Identification and disclosure without delay to clients of any actual or potential conflicts of interests or business relationships that may influence the preparation of research, advice or voting recommendations and the actions taken to eliminate, mitigate or manage the actual or potential conflicts of interests.

It should also be noted that in the US, where ISS is headquartered, ISS has registered with the Securities and Exchange Commission (SEC) as a Registered Investment Adviser (RIA) under the Investment Advisers Act, a well-tested and robust regulatory regime. The regulatory obligations stemming from this regime also

shape ISS' internal governance and operations.

In the UK and Japan, ISS is a signatory as a service provider to the respective Stewardship Codes.

**Q73:** Please specify which Member State is competent for your activities according to the definition of competent Member State for proxy advisors set forth in Article 1(2)(b). Please further specify which of the following applies:

a) You have your registered office in such Member State;

- Yes  
 No  
 Don't know

b) Should you not have your registered office in a Member State, your head office is in such Member State;

- Yes  
 No  
 Don't know

c) Should none of the above be applicable, you have an establishment within such Member State.

- Yes  
 No  
 Don't know

\* Please explain and provide evidence to corroborate your response.

*2000 character(s) maximum*

N/A

**Q74:** Have you been required to notify being subject to SRD2 provisions to an NCA and/or have you liaised informally with an NCA in relation to the disclosure obligations introduced by Article 3j(1) and (2)?

- Yes  
 No  
 Don't know

\* Please explain and provide evidence to corroborate your answer. In case your answer is yes, please indicate whether you have been subject to additional provisions either via additional national legislation or guidance to comply with Article 3j.

*2000 character(s) maximum*

Consistent with the requirements stemming from Sweden's Proxy Advisors Act, ISS-Ethix AB has notified of its activities as a proxy advisory firm, and its registration has been approved by, the Swedish Financial Supervisory Authority. The Act requires that the voting advisor's activities must be described so that Financial Supervisory Authority can test whether it is encompassed by the Proxy Advisors Act.

In addition, consistent with SRD II being transposed into UK law in 2019, ISS has notified the UK FCA that it is in scope of the regime and is a signatory to the UK Stewardship Code as a service provider.



**Q75:** Has your practice in the following areas been revised after the entry into force of SRD2? Please clarify which specific changes were made in the following areas:

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*

Please see our response to Q72.

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*

N/A

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*

N/A

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

N/A

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

N/A

**Q76:** Following the entry into application of Article 3j(3) of the SRD2, what new measures have you put in place for proper identification and handling of conflicts of interest and for transparency towards clients? Please explain and provide evidence to corroborate your response, indicating whether you have encountered any difficulties and if you have notified your clients more frequently of potential conflicts of interest.

2000 character(s) maximum

In line with the BPP updates prompted by SRD II, ISS took the following measures and provides the following relevant disclosures to its investor clients and the public:

In 2021, ISS and Deutsche Börse AG announced the successful completion of the Deutsche Börse AG acquisition of a majority stake in ISS. In connection with this transaction and consistent with SRD II, ISS put in place a number of non-interference policies to ensure it continues to operate with the same editorial independence as prior to the acquisition.

These policies include the ISS Policy on Non-interference and Potential Conflicts of Interest Related to Deutsche Börse; updated ISS policy regarding disclosure of significant relationships and director affiliated companies; and a policy related to Deutsche Börse affiliated companies. These disclosures are available on the ISS Due Diligence website.

Please also see our response to Q72.

**Q77:** Has your practice evolved to integrate more ESG elements in the voting recommendations or in the research you provide?

- Yes
- No
- Don't know

\*

Please explain and provide evidence to corroborate your response. In case the answer is *yes*, please specify what disclosures you have made in relation to this and the potential related impacts on your recommendations.

*2000 character(s) maximum*

Yes. While the proliferation of ESG-related terms is at the fore of the current public policy discussion, investors' incorporation of material E, S, and G factors into their investment analysis and engagement and proxy voting decisions is not new. Indeed, consideration of "G" factors is a well-established and routine part of investors' risk-return analysis and stewardship practices. Accordingly, the integration of ESG elements into ISS' proxy research is also not new, and ISS reports and recommendations continue to be based exclusively on publicly available information.

In the last five to ten years, investors' focus on individual E, S, and G factors has grown substantially, esp. regarding climate-related investment risk, and this interest has also manifested itself in investors' stewardship and proxy voting practices. Accordingly, ISS has responded to investor demand and market developments, such as the increasing number of E&S proposals filed and supported by shareholders across capital markets, by expanding its ESG governance research practice, including by providing investors with more voting policy choices.

Specifically, in addition to custom voting policies, ISS offers a diverse variety of proprietary voting policies. The ISS Benchmark Policy and Specialty Voting Policies, e.g. the Sustainability, Socially Responsible Investment, and Climate voting policies are publicly available on the ISS website. It is important to note that some investors use more than one voting policy to align with their own investment, stewardship, and proxy voting guidelines and/or to support the different types of asset owners on whose behalf they are voting proxies and carrying out other stewardship activities.

ISS has also incorporated E&S-related questions into its Annual Global Benchmark Policy Survey to gather comments from institutional investors, public companies, corporate directors, and all other interested market constituents. This year's survey covered the topics.

**Q78:** Has your practice evolved to provide new services, in particular in the ESG sphere?

- Yes
- No
- Don't know

\* Please explain and provide evidence to corroborate your response. In case the answer is *yes*, please explain if you identified such new (ESG) services as a source of possible conflicts of interest (e.g., in the context of advisory services to issuers) and how you handled this situation, including by means of providing specific disclosures.

*2000 character(s) maximum*

N/A

## Contact

[Contact Form](#)

