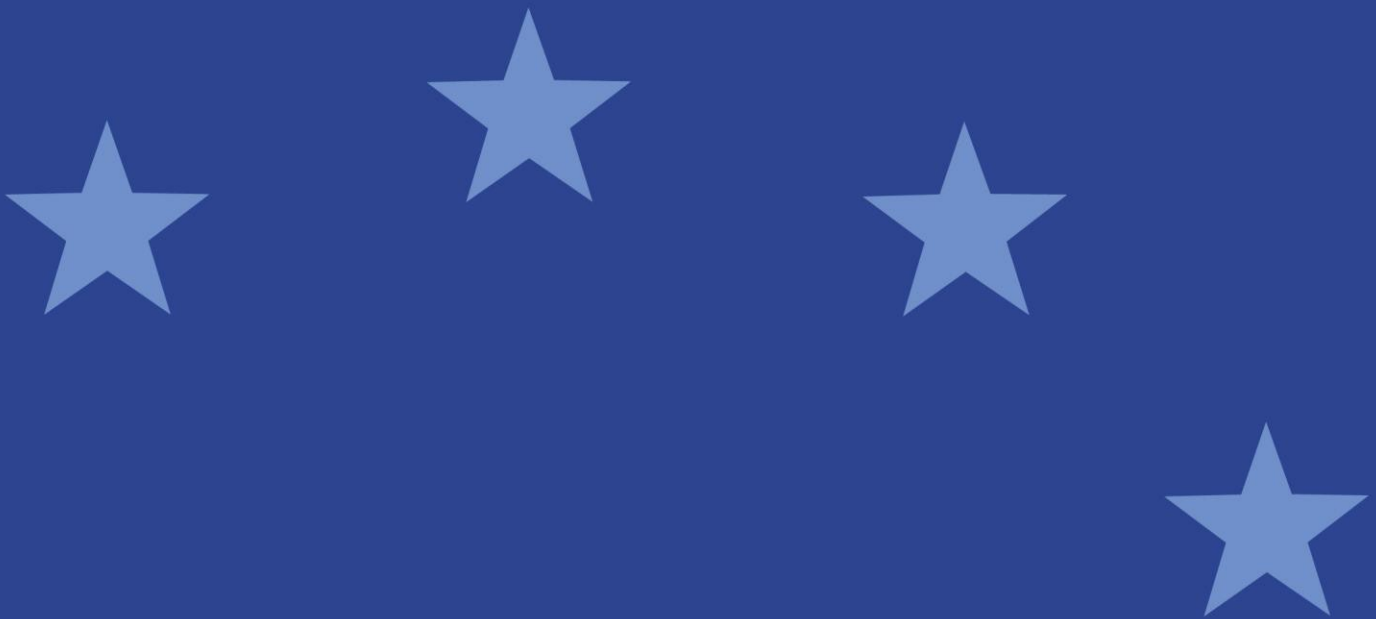




European Securities and  
Markets Authority

# Call for Evidence

**Implementation of SRD2 provisions on proxy advisors and the investment chain**



## 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 they would like to provide input on and in particular to the two catch-all questions (Q15 and Q25).

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## Acronyms used

AGM	Annual General Meeting
BPP	Best Practice Principles for Providers of Shareholder Voting Research and Analysis
CMU	Capital Markets Union
CSD	Central Securities Depository
EBA	European Banking Authority
EC	European Commission
EEA	European Economic Area
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
EU	European Union
NCA	National Competent Authority
Shareholder Rights Directive II (SRD2)	Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
Amended Shareholder Rights Directive (SRD)	Consolidated text: Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, as amended by Directive 2014/89/EU and Directive (EU) 2017/828
Implementing Regulation	Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights
US	United States

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# 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.

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## 2 Introduction

### 2.1 Background and legal mandate

1. 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.
2. 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<sup>1</sup>, the EC adopted a new CMU action plan<sup>2</sup> 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.”<sup>3</sup> 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.

3. 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.

## 2.2 Scoping of the exercise

4. 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

<sup>1</sup> [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](https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en).

<sup>2</sup> 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.

<sup>3</sup> The CMU action plan further clarified that "the Commission plans to investigate in particular the following:

- the attribution and evidence of entitlements and the record date,
- the confirmation of the entitlement and the reconciliation obligation,
- the sequence of dates and deadlines,
- any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and
- communication between issuers and central securities depositories (CSDs) as regards timing, content and format.

## 2.3 Purpose and structure of the Call for Evidence

5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.



12. 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.
13. Finally, ESMA would like to emphasize the importance of answers being factual and, to the widest possible extent, supported by clear evidence. Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on page 2 of this document.

## 2.4 Next steps

14. 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

15. 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).
16. 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 g) 'other'.

## 3.2 Questions

### 3.2.1 Background

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

*[More than one option allowed]*

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

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

***The Chartered Governance Institute is the international professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead 'effective governance and efficient administration of commerce, industry and public affairs' working with regulators and policy makers to champion high standards of governance and providing qualifications, training and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community and the voice of its membership.***

***One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including Europe, the Caribbean, parts of Africa and the Middle East.***

***As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, which includes company secretaries, our members have a uniquely privileged role in companies' governance arrangements including the work of boards and many will be responsible for liaison with stakeholders, including investors, and with proxy advisers. Our members are therefore well placed to understand the issues raised by this consultation document.***

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]**

If EU Actor is selected, please specify:

**[Pan-European Organisation]**

[Austria]

[Belgium]

[Bulgaria]

[Croatia]

[Cyprus]

[Czechia]

[Denmark]

[Estonia]

[Finland]

[France]

[Germany]

[Greece]

[Hungary]

**[Ireland]**

[Italy]

[Latvia]

[Lithuania]

[Luxembourg]

[Malta]

[Netherlands]

[Poland]

[Portugal]

[Romania]

[Slovak Republic]

[Slovenia]

[Spain]

[Sweden]

If non-EU Actor is selected, please specify. *[Max. 2000 characters]*

***See above. The Institute is an international professional body, with its headquarters in the United Kingdom.***

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]

***We believe that shareholder identification across Europe has improved since the application of SRD2. However, in the UK and Ireland we have the advantage of specific company law provisions ([s793, Companies Act 2006 in the UK](#) and [s1062, Companies Act 2014 in Ireland](#)) which give companies the right to require a person which the company “knows or has reasonable cause to believe” to have a current or past (in the last three years) interest in its shares, to “confirm that fact or (as the case may be) to indicate whether or not it is the case; and .. give such further information as may be required.” This requirement is supported by criminal sanctions. Consequently, our members in the UK and Ireland have been less affected by this provision of SRD2 than those in other Member States which did not have this legislation in place.***

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.

**Harmonisation of the definition of 'shareholder' across the EU would not be a necessary or, indeed, helpful step.**

**There are a wide variety of structures across Member State company law, not all of which recognise concepts regarded as basic in other Member States.**

**For example, the 'end-investor' is not a recognised concept in UK or Irish law, which relies on the Register of Members as the definitive record of entitlements.**

**Under this model, an end-investor is a client of any intermediary holding those shares on their behalf and, ultimately, of the 'person' whose name appears on the Register of Members, with that relationship governed by contract. This means that all participants in the ownership chain always have a direct relationship with those from whom they are owed, or to those to whom they owe, duties.**

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.

**As noted in our response to question 4 above, we do not believe that this definition should be harmonised across the EU. In our view this is a clear case for subsidiarity.**

**In our view the 'shareholder' for the purposes of the SRD should be the person recognised as such in the legal structure of the Member State in which the issuer is incorporated.**

**As noted above, in the case of the United Kingdom, this is the name on the Register of Members.**

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.

***It is our experience that some intermediaries are very good at transmitting information along the chain of intermediaries, but others less so. For many, this seems to be an issue of commercial differentiation.***

***By way of example, Ireland now has two significant depositaries (Euroclear Nominees for EB positions and CREST International Nominees for CREST positions) interposed between Issuers and CSD participants, and this has impacted the respective service levels. It takes longer to receive information through the chain, earlier deadlines are imposed on investors because of the intermediary layers, and different arrangements/constraints are enforced for exercise of rights. For example, our Irish members tell us that Euroclear Bank are unable to process split votes & refuse to provide letters of representation to allow underlying holders to attend meetings or to provide post meeting vote confirmations.***

***We believe that the critical issue is for all intermediaries to respect the spirit of the SRD2 principles so that end investors are appropriately recognised.***

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.

***There is anecdotal evidence that the facilitation of the exercise of shareholder rights by intermediaries has improved following the implementation of SRD2. However, as noted above, this is inconsistent across the market, in terms of both some Member States and some providers within Member States. The feedback that we have received is that those who were good at it already have got much better; those who weren't still do not seem to regard it as a priority. The Irish example quoted in our response to question 6 is also relevant here.***

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.

***We can offer very little evidence on this point, beyond the anecdotal observation that, once again, some intermediaries are better than others in this regard and that much rests on their commercial model.***

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.

***We have no evidence to offer on this point, beyond anecdotal evidence suggesting that they are not.***

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.

***We have no evidence to offer on this point, beyond anecdotal evidence suggesting that the effectiveness of these processes is, at best, inconsistent.***

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;

[Y] See replies to questions 3 and 8

**[N] – but see our comments above about the advantage of UK and Irish legislation in this area. We understand that this has caused some confusion where SRD2 provisions have been incorporated into member state law as written.**

[Don't know]

b) Transmission of information;

[Y]

[N]

**[Don't know]**

c) Facilitation of the exercise of shareholder rights;

[Y]

[N]

**[Don't know]**

d) Costs and charges by intermediaries;

[Y]

[N]

**[Don't know]**

e) Non-EU intermediaries.

[Y]

[N]

**[Don't know]**

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

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

Please explain and provide evidence to corroborate your response.

***Not applicable.***

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 specify your response in relation to:

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

Please explain and provide evidence to corroborate your response.

***Not applicable.***



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. *[Max. 2000 characters]*

***We have seen no evidence of any change that can be attributed to the Chapter Ia provisions. In the UK, improvements have been associated with the more effective implementation of the [Stewardship Code](#) and the fact that existing, strong powers in Ireland and the UK were already effective at helping companies identify their economic owners, something which is a key component of effective engagement.***

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);

[Y]

**[N]**

[Don't know]

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

[Y]

**[N]**

[Don't know]

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

[Y]

**[N]**

[Don't know]

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

[Y]

**[N]**

[Don't know]

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

***See our response to question 4 above. There are a wide variety of structures across Member State company law, not all of which recognise concepts regarded as basic in other Member States.***

**Whilst harmonisation might be administratively convenient for those investors working on a global or pan-European basis, it would significantly increase the costs of providers focused on domestic EU markets.**

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? [Max. 2000 characters]

**In our view, no further action is needed in this area.**

### 3.2.3 On proxy advisors

Q16: Is the definition of proxy advisors<sup>4</sup> in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?

[Y]

[N]

[Don't know]

Please explain and suggest any need for change. [Max. 2000 characters]

**From an issuer perspective, there is an issue to be resolved around the role of advisers generally. Whilst investment advisers are subject to a range of regulatory obligations, this is not the case for some other advisers – including proxy advisers, but also including, for example, sustainability ratings agencies. We understand from members in the investor community that these advisers fulfil an important need. However members on the issuer side are sceptical of the quality or qualification of some providers.**

**In the UK, we understand that both the Financial Conduct Authority and the Financial Reporting Council are commencing a study in this area and ESMA may find it helpful to engage with those undertaking this work.**

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?

[Y]

[N]

**[Don't know]**

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

**We have no evidence to offer on this point.**

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?

[Y, in more Member States]

[Y, in none of the Member States]

[N]

**[Don't know]**

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

***We have no evidence to offer on this point.***

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)?

[Y, and the entity does not sufficiently explain either why it does not apply a code of conduct or why it departs from any of its recommendations]

[Y, but the entity abides by its obligation to sufficiently explain why it does not apply a code of conduct or why it departs from any of its recommendations, and, where appropriate, discloses information of the alternative measures it has adopted]

[N]

***[Don't know]***

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

***We have no evidence to offer on this point.***

Q20: Do you consider that the disclosures provided by proxy advisors have reached an adequate level of quality following the entry into application of Article 3j? Please specify in relation to:

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

[Not at all]

***[To a limited extent]***

[To a large extent]

[Fully]

[No opinion]

b) Disclosing general voting policies and methodologies;

[Not at all]

***[To a limited extent]***

[To a large extent]

[Fully]

[No opinion]

c) Considering local market and regulatory conditions;

[Not at all]

[To a limited extent]

***[To a large extent]***

[Fully]

[No opinion]

<sup>4</sup> 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".

- d) Providing information on dialogue with issuers;
- [Not at all]
  - [To a limited extent]**
  - [To a large extent]
  - [Fully]
  - [No opinion]
- e) Identifying, disclosing and managing conflicts of interest.
- [Not at all]
  - [To a limited extent]**
  - [To a large extent]
  - [Fully]
  - [No opinion]

Please explain and provide evidence to corroborate your response, clarifying also if you have identified any ambiguity or area of possible improvement in the disclosures referred to above.

***The feedback that we have received indicates that this is inconsistent. Some proxy advisors have worked hard in these areas, others less so.***

***The [Best Practice Principles](#) are certainly a major step in the right direction and, in the UK, we have seen some benefit from application of the [Stewardship Code](#).***

***However, issuers do still have some areas of concern. These chiefly relate to:***

- ***Engagement with issuers.***

***This can still be patchy, albeit much improved from a few years ago, particularly by the major advisers. The principal issue here is the ability for issuers to engage with proxy advisers before, and immediately after, the publication of their recommendations. The chief limitation is time. Issuers understand that advisers need to turn their reports round quickly to give their clients adequate time to make a decision and then vote (although we still hear too many anecdotal accounts of a minority of investors telling companies that they are obliged to follow the recommendation). However, at least one adviser has a policy of not engaging with issuers during the period between publication of the meeting notice and the meeting date, which is not helpful in cases where there is a dispute.***

***It might be helpful were advisers required to engage with issuers in all cases where they intend to recommend an abstention or vote against management. This would serve two purposes – the issuer would better understand the reason(s) for that voting recommendation and the adviser can add any feedback from the issuer into its report.***

- ***Conflicts of interest***

***Advisers are now much clearer on this point than previously. However, there remains the problem of an adviser giving advice to both issuers and investors.***

- **Local market practice**

***Again, there has been much progress, but issuers still report a reluctance on the part of some advisers to take proper account of local market norms and, in particular, to focus on the ticking of boxes rather than providing an explanation for non-conformance.***

- **Quality of reporting**

***Again, this is an area in which reporting has improved and it is fair to note that there are still instances where issuers could improve their own disclosure or where they conflate an adviser disagreeing with management with the adviser being wrong. That said, issuers still regularly report errors in proxy advice which, in their perception, seems to be without consequences except for the issuer.***

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?

[Y]

[N]

***[Don't know]***

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

***We have no evidence to offer on this point.***

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.

***We have no evidence to offer on this point.***

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.

***The feedback that we have received indicates that more regulation may be necessary. In the UK, the Financial Reporting Council is undertaking a review in this area.***

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]

Please explain and provide reasoning on the comparative merits of different approaches in this area. *Max. 2000 characters]*

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. *[Max. 2000 characters]*

***We have no evidence to offer on this point.***

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? *[Max. 2000 characters]*

***Not applicable.***

## 4 Questions for investors

*Although the Institute has some members in the investor community, we have chosen to let investors respond to these questions individually.*

### 4.1 Introduction

17. The following section includes questions which are targeted specifically at investors investing in shares of EU listed companies. In light of the broad set of potential issues related to the practical application of the current regulatory framework, ESMA is particularly interested in understanding the views of investors as regards the remaining obstacles to the effective exercise of their rights and the extent up to which shareholder engagement is achievable under this framework.
18. As for the questions on transparency of proxy advisors (*i.e.*, Article 3j), ESMA is interested in assessing the views of those investors who make use of the services of proxy advisors, whether in terms of research, advice, recommendations, or any combination thereof.
19. Please note that, in addition to individual (retail) investors, we also include in the category of respondents to this chapter both asset managers and institutional investors as defined by Article 2 of the SRD.

### 4.2 Questions

- 4.2.1 On shareholder identification, transmission of information and facilitation of the exercise of shareholder rights

Q26: Do you consider that the SRD2 has improved your ability to receive and transmit the information necessary for the exercise of your shareholder rights via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response.

Q27: Do you consider that the SRD2 has improved the exercise of your rights as a shareholder, including the right to participate and vote in general meetings via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response and evaluate the process of attending and voting at a general meeting both in your country or abroad, if applicable (in the latter case, please distinguish between EU and non-EU jurisdictions).

*[Max. 2000 characters]*

Q28: What are you requested to do in order to be allowed to participate in the general meetings of your investee companies? [More than one option allowed]

[Submit only a confirmation of entitlement (as under Table 4 of the Implementing Regulation)]

[Provide a notice of participation through your closest intermediary (as under Table 5 of the Implementing Regulation)]

[Provide a deposit confirmation]

[Other]

Please explain and provide evidence to corroborate your response and indicate whether you are aware of any major cross-country differences, identifying the most relevant examples. *[Max. 2000 characters]*

Q29: Do you consider that the provisions of Chapter Ia have effectively allowed shareholders to receive (electronic) confirmation that votes have been validly recorded and counted by the company after the general meeting?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response and clarify how long on average it took to receive confirmation. *[Max. 2000 characters]*



Q30: Do you consider that the thresholds for shareholder identification, when put in place under Article 3a(1), have been an obstacle to dialogue with issuers (or among investors in those jurisdictions allowing for that)?

- [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 thresholds for shareholder identification, e.g., when the voting shares are held through two or more intermediaries. *[Max. 2000 characters]*

Q31: Have you experienced any issues relating to the fees and charges applied by intermediaries for services provided under Chapter Ia? Please specify your response in relation to:

- a) Problems with receiving information on the charges in advance;
  - [Y]
  - [N]
  - [Don't know]
- b) Disproportionately high charges;
  - [Y]
  - [N]
  - [Don't know]
- c) Discrimination issues, including where differences between the fees charged for domestic and cross-border exercise of shareholder rights did not seem to be duly justified or did not seem to reflect the differences in the actual costs incurred by the intermediaries involved;
  - [Y]
  - [N]
  - [Don't know]
- d) Other.
  - [Y]
  - [N]
  - [Don't know]

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

Q32: Following the entry into application of the SRD2, can you identify any persisting obstacles to the exercise of your rights?

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

Please explain and provide evidence to corroborate your response. In case your answer is yes, please specify what rights and what kind of issues are concerned (e.g., any technical obstacles to the right to vote) also indicating how you think the above obstacles could be removed. *[Max. 2000 characters]*

Q33: Do you consider that new digital technologies could help in overcoming any persisting obstacles along the investment chain?

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

Please explain and provide evidence to corroborate your response. In case your answer is yes, please explain and indicate which digital technologies and how they could improve communication and transmission of information along the investment chain.

Q34: Have you made use of the services provided by online brokerage platforms<sup>5</sup> ('neo-brokers')?

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

Please indicate if you consider that they provide the same support to their clients to facilitate engagement and participation in corporate actions in comparison to traditional intermediaries. Please provide evidence to corroborate your response. *[Max. 2000 characters]*

Q35: Overall, do you consider that the SRD2 has improved communication and engagement between investors and issuers?

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

Please explain and provide evidence to corroborate your response and clarify what further improvements could be made, if any, also in light of technological changes. *[Max. 2000 characters]*

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<sup>5</sup> Neo-brokers are commonly understood as financial entities who typically offer online brokerage services directly to individual investors, focusing on trading via a browser-based web or app trader. Neo-brokers tend to offer comparably low costs and fees, but services offered are often limited compared to those offered by established online brokers.

#### 4.2.2 On proxy advisors

Q36: Have you been notified of possible conflicts of interest by proxy advisors following the introduction of the SRD2?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response, indicating also if such conflicts of interests were mentioned in the recommendations themselves. *[Max. 2000 characters]*

Q37: Do you consider that the introduction of the SRD2 resulted in greater transparency from proxy advisors and improved your ability to assess the quality of their services 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]

b) Disclosing general voting policies and methodologies;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

c) Considering local market and regulatory conditions;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

d) Providing information on dialogue with issuers;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

e) Identifying, disclosing and managing conflicts of interest.

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response. Please also specify if the provisions on transparency have increased your reliance on their advice and indicate what complementary information would be necessary. *[Max. 2000 characters]*

Q38: In your experience, in addition to transparency aspects as covered in the previous questions, do you consider that the entry into application of the SRD2 has led to an overall improvement in the accuracy of research and the way errors are handled?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

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

Q39: Following the entry into application of the SRD2, have you changed the way you make use of the services provided by proxy advisors for the purpose of AGM voting (*i.e.*, in terms of research, advice, or recommendations)? Please specify your response as regard the:

- a) Type of services (*i.e.*, in house voting policy, custom voting policy adapted to your criteria, access to a voting platform, *etc.*);

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

- b) Number of proxy advisors contracted (and, if applicable, please specify the reasons for choosing several rather than one provider);

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

- c) Frequency of following their recommendations (and, if applicable, please specify the typical reasons for not doing so).

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your responses, clarifying how the use of proxy advisory services has changed in your specific case. *[1 box per option, Max. 2000 characters]*

Q40: Do you believe that the increasing offer of ESG-related services by proxy advisors and other players may lead to new conflicts of interest that may have an impact on the reliability of their advice?

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

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

Q41: Having in mind the ESG and technological changes in progress in the voting services industry as well as certain investors' tendencies to internalise voting research and/or to provide clients with voting options, have you changed or are you planning to change the extent to which you use the services of proxy advisors, the type of services you use or your reliance on their advice?

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

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

## 5 Questions for issuers

### 5.1 Introduction

20. 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.
21. 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.)?

[Y]

**[N]**

[Don't know]

Please explain and provide evidence to corroborate your response, explaining also what changes could be made, if any. *[Max. 2000 characters]*

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. *[Max. 2000 characters]*

***As noted previously, in our response to question 3 above the majority of our members who have commented on this issue have the advantage of the strong shareholder identification rules under UK and Irish law.***

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);
- b) For what purpose the request was made;
- c) If and when you were provided with all the required information on shareholders' identity;
- d) The predictability and the proportionality of the costs incurred;
- e) How many shareholders [in percentage of share capital] you were able to identify:

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

- f) If you have noticed any improvement in the ability to identify non-EU shareholders compared to the pre-SRD2 framework.

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

***Not applicable. Our members have taken advantage of the strong provisions available under UK and Irish law, which permits the issuer to demand information from 'any person' which the issuer knows or believes to be interested in its shares. As this is supported by criminal sanctions, the cost is limited to that of the issuer or its service provider issuing the necessary notice. Shareholders are required to comply with the law at their own cost.***

***In general, although an issuer has the power to identify 100% of its shareholders, most will focus on the larger shareholdings that are not held by individual investors.***

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. [Max. 2000 characters]

***Under UK and Irish law, it is for the issuer to set any threshold and so this has never presented a problem. In our view, it should be for Issuers, rather than individual Member States, to set this threshold, as they are best placed to know the information that they need. For example, we understand that Italy has imposed a threshold of 0.5% which has, in practical terms, ruled out Issuers' capability to identify all but the largest investors. This is not a positive step for good engagement.***

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?

[Y]

**[N]**

[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. *[Max. 2000 characters]*

***This will be at the discretion of the issuer and dependent on the information required.***

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;

[Y]

**[N]**

[Don't know]

b) Directly to the investor;

[Y]

**[N]**

[Don't know]

c) Through an announcement.

[Y]

**[N]**

[Don't know]

Please explain and provide evidence to corroborate your response, specifying the timeline under which you provide such information. *[Max. 2000 characters]*

***No change was necessary.***



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?

**[Y] – although not the notice of participation, which is not required under UK or Irish law.**

[N]

[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. *[Max. 2000 characters]*

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). *[Max. 2000 characters]*

***Not applicable***

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. *[Max. 2000 characters]*

***None. Provided they are named on the register of members or have legitimate appointment (as attorney, proxy or corporate representative) they can participate in the general meeting.***

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

[Y]

**[N]**

[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). *[Max. 2000 characters]*

***No change beyond those entirely attributable to the COVID-19 pandemic, although we are hearing some anecdotal evidence of beneficial investors in Irish securities experiencing more difficulty in obtaining 'letters of representation' to attend meetings by virtue of their securities all being held through Euroclear Bank, who will not currently support giving such authority.***

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?

[Y]

**[N]**

[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? *[Max. 2000 characters]*

***Not as a result of entry into force of SRD2. These requests have been received from time to time and appropriate responses given.***

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. *[Max. 2000 characters]*

***Not applicable***

## 5.2.2 On proxy advisors

Q54: Preliminarily, please indicate:

- a) whether proxy advisors have provided research, advice and/or recommendations on your company;
- b) whether you have used services of proxy advisors (please specify which services, e.g., research, consultancy).

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

***Proxy advisers provide research on almost all listed companies.***

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]
- b) Disclosing general voting policies and methodologies;  
[Not at all]  
**[To a limited extent]**  
[To a large extent]  
[Fully]  
[No opinion]
- c) Considering local market and regulatory conditions;  
[Not at all]  
**[To a limited extent]**  
[To a large extent]  
[Fully]  
[No opinion]
- d) Providing information on dialogue with issuers;  
[Not at all]  
**[To a limited extent]**  
[To a large extent]  
[Fully]  
[No opinion]
- e) Identifying, disclosing and managing conflicts of interest.  
[Not at all]  
**[To a limited extent]**  
[To a large extent]  
[Fully]  
[No opinion]



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

***The feedback that we have received has indicated little change in practical terms attributable to SRD2.***

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. [Max. 2000 characters]

***We have seen little meaningful change.***

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. [Max. 2000 characters]

***The feedback that we have had from members is that there has been significant improvement from some providers, but little discernible change from others.***

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

[Y]

***[N]***

[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. [Max. 2000 characters]

***None of our members have reported doing so. It may be unfair, but the perception was that any such complaint would have little effect.***

## 6 Questions for intermediaries

### 6.1 Introduction

22. 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. *[Max. 2000 characters]*

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. *[Max. 2000 characters]*

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?

[Y]

[N]

[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. *[Max. 2000 characters]*

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?

[Y, with regard to all cross-border shareholder identification]

[Y, with regard to cross-border shareholder identification involving a third-country intermediary]

[N]

[Don't know]

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

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?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response, specifying what type of standard you use. *[Max. 2000 characters]*.

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?

[Y]

[N]

[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. *[Max. 2000 characters]*

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?

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response, clarifying how long it took you to provide the requested information. *[Max. 2000 characters]*

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?

[Y]

[N]

[Don't know]

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

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. *[Max. 2000 characters]*

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

[Y]

[N]

[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. *[Max. 2000 characters]*

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

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, please specify what difficulties. *[Max. 2000 characters]*

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;
- b) proportional;
- 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.

*[1 box for each option, Max. 2000 characters]*



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. *[Max. 2000 characters]*



## 7 Questions for proxy advisors

### 7.1 Introduction

23. 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?

[Y]

[N]

[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. *[Max. 2000 characters]*

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;

[Y]

[N]

[Don't know]

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

[Y]

[N]

[Don't know]

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

[Y]

[N]

[Don't know]

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

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)?

[Y]

[N]

[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. *[Max. 2000 characters]*

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]

b) Disclosing general voting policies and methodologies;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

c) Considering local market and regulatory conditions;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

d) Providing information on dialogue with issuers;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

e) Identifying, disclosing and managing conflicts of interest.

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]



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

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. [Max. 2000 characters]

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

[Y]

[N]

[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. [Max. 2000 characters]

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

[Y]

[N]

[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. [Max. 2000 characters]