

Drive forward implementation of the 2nd Shareholders' Rights Directive

The Second Shareholder Rights Directive must be properly implemented and further developed

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Introduction

Deutsches Aktieninstitut (identification number: 38064081304-25) represents the entire German economy interested in the capital markets. The about 200 members of Deutsches Aktieninstitut are listed corporations, banks, stock exchanges, investors and other important market participants. Deutsches Aktieninstitut keeps offices in Frankfurt, Brussels and in Berlin. We followed the legislation process regarding SRD 2 Directive, expressing the view of companies.

Below you will find the response of Deutsches Aktieninstitut to ESA's Call for Evidence „Implementation of SRD 2 provisions on proxy advisors and the investment chain“¹.

¹ Available at <https://www.esma.europa.eu/press-news/consultations/call-evidence-implementation-shareholders-rights-directive-2>

3 General Questions²

3.1 Questions

3.1.2 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]

Shareholder identification has shown only limited improvements - particularly in the cross-border area. We cannot judge whether this is due to incomplete implementation.

One major problem is that in Germany only two types of identification requests are supported by the CSD: (1) the full request and (2) the threshold request exceeding a certain threshold that may be set by the issuer. However, under SRD II and the Implementation Regulation have to right to decide over the extent of their request. Therefore, in particular the CSD as first intermediary should offer identification procedures that can be customized to the concrete information needed by the issuer, e.g. requests for shareholders that are held in custody in certain countries, requests for shareholders in custody of certain intermediaries, requests for shareholders that are not yet entered in the share register. Especially the latter is an urgent need for improvement. Shareholders that are registered in the share register are already fully identified to the issuer. If the issuer files a full request, these shareholders are identified again which produces unnecessary costs. If the issuer files a threshold request, identification for other shareholders is incomplete. Therefore, we suggest that intermediaries offer more customized identification requests which is in our view also required both by SRD II and the Implementation Regulation.

Another problem in the cross-border context is when a member state has set a regulatory threshold. The correct approach, as in Germany, should be that no mandatory threshold is provided by law, but only the issuer can set a threshold. This becomes particularly problematic if the threshold of a shareholder's shareholding can be circumvented by applying the threshold to each intermediary individually rather than cumulatively. Thus, the identification can be completely

² The numbering corresponds to that of the questionnaire.

circumvented by using multiple intermediaries and staying under the legal threshold with each of them.

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]

Harmonization of the definition of shareholder is not necessary. It would rather be difficult and also counter-productive, given the different legal approaches of Member States as to who has the legal ownership of the share (share ownership vs. title against the bank to deliver the share). More importantly, the definition of a shareholder is a question that has to be answered by the legal statute of the company. Changing the definition of a shareholder also would have wide consequences for corporate law, insolvency law and banking law. Therefore, we strongly suggest that a harmonization of the shareholder definition should not be undertaken.

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].

Harmonization of the definition of shareholder is not necessary. It would rather be difficult and also counter-productive, given the different legal approaches of Member States as to who has the legal ownership of the share (share ownership vs. title against the bank to deliver the share). More importantly, the definition of a shareholder is a question that has to be answered by the legal statute of the company. Changing the definition of a shareholder also would have wide consequences for corporate law, insolvency law and banking law. Therefore, we strongly suggest that a harmonization of the shareholder definition should not be undertaken. If EU should decide to harmonize the shareholder definition, it should refer to the respective definition by corporate statute. If that is not the approach, the shareholder within the meaning of SRD should be defined as the legal or natural person that is the full legal owner of the shares and thus has full legal title to the shares, including the right to separate shares that in custody of an intermediary from any insolvency procedure and claim their delivery. Moreover,

we would like to point out that it is difficult to change the approach, and it should be noted that the definition of shareholder may affect many other areas, such as the transmission of information along the chain of intermediaries and the facilitation of the exercise of shareholder rights by intermediaries. The nominal owner and beneficial owner approaches appear to be incompatible. To achieve better harmonization, consideration should be given to defining the end investor more precisely.

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]

Shareholder information by German-based companies to German shareholders is working well, before and after SRD II. Also, the provision of meeting material to institutional investors is working well, before and after SRD II. However, in our observation, individual private shareholders still do not receive any general meeting information cross-border and voting is not at all facilitated through the chain of intermediaries cross-border. This holds true in both directions, e.g. shareholders in Germany that hold shares in companies from other EU countries in many cases do not receive voting material and shareholders in other EU countries that hold shares of German stock-listed companies do not receive voting material. Therefore, in a cross-border context, the goals of the SRD II have not yet been achieved. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. Intermediaries should be obliged to register their clients to the issuer's share register. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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]

Shareholder information by German-based companies to German shareholders is working well, before and after SRDII. Also, the provision of meeting material to institutional investors is working well, before and after SRDII. However, in our observation, individual private shareholders do still not receive any general meeting information cross-border and voting is not at all facilitated through the

chain of intermediaries cross-border. This holds true in both directions, e.g. shareholders in Germany that hold shares in companies from other EU countries in many cases do not receive voting material and shareholders in other EU countries that hold shares of German stock-listed companies do not receive voting material. Therefore, in a cross-border context, the goals of the SRD II have not yet been achieved. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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]

No, there was no improvement and for shareholder identification requests issuers were charged high fees, especially in the cross-border context. Cross-border shareholder voting is prevented by prohibitive intermediary costs charged to shareholders in many cases. However, in Germany, the Federal Ministry of Justice has been empowered to enact a cost regulation - hopefully it will do so and prescribe appropriate costs. According to German law, only the necessary expenses (state of the art) may be charged. The law also provides that differences between fees for the exercise of rights in domestic and cross-border cases are only allowed if they are justified and reflect the differences in the actual costs incurred for the provision of the services. However, the intermediaries are currently referring to a still existing cost regulation, which will expire in 2025 at the latest.

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]

In our observation, individual private shareholders still do not receive any general meeting information cross-border and voting is not at all facilitated through the chain of intermediaries cross-border which is also true with respect to shareholders in third-countries.

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]

In our observation, individual private shareholders still do not receive any general meeting information cross-border and voting is not at all facilitated through the chain of intermediaries cross-border. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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] [N] [Don't know]
- b) Transmission of information; [Y] [N] [Don't know]
- c) Facilitation of the exercise of shareholder rights; [Y] [N] [Don't know]
- d) Costs and charges by intermediaries; [Y] [N] [Don't know]
- e) Non-EU intermediaries. [Y] [N] [Don't know]

In Germany, the issuer is allowed to decide whether to specify a full request or a certain threshold for the share ID request. This is very important, as issuers need both options depending on the specific circumstances. The variant of the request with threshold is particularly important because in Germany the costs are per shareholder and therefore issuers with a large group of shareholders have to bear very high costs. Therefore, the issuer should query only a part of the shareholders. It should be possible to query only the shareholders of certain intermediaries via the central securities depository.

In the case of a full request, it is important that other member states also do not set a threshold per se and thus a full request is not possible at all. The setting of a threshold must be left to the issuers.

In general, the implementation of the Shareholder Rights Directive seems to lead to a cost shift from intermediaries to issuers. Costs for corporate actions, which were previously borne by the intermediaries through their debit service fees, are now to be paid by the issuers. On the other hand, in the case of a full request, it is important that other member states also do not set a threshold per se and thus a full request is not possible at all. The setting of a threshold must be left to the issuers.

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]

In our observation, individual private shareholders do still not receive any general meeting information cross-border and voting is not at all facilitated through the chain of intermediaries cross-border. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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;

Consideration could be given to making the definition of end investor more specific. Compare the answer to question 5. Also, we suggest that intermediaries offer more customized identification requests which is in our view also required both by SRD II and the Implementation Regulation. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information.

b) Transmission of information;

For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information.

c) Facilitation of the exercise of shareholder rights;

For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information.

d) Costs and charges by intermediaries;

From our point of view, according to the idea of Art. 3d (3) SRD II, consideration should not be given to charging intermediaries for services in connection with shareholder identification. The companies have a right to know their shareholders and also have no influence on the length of the intermediary chain. If companies have to bear fees, then it must be ensured that these may only be charged for fully automated processes (state-of-the-art). Only in this way will there be an incentive for intermediaries to design their processes efficiently.

e) Non-EU intermediaries.

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]

In our observation, individual private shareholders still do not receive any general meeting information cross-border and voting is not at all facilitated through the

chain of intermediaries cross-border. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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]

For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the share register also for cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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?

3.1.3 On proxy advisors

Q16: Is the definition of proxy advisors³ in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?

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

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

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

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

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

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

[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]

³ 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".

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]

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]

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

We would welcome more transparency on the conflict of interest regarding services provided other than voting advocacy.

However, it should be possible to make comments on voting recommendations to avoid false or misleading information. This should be part of the Best Practice Principle. Furthermore, it would be helpful if the issuers have at least a period of 48 hours to make comments. When the proxy advisors do not follow the comments of the issuers on the voting recommendation they should have to make this transparent.

Furthermore, we would welcome more transparency on the conflict of interest regarding services provided other than voting advocacy.

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]

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

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

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

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

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

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

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

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

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



5 Questions for issuers

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]

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]

For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. Intermediaries should be obliged to register their clients to the issuer's share register. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders. Another problem is that in Germany only two types of identification requests are supported by intermediaries, especially the CSD as first intermediary: (1) the full request for identification of all shareholders and (2) the threshold request for identification of shareholders exceeding a certain threshold that may be set by the issuer. However, under SRD II and the Implementation Regulation have to right to decide over the extent of their request. Therefore, in particular the CSD as first intermediary should offer identification procedures that can be customized to the concrete information need of the issuer, e.g. requests for shareholders that are held in custody in certain countries, requests for shareholders in custody of certain intermediaries, requests for shareholders that are not yet entered in the share register.

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;

The required information was not obtained to the extent needed, as (1) the identification request as full request delivers much more than the required information (with high cost implications), including shareholders that are already identified in the share register and (2) the threshold requests only delivers shareholders above a certain threshold, but cuts the identification of shareholders with shareholdings under the threshold or that have distributed their shares to several intermediaries, thus staying under the threshold. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information and voting material can be provided directly by the issuer to the shareholder with no need for intermediaries to answer additional identification requests.

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.

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]

In Germany, the issuer is allowed to decide whether to specify a full request or a certain threshold for the share ID request. This is very important, as issuers need both options depending on the specific circumstances. The variant of the request with threshold is particularly important because in Germany the costs are per

shareholder and therefore issuers with a large group of shareholders have to bear very high costs. Therefore, the issuer should be able to query only a part of the shareholders. It should be possible to query only the shareholders of certain intermediaries via the central securities depository. Thresholds set by Member States are on the other side counter-productive, as they impede the efficient identification of all shareholders needed. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information and voting material can be provided directly by the issuer to the shareholder with no need for intermediaries to answer additional identification requests.

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]

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]

The information through the CSD and the chain of intermediaries is effected through the publication of the so-called Golden Operational Record. However, this information did not reach private shareholders cross-border so they did not receive meeting information and voting material.

b) Directly to the investor; [Y] [N] [Don't know]

The information directly to the investor is done: (1) In case of registered shares directly to the shareholders registered in the share register. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. (2) In case of bearer shares through the chain of intermediaries. Whereas this information reaches private shareholders with custody banks in Germany, it does not reach shareholders cross-border. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

c) Through an announcement. [Y] [N] [Don't know]

In Germany, e.g. the Annual General Meeting is convened via an announcement in the Federal Gazette. In this regard, no change was necessary due to SRD II.

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] [N] [Don't know]

Companies with registered shares communicate directly with the shareholders registered in the share register regarding the information on the exercise of shareholders' rights. Shareholders can exercise their rights directly based on this direct information. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. In this case, the intermediaries would not be able to issue a confirmation of entitlement, as the entitlement anyway for voting is only derived from the share register.

For companies with bearer shares, on the other hand, communication takes place via the intermediaries until the respective registration for the Annual General Meeting. From registration onwards, communication in the case of larger stock corporations then takes place directly via a shareholder portal, which is why votes are then cast, voting rights confirmed, etc. directly.

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).

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].

For companies with bearer shares, the last intermediary sends the registration and proof of deposit directly to the company. For companies with registered shares, proof of share possession is the share register of the respective company. For registered shares, we therefore strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border which facilitates shareholder voting in the most efficient and direct way. Compare the answer to question 48.

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]

In Germany, a slightly mounting capital presence from institutional investors was observed in the last years, also in connection with the introduction of a fully virtual general meeting which was, however, not correlated to SRDII. However, private shareholder participation cross-border was still close to zero. In our observation, individual private shareholders do still not receive any general meeting information cross-border and voting is not at all facilitated through the chain of intermediaries cross-border. This holds true in both directions, e.g. shareholders in Germany that hold shares in companies from other EU countries in many cases do not receive voting material and shareholders in other EU countries that hold shares of German stock-listed companies do not receive voting material. Therefore, in a cross-border context, the goals of the SRD II have not yet been achieved. For registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. Intermediaries should be obliged to register their clients to the issuer's share register. For bearer shares, we suggest that regulation foster efficiency of cross-border meeting information to shareholders.

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]

For registered shares, shareholders registered in the share register receive their voting confirmation directly from the issuer with a direct access to the issuer's shareholder online service. Thus, for registered shares, we strongly suggest that regulation foster the direct registration of shareholders in the issuer's share register also cross-border. With that, information can be provided directly by the issuer to the shareholder with no need for intermediaries to forward such information. For bearer shares, voting confirmations are issued to those shareholders that participated in the meeting and are thus known to the issuer. As a consequence, in both cases voting confirmations are not usually done via the chain of intermediaries and there is no need for the intermediary to step in. The forwarding of voting confirmation to unidentified beneficial holders by nominees should be a question to be solved by intermediaries.

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]

ISO 20022 standard has proven very useful for the fostering of shareholder identification. However, ISO 20022 should be further developed in a way that allows for more customized identification requests where the issuer can decide more in detail on the scope and reach of the identification request.

5.2.2 On proxy advisors

Q54: Preliminarily, please indicate:

a) whether proxy advisors have provided research, advice and/or recommendations on your company;

Yes.

b) whether you have used services of proxy advisors (please specify which services, e.g., research, consultancy).

Yes.

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]

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

These aspects have already been addressed before SRD2, in some cases quite successfully. SRD2 might have brought some improvement, however we refer to the answers to Q 20.

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]

In our view proxy advisors evaluate other sources. Some of them get in contact with the issuers. Issuers then can give arguments but are not in the position to make sure that their arguments are considered.

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]

Proxy Advisor evaluate other sources. Some of them contact issuers. Issuers can then provide comments, however they can't influence if the proxy advisors consider this comments.

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]

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