

EBF Response Form

European Commission Consultation - Shareholder Rights Directive – Evaluation and Review

Final

1. Shareholders

Definition of shareholder (Article 2 point (b))

The SRD leaves the definition of who qualifies as a shareholder to the Member States in which the company is registered. Consequently, there are different approaches as to who is entitled to exercise shareholder rights across the EU.

Question1. To what extent does the lack of a common definition of ‘shareholder’ in the SRD lead to legal uncertainty?

- ☐ To a very large extent
- ☐ To a large extent
- ☐ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/no opinion

How should the EU tackle it?

- ☐ By introducing a common definition of ‘shareholder’ applicable to the entire directive, including the exercise of shareholder rights
- ☒ By introducing a common definition of ‘shareholder’ only for the identification of shareholders
- ☐ By publishing a list of different definitions of ‘shareholder’ applicable in different Member States
- ☐ By other means

If you would like to, please explain your answer:

500 character(s) maximum

Latest reflections by EBF Membership outline mixed views on the rationale for introducing a single definition of shareholder in EU legislation.

Some members highlight that while - at least in some countries - operational workarounds have made it possible to conduct cross-border identification and exercise of shareholder rights via intermediaries in the current context, these workarounds have proven to be costly and can even require manual intervention. These members see value – also recognising the broader trends towards harmonisation - in further analysis on the potential impacts and benefits of a single definition. In fact, important fundamental implementation questions would need to be thoroughly addressed, as well as impacts on chain-wide events (e.g., corporate actions, general meetings, cross-border listings, etc.)

Others do not report particular difficulties in operating with multiple shareholder definitions and therefore remain unconvinced that a single definition should be considered. Shareholder is determined by national corporate law, rising obligations for companies toward their shareholders and rights for shareholders, usually within a complex setting of regulations. In some cases, distinctions are made between different classes of shares. Against this background, these members retain that interference with this system is not warranted.

Members also note that difficulties may be concentrated in situations involving a nominee type definition of shareholder.

On this topic, EBF also refers to broader work being conducted by dedicated working groups (e.g., AML-SeCo SEG). EBF is a participant and supportive of the work of these groups.

Question2. In case a common definition of ‘shareholder’ was to be introduced, which of the following definitions would you advise?

- ☐ The person who holds the shares in their own name, even if on behalf of another person (nominee shareholder definition)
- ☐ The person on whose securities account the shares are held with the last intermediary in the chain (even where an intermediary in the chain is the nominee shareholder and holds the shares on behalf of that end-investor, end-investor definition)
- ☒ Other

If you would like to, please explain your answer:

500 character(s) maximum

Please see above

Identification of shareholders (Article 3a)

Member States must ensure that companies have the right to identify their shareholders. This provision aims to ensure the flow of information between listed companies/issuers (in what follows: companies), intermediaries, and shareholders, e.g., for the purposes of corporate action processing. However, Member States may provide that only shareholders holding more than a certain percentage of shares or voting rights fall within the scope of this provision. Such a percentage must not exceed 0.5 %. Therefore, who can be identified as shareholder varies.

Question3. To what extent does the current right of companies to identify their shareholders facilitate the flow of information between companies, intermediaries, and shareholders?

- ☐ To a very large extent
- ☐ To a large extent
- ☒ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/no opinion

If you would like to, please explain your answer:

500 character(s) maximum

EBF considers this question primarily relevant for issuers. From the perspective of intermediaries, we are broadly supportive of the current shareholder identification framework, which has contributed to greater transparency and shareholder engagement.

However, practical challenges remain in cross-border custody chains, notably due to the inconsistent application of the 0.5% threshold, which creates operational complexity, especially where holdings are fragmented across intermediaries.

In addition, certain third-country regimes continue to limit access to beneficial owner information and direct shareholder communication.

Question4. Are you aware of any problems related to the identification of shareholders?

- ☒ Companies cannot identify all shareholders they would like to identify
- ☐ Companies do not know who they can identify
- ☒ Communication between companies and intermediaries is difficult, e.g., due to the use of different formats and technologies (*Please note that communication problems will be treated in-depth in the next section*)
- ☒ The quality of shareholder information companies receive is insufficient
- ☐ It is unclear how companies can identify shareholders for shares recorded or issued using Distributed Ledger Technology
- ☐ Other
- ☐ Don't know/no opinion

please explain the other problem(s):

500 character(s) maximum

When companies use the shareholder identification to inform their shareholders on an upcoming or ongoing corporate action, this may bear considerable negative effect on the smooth processing of said corporate action: shareholders are observed to give instructions in non-standard ways, sometimes to the issuer instead of the financial intermediary; there are more late instructions due to confusion on communicated deadlines, there are double instructions that need to be culled.

It would help if issuers refrained from giving directions on instructing on corporate actions; or that they always explicitly refer to the shareholder's financial intermediary and its communication process for any instructions.

Question5. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Companies' right to identify shareholders without any threshold limiting this right	☒					
EU-wide threshold for the identification of shareholders (please indicate the percentage in the free text box below this table)					☒	
Companies' right to identify the holders of all types of registered securities deposited at a central securities depository (e.g., also bond holders)			☒			

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Issuing or recording shares with Distributed Ledger Technology (such as blockchain)						X
Specific obligations regarding omnibus accounts, i.e., account enabling any participant in a securities settlement system to hold in one securities account the securities that belong to different clients of that participant					X	
A golden operational record, requiring the issuer to send a record of operational information and enabling all parties in the chain of custody to process the information in the same manner	X					
Possibility to tailor requests on shareholders' identity to the specific needs of companies (e.g., identification of specific groups of shareholders)					X	
Improving the possibility of companies to directly contact their shareholders			X			
Other	X					

please explain the other problem(s):

500 character(s) maximum

Art. 3a(3)(2) SRD II (shareholder identification at the level of the intermediary) complicates compliance with Article 6(1)(c) GDPR. Art. 3a(3)(2) SRD II should therefore be deleted.

If you would like to, please explain your answer:

500 character(s) maximum

Thresholds: sentences 2 and 3 in Article 3a(1) SRD II should be removed to dispense with statutory thresholds. The right of a listed company to identify its shareholders should not be limited to a specific percentage of shares or voting rights.

Scope: Members' views on expanding the scope of shareholder identification based on types of securities holdings varies, reflecting differences in approach, local market arrangements and practice. In principle, the proposal is considered useful insofar as limited to registered shares. Some Members

also invite further reflection on extending selected SRD process rules to non-listed securities held through CSD infrastructures where similar operational needs arise.

Golden operation record: This is considered more fitting under Art. 3b (Corporate Actions). In general, the lack of a golden operational record is seen as lead to delays in communication through the chain with intermediaries having to source information from multiple locations. A golden operational record would be able to provide a continuous flow of information throughout time. Having said that, implementation concerns need to be addressed first, e.g., ownership of monitoring minimum requirements must be clear at implementation and must be actively enforced. Members also highlight that a similar result could be tackled also via enforcing quality improvements (STP formats) in communication initiated by issuers.

2. Interaction between Companies, Shareholders, and Intermediaries

Transmission of information (Article 3b)

The exercise of shareholder rights requires the transmission of information (e.g., on general meetings) from the company to shareholders and conversely (e.g., votes) from shareholders to the company. Intermediaries play an important role in passing on this information. Intermediaries include investment firms, credit institutions, and central securities depositories, which provide services of safekeeping shares, administrating shares or maintaining securities accounts on behalf of shareholders or other persons.

Question6. To what extent have the following measures contributed to the smooth flow of information between shareholders and companies? Please note that the details of the measures described are contained in [Commission Implementing Regulation \(EU\) 2018/1212](#).

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Companies' obligation to provide intermediaries with the relevant information in a timely manner, no later than on the same business day on which it announces the corporate event (e.g., general meeting)			X			
Companies' obligation to provide intermediaries with the relevant information in a standardised manner			X			
Intermediaries' obligation to transmit the information		X				

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
provided by the companies to the shareholders without delay						
Intermediaries' obligation to transmit information related to the exercise of shareholder rights from the shareholder to the companies without delay		X				
Intermediaries' obligation to transmit information in a standardised manner			X			
Intermediaries' obligation to directly transmit information to the company or the shareholder where this can be done despite the involvement of more than one intermediary (chain of intermediaries)						X

If you would like to, please explain your answer:

Communication from issuers: In practice, communication in the intermediary chain was already organised with ISO formats and SWIFT prior to the implementation of SRD II. Real shortcomings - even under SRD II - lie with the use by issuers or their agents of legacy communication methods leading to STP breaks.

More improvements could be made if issuers would be required to provide their issuer CSD with timely and correct corporate action information in a format that would allow the issuer CSD to automatically forward the information as ISO 15022/20022 messages to CSD participants, for down-stream intermediaries to further increase STP of event information, as has been done for general meetings.

Also, some Members report that times set in SRD II may force intermediaries to distribute pre-liminary data as received without options to validate, qualify and explain the material. We would in addition recommend that supplementary information is made easier accessible to investors.

Don't know / no opinion on the last option is given due to unclear interpretation of the question; SRD does not mandate the obligation to directly transmit information to the company where this can be done irrespective of the involvement of additional intermediaries up or down the chain.

Question 7. Are you aware of any problems related to the transmission of information?

- Information does not reach recipients
- Information is received late
- Information quality is insufficient (e.g., the information is incomplete)
- Communication between companies, intermediaries and shareholders is difficult (e.g., differing formats and technologies)
- High costs for information transmission services (please note that costs are also treated in a section below)
- Other
- Don't know/no opinion

Question 8. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Facilitating direct communications between companies and shareholders				X		
Mandating the use of a single standard format for all information exchanged, enabling straight-through processing (STP) without any manual intervention					X	
Facilitating communication through technical solutions which allow automatic and instantaneous access to information				X		
Enabling or increasing the use of shares issued or recorded with Distributed Ledger Technology, allowing e.g., programmed communication						X
Other	X					

Please specify the other measure:

Therefore, the obligation to transmit and receive information via electronic and machine-readable formats (e.g., ISO 20022 or in accordance with Article 2 Implementing Regulation tables) must also apply to issuers, as should the requirement to provide information of a sufficient quality (Article 3(2) IR).

In addition, the amendment must ensure that companies are required to provide information of a sufficient quality. We therefore propose that also Article 3(2) is amended accordingly. Only a completely and correctly filled ISO message can be processed without further ado via STP.

If you would like to, please explain your answer:

On direct communication: while promoting direct communication can be seen as generally positive, its active promotion through policy solutions is not seen as a priority item to improve the SRD framework.

On mandating the use of a single standard format: EBF Members do not consider this high priority from a policy standpoint, referring to the ISO 20022 migration report.

On instantaneous communication: EBF members understand the potential gains but emphasize the need to fully consider extensive implementation questions and cost/benefits.

Facilitation of the exercise of shareholder rights (Article 3c)

Intermediaries do not only play an important role in transmitting information but in facilitating the exercise of shareholder rights. Whether shareholders exercise their rights themselves or through proxy holders that act on their behalf – they all need to prove their entitlement.

Question9. To what extent have the following measures facilitated the exercise of shareholder rights? Please note that the details of the measures described are contained in [Commission Implementing Regulation \(EU\) 2018/1212](#).

	To a very large extent	To a large extent	To moderate extent ^a	To a small extent	Not at all	Don't know/no opinion
Requiring the last intermediary to confirm, upon request, to the shareholder or third party nominated by the shareholder, the entitled position					X	

	To a very large extent	To a large extent	To a moderate extent ^a	To a small extent	Not at all	Don't know/no opinion
appearing in its records						
Requiring the last intermediary to ensure that the entitled positions in its records are reconciled with those of the first intermediary					X	
Requiring an electronic confirmation of receipt of the votes when votes are cast electronically			X			
Requiring a confirmation that votes have been validly recorded and counted by the company to be sent upon request			X			
Requiring standardised notifications for corporate events such as general meetings and shareholder participation therein			X			

If you would like to, please explain your answer:

Intermediaries were able to facilitate the exercise of rights even before SRD II. This is why the score “not at all” is assigned to the first two questions. Reconciliation of entitled position for instance is also required by MiFID – in the chain, therefore, every account holder reconciles with their account provider.

An electronic confirmation of receipt of electronic votes is adopted in some markets. Where electronic votes are available and/or allowed, receiving confirmation that votes have been validly recorded and counted by the company is also possible.

Concerning standardized notification for corporate events, relevant industry standards are now in place. However, implementation may still vary depending on applicable provisions in national corporate law.

Question 10. Are you aware of any problems related to the facilitation of shareholder rights?

- Difficulties with cross-border use of evidence for the entitlement to exercise shareholder rights (e.g., certificates of holding for shareholders and powers of attorney for proxy holders), which might include belated or no receipt of confirmation of entitlement, national form requirements for powers of attorney or similar obstacles
- Required documentation by Member States to prove the entitlement to exercise shareholder rights (e.g., certificates of holding for shareholders and the powers of attorney for proxy holders) is often still paper-based
- Late, inconsistent, or incomplete reconciliation of share positions across the chain of intermediaries, preventing shareholders from being recognised as entitled to exercise their rights
- Differences in record dates across Member States (i.e., the date on which shares must be held by shareholders for them to be entitled to vote and exercise other shareholder rights at general meetings) render the cross-border exercise of shareholder rights difficult
- Voting cut-off dates (i.e., the dates for submitting votes set by custodians) set well in advance of the general meeting giving shareholders little time to analyse meeting information
- Convocation date may be too close to the date of the general meeting
- Meeting material may be provided too close to the date of the general meeting.
- Lack of transparency in post-meeting confirmations and information
- Other
- Don't know/no opinion

Other

Some Members report that companies still do not accept the confirmation of entitlement in accordance with Table 4 of the Implementing Regulation (IR) in all markets. This creates issues, especially in cross-border instances.

On a more general level, divergent national transpositions led to inconsistent scope, entitlement and proof requirement applications under SRD II, with some Member States extending rules beyond listed shares. As a result, cross border participation in general meetings still relies on manual processes, paper powers of attorney and legal formalities. Electronic meeting notices are not always matched by electronic voting options.

Question 11. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To some extent	Not at all	Don't know/no opinion
Introducing a standardised proof of entitlement for the exercise of shareholder rights				X		
Prescribing that the power to represent the shareholder for proxy holders should be possible in electronic format under certain security conditions						X
Ensuring proofs of entitlement and powers of attorney are interoperable with cross-border and harmonised electronic authentication frameworks (e.g., EU Digital Identity Wallet, EU Business Wallet)				X		
Enabling or increasing the use of shares issued or recorded with Distributed Ledger Technology						X
Enabling automated functions in the shares and programmable shares to exercise shareholders rights						X
Introducing (more detailed) EU-wide deadlines/timelines for:						X
a) Convocation of general meetings						X
b) Publication of meeting materials						X
c) Record dates		X				
d) Cut-off dates						X
e) Updating shareholder registers						X
Shortening the 15-day maximum deadline for publishing voting results				X		
Requiring publication of voting results for each class of shares				X		

	To a very large extent	To a large extent	To a moderate extent	To some extent	Not at all	Don't know/no opinion
Enabling instantaneous and automated receipt of vote confirmation						X
Other	X					

Other:

- There should be a clear indication of which documents issuers are authorised to accept for the exercise of shareholder rights. Ideally, this requirement should be laid down in the Delegated Regulation.
- Also, confirmation of entitlement via Table 4 Implementing Regulation should be accepted across borders.

If you would like to, please explain your answer:

500 character(s) maximum

On standardised proofs of entitlement and ensuring that they are interoperable with cross-border and harmonised electronic authentication frameworks: this is not considered a key priority. It can be an area for further progress on the long term, but attention should be rather devoted to ensuring STP, smoother functioning of end-to-end communication within the intermediary chain.

On EU-wide deadlines/timelines: EBF considers as important that record dates occur at least one or two days before final market deadlines. Further considerations could be given to harmonisation in that sense.

On Enabling instantaneous and automated receipt of vote confirmation: EBF views would be better targeted on the “provision” of vote confirmation by issuers. In terms of “enabling”, intermediaries can enable the instantaneous receipt of vote confirmation, subject to receiving relevant information from the issuer.

On a more general note, EBF notes that divergent national transpositions have resulted in varying interpretations of securities covered by SRD II and discrepancies in specific requirements like confirmation and proof of entitlement (e.g., some MS have extended the scope of SRD II to securities other than listed shares). Furthermore, Market practices which require paper-based supports to prove entitlement to vote (Powers of Attorney, wet ink signatures, etc) persist.

Non-discrimination, proportionality and transparency of costs (Article 3d)

In line with the objective to facilitate the exercise of shareholder rights, any charges imposed by intermediaries must be publicly disclosed, non-discriminatory and proportionate.

Question 12. Are you aware of any problems related to the fees or charges imposed by intermediaries?

- High costs in cross-border settings disincentivise the exercise of shareholder rights
- Differences in charges of intermediaries between the domestic services and cross-border intra-EU services do not reflect the difference in actual costs incurred for delivering these services
- Lack of transparency as to how intermediaries calculate their charges
- Other

Don't know/no opinion

Question 13. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Fixed charges for specific services						X
Maximum ceilings for charges for specific services						X
Clarification of who (company, intermediary, shareholder) pays for which request						X
Standardised terminology for the types of charges and services						X
Standardised format for disclosure of charges						X
Central database or comparator of intermediaries' charges structures to						X

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
ensure transparency						
Other						

If you would like to, please explain your answer:

500 character(s) maximum

Third-country intermediaries (Article 3e)

The SRD also applies to third-country intermediaries which have neither their registered office nor their head office in the EU when they provide services with respect to shares of companies which fall under the SRD.

Question14. Are there any problems with the Directive's provision on third-country intermediaries?

500 character(s) maximum

Non-EU intermediaries involved not in the scope.

Enforcement across third-country intermediaries is uneven, creating gaps and uncertainty in cross-border custody chains.

For example, these limitations arise in the U.S., where "objecting beneficial owners" (OBOs) may restrict issuer access to beneficial-owner details, complicating end-to-end identification and communication.

Question15. If you see any problems, which measures would improve the situation?

500 character(s) maximum

An intervention in the form of "soft law" (e.g. ESMA guidelines on costs and transmission obligations) could be a useful first step. Also, improved cooperation between markets, clearer rules on responsibilities, and basic equivalence requirements would help ensure greater consistency and the effective applicability of the law across all countries, without creating excessive burdens.

3. Institutional Investors and Asset Managers (Articles 3g, 3h and 3i)

A strong level of engagement of institutional investors and asset managers is crucial for the long-term performance of companies. Therefore, the SRD subjects them to certain transparency requirements.

Question16. To what extent is the objective of the Shareholder Rights framework of increasing the level of engagement of institutional investors and asset managers in order to improve the long-term performance of the company still relevant today?

- ☐ To a very large extent
- ☐ To a large extent
- ☐ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/no opinion

If you would like to, please explain your answer:

500 character(s) maximum

Question17. To what extent have the following measures increased the level of engagement of institutional investors and asset managers?

	To a very large extent	To a large extent	To moderate extent	To a small extent	Not at all	Don't know/no opinion
Institutional investors and asset managers must publicly disclose – on a “comply or explain” basis – a shareholder engagement policy						
Institutional investors and asset managers must publicly disclose each year – on a “comply or explain basis” – how their engagement policy has been implemented						
Institutional investors must publicly disclose how their equity investment strategy contributes to the long-term performance of their investee companies						

	To a very large extent	To a large extent	To moderate extent ^a	To a small extent	Not at all	Don't know/no opinion
Institutional investors must publicly disclose – on a “comply or explain” basis – details regarding their arrangements with their asset managers						
Asset managers must annually report to their institutional investors – or to the public – on how their investment strategies and implementation thereof contribute to the long-term performance of the assets of the institutional investors or of the funds.						

If you would like to, please explain your answer:

500 character(s) maximum

Question18. Are you aware of any problems related to the provisions on institutional investors and asset managers, e.g., related to reporting?

500 character(s) maximum

Question19. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To moderate extent ^a	To small extent ^a	Not at all	Don't know/no opinion
Expanding public disclosure related to engagement policy and investment strategy of institutional investors and asset managers						
Reducing public disclosure related to engagement						

	To a very large extent	To a large extent	To moderate extent	To a small extent	Not at all	Don't know/no opinion
policy and investment strategy of institutional investors and asset managers						
Clarifying the elements of the engagement policy and the equity investment strategy						
Turning certain reporting or "comply or explain" obligations into mandatory requirements						
Introducing an EU-wide stewardship code of best practices						
Other						

If you would like to, please explain your answer:

500 character(s) maximum

4. Proxy Advisors (Article 3j)

Proxy advisors provide research, advice and voting recommendations to shareholders on how to vote, based on, among others, the information disclosed by the company. Therefore, proxy advisors are important actors in the corporate governance processes of companies.

Question 20. To what extent have the following measures improved the reliability, comparability and quality of advice of proxy advisors?

	To a very large extent	To a large extent	To moderate extent	To a small extent	Not at all	Don't know/no opinion
Application of a code of conduct on a "comply-or-explain" basis				X		
Disclosure to the public of information in relation to the preparation of proxy advisors' research, advice and voting recommendations				X		
Disclosure to the client of conflicts of interests and actions taken to address them				X		

If you would like to, please explain your answer:

500 character(s) maximum

Overall, there is room to improve the functioning and accountability of proxy advisors, given their significant influence on voting outcomes and shareholder behaviour. In particular, greater accuracy, methodological transparency and timely correction mechanisms would enhance confidence in proxy research reports. In addition, voting policies should be more proportionate and issuer specific, taking better account of sectoral characteristics, company circumstances and national legal frameworks, rather than relying on overly standardised approaches.

Question21. Are you aware of any problems related to proxy advisors?

- ☐ Revenue sources and potential conflicts of interest of proxy advisors are not disclosed transparently
- ☐ It is unclear which actors fall under the provisions on proxy advisors
- ☐ Proxy advisors' disclosure on dialogue with companies is not satisfactory
- ☐ Handling of company complaints is not satisfactory
- ☐ Proxy advisors' approaches to research, advice and voting recommendations are not disclosed transparently
- ☐ Proxy advisors' adherence to a code of conduct is not transparent
- ☐ Accountability and transparency of proxy advisors are limited
- ☐ Enforcement of the regulatory framework between EU and third-country proxy advisors is uneven
- ☐ Other: *The conflict of interest arising from the provision of services by proxy advisors to the entities on whose general meetings they issue voting recommendations*
- ☐ Don't know/no opinion

Question22. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Clarifying the definition of proxy advisor under the SRD		X				
EU-wide code of conduct for proxy advisors					X	
Specifying key features an industry code of conduct should have					X	
Additional transparency and disclosure requirements for proxy advisors	X					
Reducing disclosure requirements for proxy advisors					X	
EU-wide basic registration of proxy advisors with activity in the EU			X			

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
EU-centralised supervision of proxy advisors						X
National competent authority oversight of proxy advisors						X
Other	X					

If you would like to, please explain your answer:

500 character(s) maximum

It is of fundamental importance to review the policies of proxy advisors and, namely,

1. to make them more rigorous with particular reference to their transparency
2. to make them less generic and more tailored to the specific characteristics of, at least, the sector concerned.

5. General Meetings of Shareholders

General considerations

One of the general objectives of the SRD is to improve corporate governance by strengthening shareholder rights, among other means, by increasing meaningful participation in general meetings. Over recent years, especially during the COVID-19 pandemic, the practice of general meetings has evolved significantly. These developments lead to new potentials for shareholder engagement but also raise risks regarding the effective exercise of shareholder rights.

Question23. What is the best format for the exercise of shareholder rights?

- ☐ In-person general meeting
- ☐ Virtual only general meeting
- ☐ Hybrid general meeting
- ☐ Exercise of rights prior to (outside) general meetings
- ☐ Other
- ☒ Don't know/no opinion

Question24. Not all Member States offer companies and their shareholders the possibility to freely choose the format of general meetings (in-person, virtual, or hybrid) and the timing for exercising shareholder rights (at or prior to general meetings). To what extent would aligning rules across the EU to allow companies to opt for the following formats lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
In-person only general meetings						X

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Virtual-only general meetings						X
Hybrid general meetings (i.e., where each shareholder is able to choose between in-person and virtual attendance)						X
Requiring shareholders to exercise certain rights prior to the general meeting					X	
Adopting shareholder resolutions outside general meetings				X		
Other						X

If you would like to, please explain your answer:

While virtual-only or hybrid formats can facilitate inclusiveness and cross-border participation (enabling all shareholders to participate on the same conditions, placing those who can travel and those who cannot on an equal footing), several constraints of technological and legal nature may still exist today that can lead to higher risks for issuers and, therefore, making the adoption of mandatory solutions not feasible at this stage. For instance, limitations of certain national laws still require physical attendance at meetings or submission of physical documentation.

Overall, **EBF recommends flexibility in this respect**. In our view, virtual or hybrid general meetings would not require specific, separate restrictive EU-level regulation. Any format should be allowed just as equally, provided that the same level of exercisability of rights of shareholders is ensured. What really matters, is to adequately regulate the exercise of shareholders' rights and to guarantee that rights are actually exercisable irrespective of the format of the GM.

Rather than mandating a single format, the European Commission could consider establishing a general framework enabling issuers to choose between different alternative and equivalent meeting formats, such as physical, hybrid or virtual meetings. All these formats should be permitted under the national laws implementing the SRD. The latter should explicitly entitle the board of directors (or board of administration/management board) to decide on the meeting format for each shareholders' meeting, in line with the national framework and without requiring amendments to the company's by-laws.

Additional elements of attention:

- Different POA requirements and practical procedures discourage retail investors to participate in a cross-border context

Question25. To what extent is there a need for common EU rules on the format of general meetings?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Each shareholder must be able to choose between in-person and virtual attendance (hybrid general meetings)						X
Each shareholder must be able to exercise their rights during the general meeting						X
Each shareholder must have the possibility to also exercise their rights prior to the general meeting						X
There should be minimum standards to safeguard shareholder rights and legal certainty in the context of virtual participation	X					
Other						

If you would like to, please explain your answer:

500 character(s) maximum

With regard to the exercise of shareholder rights, it is important to ensure that no limitations are imposed on these rights. However, it is not essential for these rights to be exercised exclusively during the general meeting, as they can also be exercised effectively at an earlier point in time.

Regarding virtual participation, introducing minimum technical quality, communication security and system reliability standards may be appropriate to avoid application uncertainties and reinforce participants' confidence.

Question26. To what extent were the following shareholder rights strengthened by the SRD?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Right to receive information prior to the general meeting	X					

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Right to put items on the agenda	X					
Right to table draft resolutions	X					
Right to vote in the general meetings	X					
Right to vote by correspondence	X					
Right to ask questions	X					
Right to appoint a chosen proxy holder	X					

If you would like to, please explain your answer:

500 character(s) maximum

Question27. Are you aware of any problems related to the exercise of shareholder rights, among the following?

- ☒ Not all relevant shareholder rights are provided for in the SRD, hindering cross-border investments
- ☒ Many aspects of existing shareholder rights are left to the Member States, hindering cross-border investment
- ☐ Existing shareholder rights are not sufficient to ensure sound corporate governance
- ☒ Delays and inefficiencies regarding the vote casting and counting infrastructures
- ☒ Persisting practices lead to share blocking effects (operational constraints to transfer shares within a certain period before a general meeting)
- ☐ Persisting practices impede split voting
- ☐ Other
- ☐ Don't know/no opinion

Question28. To what extent would the following measures lead to improvements?

	To a very large extent	To a large extent	To moderate extent	To small extent	Not at all	Don't know/no opinion
Enabling shareholders to speak at the general meeting or to submit opinions prior to it				X		
Enabling shareholders to challenge resolutions under certain common conditions				X		

	To a very large extent	To a large extent	To moderate extent	To a small extent	Not at all	Don't know/no opinion
EU-wide conditions for attendance of shareholders and proxy holders				X		
Standardised protocols for vote casting and counting				X		
EU-wide threshold of share ownership for the right to put items on the agenda and to table draft resolutions				X		
Lowering the current 5 % optional threshold of share ownership for the right to put items on the agenda and to table draft resolutions					X	
Other						X

If you would like to, please explain your answer:

500 character(s) maximum

Since the entry into application of new SRD II requirements, a number of improvements have been made.

Having said that, Article 3c has left a wide margin to EU Member States in the transposition phase and this has prompted heterogeneous application across national legal systems. This is the case, for example, of how i) general meetings are managed and ii) shareholders receive information regarding general meetings and other corporate events.

We also note a lack of post-vote confirmations from issuers and issuer agents which without intermediaries cannot transmit them through to their clients. Vote confirmations from issuers are essential to end investors in order to record their vote, prove their compliance and validate ESG credentials in addition to participation in the general meeting

Link between directors' pay and companies' performance (Articles 9a and 9b)

One of the goals of SRD was to foster the long-term performance of the company. Thus, it aimed to improve the incentives for directors to act in the interest of the company by linking directors' pay to the long-term performance of the company.

Question29. To what extent is the objective of the Shareholder Rights framework of increasing the link between directors' pay and long-term performance of the company in order to improve the long-term performance of the company still relevant today?

- ☐ To a large extent
- ☒ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/no opinion

If you would like to, please explain your answer:

500 character(s) maximum

Current regulatory requirements regarding public disclosures are very demanding.

Question30. To what extent have the following measures contributed to the alignment between directors' pay and long-term performance of the company, by diminishing incentives for directors to focus on short-term returns?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Companies must publish a remuneration policy based on which remuneration to directors is paid				☒		
Companies must publish a report on directors' remuneration for the most recent financial year				☒		
Shareholder vote on the remuneration policy and reports				☒		

If you would like to, please explain your answer:

500-character(s) maximum

What has proved effective in aligning directors' pay with the company's long-term performance is the legally mandated deferral of banks' variable remuneration, together with companies' practice of setting long-term performance metrics for deferred awards.

Question31. Are you aware of any problems related to the existing rules on the long-term performance of the company and the link between directors' pay and companies' performance?

- ☒ Current rules are too burdensome
- ☐ Member States can make the vote of shareholders on the remuneration policy only advisory

- Shareholders' vote on the remuneration report is only advisory
- Member States can replace the shareholders' vote on the remuneration report by a discussion requirement
- **Executive remuneration is not comparable across companies**
- The Directive is insufficiently applied/enforced
- Other
- Don't know/no opinion

Question32. To what extent would the following measures lead to an improvement?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Binding vote of shareholders on director remuneration					X	
Simplified rules on remuneration policy	X					
Simplified rules on remuneration reports	X					
Other						X

If you would like to, please explain your answer:

500 character(s) maximum

Related party transactions (Article 9c)

The SRD aims at protecting the interests of the company and shareholders in case of transactions with related parties that risk leading to an appropriation of value of the company by controlling shareholders or members of the management body. The SRD aims at minimising their possible negative impact by requiring the public announcement of the related party transaction and the approval by the general meeting or by the supervisory or administrative body.

Question33. To what extent is the objective of the Shareholder Rights framework, to minimise the possible negative impact of related party transactions in order to improve the long-term performance of the company, still relevant today?

- To a very large extent
- To a large extent
- To a moderate extent
- **To a small extent**
- Not at all
- Don't know/no opinion

If you would like to, please explain your answer:

500 character(s) maximum

Question34. To what extent have the following measures contributed to minimising the possible negative impact of related party transactions?

	To a very large extent	To a large extent	To moderate extent	To small extent	Not at all	Don't know/no opinion
Public announcement of related party transactions (transparency)			X			
Approval of related party transaction by the general meeting (shareholder involvement) or by the administrative or supervisory body			X			
Extension of transparency requirements to transactions between related parties of the company and its subsidiaries					X	
Report as to whether the related party transaction is fair and reasonable (optional for Member States)					X	

If you would like to, please explain your answer:

500 character(s) maximum

We believe that the requirement for board approval in all cases (except where shareholder approval is required) is excessive. A more flexible regime should be provided, under which responsibility for certain transactions is entrusted to individuals or corporate bodies below board level, without prejudice to subsequent board oversight. While it is appropriate to ensure that related-party transactions are fair and reasonable, it is not essential for the audit committee to opine in every instance; it would suffice if, as in delegated transactions, such assessment could be performed by individuals or committees below board level, on the basis of general criteria previously determined by the audit committee.

As regards the contents of the public announcement of related-party transactions, specific concerns arise for both the entity and its counterparties in relation to the disclosure of sensitive commercial information. This issue should be carefully addressed and appropriately balanced.

Question 35. Are you aware of any problems with the provisions on related party transactions?

- ☐ It is unclear which transactions qualify as material related party transactions
- ☐ Too many options for Member States, lead to fragmentation
- ☒ Extensive rules on which transactions qualify as material related party transactions lead to complexity and legal uncertainty
- ☒ Other
- ☐ Don't know/no opinion

Question36. To what extent would the following measures lead to improvements?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Specifying which transactions qualify as material related party transactions (including quantitative ratios)		X				
Providing fewer options for Member States and introducing more rules on related party transactions					X	
Other	X					

If you would like to, please explain your answer:

500 character(s) maximum

Even if the board of directors can delegate certain related-party transactions, these are generally subject to board approval (save in instances where shareholder approval is required). We believe that requiring formal board authorisation in all cases is disproportionate and impractical. Therefore, we are of the opinion that a materiality threshold triggering a requirement for board approval (in addition to shareholder approval) should be defined. Transactions below this threshold should be entrusted to individuals or corporate bodies below board level, without prejudice to establishing a tailored control procedure, including reporting to the board and/or the relevant board committees. This would allow for appropriate oversight without imposing an automatic approval requirement in every instance.

6. Enforcement

Member States have to provide for measures and penalties which are effective, proportionate and dissuasive. This is to ensure that the shareholder rights provided for in the SRD are effectively enforced.

Question37. Are you aware of any problems regarding enforcement?

- ☒ Insufficient supervision by Member States' competent authorities
- ☒ Unclear which Member State is competent for the enforcement of the Directive
- ☒ Legal uncertainty, especially on scope of the SRD and the definition of central concepts
- ☐ Other
- ☐ Don't know/no opinion

Question38. To what extent would the following measures lead to improvements?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Transferring certain SRD provisions into a regulation						X
Codes of conduct developed by the private sector						X
Peer review mechanisms						X
EU guidelines						X
Supervision by an EU authority, e.g., ESMA				X		
Other						

If you would like to, please explain your answer:

500 character(s) maximum

supervision should be made more coherent. ESMA should maintain a public register of competent national authorities, national gold-plating measures, applicable fee regimes and implementation guidance. This would materially reduce cross-border compliance uncertainty.

1. Additional information

Question39. Do you have any final comments or suggestions, e.g., on any aspects not sufficiently covered by the SRD framework?

Question40. Feel free to attach any relevant documents to support or complement your replies. Please upload your file(s)