

AFME response to the Targeted EC consultation on the application of the SRD

November 2024

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **Targeted EC consultation on the application of the Shareholder Rights Directive (SRD)**. The Association for Financial Markets in Europe (AFME) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

AFME is registered on the EU Transparency Register, registration number 65110063986-76. We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Consultation Response

1. **Please provide the name of your organisation (or if you are responding as a natural person, please indicate that. If you wish to provide your name, you are welcome to do so).**

Association for Financial Markets in Europe

2. **Where are you / your organisation based?**

EU-level association

3. **Where are your headquarters based?**

Third countries

4. **Which of the following best describes where you / your organisation are active?**

EU-wide

5. **Which of the following best describes you / your organisation:**

Association / umbrella organisation representing one or more of the other groups listed

6. **If you responded to the previous question that you are an association / umbrella organisation representing one or more of the other groups listed, please provide the name of your association:**

Association for Financial Markets in Europe

7. **Please indicate which categories of the organisation(s) you represent (please select all that apply):**

Intermediary (e.g. a central security depository, custodian bank, other credit institution, investment / brokerage firm)

8. **If you represent a company, please indicate its size:**

N/A

Association for Financial Markets in Europe

London Office: Level 10, 20 Churchill Place, London E14 5HJ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540

Frankfurt Office: c/o SPACES – Regus, First Floor Reception, Große Gallusstraße 16-18, 60312, Frankfurt am Main, Germany T: +49 (0)69 710 456 660

www.afme.eu

9. If you are an institutional investor/ asset manager, please provide an average value for the assets that you hold/manage (please respond in millions of €):

N/A

General questions on the importance of and progress made as a result of the implementation of the SRDs

This part of the survey asks for high-level input concerning the importance for you of the issues addressed in the SRD1 and SRD2, and your view of how the conditions for shareholder rights have evolved in recent years.

10. Please indicate how important the following are in terms of needs and priorities for you/ your organisation.

Please rate from 1-5 where 5 = Very important and 1 = Not important at all; or if you do not know, or if not relevant.

Promoting shareholder engagement (equal treatment of shareholders)	5
To ensure investors can be better prepared for the GM	5
To improve investors' ability to participate in the GM	5
To enable investors to better exercise voting rights in the GM	5
Increasing transparency vis-à-vis shareholders (shareholder identification)	5
Facilitating the transmission of information across the investment chain	5
Facilitating the exercise of shareholder rights	5
Ensuring non-discrimination, proportionality and transparency of costs in services to facilitate the exercise of shareholder rights	5
Creating an enabling environment for cross-border investment in the EU	5
Creating an enabling environment for Third Country investment in the EU	5
Creating a level playing field for third-country intermediaries	5
Increasing transparency of proxy advisors	5
Providing a framework for the digitalisation of interactions across the investment chain	5

11. In your view, how much progress has been made in these areas since the deadline for full application of all SRDs provisions since September 2020?

Please rate from 1-5 where 5 = Very significant progress and 1 = No progress at all; or if you do not know, or if not relevant.

Promoting shareholder engagement (equal treatment of shareholders)	DK
To ensure investors can be better prepared for the GM	2
To improve investors' ability to participate in the GM	2
To enable investors to better exercise voting rights in the GM	2
Increasing transparency vis-à-vis shareholders (shareholder identification)	2
Facilitating the transmission of information across the investment chain	2
Facilitating the exercise of shareholder rights	2
Ensuring non-discrimination, proportionality and transparency of costs in services to facilitate the exercise of shareholder rights	2
Creating an enabling environment for cross-border investment in the EU	DK
Creating an enabling environment for Third Country investment in the EU	DK
Creating a level playing field for third-country intermediaries	DK
Increasing transparency of proxy advisors	DK
Providing a framework for the digitalisation of interactions across the investment chain	3

12. How consistent are the SRD1 and SRD2 with EU policies, requirements and regulations in related fields? Are there any, conflicts or tensions?

Not answered

13. If you see any significant inconsistencies between the SRD1 / SRD2 and other EU policies or priorities, please briefly explain them in the text box below.

Not answered

14. What do you consider to be the main achievement, improvement or positive impact of the SRD1 and SRD2 to date?

Improvement of Shareholder Identification processes

We have observed an increase in the volume of shareholder identification (SI) requests received, supporting the objective of improving transparency for issuers.

We also note an improvement in the level of standardisation and timeliness of the SI process. SRDII has also led to the development of ISO 20022 messaging standards by the Securities Market Practice Group (SMPG) to facilitate transmission of information in a machine-readable STP format. The adoption of these standards by some market participants has supported this improvement. We believe that a greater percentage of requests received are able to be straight-through processed than prior to the entry into application of Article 3a. We note that this has been incremental progress over time, rather than an immediate step-change following entry into application.

However, there is still significant room for improvement.

15. What do you consider to be the main challenge or disappointment with the SRD1 and SRD2 and/or its implementation to date?

Inconsistent transposition, including lack of common definition of shareholder

Due to differences in transpositions, the amount of shareholder information issuers can expect to receive and the quantity of information intermediaries are required to disclose has been impacted.

Please refer to our response to Q37 for further detail.

Re proxy voting, jurisdictional differences give rise to an uneven availability of electronic voting, which is not permissible in certain markets, partly due to different requirements regarding proof of entitlement required to vote within custody chain. Requirements for physical presence can undermine shareholder engagement and make cross-border voting more difficult. Requirements for POAs create a significant operational burden to document and maintain.

Lack of compliance with messaging standards

ISO20022 standards were developed to enable compliance with requirements for data transmission in machine readable, standardised format. Despite this, many intermediaries still maintain legacy channels of communication including ISO15022 and proprietary channels. These legacy methods do not enable STP and require data enrichment from intermediaries, causing delays in disseminating information through the investor chain.

Missing Information

Proxy - members report a high frequency of key pieces of information missing from agendas. All data points should be included on the agenda in the first instance, as per market standards.

General meetings- results should be transmitted through the holding chain within a certain time period following the meeting. Anecdotal feedback suggests that this is currently not the case, and firms often have to request this information from issuers or obtain it manually from websites.

Corporate actions - per SRDII only certain information must be provided on issuer announcements - i.e. Block A of Table 8. This deviates from market standards, which also require the information provided in Blocks B and C of Table 8.

16. Looking to the future, the next questions ask about changes that could be considered to improve specific provisions of the SRDs. How do you think the regulatory framework for shareholder rights in the EU should evolve in the future'?

Yes / No / don't know

Business as usual, meaning that shareholder rights should be regulated at EU level based on the two SRD Directives, and the Commissions Implementing Regulation		
Increased harmonisation, meaning that the framework should be enhanced by a Regulation whose provisions would be directly applicable in the Member States	Y	See Q15
Other – please describe any other changes to the overarching regulatory framework for shareholder rights that you think are necessary		

General Meetings (Articles 4-14)

In this section you are invited to provide feedback on the SRD provisions on general meetings.

17. Please indicate how important the following are in terms of needs and priorities for you/ your organisation.

Please rate from 1-5 where 5 = Very important and 1 = Not important at all; or if you do not know, or if not relevant.

Availability of access to information prior to the GM	5
Rights to put items on the agenda/ table draft proposals	5
Streamlined requirements for participating and voting	5
Electronic participation	5
Electronic voting	5
Ability to exercise the right to ask questions	5
Ease of proxy voting	5
Ease of appointment and notification of proxy holders	5
Ease of voting by correspondence	5
General removal of impediments to exercise of voting rights	5
Processes for- confirmation of receipt, recording and counting of the votes cast	5

18. In your view, how much progress has been made in these areas since the deadline for full application of all SRD2 provisions in September 2020?

Please rate from 1-5 where 5 = Very significant progress and 1 = No progress at all; or if you do not know, or if not relevant.

Availability of access to information prior to the GM	2
Rights to put items on the agenda/ table draft proposals	2
Streamlined requirements for participating and voting	2
Electronic participation	2
Electronic voting	2
Ability to exercise the right to ask questions	2
Ease of proxy voting	3
Ease of appointment and notification of proxy holders	2
Ease of voting by correspondence	2
General removal of impediments to exercise of voting rights	2
Processes for- confirmation of receipt, recording and counting of the votes cast	2

19. Please indicate how often issuers in the market where you are active/hold shares/operate organise general meetings in the following formats

Not answered

20. If you wish to make any comments (for example on specific Member States/ markets), or refer to evidence, please do so here:

Not answered

21. Are you aware of any general meetings, where shareholders (or their agents) were not offered the possibility to attend in person (i.e. only fully virtual /electronic participation was offered)?

Not answered

22. If you wish to make any comments, or refer to any evidence, please include here:

Not answered

23. To what extent are the following factors (in the table below) barriers to exercising of shareholder rights related to general meetings and to related corporate action processing?

To a large extent / To some extent / To a limited extent / Not at all / Don't know

Specific national requirements (in particular, requirements of Powers of Attorney to exercise voting rights)	To a large extent
Market practices require paper-based supports to prove entitlement to vote (Powers of Attorney, wet ink signatures, etc.)	To a large extent
The fees charged to vote or participate in meetings are disproportionately high	Don't know
The fees charged to vote or participate in meetings are non-transparent	Don't know
There are problems with the transmission of information when shareholders try to exercise their rights (delays or incomplete information)	To a large extent
The length and complexity of chains of intermediaries (custody or investment chains) makes it difficult	Not at all
No harmonised definition of shareholder (i.e. who is entitled to exercise the rights attached to shares) at EU level	To a small extent
Market actors have not adopted market standards (such as ISO 20022), which reduces shareholder engagement	To a large extent
Shareholders or their representatives are unable to participate on-line in general meetings	To some extent
Lack of harmonisation of the evidence of entitlement needed to exercise shareholder rights across the Member States	Not at all
Lack of harmonisation of the record date across Member States	To a large extent
The confirmation of the entitlement and the reconciliation obligation	Not at all
The sequence of dates and deadlines	To a large extent
The communication between issuers and central securities depositories (CSDs) as regards timing, content and format	To a large extent

24. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

25. What are your views on the effects of harmonising the evidence of entitlement requirements and of the record date for shareholders at EU level?

To a large extent / To some extent / To a limited extent / Not at all / Don't know

Would the harmonisation of the evidence of entitlement requirements be desirable?	Don't know
Would the harmonisation of the evidence of entitlement ensure that shareholders are more able to exercise their voting rights and participate at general meetings?	To some extent
Would the harmonisation of the record date be desirable?	To a large extent

26. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

27. On average, what are the costs incurred to physically attend a general meeting (e.g. for travel, accommodation, man-hours, and subsistence)? Please consider both general meetings you have attended and those you have not attended). Please provide a value in Euros.

Not answered

28. What would be the costs related to online participation? Please provide a value in Euros.

Not answered

29. On average, what are the costs incurred for the organisation of different types of general meetings (physical, hybrid and online)? When providing your answer please consider only the costs related to the items suggested below each type of general meeting, for one meeting)

Not answered

Identification of shareholders (Article 3a)

In this section we ask you questions surrounding the identification of shareholders.

30. In your experience, how has the number of shareholder identification requests launched by issuers evolved since September 2020 (since the entry into application of SRD2 relevant implementing rules)?

Some increase

31. To what extent do you consider the following to be barriers to identification of shareholders (i.e. the implementation and application of Article 3a SRD2) in your country?

To a large extent / To some extent / To a limited extent / Not at all / Don't know

The transposing national law is not appropriate to ensure compliance with Art 3a: incorrect wording, incomplete transposition?	To a large extent
Existing national laws or administrative requirements hinder the application of Art 3a (such as paper-based support or powers of attorney)	Not at all
The fees levied by financial intermediaries for the identification of shareholders in cross-border contexts (i.e. where the shareholder or listed company is in another Member State) are too high	Not at all
The lack of transparency about financial intermediaries' fees to identify shareholders in cross-border contexts (where the shareholder or listed company is in another Member State)	To a small extent
The non-adoption of common EU-wide market standards	To some extent
Partial or non-application of common EU market standards in some Member States	Don't know
The lack of adequate technology available to market participants	Not at all
Long/complex chains of intermediaries (investment or custody chains)	Not at all
The reliance on omnibus accounts in cross-border chains of intermediaries.	Not at all
The lack of an EU-wide definition of shareholders (i.e. who is entitled to exercise the rights attaching to shares)	To a large extent
The lack of a harmonised record date	Not at all
Non-compliance with (or too long) deadlines for intermediaries in the chain	Not at all
Other <i>[Due to issuer agents sending invalid or out-of-scope requests, Intermediaries are required to conduct a four-eye check of all incoming requests to ensure that they are compliant]</i>	To a large extent

32. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

Definition of 'shareholder'

The identification, assignment to and exercise of shareholder rights depends strongly on who is defined as a 'shareholder' for such purposes. As per Article 2(b) of the SRD, this is left up to the Member States, meaning that the definition varies by country. Importantly, some Member States' legal systems recognise the beneficial owner of shares as the 'shareholder' whereas others recognise the legal owner as the shareholders. The next few questions ask about your experiences and views on the current approach, as well as on potential future changes.

33. Do you consider that more harmonisation in the definition of 'shareholder' is necessary?

Yes, to a large extent

34. Why do you favour a more harmonised definition of 'shareholder'?

Because varied definitions of 'shareholder' across Member States...

...cause legal uncertainty	Y
...create difficulties for issuers to identify their shareholders	Y
...create difficulties in the transmission of information in the investment chain	Y
...create difficulties for shareholders to exercise their rights	Y
...increase costs of interactions in the investment chain	Y
...create difficulties for actors in the investment chain to comply with the provisions of the SRD1 and / or SRD2	Y
...create difficulties for competent authorities to enforce compliance with the provisions of the SRD1 and / or SRD2	
...increase the costs of enforcing compliance of the SRD1 and / or SRD2 for competent authorities	

35. If you consider that the varied definitions of 'shareholder' increase costs of interactions in the investment chain, could you estimate how much higher these costs are for different participants compared to a situation where all Member States had the same definition of 'shareholder'?

Not answered

36. If you consider that the varied definitions of 'shareholder' increase costs of enforcement of compliance for competent authorities could you estimate how much higher these costs are compared to a situation where all Member States had the same definition of 'shareholder'?

Not answered

37. Please provide any additional detail to explain why you consider the current flexible approach to the definition of 'shareholder' appropriate or problematic.

The definition of shareholder for SRDII purposes still depends on the national law of each security's country of issuance. This is particularly problematic in cases of cross-border investment, which typically have longer custody chains (i.e. multiple intermediaries between issuer and end investor.) We consider that the objective of an issuer raising an identification request is to determine the end investors - the person or entity at the end of the chain.

If, under applicable national laws, the shareholder is determined as an entity that is not the end investor, there are two main consequences.

Firstly, the issuer does not have a legal right to obtain information about persons or entities further down the custody chain (including the end investor). If an intermediary further down the custody chain does provide this information, they risk doing so without the benefit of SRDII protections on the disclosure of this information and may thus be in breach of legal or contractual obligations. From an issuer perspective, therefore, it is unlikely that the shareholder identification request will determine the end investors.

Secondly, from an investor perspective, SRDII rights and obligations will not apply to persons or entities further down the chain. Thus, end investors may not be able to fully exercise their rights.

A common pan-European definition of shareholder that identifies the end investor (or "ultimate account holder") as being the shareholder is therefore needed so that the party entitled to exercise rights that have been attributed to securities positions is properly identified on a harmonised basis.

We note that changes to definition of shareholder must also take into account potential impacts on other parts of legislation. For example, in some countries, the current definition helps facilitate the protection of the end investor in cases of bankruptcy of an intermediary.

38. How do you think the SRD provisions on the definition of 'shareholder' should evolve in the future.

The definition of shareholder should remain completely up to the Member States		
2. List of definitions The European Commission should publish and keep updated a list of each Member State's definition of 'shareholder'	Y	Note – as an interim solution towards eventual full harmonisation
3. Discrete harmonisation While leaving it up to the Member States to formally define 'shareholder' in company law, the concept would be defined in a harmonised way for specific purposes associated with shareholder identification	Y	Note – as an interim solution towards eventual full harmonisation
4. Full harmonisation 'Shareholder' would be defined throughout the EU as the beneficial owner of shares	Y	

Transmission of information

In Chapter 1a, the SRD2 introduced several provisions addressing shareholder identification (Article 3a), the transmission of information in the investment chain (Article 3b), the exercise of shareholder rights (Article 3c) and costs imposed on shareholders (Article 3d). These are supported by provisions in the Implementing Regulation of the SRD2. This part of the survey asks about these aspects, both in terms of your views and experiences of the rules in force, and potential future changes.

39. Do you agree or disagree with the following statements on interactions in the investment chain related to key provisions of the SRD2?

Strongly agree / Tend to agree / Neither agree nor disagree / Tend to disagree / Strongly Disagree

Issuers are able to identify their shareholders when needed	Tend to agree
Information flows in the investment chain are smooth and efficient	Tend to agree
The content, format and timing of information provided to shareholders ahead of general meetings is in line with SRD2 requirements	Tend to agree
The content, format and timing of information provided to shareholders on corporate events other than general meetings is in line with SRD2 requirements	Neither agree nor disagree
Shareholders have the opportunity to participate in general meetings where they have the right to do so	Tend to agree
Shareholders have the opportunity to vote at general meetings where they have the right to do so	Tend to agree
Costs charged by intermediaries for shareholders to obtain information and exercise their rights are communicated transparently	Strongly agree
Costs charged by intermediaries for shareholders to obtain information and exercise their rights are proportionate to the costs incurred for delivering the service	Strongly agree
Costs charged by intermediaries for shareholders to obtain information and exercise their rights are non-discriminatory (between domestic and foreign shareholders)	Strongly agree

Information exchanges related to general meetings

40. When it comes to general meetings, do you find that the information provided by issuers on the following items is complete?

Always / Mostly / Sometimes / Rarely / Never

Date and time of the general meeting	Always
Type of general meeting	Mostly
Location of the general meeting	Always
The record date- (the cut-off date used to determine which shareholders are entitled to a corporate dividend)	Mostly
How to participate (on-line, in person, via a proxy, via correspondence attendance)	Sometimes
Where to find the required forms (for proxy voting, for voting by correspondence etc.)	Sometimes
Where to find information on a website / a url	Sometimes
How to vote (if not in person at the meeting)	Sometimes
The deadline for voting remotely	Mostly
How to add items to the agenda	Rarely
Issuer deadline for modifying participation	Rarely

41. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

AFME supports updates to market standards so that this includes a deadline for confirming method of participation to the issuer. The standards should be clear that it is possible to vote in advance of the general meeting, and still attend the meeting (without voting again).

42. Is the information on general meetings (e.g. meeting notices) and other corporate events between listed companies and shareholders provided on time, particularly in cross-border contexts? The implementing Regulation requires under Article 9(3) that the last intermediary transmit to the shareholder the information about the corporate event/general meeting without delay and no later than by the close of the same business day as it received the information (or if received after 16.00 during its business day, no later than by 10.00 of the next business day.)

Domestic	Always
Cross border	Always

43. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

AFME members, acting as intermediaries, don't see any differentiation in process between cross-border and domestic from an information transmission perspective. AFME members all consider themselves compliant with timelines mandated by the implementing regulation.

44. Have you encountered any issues due to having to pay fees for transmission of information between listed companies and shareholders, particularly in cross-border contexts?

Not answered

45. Please specify here, if relevant, which types of issue you have encountered, particularly as regards costs

Not answered

46. Regarding the transmission of information specific to corporate events other than general meetings (i.e. distribution of profit, reorganisation of the issuer shares etc.), do shareholders receive all the information they need to exercise their rights and participate to the events?

Always Often Sometimes Rarely Never Don't know

Domestic	Always
Cross border	Always

47. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

AFME members, acting as intermediaries, don't see any differentiation in process between cross-border and domestic from an information transmission perspective. AFME members all consider themselves compliant with SRDII and the implementing regulation, and pass on all information received from the issuer or upstream intermediary. We note that firms are only able to pass on the information that they receive – so, if incomplete information is provided by the issuer, the shareholder will not receive all the necessary information. Similarly, if the information is provided piecemeal by the issuer, then this ultimately results in the investor receiving an excessive quantity of messages to obtain the necessary information.

AFME supports updates SRD to enshrine the concept of a 'golden operational record' – i.e. the issuer provides all information up-front in a machine-readable format.

Cross-border investment

- 48. A specific goal of the SRD2 is to facilitate cross-border investment, i.e. to make it easier for investors based in one Member State to hold shares in companies based in another Member State. In that context, do you agree or disagree with the following statements?**

Strongly Agree / Tend to Agree / Neither agree nor disagree / Tend to disagree / Strongly Disagree / Don't Know / Not applicable

Investing and exercising shareholder rights is just as easy cross border in the EU as it is domestically	Tend to Disagree
Investing and the exercise of shareholder rights specifically for retail investors is just as easy cross border in the EU as it is domestically	Strongly Disagree
Investing and exercising shareholder rights in the EU is just as easy for third Country (non EU) investors as it is for EU investors	Neither agree nor disagree

- 49. In your view, to what extent do the following issues act as barriers to cross-border investment in the EU?**

To a large extent / To some extent / To a limited extent / Not at all / Don't know

The lack of a harmonised definition of 'shareholder'	To a large extent
Divergent rules (legislation) across Member States in terms of interactions in the investment chain (e.g. requirements for paper documents, power of attorney documents etc.)	To a large extent
Divergent practices and market standards in terms of interactions in the investment chain	To some extent
Different thresholds for the right of issuers to request the identify of shareholders	To a limited extent
The use of different formats and standards, particularly concerning digital solutions	To a limited extent
Higher charges / fees for shareholders to obtain information and exercise their rights in a cross- border context	To a limited extent
Difficulties for shareholders to obtain information and exercise their rights digitally / online in a cross-border context	To a large extent
Long and complex intermediary chains	Not at all
Issues un-related to the SRD and SRD2 (e.g. lacking knowledge about foreign firms)	To some extent
Other, please specify:	

- 50. Please provide any further views on investment and the exercise of rights cross-border, and how this has been affected by the SRD and SRD2.**

Increasing levels of cross-border investment both within and into the EU is a key objective of CMU, shared by AFME. From a post trade perspective, the barriers to achieving this are well documented. Many of these barriers are outside of the scope of SRD. We refer to previous analysis by expert groups such as the EPTF, the CMU High Level Forum, and the AMI-SeCo. Previous research has also identified a level of 'home bias' across EU investors, but suggests that this may be inversely correlated with the size of assets invested – i.e. retail investors may be more likely to invest in their home market than larger institutional players. This is consistent with the view of AFME members, who consider that there are greater barriers to cross-border investment for retail investors than for institutional investors. Further, we believe that the barriers to cross-border investment are broadly the same for any non-domestic investor, regardless of whether they are EU-based or non-EU-based.

Despite the introduction of CSDR, there remains low-levels of cross-border issuance. AFME analysis indicates that in 2023H1, 3% of equity issuance was originated cross-border by EU companies outside their local exchange, which compares with 9% in 2022FY and 2021FY.

From an SRD perspective, the simplification and harmonisation of key processes, as well as the removal of national-level specificities, would represent a major step forward to facilitating cross-border investment. In particular we recommend converting the rules from a Directive to a Regulation to help deliver this.

Requirements for physical presence can undermine shareholder engagement and make cross-border voting more difficult. Requirements for POAs create a significant operational burden to document and

maintain. As previously noted, information that is missing, incomplete or provided in a non-standard, non-STP format by issuers can also create barriers for shareholders to exercise their rights.

Digitalisation of the investment chain

51. Do you consider that there is a need to increase the use of digital solutions to improve how information is communicated across the custody chain (e.g. block chain, API, mobile applications)?

Yes, to some extent

52. Considering the intermediaries with which you operate (or if a supervisory authority - come into contact with), what percentage do you estimate have fully adopted the ISO 20022 messaging standards to comply with the regulatory requirements (SRD2; Implementing Regulation)? Please give an estimate in percentage in the box below. Please ignore if you are unable to answer.

Estimation in percentage (%):

Not answered

53. Do you think that the only way to comply with the requirements of the SRD2 and the Implementing Regulation relating to the transmission of information is the adoption of ISO 20022 by market participants?

No, there are other ways to comply (please explain)

54. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

We emphasise that our opinion is that progress is contingent on improving the quality and standardisation of the information, rather than the means by which it is communicated. It is important that standards are followed from issuer/first intermediary through to the end of the chain.

We note that SMPG guidance states that information "shall be communicated in formatted electronic form using standards defined and used by the securities industry such as the ISO standards or methodology compatible with ISO, irrespective of the communication channel used." This leaves open the possibility of alternative means than ISO messaging.

However, we note that, currently, standards for shareholder identification and general meeting processes have been developed based on the use of ISO 20022, and AFME recommends full compliance with these standards.

For corporate action messages, there is widespread usage of ISO 15022, and this currently remains a an appropriate industry standard means for transmission of information related to corporate action events.

55. Would you support the introduction of a legal obligation to adopt the ISO 20022 messaging standards in the context of the transmission of information between intermediaries?

No

56. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

As noted in our response to Question 54, AFME members strongly support standardisation and communication in electronic form, but note that ISO 20022 is not necessarily the only way of achieving this. Appropriate market standards may change over time and therefore there is a risk attached to enshrining specific communication protocols into legislation. We also note that messages are transmitted between parties on a global basis, and it would not be possible to enforce global compliance with an EU legal obligation to adopt ISO 20022.

57. Has your organisation adopted a secure, machine-readable messaging standard for interactions in the investment chain?

Yes, the ISO 20022 messaging standard

Yes, a messaging standard other than ISO 20022 (please specify)

No, we do not use a secure, machine readable messaging standard

Not answered

58. Please provide any other insight on your choice of messaging standard:

Not answered

Costs of communication/ interaction in the investment chain

59. Did your organisation take any action to comply with the provisions of SRD2 on interactions in the investment chain?

Significant action

60. Please describe the action taken:

At an industry-wide level, AFME and its members supported the development of market standards for the key processes outlined in SRDII, partnering with associations representing other impacted stakeholders.

AFME members also conducted legal analysis on an associated basis. This involved engaging external legal counsel to conduct a review across all in-scope jurisdictions to determine key questions, including:

- Effective date
- In-scope instruments
- Meaning of 'shareholder' under national law
- National guidance/interpretation of key terms
- Existence of any contractual opt-outs or goldplating
- Local monitoring and penalty measures

We note that this extensive and expensive analysis was necessary given the divergent implementation of the Directive across EU member states, including the failure of jurisdictions to meet the implementation timelines set out in SRDII.

61. How has compliance with the SRD2 provisions on interactions in the investment chain affected the costs incurred for your organisation?

Rough estimate either in EUR, percentage of turnover, person days, or full-time equivalents

One-off costs, new IT equipment	
One-off costs for designing and adopting new processes	
One-off staff training costs	
Annual cost for maintaining IT systems, upgrades, on-going training	

Not answered

62. How have compliance costs regarding interactions in the investment chain changed since the implementation of SRD2?

Cost have increased a lot (>+30%) / Costs have increased a little (+10%-+30%) / No noticeable change (-10% to +10%) / Costs have decreased a little (-10% to - 30%) / Costs have decreased a lot (<-30%)

Annual cost for maintaining IT systems, upgrades, on-going training	
Annual costs for the identification of shareholders	
Annual costs to provide information to shareholders on corporate events	
Annual costs to facilitate the exercise of shareholder rights	

Not answered

63. Please provide any further information to explain your answer on the costs incurred by your organisation.

Not answered

64. How have your organisation's charges / fees to shareholders changed since the application of the SRD2?

Charges have increased a lot (>+30%) / Charges have increased a little (+10%-+30%) / No noticeable change (-10% to +10%) / Charges have decreased a little (-10% to - 30%) / Charges have decreased a lot (<-30%)

Not answered

Provision of information on corporate events	
Participation in general meetings	
Voting at a general meeting	

Looking ahead - potential changes to the rules on interactions in the investment chain'

65. Overall, do you think that changes are needed to the EU-level legal provisions on interactions in the investment chain?

Yes, minor changes

66. Please express your view on whether and how the SRD provisions on interactions in the investment chain should evolve in the future.

Yes / No / Not sure

1. Business as usual: The SRD2 provisions on interactions in the investment chain would remain unchanged	N	
2. Clarifications and guidance: While leaving the rules unchanged, the European Commission could publish additional information and guidance to improve awareness, compliance and the consistency of application of the rules	Y	
3. Minor refinements: Harmonisation could be increased through refinements such as standardising the threshold for issuers to request the identify of shareholders and the documentation required to demonstrate entitlement to vote at a general meeting	Y	Support removal of threshold in all jurisdictions. Support harmonisation documentation required to demonstrate proof of entitlement, with a view to ultimately eliminating the need for documentation to be provided in a non-machine readable format.
4. Harmonised, digital information flows: To further facilitate interactions in the investment chain, reduce discrepancies between Member States and incentivise digitalisation, requirements could be standardised and the use of a common, interoperable standard mandated (e.g. ISO 20022)	N	
Other, please specify:		

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

67. In your country, is there a legal requirement or is it market practice to use paper documents with wet ink signatures in the communication between issuers and investors for the purpose of executing corporate events/participating to general meetings (i.e. proxy voting, choosing of options etc.)

A legal requirement

Market practice

Don't know

No such requirement or market practice exists

Not answered

68. Please specify for which types of corporate events paper document/ wet signatures are required:

Not answered

69. When you exercise the right to vote flowing from your shares do you receive electronic confirmation that your vote has been recorded and counted by the company?

Sometimes

70. Do you have any experience with services provided by online brokerage platforms ('neo-brokers')?

Yes

No

Don't know

Not answered

71. If you wish to make any comments to provide more detail or explain your answer, please do so here:

Not answered

72. If you answered yes to the previous question, do you consider that, in general, their services comply with the SRD2 requirements relating to the transmission of information and the facilitation of the exercise of shareholders rights (articles 3b and 3c SRD2)?

Always

Mostly

Sometimes

Rarely

Never

I don't know.

Not answered

73. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

74. Did you receive the same level of support as in the case of traditional brokers regarding other corporate events (e.g. dividend payments)?

Yes, fully

To a large extent

Partly

No, not at all

Don't know

Not answered

75. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

76. How does the support you received from the online brokers to participate and vote in a general meeting compare to that received when investing via 'traditional' intermediaries or credit institutions?

Much better

Better
About the same
Worse
Much worse
Don't know

Not answered

77. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

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

In this section we ask about your experiences regarding non-discrimination, proportionality and transparency of costs when exercising shareholders' rights.

78. For services regarding interactions in the investment chain, the fees charged by intermediaries are...

Strongly agree / Tend to agree / Neither agree nor disagree / Tend to Strongly disagree / disagree / Don't know

Fully transparent in domestic situations	
Fully transparency in cross-border situations	
Non-discriminatory and proportionate in domestic situations	
Non-discriminatory and proportionate in cross-border situations	

79. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

80. Following the entry into force of the SRD2 (Article 3d), have you taken steps to improve the transparency of the fees you charge for shareholder identification, the transmission of information and/or to the facilitation of the exercise shareholder rights?

Yes, for both national and cross-border services

Yes, for national services only

Yes, for cross-border services only

No

Information about our fees was already transparent

Don't know/not applicable

Not answered

81. Following the entry into force of the SRD2 (Article 3d), have you adjusted your fees to ensure that they are non-discriminatory and proportionate to the actual costs of providing services ?

Yes / No / Don't know/not applicable

Shareholder identification (domestic)	
Shareholder identification (cross-border)	
Transmission of information (domestic)	
Transmission of information (cross-border)	
Exercise of shareholder rights (domestic)	
Exercise of shareholder rights (cross-border)	

Not answered

82. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

83. Is there a significant difference between the fees levied for domestic services in comparison with cross-border services?

Yes, there is a significant difference for some services

Yes, there is a significant difference in the case of certain countries.

84. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

We see differences primarily in the fee schedules of certain market infrastructures.

Feedback from AFME members strongly suggests that intermediaries apply the same pricing structure for all types of client.

85. If 'yes', can you explain how the fees / charges differ for cross-border investors, and why this is the case?

...

Third-country (non-EU) intermediaries (Article 3e)

In this section we ask you to provide some inputs regarding the appropriateness of the material scope of the SRDs in particular concerning third-country intermediaries (non-EU intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU companies listed in the EU)

86. Do you consider that the scope of application of SRD2 regarding third country intermediaries is appropriate with regard to:

To a large extent / To some extent / To a small extent / Not at all / Don't know

Identification of shareholders	<i>To a large extent</i>
Transmission of information	<i>To a large extent</i>
Facilitation of shareholder rights	<i>To a large extent</i>
Transparency of costs	<i>To a large extent</i>

87. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

We consider that the current scope of application is appropriate. EU law and regulation should be applicable to all parties investing or participating in EU securities markets.

88. When third-country intermediaries are involved in the chain between participants registered in your MS, are any of the following issues more likely to arise as compared to involving only EU intermediaries?

Always / Mostly / Sometimes / Rarely / Never / Don't know

Complications/delays/obstacles regarding the identification of shareholders by listed companies	<i>Rarely</i>
Delays in the transmission of information	<i>Rarely</i>
Non-complete information transmitted	<i>Rarely</i>
Incorrect information transmitted	<i>Rarely</i>
Non-transparent/ disproportionate fees levied	<i>Rarely</i>
Other, please specify	

89. Overall, do you consider that the inclusion of third-country intermediaries in the scope of the SRD2 obligations (related to shareholder identification, the transmission of information, the facilitation of exercise of shareholder rights and costs) has reduced the amount of interruptions in the flow of information across the chains of intermediaries?

Yes, to some extent

90. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

...

91. To what extent do you view the following as main barriers to third-country intermediaries' compliance with their obligations regarding the exercise of shareholder rights (identification of shareholders, transmission of information, facilitation of the exercise of shareholder rights, costs)?

To a large extent / To some extent / To a small extent / Not at all / Don't know

Jurisdictional issues/conflicting national provisions/difficulty in establishing cross-border competence	
Lack of supervision (checks)/enforcement	
High costs required to comply with the SRD2 obligations	
Conflicting market standards at international level	
Other, please specify:	

92. Do you consider that intermediaries from non-EU countries operating in your MS are adequately supervised to ensure compliance with their obligations under SRD2 Chap 1a?

Yes, to a large extent

Yes, to some extent

Yes, to a small extent

No

Don't know

Not answered

93. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

Proxy advisors (Article 3j)

Article 3j of the SRD2 was introduced to increase the transparency of proxy advisors. It contains provisions on codes of conduct, information that must be disclosed concerning research, advice and voting recommendations, and conflicts of interest. This part of the survey asks about these aspects, both in terms of your views and experiences of the rules in force, and potential future changes.

94. Do you agree or disagree with the following statements on the implementation and effectiveness of the SRD2 provisions on proxy advisors?

Strongly agree / Tend to agree / Neither agree nor disagree / Tend to Strongly disagree / disagree / Don't know

The current provision on codes of conduct (Art. 3j(1)), which requires proxy advisors either to adhere to a code of conduct or explain why not, in both cases making the information publicly available, is appropriate	
Proxy advisors' approach to codes of conduct is satisfactory	
The current provision on annual disclosure by proxy advisors (Art. 3j(2)), which requires the publication of information on the preparation of research, advice and voting recommendations, is appropriate	
Proxy advisors' approach to the disclosure of information is satisfactory	
The current provision on conflicts of interest (Art. 3j(3), which requires the Member States to ensure proxy advisors identify and disclose actual or potential conflicts of interest, is appropriate	
Proxy advisors' approach to dealing with potential conflicts of interest is satisfactory	
Proxy advisors based in third countries are just as transparent as ones based in the EU	

Not answered

95. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

96. Do you consider that how proxy advisors take into account sustainability or environmental, social and governance (ESG) criteria when making assessments (for example about an issuer) is satisfactory?

Yes, to a large extent

Yes, to some extent

Yes, to a small extent

No

Don't know

Not answered

97. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

Not answered

98. In your experience, how has the situation on proxy advisors evolved since the deadline for full application of all SRD2 provisions in September 2020?

Significant improvement / Minor improvement / No noticeable change / Minor deterioration / Significant deterioration / Don't know

Investors are able to find out whether proxy advisors adhere to a code of conduct	
Investors are able to scrutinise proxy advisors' approaches to research, advice and voting recommendations	
Investors are able to find out about actual or potential conflicts of interest among proxy advisors	
The quality of advice by proxy advisors	
Other aspect(s), please specify:	

Not answered

99. For any aspects that you think have improved, please explain the changes and their implications.

Not answered

100. For any aspects that you think have deteriorated, please explain the changes and their implications.

Not answered

101. Did your organisation take any action to comply with the provisions of SRD2 on the transparency of proxy advisors?

Significant action

Minor action

Marginal / no action

Don't know

Not answered

102. Please describe the action taken:

Not answered

103. How has compliance with the SRD2 provisions on transparency of proxy advisors affected the costs incurred for your organisation?

Rough estimate either in EUR, percentage of turnover, person days, or full-time equivalents

One-off costs, e.g. for identifying and adopting a new code of conduct, developing standard operating procedures for the disclosure of required information	
Ongoing annual costs for action needed to adhere to a code of conduct, disclose information the preparation of research, advice and voting recommendations, and to disclose information on actual or potential conflicts of interest	

Not answered

104. Please provide any further information to explain your answer on the costs incurred by your organisation.

Not answered

105. How have costs for enforcement of the SRD2 provisions on the transparency of proxy advisors been affected by the application of the SRD2 provisions in your country?

Rough estimate either in EUR, person days, or full-time equivalents

One-off costs, e.g. for new IT equipment, and devising and adopting new processes	
Annual ongoing costs	

Not answered

106. Please share any further views or explanations concerning enforcement of the SRD2 provisions and rules on the transparency of proxy advisors.

Not answered

107. Overall, do you think that changes are needed to the EU-level legal provisions on the transparency of proxy advisors?

Yes, major changes

Yes, minor changes

No changes are needed

Don't know

Not answered

108. Please express your view on whether and how the regulatory framework for SRD provisions on the transparency of proxy advisors should evolve in the future.

Yes / No / Not sure

1. Business as usual: The SRD2 provisions on the transparency of proxy advisors would remain unchanged		
--	--	--

2. Strengthened code of conduct framework: To give codes of conduct more teeth, required features of these could be made explicit (e.g. regarding an independent mechanism for monitoring compliance) and a mediator or enforcer of last resort could be appointed		
3. Strengthened transparency: To strengthen the transparency of proxy advisors' behaviour, this measure would require them to disclose information sources, provide more detail on potential conflicts of interest, and provide more detail in terms of revenue sources. It would also establish a registration mechanism at EU level		

Not answered

Enforcement and sanctions

In this section we ask about the enforcement of the SRD's in practice, and in particular whether the supervision and sanctions in place at national level ensure that market actors comply with their SRD obligations.

109. Is there any legal ambiguity regarding the authority in charge of supervising compliance of actors with their obligations under the SRDs?

Yes

110. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

AFME members note that there has been some ambiguity as to whether all aspects of SRD supervision falls under the scope of securities regulators.

It would be helpful for relevant authorities to provide further detailed information on their monitoring processes and any potential sanctions for non-compliance.

Further to this, we note that there can be conflicts between the spirit of the directive and what market participants are permitted to under applicable national law. For example, if the legal definition of shareholder in any jurisdiction identifies any party other than the beneficial owner, intermediaries cannot meaningfully respond to shareholder disclosure requests whilst remaining compliant with data protection laws.

111. Are you aware of any sanctions imposed by the authorities as a result of an infringement of the SRD provisions?

Don't know

112. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

...

113. Do you consider that the sanctions/penalties applied by the authority(ies) are sufficiently dissuasive to ensure compliance with the SRDs?

Don't know

114. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

It is clear that, as it stands, all parts of the industry are not in full compliance with SRD II, as demonstrated in the annual CEG report. As outlined in previous responses, we believe that changes to the SRDs – including enshrining the rules in regulation – are necessary to materially increase levels of compliance. The existence of sanctions alone are not the correct tool for achieving full compliance.

115. Do redress and/or compensation mechanisms exist for investors who suffer damage as a result of an infringement to the SRDs? If so, please indicate if you consider they are effective and used in practice.

Don't know

116. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

...

117. How effective has cross-border monitoring and enforcement of SRD cross-border provisions been?

Don't know

118. If you wish to make any comments explaining your views, or refer to evidence in response to the above question, please do so here:

We refer to the annual CEG report as an important overview of cross-border compliance with SRDII.

Costs of enforcement

119. How have costs for enforcement of interactions in the investment chain been affected by the application of the SRD2 provisions in your country?

Rough estimate either in EUR, person days, or full-time equivalents

One-off costs, e.g. for new IT equipment, and devising and adopting new processes	
Annual ongoing costs	

Compliance

120. In your view, has the application of the SRD2 provisions on interactions in the investment chain affected the conditions for compliance with rules on shareholder rights in your country? Please answer in terms of your agreement or disagreement with the following statements.

Strongly agree / Tend to agree / Neither agree nor disagree / Tend to Strongly disagree / disagree / Don't know

Compliance levels are high overall	
Compliance levels are high vis-à-vis cross-border shareholders	
Compliance with rules on shareholder rights has improved	
Supervisory authorities have sufficient resources to enforce compliance	

121. Please share any further views or explanations concerning enforcement of the SRD2 provisions and rules on interactions in the investment chain.

...

Closing questions and additional remarks

122. Would you like to make any other comments or observations regarding the SRD1, SRD2, Implementing Regulation or other aspects of the regulation of shareholder rights in the EU?

...

123. If you wish to upload any relevant documents, please do so here:

- AGC paper
- AFME paper CMU actions 10 and 12
- AFME SRDII issues log
- Academic paper
- Response to ESMA consultation

124. In the context of this study, may we contact you for a follow-up interview or additional questions regarding this Study?

Yes

125. If you have answered yes to the previous question, could you provide us with your contact details:

Contacts

Name: Pete Tomlinson

Email: peter.tomlinson@afme.eu

Telephone number: +44 (0)20 3828 2684