Centre for Strategy & Evaluation Services

Study for the European Commission, DG Justice

Shareholder Rights Directive (SRD) Evaluation – follow-up questions

In your response to our earlier targeted survey questionnaire regarding this study for DG JUST, you kindly indicated that you would be available for a follow-up approach from our team. We are now reverting to you with a few more questions regarding which it is hoped you may be able to provide some inputs (where this is relevant to your experience of the SRDs). These relate generally questions around costs, fees, and wider aspects of the SRDs.

We'd be grateful if you could please respond to this short follow-up survey by the 7th June 2024. If you have any questions, please contact jsmit@cses.co.uk.

Costs and fees related to the application of the SRDs

1. Please describe the main actions taken by your organisation/ your association members to comply with SRD2. These could include for example, the need to purchase and implement new IT equipment, design, and adjust certain processes, and training / familiarisation for staff. This would relate to things you would not have done had it not been for the SRDs, not things you might have been planning to do anyway, and maybe the SRDs just acted as a trigger for that.

No response

2. Can you estimate the one-off costs associated with the above actions for your company / a typical member, in terms of either EUR (ballpark figure) and / or staff time?

No response

3. Can you estimate changes to annual recurrent costs for your company / a typical member associated with the need to comply with SRD2, in terms of either EUR (ballpark figure) and / or staff time?

No response

One of the important aims of the SRDs was to ensure non-discrimination, proportionality, and transparency of costs – for example related to transmission of information and attendance of general meetings.

4. Has SRD2 led to any change in the fees charged by intermediaries to facilitate shareholder rights? If so, can you estimate these and how they might differ by service, country, or any other factor? We're particularly interested in fees charged for the exercise of rights cross-border. Can you provide examples of such fees? What problems have you encountered in this respect?

No response

5. Has SRD2 led to increased transparency of fees charged by intermediaries in the transmission of information (e.g. for shareholder identity requests, or transmitting corporate information), for example, in the form of public fee schedules? Are fees considered proportionate and non-discriminatory? Can you provide any examples of the fees involved? What problems have you encountered regarding fees?

No response

6. Are fees for attending general meetings proportionate, transparent and non-discriminatory? Do you have any examples of the fees in question that you can share with the study team?

No response

7. Has SRD2 led to any efficiency gains or savings for you/ your members? If so, please describe the nature of these, and their magnitude in terms of EUR (ballpark figure) and / or staff time. We're particularly interested in the transmission of information and facilitation of shareholder rights cross-border (e.g. speed, delays, costs)

No response

Wider ranging questions

8. Has SRD2 made any difference to the ease with which shareholders can exercise their rights cross-border in the EU? If so, please explain.

There has been increased automation in the voting chain, which facilitates cross-border voting. Intermediaries are, to some extent, transmitting information in a more timely manner. Investors have obtained the right for vote confirmation, which is important, although we regret that it is not systematic and not in a universal format.

9. What do you consider the most important remaining barriers to the exercise of shareholder rights cross-border in the EU?

Despite the objectives of SRDII to remove obstacles to voting and participation in general meetings, our members still observe obstacles in practice, in some EU Member States, including:

- Power of attorney (POA) requirements, which are often unnecessarily burdensome (e.g. Belgium, Sweden) and differ across the EU.
- Requirement for physical attendance by investors to be able to vote, and manual counting of voting.
- Cut-off date often set too early, and meeting materials sent too late – leaving limited time for investors to make informed voting decisions
- Split voting is not always allowed.
- Lack of automatic vote confirmation
- Lack of common definition of "shareholder" in the EU, and therefore limited transparency on beneficial owners.
- Barriers to the filing of shareholder proposals
- AGM practices introduced during the COVID emergency remaining in some markets (e.g. Italy still allows companies to conduct "behind closed doors" AGMs, and several markets allow fully virtual AGMs)
- Situations where independent board directors can be removed at any time by a resolution of a shareholder general meeting and without the necessity of the cessation proposal being included in the shareholders' meeting agenda. (e.g. Spain)
- Shareblocking remains an issue in some markets.
- Some tabulators require direct instructions from investors and do not accept instructions from the proxy voting vendor plateform, which creates unnecessary obstacles for investors.

10. How widespread are these barriers (above)? Are they more present in some Member States than others (if yes, which?) If you were to venture a guess, what percentage of shareholders in the EU overall (EU and Third Country) would be affected by these barriers (e.g. up to 20%/ between 20-40%; 40-60%; between 60-80%; more than 80%)? Is the situation improving or not since the implementation of the SRDs?

No response

11. Looking ahead, what are the most important changes needed to the SRD framework? Name up to five key changes

   1. Remove barriers to a modern and efficient voting process, by banning burdensome power of attorney requirements, physical attendance requirements, and manual processes.

   2. Introduce minimum harmonisation of AGM practices:
      - ICGN published a statement in April 2023 on *Post Covid AGMs and Shareholder Rights*, calling on regulators to discourage the practice of companies adopting virtual-only AGMs and to require that companies provide for hybrid AGMs to allow global investors to have the option of virtual or live participation.
      - Agree on a common definition and a harmonised approach to "record date".
      - Vote deadlines set by intermediaries and custodians can be sometimes significantly ahead of the AGM, preventing investors from casting their votes in the most informed manner possible. Further EU harmonisation would be beneficial, to ensure that the cut-off dates are set closer to the meeting dates. A shorter window between vote cutoff and meeting dates, would help enable more informed, better decisions on proxy matters.
      - Meeting materials should be distributed sufficiently in advance to allow for informed decisions – this is often not the case.
      - Investors need the votes to be counted systematically, the vote tally to be published, and transparency on voting outcome per agenda item.

   3. Introduce mandatory and robust investor protection safeguards when companies adopt dual-class share structures. The Shareholder Rights Directive encourage investors to play a greater, and more responsible, role in monitoring company governance and engaging with companies, yet the proposed directive on multiple-vote share structures has the effect of watering down their influence. Strong and mandatory investor protection safeguards should be required.

   4. Ensure that shareholders can file proposals (including advisory shareholder proposals), and introduce a set of harmonised rules for the Single Market (thresholds, nature, conditions, etc.)

   5. Ensure that the ban on share blocking is implemented by all market participants, in all EEA member states.