



ESMA's Call for Evidence on the Implementation of the provisions of Directive 2017/828 as regards the encouragement of long-term shareholder engagement regarding proxy advisors and the investment chain

[Link to the paper: Call for evidence about the implementation of SRD2 provisions on proxy advisors and the investment chain](#)

1. Target audience (potential stakeholders)

This paper is primarily of interest to:

- Investors (specific questions Section 4);
- Issuers whose shares are listed in Europe (specific questions Section 5);
- Intermediaries (specific questions Section 6); and
- Proxy advisors (specific questions Section 7).

Other market participants, such as consultants and service providers in the investor communication and voting industry, are also invited to express their views by responding to any general questions (Section 3) and, in particular, to the two catch-all questions (Q15 and Q25), the response to which may include any type of content or suggestion.

The CNMV would appreciate if all the above-mentioned potential stakeholders were to send a copy of their responses to the consultation to the following email address:

Documentosinternacional@cnmv.es

2. Information Note

ESMA published, on 11 October, a call for evidence to gather information from the potential stakeholders when reviewing Directive 2017/828 amending Directive 2007/36 as regards the encouragement of long-term shareholder engagement (SRD2) concerning the implementation of some of its provisions, specifically Chapter Ia on the identification of shareholders, transmission of information and facilitation of shareholder rights, and Article 3j on the transparency of proxy advisors. ESMA will consider the feedback provided by this call when preparing the final report to be submitted to the European Parliament and the Council.

The call for evidence is structured as follows:

Section 2: Background and legal mandate.

Articles 3f(2) and 3k(2) indicate that the European Commission shall, in close cooperation with ESMA, submit two reports to the European Parliament and to the Council: the first on the implementation of Chapter Ia, including its effectiveness, the difficulties in practical application and enforcement, taking into account relevant market developments at the Union and international level, while addressing the appropriateness of the scope of application in relation to third-country intermediaries; and the second on the implementation of Article 3j which, among others, includes the appropriateness of its scope of application and its effectiveness

and the assessment of the need for establishing regulatory requirements for proxy advisors, taking into account relevant Union and international market developments.

In September 2020, the Commission adopted a new Capital Markets Union (CMU) action plan, in which action 12 stated: “To facilitate cross-border investor engagement, the Commission will consider introducing an EU definition of 'shareholder' and further clarifying and harmonising rules governing the interaction between investors, intermediaries and issuers. It will also examine possible national barriers to the use of new digital technologies in this area”. Based on this action plan, the Commission committed itself to assess if and how the rules governing the interaction as regards the exercise of voting rights and corporate actions’ processing should be clarified and harmonised. This assessment would be carried out as part of the evaluation which, in close cooperation with ESMA, will be submitted to the Parliament and to the Council in Q3 2023. As for the drafting of this report, on 3 October ESMA received from the Commission the mandate to provide information on the implementation of the provisions mentioned relating to Action 12 of the CMU action plan and to assess the need for further regulatory requirements.

The scope of evaluation covers the following articles included in Chapter Ia: Article 3a (Identification of shareholders), Article 3b (Transmission of information), Article 3c (Facilitation of the exercise of voting rights), Article 3d (Non-discrimination, proportionality, and transparency of costs) and Article 3e (Third-country intermediaries). Added to this is Article 3j on the transparency of proxy advisors: code of conduct, information related to the preparation of research, advice and voting recommendations, and potential conflicts of interest, applying this regime to third-country proxy advisors.

The call for evidence aims to collect information from market participants in order to obtain a comprehensive overview of how stakeholders perceive the appropriateness and effectiveness of the current regulatory framework and to learn about the difficulties encountered. The findings obtained from this call will allow ESMA to take action to fulfil its evaluation obligations in accordance with the mandate provided by the Commission. Moreover, the responses will help prioritise the areas where there is a need for improvement of current practices.

The questionnaire contains 5 sections of questions with a brief summary of their aim and of the type of information ESMA seeks to obtain. In general, the questions aim to provide an understanding of the practical impact and the supervisory implications of the relevant provisions. The questionnaire also includes questions on the current trends in the market, namely on technological developments and environmental, social and governance (ESG) aspects.

Section 3 general questions Q 1-25 common to all categories of stakeholders.

Regarding the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, among other issues, there are questions on: whether a European definition of ‘shareholder’ is necessary, together with what this should be; whether the transmission of information along the chain of intermediaries has improved; whether shareholder identification, facilitation of the exercise of shareholder rights, transparency/ non-discrimination/proportionality of charges for services have improved; whether the practices of third-country intermediaries are in line with European provisions; whether the processes put in place by intermediaries for the purpose of implementing Chapter Ia are effective; whether any specific obstacles or difficulties have been encountered in the practical application of Chapter Ia and its transposition in national law (attribution and evidence of entitlements, dates for corporate actions, requirements of powers of attorney to exercise voting rights,

transmission of information including communication between issuers and CSDs) and what improvements could be implemented; whether long-term shareholder engagement/sustainability objectives have been improved and what aspects should be further clarified and/or harmonized. Q 15 is of a general nature to include any further remark.

The following questions, among other matters, are asked regarding proxy advisors: whether such definition is able to identify the relevant players in the shareholder voting research and advisory industry; whether the definition of competent Member State provided a European Union (EU) framework for proxy advisors covering EU listed companies; whether the respondents are aware of proxy advisors that have neither their registered office nor their head office in the EU, only an establishment located in the Union that may and that may be subject to two or more Member States' legislation or no Member States' legislation at all; whether the respondents are aware of any entity providing proxy advisory or voting research services with regard to EU listed companies that does not fully apply and/or fully report on the application of a code of conduct; whether the disclosures provided by proxy advisors have reached an adequate level of quality (accuracy and reliability of the advice, disclosure policies, local market regulatory conditions, dialogue with issuers, conflicts of interest); whether improvements have been noticed in such a way that the ESG criteria are taken into account in the industry; whether the level of harmonisation achieved under the SRD2 is considered sufficient; whether the EU approach to regulation based on the 'comply or explain' principle sufficiently addresses the challenges faced by this legislation; and whether, in view of the ESG and technological changes, as well as certain tendency to internalise voting research and/or to provide voting options, the SRD2 is still considered adequate. Q 25 is of a general nature to include any further remark.

Section 4: specific questions Q 26-41 targeted at investors (specifically at shareholders of EU listed companies).

The following questions, among others, are asked with regard to shareholder identification, transmission of information and facilitation of the exercise of shareholder rights: whether the respondents' ability to receive and transmit the information necessary for the exercise of their shareholder rights has improved, including the right to participate and vote in general meetings (also in third countries) via the intermediary holding their securities account and the chain of intermediaries; whether the respondents consider the provisions of Chapter Ia have effectively allowed shareholders to receive (electronic) confirmation that votes have been validly recorded and counted by the company after the general meeting; whether the thresholds for shareholder identification have been an obstacle to dialogue with issuers; whether any issues have been experienced relating to the fees and charges (problems with receiving this information in advance, disproportionately high charges, discrimination); whether it is considered that new technologies could help in overcoming communication and transmission obstacles along the investment chain; and whether the services of 'neo-brokers' have been used and, if so, indicating how satisfactory the experience was.

The following was asked, among other questions, in relation to proxy advisors: whether respondents were notified of possible conflicts of interest by proxy advisors; whether there was greater transparency to assess the quality of the services; whether respondents have you changed the way they make use of the services provided by proxy advisors (in terms of research, advice, or recommendations); and whether the increasing offer of ESG-related services may lead to new conflicts of interest that may have an impact on the reliability of their advice.

Section 5: specific questions Q 26-41 targeted at issuers.

The following questions, among others, are asked with regard to shareholder identification, transmission of information and facilitation of the exercise of shareholder rights: whether there have been difficulties in assessing which Member State or NCA is competent with regard to corporate actions (shareholder identification and voting); whether there have been difficulties to identify their shareholders and, if so, how to perform the request for identification of shareholders (to whom, purpose, information obtained, shareholders as % of the share capital, in or outside the EU); whether the thresholds for shareholder identification have been an obstacle to dialogue with shareholders; whether the way the information is provided to shareholders for the exercise of their rights has changed (CSDs and the chain of intermediaries, directly to the investor or through an announcement); which other corporate events fall under the scope of Article 8 of the Implementing Regulation; what documents are required to allow shareholders to participate in a general meeting; whether any request has been received from shareholders to confirm that their vote has been validly recorded and counted; and whether the standard used for the application of the provisions of Chapter Ia are useful to complete SRD2.

The following questions, among others, are asked in relation to proxy advisors: whether proxy advisors were used and which services were requested; whether the transparency to assess the quality of the services has improved; whether the dialogue with proxy advisors on the analysis and recommendations, before being distributed to investors, has improved; and whether a complaint procedure under the Best Practice Principles for Providers of Shareholder Voting Research and Analysis ('BPP') framework has been initiated.

Section 6: specific questions Q 59-71 targeted at intermediaries.

The following questions, among others, are asked with regard to shareholder identification, transmission of information and facilitation of the exercise of shareholder rights: whether there have been difficulties in assessing which Member State or NCA is competent with regards to corporate actions; whether more or less shareholder identification requests have been received; whether obstacles have been encountered in providing the information required regarding shareholder identity to requesting issuers (also regarding cross-border shareholder identification and when involving third-country intermediaries); whether the subsequent transmission of information to investors for the exercise of their rights along the chain of intermediaries improved; whether there have been any changes in how frequently upstream voting indications are received from investors at any level of the chain of intermediaries; has any electronic system has been put in place for shareholders to exercise their right to vote, including at cross-border level; how has it been ensured that the costs charged are transparent, proportional and non-discriminatory; and whether the standards are useful to complete SRD2. There are no specific questions on proxy advisors.

Section 7: specific questions Q 72-78 targeted at proxy advisors.

The following questions, among others, are asked in relation to proxy advisors: whether they are signatories to a code of conduct, what Member State is competent and the criteria according to which this is competent; whether respondents were contacted by an NCA to inform they are subject to SRD2 provisions or they liaised with an NCA upon their own initiative; whether their practices have been revised to ensure the accuracy and reliability of the advice, the policies and methodologies, the local market regulatory conditions, their dialogue with issuers and any conflicts of interest); and whether new measures have been implemented to avoid conflicts of interest. There are no specific questions regarding

shareholder identification, transmission of information and facilitation of the exercise of shareholder rights.

Next steps: ESMA intends to draft and publish the report in July 2023.

3.- Submission of Comments

28 November is the deadline for submitting comments.

Respondents may send their comments through ESMA's website: www.esma.europa.eu. Both the paper of this call for evidence and the response form are available by clicking on [Consultations](#).

Likewise, as indicated above, the CNMV would also appreciate if stakeholders could send a copy of their responses to the call for evidence to the following address: Documentosinternacional@cnmv.es

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