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Report

Implementation of SRD2 provisions on proxy advisors and the investment chain

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1 Executive Summary

Reasons for publication

On 3 October 2022, the European Commission requested ESMA and the EBA to provide input to help it prepare a report on certain provisions of Directive (EU) 2017/828 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (the second Shareholder Rights Directive – SRD2). It did so on the basis of Articles 3f(2) and 3k(2) of that Directive (references to the numbering of Directive 2007/36/EC, as amended). Under these provisions, the Commission is to submit a report on the implementation of Article 3j (regarding proxy advisors) and Chapter Ia (concerning the investment chain) of the SRD2 to the European Parliament and the Council in close cooperation with ESMA and, as far as Chapter Ia is concerned, the EBA. The report should focus on the implementation of these legal provisions and their effectiveness as well as assess the appropriateness of their scope of application while taking into account relevant market developments at the Union and international level.

This report represents the input that ESMA and the EBA have issued to the Commission.

Contents

Based on evidence collected from stakeholders, this report provides an analysis of the implementation of the SRD2 and presents conclusions in its Advice section. ESMA launched a public Call for Evidence on 11 October 2022, to collect information from market participants and the general public at large. 73 respondents provided evidence within the 7-week consultation period. ESMA also reached out to stakeholders and took the advice of its Securities and Markets Stakeholders Group (SMSG) into account. The EBA participated in some of ESMA's initiatives and conducted its own consultations with stakeholders and its Banking Stakeholders Group (BSG) as well. ESMA focused on the SRD2 provisions on proxy advisors (Article 3j), shareholder identification (Article 3a), transmission of information (Article 3b) and facilitation of the exercise of shareholder rights (Article 3c). The EBA focused on the SRD2 provisions on costs and charges applied by intermediaries (Article 3d) and on the practices implemented by third-country intermediaries (Article 3e).

In the Advice section on Article 3j (concerning proxy advisors), the report finds that while the current framework has proved robust overall, certain improvements could be put in place. Firstly, the report suggests that the Commission should consider clarifying the definition of the term “proxy advisor” (as laid down in Article 2(g) of the SRD2). In light of the evolution of market practice in this area, it also calls on the Commission to consider defining minimum standards for codes of conduct for proxy advisors (as the SRD2 currently only refers to these

without requiring any specifications). As conflicts of interest are a particularly important issue in the eyes of market participants, the report addresses some of the specific concerns which have been raised in this context, for instance by suggesting that disclosure obligations by proxy advisors, especially vis-à-vis their clients, could be enhanced in cases where proxy advisors render consultancy services to issuers and advise investors on those same entities. Furthermore, taking into account the global nature of the proxy advisory market and the limits of local approaches as highlighted by stakeholders, the report suggests that a basic registration mechanism for proxy advisors should be introduced at the EU level, coupled with the publication of an overview of proxy advisors operating in the EU and whether they apply a code of conduct or not.

In the Advice on Chapter Ia of the SRD2 (concerning the investment chain), the report firstly suggests that the Commission should consider the possibility of introducing a harmonised definition of the term “shareholder” throughout the EU (in accordance with Action 12 of the Commission’s own Capital Markets Union Action Plan). At the same time, the report is aware that such a definition would have an impact on company, securities, and tax law across Member States (MSs) and it points out various ways of addressing those issues. In addition, the report advises the Commission to evaluate if a clearer indication can be given as to which securities fall under the scope of the SRD2. Moreover, it finds that an effort would be warranted to determine if more flexibility could be given to issuers, so they could better customise shareholder identification requests in accordance with their individual needs. The Commission should also consider amending the Directive and the Commission Implementing Regulation 2018/1212 (the IR) by introducing a “golden operational record” requirement on the issuer, in connection with the fulfilment of Article 3a duties regarding the shareholder identification as well as those of Article 3b regarding the transmission of information along the chain of intermediaries. The report furthermore raises the issue of aligning the deadlines under Article 9 of the IR with intermediaries’ compliance duties. With respect to the exercise of voting rights, it finds that the Commission should look into harmonising the documentation required, for example by providing that the confirmation of entitlement be accepted as the proper form to allow shareholder participation throughout the EU, and that the use of machine-readable formats is further mandated to allow interoperability and straight-through processing, also leveraging on European industry standards. On non-discrimination, proportionality, and transparency of costs, the report recommends that the Commission facilitate harmonisation of terminology, both for the types of services rendered and on corresponding charges. It finds that a common format should be defined for the purposes of disclosing charges and draws attention to the issue of increasing transparency with respect to these.

Next Steps

This report feeds into the Commission's obligation to issue a report to the European Parliament and the Council. ESMA and the EBA will continue to monitor the process and consider any proposed changes to legislation going forward. They will also continue to play an active part in the discussion on the topics concerned, including by providing advice as required.

2 Introduction

2.1 Background

1. The original Shareholder Rights Directive (Directive 2007/36/EC – SRD1) established rules promoting the exercise of shareholder rights at general meetings (GMs) of companies with registered offices in the EU and whose shares were admitted to trading on a regulated market within the EU.
2. The SRD1 was reviewed in 2017 with a general deadline for transposition set to June 2019. The Shareholder Rights Directive II (Directive 2017/828 – SRD2) amended the contents of the original SRD1 by imposing certain minimum standards to further facilitate the exercise of shareholder rights and to encourage long-term shareholder engagement to support companies' long-term strategy and performance. In 2018, the Commission adopted an Implementing Regulation (Commission Implementing Regulation 2018/1212 – IR) to further clarify certain minimum practical application requirements of the revised Directive.
3. As shares of listed companies are often held through complex ownership structures encompassing many intermediaries, particularly in a cross-border context, effective engagement and exercise of shareholder rights depend to a large extent on the efficiency of the investment chain in channelling information between companies and shareholders. The SRD2 facilitates shareholder identification and the transmission of information between investors, issuers, and intermediaries. Further to that, the SRD2 introduces transparency requirements on the proxy advisory industry and also addresses other areas, namely institutional investors and asset managers' transparency, as well as transparency and approval of directors' remuneration and related party transactions. The SRD2 entered into force in 2017 and MSs subsequently set themselves to transpose it into national law. The full regulatory framework, including the IR, entered into application in September 2020.

2.2 Mandate

4. On 3 October 2022, the Commission asked ESMA and the EBA for assistance in the preparation of a report on the implementation of the SRD2 that the Commission is required to submit to the European Parliament and the Council, according to the review clauses included in Articles 3f(2) and 3k(2).
5. The Commission requested that both ESMA and the EBA be involved in the preparation of the input to be provided regarding Chapter Ia of the SRD2, in particular Articles 3a-3e, which regulate companies' and intermediaries' rights and obligations regarding

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

6. In addition, ESMA was also asked to provide input on the implementation of Article 3j of the SRD2, which regulates the transparency of the proxy advisory industry. In that regard, ESMA was explicitly asked to assess whether the establishment of regulatory requirements for proxy advisors would be deemed necessary.
7. For the purpose of producing their report, the two European Supervisory Authorities (ESAs) were requested to gather input from stakeholders via stock-taking and consultation, e.g. in the form of a targeted survey or a call for evidence. The stakeholder outreach was to be addressed to the different types of stakeholders involved, namely investors, issuers, intermediaries and proxy advisors.
8. Furthermore, both ESAs were requested to make use of information derived from experience of their respective National Competent Authorities (NCAs), in particular those tasked with supervising market participants' compliance with the relevant SRD2 provisions. The NCA input was expected to be particularly helpful in connection with any practical difficulties arising with respect to the enforcement of SRD2 provisions.
9. Lastly, the Commission in its mandate emphasised that Action 12 of the Commission's 2020 Capital Markets Union (CMU) Action Plan addresses the facilitation of shareholder engagement, in particular by harmonising the definition of shareholder across EU jurisdictions. Therefore, ESMA and the EBA were specifically asked to include recommendations in connection with that Action.
10. The Commission requested to receive the contribution of the two ESAs in July 2023.

2.3 Methodology

11. Taking into account the mandate given by the Commission, requiring close coordination, ESMA and the EBA decided to issue a joint report. ESMA focused on the SRD2 provisions on proxy advisors (Article 3j), shareholder identification (Article 3a), transmission of information (Article 3b) and facilitation of the exercise of shareholder rights (Article 3c). The EBA focused on costs and charges applied by intermediaries (Article 3d) and on the practices implemented by third-country intermediaries (Article 3e).
12. To collect input from stakeholders, a Call for Evidence was launched on 11 October 2022, which included 78 questions. The questions were divided into two sections tackling topics related to the investment chain (i.e., Articles 3a-3e), as well as to proxy advisors

(i.e., Article 3j), and further broken down by type of respondents (i.e., investors, issuers, intermediaries and proxy advisors).

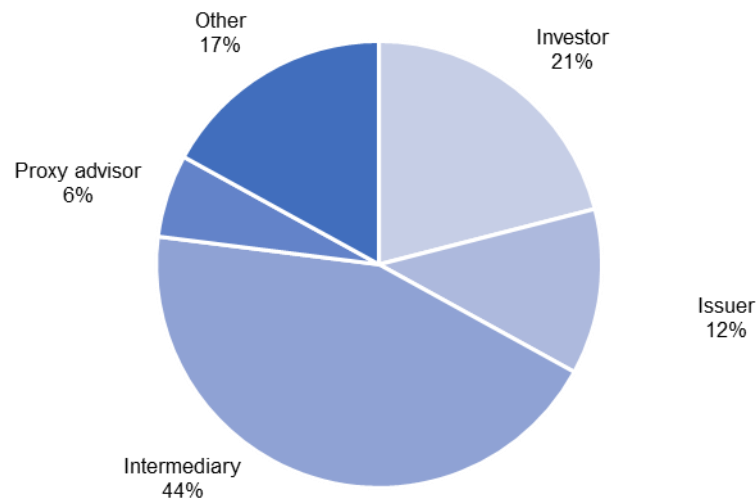
13. 73 market participants provided responses to the Call for Evidence, representing all of the aforementioned groups, including respective industry associations. Responses were also received from other categories of respondents. These include service providers such as issuer agents that assist issuers with tasks such as shareholder identification or providers of platforms that enable electronic voting. A few responses were also received from other entities, such as law firms and NGOs. It should be noted that some respondents opted to provide input related to the general questions, but not to their respective section, while other entities have responded in more than one capacity, due to the multifaceted nature of their business (e.g. one firm provided answers to the issuer, the intermediary and the proxy advisor sections, as it is also the controlling shareholder of a proxy advisory firm). A detailed categorisation of the respondents to the Call for Evidence is presented in section 2.4.1.
14. Further to the input received via the Call for Evidence, the report takes into account bilateral and multilateral discussions organised between the two ESAs and stakeholders, especially respondents to the Call for Evidence itself in case some clarification was needed. In addition, the two ESAs also sought the input of their respective NCAs on the challenges they encountered in the enforcement of SRD2 provisions. While the experience is still limited in time and NCAs' roles vary widely across MSs (for further information, please see Annex VII: SRD2 transposition), any specific challenges encountered are referred to, when applicable, in the section "Analysis". Finally, ESMA sought the advice of the Securities and Markets Stakeholders Group (SMSG).
15. The report is divided into three main sections, entitled "Analysis", "Advice" and "Evidence", respectively. The "Analysis" section elaborates on the input collected through the Call for Evidence and highlights red lines and key messages coming from stakeholders with respect to the implementation of the SRD2, drawing certain conclusions on key areas for improvement. In the "Advice" section, ESMA and the EBA, taking into consideration the input received and the key areas identified, make recommendations on potential improvements where practical implementation and enforcement difficulties are encountered. The advice prioritises areas where policy recommendations are likely to have the strongest impact. Lastly, the "Evidence" section summarises the input gathered directly from the public consultation and is found in Annex V: Input received via the ESMA's Call for Evidence of the report. The advice provided by the SMSG is summarised in this annex and presented in Annex VI: SMSG Advice.

2.4 Input received via the Call for Evidence

2.4.1 Categorisation of respondents

16. The graph below outlines the main categories of respondents who replied to the consultation. It is notable that intermediaries constitute the largest share of respondents (44%) with investors accounting for 21%, followed by issuers (12%) and proxy advisors (6%). The percentages in this chart reflect the classification in types of respondents according to the respondents themselves. As mentioned earlier, several entities are therefore presented here in more than one capacity.

Graph 1: Categorisation of respondents



2.4.2 Main topics addressed

17. The SRD2 encompasses different topical areas that cover multiple facets of corporate governance. As noted above, some of these areas will be addressed in the following in

accordance with their corresponding provisions within the SRD2. The table below aims to link these provisions with the areas they refer to.

Table 1: Topical areas of the SRD2 tackled in the report

SRD2 provision	Topical Area
Chapter Ia	Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights
Article 3a – e	Investment Chain
Article 3a	Identification of shareholders
Article 3b	Transmission of information
Article 3c	Facilitation of exercise of voting rights
Article 3d	Non-discrimination, proportionality, and transparency of costs
Article 3e	Third-country intermediaries
Article 3j	Transparency of proxy advisors
Paragraph 1	Application of a code of conduct
Paragraph 2	Disclosures
Paragraph 3	Conflicts of interests
Paragraph 4	Proxy advisors operating via establishments

18. By way of introduction, graphs 2 and 3 below provide a helicopter view of the input gathered via the Call for Evidence, which is presented in the “Evidence” section (Annex V: Input received via the ESMA’s Call for Evidence). The graphs highlight the most important issues raised by stakeholders in the “Proxy Advisors” and “Investment Chain” sections, respectively.

19. In the area of proxy advisors, the following main takeaways can be highlighted, also based on the relevant qualitative comments provided by respondents to each respective question:

- i. Overall, based on reported evidence, there is general support for the SRD2 regulatory framework, although respondents see room for improvement in certain areas;
- ii. Regarding the definition of proxy advisors, respondents seek further clarity on which players are captured;
- iii. With regard to disclosures, respondents seem to be overall positive concerning the accuracy and reliability of proxy advice and proxy advisors’ disclosure of voting policies and methodologies, while they are less positive on their dialogue with issuers, conflicts of interest and their taking into account of local market conditions;

- iv. Respondents are generally positive on the use of ESG criteria by proxy advisors, although transparency on the sources of ESG data and the relevant methodology are deemed as in need of improvement and
- v. Respondents consider that the scope of application of the SRD2 could be improved also by taking into account the implications of further services being provided by proxy advisors on conflicts of interest.

Graph 2: Main takeaways from the Call for Evidence (proxy advisors)

Proxy Advisors

■ Not at all/ No
 ■ To a limited extent
 ■ To a large extent
 ■ Fully/ Yes
 ■ No opinion

Topic	Emerging views
SRD2 effectiveness	
(Q22): Do you consider the level of harmonisation achieved under the SRD2 sufficient to ensure that investors are adequately and evenly informed about the accuracy and reliability of the activities of proxy advisors?	
Definitions	
(Q16): Is the definition of proxy advisors in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?	
Disclosures	
(Q20): Do you consider that the disclosures provided by proxy advisors have reached an adequate level following the entry into application of SRD II? Please specify in relation to the below:	
a) Fostering transparency to ensure the accuracy and reliability of the advice;	
b) Disclosing general voting policies and methodologies;	
c) Considering local market and regulatory conditions;	
d) Providing information on dialogue with issuers;	
e) Identifying, disclosing and managing conflicts of interest.	
ESG and new trends	
(Q21): Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?	
(Q24): Having in mind the ESG and technological changes in progress as well as investors' tendency to internalise voting research and/or to provide clients with voting options, do you consider that the scope of application taken by the SRD2 is still adequate to cover all market players and services?	

20. In the area of investment chain, the following main takeaways can be highlighted, also based on the relevant qualitative comments provided by respondents to each respective question:

- i. Overall, the processes put in place by intermediaries are considered broadly in line with the legislative framework. However, comments raised suggest further steps towards harmonisation;
- ii. Respondents generally see some improvements in the shareholder identification process, especially in those countries where the previously applicable regimes appeared to be more cumbersome in allowing issuers to identify their shareholders;
- iii. Respondents find there is a need for a harmonised shareholder definition in the EU to ensure full effectiveness of shareholder identification rules, although certain concerns were also raised in connection with compatibility with the different national company, securities, and tax laws;
- iv. Respondents generally have seen some improvements in the transmission of information, while a less positive view is expressed in connection with the SRD2's ability to facilitate the exercise of voting rights. The need for further harmonisation in both areas is frequently highlighted;
- v. Very limited satisfaction is expressed by respondents in connection with proportionality, transparency and non-discrimination of the charges applied by intermediaries for voting purposes and
- vi. Respondents also identified a few issues regarding the practices of third-country intermediaries, mainly in relation to certain non-EU intermediaries rather than large global players.

Graph 3: Main takeaways from the Call for Evidence (investment chain)

Investment chain

■ Not at all/ No
 ■ To a limited extent
 ■ To a large extent
 ■ Fully/ Yes
 ■ No opinion

Topic	Emerging views
SRD2 effectiveness	
(Q10): Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia are working in line with the relevant provisions of the SRD2 and the IR?	
Shareholder identification	
(Q3): Do you consider that shareholder identification, within the meaning of Article 3)(a), has improved following the entry into application of this provision and the IR?	
(Q4): Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3)(a) provisions?	
Transmission of information	
(Q6): Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3)(b) and the IR?	
Exercise of shareholder rights	
(Q7): Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3)(c) and the IR?	
Charges applied	
(Q8): Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights have improved following the entry into application of this provision?	
Third-country intermediaries' practices	
(Q9): Do you consider that the practices of third-country intermediaries (i.e., intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the IR?	

3 Proxy advisors

3.1 Analysis

3.1.1 Introduction

21. Proxy advisors provide services to shareholders by analysing corporate information and issuing voting research and recommendations to their clients. They may also assist them in their participation and voting in GMs. Certain proxy advisors have expanded to providing additional services including e.g. ESG-related services and services within the spectrum of data analytics. Overall, proxy advisors have gained prominence over time as they are seen as able to exercise considerable influence on corporate decision-making across the globe¹.
22. It is widely recognised that the services provided by proxy advisors are valued by investors, in particular asset managers, with highly diversified portfolios, that benefit from proxy advisors' ability to provide analysis and research on single companies in their portfolio, regardless of the country of incorporation and/or listing and of the markets in which such companies operate².
23. Although proxy advisors are seen as highly influential, it should be noted that the exercise of voting rights and the relevant decision-making process remain within investors' prerogatives: it is their role to analyse proxy advisors' recommendations and use them as input for their analyses and voting³. Investors have increasingly been called upon to adopt voting policies and held accountable for their application. Accordingly, some investors also seek the assistance of proxy advisors to define and implement their own voting guidelines.
24. The two major international proxy advisors, ISS and Glass Lewis, are US-based and have a combined global market share that exceeds 90%⁴. New entrants to the market have emerged and the industry has also been reshaped by merger & acquisition activity, such as the acquisition by Glass Lewis of the German-based proxy advisor IVOX in 2015 and of

¹ ESMA acknowledges a wide, although not fully conclusive, literature on this topic.

² As indicated in recital 25 of SRD2, "*many institutional investors and asset managers use the services of proxy advisors who provide research, advice, and recommendations on how to vote in general meetings of listed companies. While proxy advisors play an important role in corporate governance by contributing to reducing the costs of the analysis related to company information, they may also have an important influence on the voting behaviour of investors. In particular, investors with highly diversified portfolios and many foreign shareholdings rely more on proxy recommendations*".

³ A recent study has suggested that proxy advisors' influence may be overestimated sometimes – see Morrow Sodali, Durham University Business School and Financial Reporting Council (FRC), "*The Analytical report on the influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE 350 companies and investor voting*" (2023), page 5.

⁴ Research suggests that their share may have decreased slightly in recent years, see Chong, S., "*The Proxy Advisory Industry: Influencing and Being Influenced*", USC Marshall School of Business Research Paper (2022), page 10.

the French-based proxy advisor Proxinvest in 2022. The two leading global market players also changed their ownership structure in recent years, as a stock exchange group purchased a majority stake in ISS in 2020, while Glass Lewis was acquired by a private equity firm and an individual entrepreneur in 2021. Other firms that recognise themselves as providers of voting research (and as such joined the Best Practice Principles Group – BPPG) include EOS at Federated Hermes (UK-based), PIRC (UK-based) and Minerva Analytics (UK-based). It should be noted that, in line with the input received via the Call for Evidence, there are a few additional proxy advisors headquartered in EU countries, with a main focus on domestic markets (hereinafter also referred to as “local” proxy advisors), and that have not signed up to the Best Practice Principles (BPP).

25. Around a decade ago, ESMA performed an analysis of the proxy advisory market, carrying out a targeted fact-finding exercise. ESMA then published a paper to assess the proxy advisory market and found no clear evidence of market failures that would justify regulatory intervention. On this basis, in its 2013 report⁵, ESMA recommended the industry develop a code of conduct to improve investors and issuers’ understanding of what they can expect from proxy advisors. ESMA complemented its report with a number of specific expectations on how to bring about the necessary improvements, both in some key areas such as conflicts of interest and transparency and on the governance criteria for developing, maintaining, and updating the code of conduct. Following up on the ESMA 2013 report, the BPP were established by the BPPG. ESMA subsequently published a follow-up report in 2015, which concluded that the drafting of the principles was overall in line with its expectations, but the governance structure of the group showed room for improvement, particularly with respect to ensuring a robust monitoring mechanism of the principles⁶.
26. Further to ESMA’s 2015 report and a public stakeholder consultation launched in 2017, the BPPG performed a review⁷ of the BPP in 2019, with the purpose of developing an amended version of the original principles, to also factor in the SRD2 provisions. After the review, an ad-hoc oversight committee named the BPP Oversight Committee (IOC) was established. This Committee is composed of representatives of investors, issuers and academics and has an independent Chair. Moreover, to improve the quality of disclosures, the BPP notably embedded an “apply and explain” approach, whereby signatories are asked to disclose how they apply the recommendations in their specific circumstances and business models⁸.

⁵ ESMA, “*Final Report: Feedback statement on the consultation regarding the role of the proxy advisory industry*” (2013).

⁶ ESMA, “*Follow-up on the development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis*” (2015), page 39, paragraph 118.

⁷ Melis, D. A.M., “*Report of the Independent Review Chair of the 2019 Best Practice Principles for Providers of Shareholder Voting Research & Analysis*” (2019).

⁸ Deviations from the principles are still possible, provided they are adequately explained, see Melis, D. A.M. (2019), page 9.

27. Input received via the Call for Evidence indicates that stewardship codes, notably the UK Stewardship Code and the Japanese Stewardship Code, have also been applied by certain proxy advisors. The UK Stewardship Code, although primarily addressed to asset managers, grants the possibility for proxy advisors to opt in. It was first released in 2010 by the FRC and revised in 2019 and is based on a similar “apply and explain” principle. The Japanese Stewardship Code, published in 2014 by the Japanese Financial Services Authority, is also open to proxy advisors while it is based on the “comply or explain” principle. Lastly, as regards other major jurisdictions, the debate about the role of proxy advisors and whether they should be regulated that took place in recent years in the US is worth mentioning. In 2020, the SEC issued rules on proxy advisors, however many of these were amended or repealed in 2022, also in light of the increasing role of self-regulation in this area⁹.

3.1.2 Article 2(g) – Definition of proxy advisors

28. Recital 26 of the SRD2 states that:

“in view of their importance, proxy advisors should be subject to transparency requirements”,

those requirements being detailed in Article 3j. It is necessary to refer to the definition of “proxy advisor” provided in Article 2(g) to understand their scope of application:

“[...] a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors’ voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights”.

29. The majority of respondents to the Call for Evidence consider that the definition of proxy advisors set out by the SRD2 has been able to identify the relevant players in the industry. Nonetheless, some respondents suggest that this definition might be improved. In their view, the framework resulting from the SRD2 still leaves room for confusion on who actually is a proxy advisor, and further clarity is needed on whether certain players should be considered as proxy advisors.

30. In addition, some respondents expressed limited satisfaction with the current scope of the SRD2, in light of evolving market practice and new services and players emerging,

⁹ SEC, “Amendments to the Proxy Rules for Proxy Voting Advice” (2021), page 14.

especially when it comes to the provision of ESG-related services. Local proxy advisors highlight the need for ensuring consistent transparency requirements for all entities providing voting advisory services in a broad sense, including providers of ESG data and services¹⁰.

31. Certain participants to the consultation, particularly from the issuer community, highlighted in turn the need for regulating ESG rating providers, due to potential overlaps of their business with that of proxy advisors¹¹.
32. On the basis of the above, some respondents to the consultation, primarily local proxy advisors and issuers, suggested that in order to avoid the offering of proxy advisory services that are not subject to any transparency requirements, the SRD2 definition should:
 - i. Clarify whether certain players should fall under the scope of the Directive, such as any professionals offering similar services (and not necessarily operating only as legal entities) or non-profit organisations providing recommendations, while still reflecting the differences among the various types of service providers;
 - ii. Confirm that the SRD2 definition of proxy advisors is technology-neutral and applies regardless of the specific tools and techniques used, such as mobile apps, artificial intelligence tools, etc and
 - iii. Clarify whether an entity is to be considered a proxy advisor as defined under the SRD2 if the research and advice are provided only as ancillary services to the provision of ESG and/ or corporate governance-related advisory services and of services for the actual exercise of voting rights (e.g. voting platforms with pre-tabulated votes in accordance with proxy advisors' recommendations).
33. ESMA understands the merits of encompassing professionals not operating as legal entities but providing services on a commercial basis, in order to focus on economic substance over legal form. Regarding non-profit organisations, it notes that only providing recommendations on a professional and commercial basis may capture those organisations in the definition of proxy advisors.

¹⁰ In their view, this should also encompass disclosure and management of potential conflicts of interest, and transparency on how specific clients' guidelines in the analyses of agendas and voting execution are applied.

¹¹ In particular, they call for regulation of such activities, e.g. by addressing i. Conflicts of interest, notably in terms of ownership and services offered; ii. Quality of ratings and iii. Transparency of rating methodologies.

34. In addition, ESMA agrees that the SRD2 definition should be able to cater for evolving market practices and remain technology-neutral.
35. Regarding entities offering services such as ESG-related services, voting execution services, engagement services, or other advisory services to investors and/ or issuers, as long as such services are related to the provision of voting research or advice, ESMA finds that these should be captured by the SRD2 to reflect current market practices. This may also mean that research and advice are provided as ancillary services.
36. According to a few NCAs providing input to ESMA, the lack of clarity surrounding the definition of “proxy advisor” may make monitoring more difficult. In this regard, ESMA observes that a basic registration mechanism, namely one in which proxy advisors are required to notify their presence in the EU (as further explained below under paragraph 75), would improve clarity on market players subject to Article 3j of the SRD2 and their specific business model and type of services offered.
37. Finally, it should be highlighted that the European Commission has recently proposed a regulatory framework for ESG ratings activities¹². ESMA notes that while this regulatory initiative has been set up as a standalone proposal, based on ESG rating agencies’ specific business model and market structure, potential overlaps and/ or conflicts with the regulatory framework on proxy advisors should be avoided¹³.

3.1.3 Article 3j(1) – Application of a code of conduct

38. According to the comply or explain approach provided in Article 3j(1) of the SRD2:

“Member States shall ensure that proxy advisors publicly disclose reference to a code of conduct which they apply and report on the application of that code of conduct. Where proxy advisors do not apply a code of conduct, they shall provide a clear and reasoned explanation why this is the case. Where proxy advisors apply a code of conduct but depart from any of its recommendations, they shall declare from which parts they depart, provide explanations for doing so and indicate, where appropriate, any alternative measures adopted. Information referred to in this paragraph shall be made publicly available, free of

¹² European Commission, “Proposal for a regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities” (2023).

¹³ In addition, it should be noted that similar issues may arise in connection with the role of external verifiers under the European Green Bond Standard proposal. Please see European Commission, “Proposal for a regulation on European green bonds” (2021).

charge, on the websites of proxy advisors and shall be updated on an annual basis.”

39. Input collected through the Call for Evidence confirms that the adoption of a code of conduct is widespread among proxy advisors. However, not all of them are signatories to the BPP and references to the UK Stewardship Code and the Japanese Stewardship Code are also made¹⁴. For example, one respondent mentioned that it adheres to more than one code, and another indicated that, while being compliant with the BPP, it has decided not to become a signatory, due to the costs involved and the overlaps between the BPP and the SRD2. One additional respondent reported to have developed its own code of conduct¹⁵.
40. Overall, while it seems confirmed that the BPP remain the source of self-discipline specifically addressing the proxy advisory industry, it is worth noting that other codes, of different types, are being developed around the world and can serve as such a source as well. This may have an impact on how effective the current reference in the SRD2 to “a” code of conduct really is, without providing any indication on the required features, content, or the existence of a monitoring mechanism.
41. Consistently with the previous picture, only a small number of respondents provide evidence on the existence of proxy advisors that did not fully apply and/ or fully report on the application of such a code of conduct. A few asset managers paint a positive picture of such cases referring to proxy advisors that, even if they are not (or not fully) applying a code of conduct, still adequately disclose the reasons why and, where appropriate, alternative measures adopted (in line with Article 3j(1)). However, other respondents, including a proxy advisor and issuer associations, report that appropriate disclosure on the reasons for departing from a code of conduct and/ or on alternative safeguards in place was not provided by some proxy advisors, especially new entities offering advisory services and that are not signatories to the BPP.
42. Generally, respondents to the Call for Evidence, mainly representatives of investors, consider that market practice has improved and welcome the monitoring by the IOC. Most investors see the current legal framework developed by the SRD2 and the role of the BPP and the IOC as enablers of a robust self-regulation system. Annual review by the IOC of the statements published by proxy advisors (featuring detailed information on how they

¹⁴ According to the input received, two respondents are founding signatories of the BPP, two are signatories to the UK Stewardship Code (one also being signatory to the BPP and one also a signatory to the Japanese Stewardship Code). However, ESMA’s desk research indicates that at the time of the consultation, three of the respondents were in fact signatories to the UK Stewardship Code.

¹⁵ It should be noted that ESMA’s desk research identified that the latter respondent has also become a signatory to the newly published Spanish Code of Good Practice for Investors. This code makes use of the “comply or explain” principle for a transitional period of three years after its adoption by asset managers and proxy advisors, after which all signatories are mandated to an “apply and explain” principle. The code can be found [here](#).

comply with the BPP) is seen by global proxy advisors as able to generate improvements in disclosure practice and provide assurance and transparency as to whether and how signatories are complying with the BPP. Global proxy advisors also emphasise the importance of the BPP in driving harmonisation of market practice. According to them, the self-regulatory system is able to ensure proportionality and flexibility (in terms of adaptability to different situations and proxy advisors' different features), while at the same time avoiding the fixed costs and potential anti-competitive effects of prescriptive conduct regulation, namely in terms of increasing barriers to entry¹⁶.

43. In addition, a few responses stress that asset managers increasingly have custom policies and rely on proxy advisors more for their data and analyses rather than for their voting recommendations, which may reduce the risk of overreliance on the latter. According to them, some asset managers are exploring ways to give their investor-clients the option to cast their vote themselves, which in perspective may facilitate more diversified voting. In their view, these aspects suggest retaining the SRD2 current approach, mainly based on transparency and self-regulation, which may better fit proxy advisors' evolving practices and different business models than prescriptive conduct regulation.
44. Global proxy advisors and investors also argue that consistent with ESMA's findings in 2013¹⁷, there is still no evidence of significant market failure that could require a regulatory intervention. They recall that more prescriptive regulatory approaches in other jurisdictions (notably in the US and in Australia) have been reconsidered in favour of monitored self-regulation of the kind embodied in the BPP initiative. Moreover, some investor representatives warn about the risks of further regulating the proxy advisory industry, again based on the argument that this may lead to additional barriers to entry in that market. This, in turn, may affect the competitiveness of this industry and ultimately negatively impact investors' ability to fully exercise their stewardship activities, for example resulting in fewer or less informed voting.
45. Still, certain stakeholders see room for improvement and suggest a number of steps that could be taken to address current weaknesses. In particular, local proxy advisors and issuers tend to be less optimistic about the effectiveness of the current framework and suggest further regulatory steps. These respondents consider that the national dimension of supervision envisaged by the SRD2 is not fully satisfactory and that further harmonisation and common supervision are needed. As such, local proxy advisors suggest that ESMA keep a register of the proxy advisors subject to the SRD2 and develop a European code of conduct, acting as common EU supervisor. In addition, certain issuers

¹⁶ Incidentally, ESMA recalls that competition matters on a European scale fall within the remit of the European Commission and that ESMA does not have specific enforcement powers in this area.

¹⁷ ESMA (2013).

would consider it helpful to entrust NCAs with the task of monitoring developments at the domestic level, including as regards the impact of proxy advisors' activity on GM outcomes. In their view, NCA monitoring could take the form of an annual report, which could be accompanied by a reporting mechanism to ESMA, which would also manage a complaint mechanism. Issuers also flag the need to increase their representation in the IOC.

46. ESMA generally notes from the Call for Evidence that the design of the current regulatory framework is considered overall robust, and its application is seen to be gradually improving. Therefore, the present approach of “monitored self-regulation” should be maintained. Nonetheless, further improvements could be foreseen in this context. For example, a basic registration mechanism, as referred to in paragraph 75 could be also helpful in improving the functioning of the SRD2 framework (e.g. by providing clarity on which MS is the competent MS). In addition, a reference within the Directive to a code of conduct that entails certain minimum features, including on its monitoring, may be helpful in further improving market practice.
47. ESMA also understands that while the IOC is independently chaired and diversely composed and this has provided some level of comfort to stakeholders, the governance of the BPPG, as recommended by ESMA in 2015, would still benefit from a clearer and more robust structure, including via the appointment of an ad-hoc Chair¹⁸ that is separate from that of the IOC. This may, in turn, facilitate regular updates of the self-regulatory principles going forward, to meet evolving market expectations.

3.1.4 Article 3j(2) - Disclosures

48. According to Article 3j(2) of the SRD2:

“Member States shall ensure that, in order to adequately inform their clients about the accuracy and reliability of their activities, proxy advisors publicly disclose on an annual basis certain information in relation to the preparation of their research, advice and voting recommendations [...]¹⁹. The information referred to in this paragraph shall be made publicly available on the websites of proxy advisors and shall remain available free of charge for at least three years

¹⁸ In line with recommendations set forth in ESMA's previous analysis: ESMA (2015), page 34, paragraph 107.

¹⁹ (a) the essential features of the methodologies and models they apply; (b) the main information sources they use; (c) the procedures put in place to ensure quality of the research, advice and voting recommendations and qualifications of the staff involved; (d) whether and, if so, how they take national market, legal, regulatory and company-specific conditions into account; (e) the essential features of the voting policies they apply for each market; (f) whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof; (g) the policy regarding the prevention and management of potential conflicts of interest.

from the date of publication. The information may be provided together with disclosure on the adoption of a code of conduct under paragraph 1.²⁰

49. The Call for Evidence looks into the disclosures provided by proxy advisors according to Article 3j(2), and whether they have reached an adequate level following the entry into application of the SRD2.
50. An overall positive picture of market practice was drawn by all types of respondents. This is true especially as to the transparency provided by proxy advisors to ensure the accuracy and reliability of the advice, the disclosure on their voting policies and methodologies and, to a lesser extent, on how they consider local market and regulatory conditions. Reflection of local market conditions seems to vary depending on the specific market under scrutiny and on the breadth of the geographical area for which voting policies are designed by global proxy advisors. While some calls for improvements have been made on these topics, as mentioned earlier, several market participants acknowledge the key role of IOC monitoring in fostering adherence to best practices, also in this area.
51. Coming to whether the above improvements can be attributed to the entry into application of the SRD2, proxy advisors tend to emphasise that the Directive did not have a major effect on current practices and only required partial changes because disclosure policies were already quite advanced before its application. However, other respondents noted that proxy advisors' practice has in fact been adapted since the SRD2 has come into force. Although not attributable to the SRD2, stakeholders noted that since its entry into application, the IOC has begun overseeing the BPP reporting process, providing reviews of the signatories' reports on an annual basis.
52. A few NCAs providing input to ESMA have also observed a gradual improvement on proxy advisors' practices over the years. However, they often stress that it is difficult for them to identify specific shortcomings when carrying out their supervisory duties. In particular, NCAs find it difficult to draw conclusions on proxy advisors' activities based on the information they publish, especially when they lack specific powers to be able to request more granular information from proxy advisors regarding their activities, and even more so in the case of proxy advisors operating in the EU via an establishment placed in a different MS.
53. The assessment by respondents concerning the disclosure provided by proxy advisors on dialogue with issuers is less positive, and improvements in this area have been suggested,

²⁰ i.e., those under a self-regulatory code.

especially by the issuer community. As a background, it should be recalled that, according to Article 3j(2)(f) of the SRD2:

“proxy advisors publicly disclose on an annual basis [...] whether they have dialogues with the companies which are the object of their research, advice or voting recommendations and with the stakeholders of the company, and, if so, the extent and nature thereof”.

It is worth noting that while the SRD2 provides for such disclosure by proxy advisors, it does not provide any prescriptive conduct requirement concerning dialogue with issuers, including requiring proxy advisors to enter into such dialogue and give a minimum amount of time to issuers to review the draft report and flag possible errors.

54. On this matter, issuer representatives especially call for more transparency on how proxy advisors engage with them and whether they consider their views and comments in an efficient and timely manner, asking that either the BPP or the SRD address this. In their view, it should be ensured that issuers can submit a request for receiving the draft report before its publication, can correct factual errors and provide comments on reports. In addition, such interaction should be disclosed to the recipients of the report. In this respect, one frequent comment made by the issuer community is that, where allowed by proxy advisors, the time granted to issuers for feedback and review of data shared prior to the GM (e.g. on board composition, compensation practices and equity plans) is too short and that comments provided are not always incorporated. On the other hand, while the timeline for dialogue is admittedly tight, it is also noted by proxy advisors that the quality of issuer responses to their remarks is not always satisfactory. Generally, a framework for more structured dialogue, especially in the case of negative recommendations issued by proxy advisors, would be seen as a welcome step, particularly by issuers.
55. It should be noted that the IOC seems aware of some of these shortcomings as it devotes a number of recommendations to improving disclosure on dialogue between proxy advisors and issuers. In particular, the IOC encourages proxy advisors to adequately disclose:
- i. The process for issuer feedback and its features (whether it varies by market, company size or other factors) or, conversely, why the process is not in place;
 - ii. What document is provided to the issuer (full report, research only, etc.);
 - iii. Whether the issuer is provided with any advance notice as to when the report will be sent for review;
 - iv. The time given to the issuer to respond and

- v. Whether the issuer has to pay any fees to have access to the report before its publication.
56. Generally, respondents agree that the accuracy and quality of research by proxy advisors as well as dialogue with issuers would benefit from timelier disclosure of corporate documents by companies (and – as far as needed – an increase in the minimum period for convening GMs according to the SRD – i.e., 21 days²¹). Timelier disclosure of GM documents would in fact grant proxy advisors more time to perform their analyses before the cut-off date for submitting votes actually set by custodians in some EU markets (reportedly between 10 and 15 days prior to the GM date).
57. Also according to investors, transparency on the dialogue with issuers and on consequent changes on research is identified as an area for improvement. In this respect, investors suggest that accuracy of research might benefit from envisaging that all issuers are given standard time to signal possible errors to ensure that investors receive accurate and reliable information. Ultimately, this would allow proxy advisors to correct any erroneous data in due course and at the latest before releasing their voting recommendations to their clients.
58. As regards the dialogue between proxy advisors and issuers, a few NCAs providing input to ESMA are also aware of the difficulties affecting such interaction and generally concur with the stakeholders' view that there may still be room for improvement and that an extended timeline would facilitate dialogue. In addition, a few NCAs also highlight the diversity in practice observed in proxy advisors' policies with respect to dialogue²². Here, ESMA notes that while this aspect is currently left to proxy advisors' own policies, it would be helpful if specific best practices could be developed in this area by codes of conduct, also leveraging on potentially longer timelines for the publication of meeting documents as suggested in letter (n) of the advice on the investment chain section.

²¹ On this point, please see also Article 5(1) of the SRD1: "[...] Member States shall ensure that the company issues the convocation of the GM in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting. [...]" and Article 5(4): "Member States shall ensure that, for a continuous period beginning no later than on the 21st day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information: [...] c) the documents to be submitted to the general meeting [...]"

²² A few examples raised by these NCAs are provided in the following: One proxy advisor was reported to have sent the draft report to issuers giving them 24-48 hours to correct any factual error, and, in case of a negative recommendation, to submit their observations that are included as quotes in the report. Another one was reported to have uploaded the data deemed as relevant to the voting recommendations on an online platform and have given the issuer the opportunity to notify the proxy of any factual error or possible omission. However, the issuer reportedly only had access to the proxy's voting recommendations (and was able to share its positions on those) if it purchased the report. Lastly, another proxy advisor was reported to not have provided access to the report to issuers before it was sent to the client, arguing that such an approach would undermine their intellectual property rights and independence and would reduce the incentive for issuers to provide complete public information.

59. Finally, some criticism was expressed by respondents on the management of complaints by proxy advisors. Certain respondents from the issuer community and also the SMSG flag poor transparency on the complaint procedures, arguing that this ultimately discourages issuers from launching such complaints. Standardisation and improvement of complaints handling are therefore recommended, together with the possibility that the procedure be initiated with the national regulator. These respondents also argue for a complaint system that could be either complementary or alternative to that currently performed by the BPPG/IOC. It is interesting to note that none of the respondents to the Call for Evidence have initiated a complaint procedure under the BPP framework as regards research reports, although ESMA understands that one complaint has actually been escalated to the IOC's attention²³.
60. On this topic, the IOC points out that the BPP call for effective procedures by their signatories for handling the complaints in a responsive and timely manner, aiming at increasing the accountability of the whole process. The IOC also notes that the process of monitored self-regulation has begun to bear fruit with the 2022 statements, when signatories included reactions to IOC recommendations in the first cycle of reviews (2021).
61. Nonetheless, based on the input received in the consultation, ESMA would find it beneficial if some additional reassurance was provided at the EU level on the ability of the complaint mechanism to address stakeholders' expectations and thereby improve public trust in proxy advisors' practices.

3.1.5 Article 3j(3) - Conflicts of interests

62. Coming to conflicts of interest, it is worth recalling that according to Article 3j(2)(g) of the SRD2:

“proxy advisors publicly disclose on an annual basis [...] the policy regarding the prevention and management of potential conflicts of interests”.

In addition, Article 3j(3) states that:

“Member States shall ensure that proxy advisors identify and disclose without delay to their clients any actual or potential conflicts of interests or business relationships that may influence the preparation of their research, advice or voting recommendations and the actions they have

²³ BPPG Oversight Committee, “2022 BPPG Oversight Committee Annual Report”, page 56.

undertaken to eliminate, mitigate or manage the actual or potential conflicts of interests”.

63. It is worth noting that, in contrast to Article 3j(2), Article 3j(3) cannot be addressed by simply complying with a code of conduct or by explaining the reasons for not doing so but constitutes a mandatory disclosure requirement on proxy advisors towards their clients.
64. Conflicts of interest is the area in which disclosure by proxy advisors has overall been considered less satisfactory by all types of respondents to the consultation, including some of the proxy advisors themselves. Most concerns have been expressed about situations in which proxy advisors release research about issuers to investors and serve at the same time as consultants to the same listed companies, e.g. to suggest improvements to their corporate governance practices. It has been reported that the increasing provision of such services by certain proxy advisors is a source of concern and that potential conflicts of interest are more frequently observed than in the past, also in the perspective of issuers that may feel pressured (e.g. through marketing campaigns) to buy such services in order to avoid negative recommendations²⁴.
65. Both issuers and investors emphasise the importance of disclosure by proxy advisors on the comparative size and nature of their revenue sources (as recommended by the IOC in its monitoring) and on the structure of fees charged, so that it can be assessed how much is earned through additional services such as consultancy, ESG data provision and voting execution services. Issuers' representatives also emphasise that, according to the SRD2, proxy advisors should inform their clients about individual conflicts that have emerged in the preparation of their research and advice. In addition, they request that such piece of information be presented on the front-page of the same report, in line with the practice on investment services.
66. Evidence on practices actually adopted by proxy advisors on conflicts of interest and on relevant disclosure varies. Some market players accompany the research with a conflict-of-interest statement, indicating whether they have a relationship with the company on which they are offering voting advice and describing this relationship. Others make this piece of information available to their investor clients, even if it is not displayed in the same report as the advice itself. Interestingly, some local proxy advisors call for a stricter approach on the provision of consultancy services to issuers that are the object of research and voting advice, suggesting that such activity should be forbidden (in line with their own

²⁴ In that regard, issuer representatives warned about the risk that a proxy advisor might use its market power to create the need for issuers to be advised in order for them to obtain more favourable voting recommendations, as the aforementioned marketing of consultancy services could possibly be targeted to issuers receiving negative recommendations.

reported practice) or, alternatively, accompanied by full transparency (to the public) on issuers that purchased consultancy services and on the related fees charged.

67. According to some respondents, including certain proxy advisors, more granular SRD2 provisions on identification of potential conflicts of interest (coming from ancillary and overlay services such as corporate governance and/ or ESG advice and voting services) would be welcome. While some proxy advisors highlight that considerable efforts have been made in this regard, other market participants, and also the SMSG, are somewhat critical and maintain that neither the SRD2 nor the updated BPP have been fully successful on this matter.
68. Moreover, input received through the consultation confirms that evolving market practice shows increasing consideration of ESG issues in the preparation of voting research and advice according to proxy advisors' own policies or to client-customised policies. This change was not only reported by proxy advisors but also acknowledged by several investors, some of which also noted that the integration of ESG issues in voting research and advice is still in progress and shows different levels of maturity. While the provision of additional ESG-related services to issuers raises some concerns amongst them, as they consider it may increase the likelihood of potential conflicts of interest, investors seem not too concerned at this stage.
69. Finally, based on NCAs' supervisory experience on proxy advisors, there is limited evidence of specific instances in which major conflicts of interest have surfaced and have become an issue for market players. This may also indicate that it is not always easy for them to access information on this matter.
70. Overall, based on stakeholders' feedback, ESMA considers that conflicts of interest remain a source of concern for the market and a reinforcement of the SRD2 provisions in this area would be helpful both in terms of disclosures to the public and to investors-clients.

3.1.6 Article 3j(4) - Proxy Advisors operating via establishments

71. Article 1(6)(c) sets out that Chapter Ib, which includes Article 3j(4), applies to:

“proxy advisors, to the extent that they provide services to shareholders with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State”.

According to its paragraph 4, Article 3j also applies to proxy advisors that have neither their registered office nor their head office in the EU, which carry out their activities through an establishment located in the Union. For that purpose, the SRD2 identifies the competent MS as that:

“in which the proxy advisor has its registered office, or, where the proxy advisor does not have its registered office in a Member State, the Member State in which the proxy advisor has its head office, or, where the proxy advisor has neither its registered office nor its head office in a Member State, the Member State in which the proxy advisor has an establishment”²⁵.

Additionally, recital 27 of the SRD2 sets out in relation to third-country proxy advisors that:

“In order to ensure a level playing field between Union and third-country proxy advisors, this Directive should also apply to third-country proxy advisors which carry out their activities through an establishment in the Union, regardless of the form of that establishment”.

72. Input collected on the effectiveness of such provisions to ensure a harmonised framework for all proxy advisors covering EU listed companies varies and includes a number of responses by proxy advisors, investors and issuer representatives generally emphasising the cross-border nature of proxy advisors’ activities and the limits of a national-level supervision framework as provided by the SRD2. It should be noted that most proxy advisors responding to the consultation have asserted that their registered office is in the EU and only one has maintained that its headquarters are in the US, but it has establishments in the EU²⁶.
73. According to two local proxy advisors, the implementation of the SRD2 differs widely across EU jurisdictions, making each player subject to different supervisory rules. In this respect, an asset managers’ representative points to the importance of the BPP and of the centralised IOC monitoring (rather than local monitoring where the proxy advisors are

²⁵ Article 1(2)(b) of the SRD2

²⁶ ESMA’s desk research indicates that certain players that have not responded to the ESMA consultation provide services in relation to European companies, but they do not have a registered office, nor a head office, nor even an establishment in the EU. Although compatible with the SRD2, having third-country proxy advisors operating without an establishment may create room for regulatory arbitrage risks.

incorporated or based). Certain issuer representatives further suggest that common supervision by ESMA be established, in line with what local proxy advisors also argue.

74. When it comes to the perspective of NCA supervision, it should be noted that supervision by specific NCAs applies to the very few players that operate via a registered office, a head office, or an establishment in the respective MS. Therefore, not every NCA supervises a proxy advisor, even if it requires proxy advisors operating locally to register with it. Further to that, ESMA understands that not all MSs entrusted an NCA with supervising domestic proxy advisors²⁷.
75. In this regard, ESMA notes that a registration system as reported earlier in paragraph 36 may also be helpful in providing further clarity on entities operating in Europe and falling under the scope of the SRD2. Given the global nature of the proxy advisory market, and the limits of local approaches as highlighted above by stakeholders, ESMA notes that such a registration mechanism should be placed at the EU level²⁸. The global nature of the market and the ease of moving an establishment out of the EU should also be taken into account when evaluating the existent and prospective regulatory strategies (namely in light of the risk that a very prescriptive regulatory approach may provide incentives for third-country proxy advisors to operate in EU markets without either an establishment or a head office/registered office).

3.2 Advice

76. On the basis of the above considerations, ESMA presents its advice to the Commission below.

3.2.1 Article 2(g) – Definition of proxy advisors

Regarding the definition of proxy advisors, ESMA recommends that:

- (a) The Commission should consider further clarifying the SRD2 definition of proxy advisors to improve market certainty and ensure that all market players exercising a similar economic function on a professional and commercial basis are captured. This could encompass:

²⁷ For a detailed analysis of MSs' status, reference is made to Table 4 included in Annex VII: SRD2 transposition .

²⁸ For a publication in the UK, which lists proxy advisors and whether they have subscribed to the UK Stewardship Code, see Morrow Sodali, Durham University Business School and Financial Reporting Council (2023), page 12.

- i. Clarifying the role of professionals that are not established as legal persons and provide advice on a commercial basis;
- ii. Clarifying the role of any non-profit organisations in case they provide advice on a professional and commercial basis;
- iii. Clarifying that the provision of (ESG) data services, governance and/ or ESG analysis and rating services (on a professional and commercial basis), when related to advice on the exercise of voting rights (including when the latter is provided as an ancillary service), is included in the definition of proxy advisors.

In connection with point iii), potential overlaps and/ or conflicts between the regulatory framework on proxy advisors and that applicable in other bordering areas such as on ESG rating activities should be avoided.

- (b) The Commission should also consider whether a basic registration mechanism at EU level may help to provide better clarity to market participants and NCAs on the players operating under the SRD2 framework, as also proposed below under letters (h) and (i).

3.2.2 Article 3j(1) – Application of a code of conduct

Regarding the application of a code of conduct, ESMA recommends that:

- (c) Taking into account that the current framework, mainly based on self-regulation and inherent disclosures, has contributed to reducing the risk of further raising barriers to entry in an industry that is already highly concentrated, the Commission should consider whether the general reference included in Article 3j(1)(2) to “a code of conduct” still serves the purpose of ensuring adequate transparency. In this regard, more specific qualifications of what features such a code should have, in particular an independent monitoring mechanism, may be helpful in providing further clarity to the market.

3.2.3 Article 3j(2) – Disclosures

Regarding proxy advisors' disclosures, ESMA recommends that:

- (d) Given that Article 3j(2) endorses the application of codes of conduct by proxy advisors as a tool to comply with the regulatory framework and considering a specific proposal in this direction provided via the Call for Evidence, the Commission should consider whether issuers and investor-clients should be allowed to resort to ESMA in exceptional cases of critical issues or alleged violations of a code of conduct (for example those that could not be addressed in a satisfactory way either bilaterally with the interested proxy advisors or by resorting to other mechanisms put in place by the proxy advisory industry). In those cases, ESMA could attempt to facilitate dialogue between the issuers/ investors and the proxy advisors involved, taking into consideration the account provided by the entities as well as proxy advisors' policies and statements as published. Any ESMA recommendations would not be binding on the parties, who would still be able to seek judicial remedies.
- (e) Taking into account the limited disclosure of data sources highlighted via the Call for Evidence, the Commission could consider requesting more specific disclosure of information sources, including ESG data, under Article 3j(2)(b) of the SRD2.

3.2.4 Article 3j(3) – Conflicts of interests

Regarding conflicts of interest, ESMA recommends that:

- (f) The Commission should consider whether more detailed disclosure obligations on conflicts of interest by proxy advisors vis-à-vis their clients, as currently included in Article 3j(3), might improve investors' understanding of possible conflicts of interest. This could be in the form of annotations on the first page of the voting advice, showing individual conflicts that have emerged and their nature, such as consultancy services provided to issuers or other interested parties, staff members who previously worked for or had other types of relations with one of the clients, etc., provided of course that the disclosure does not breach legal provisions on confidentiality.
- (g) Building on what is already recommended as best practice, the Commission should consider improving the list of public disclosures under Article 3j(2) of the SRD2, by mandating transparency on the type of revenues a proxy advisor has generated by providing services to different types of clients, and their relative weight.

3.2.5 Article 3j(4) – Proxy advisors operating via establishments

Regarding proxy advisors operating via establishments, ESMA recommends that:

- (h) Taking into account the global nature of the proxy advisory market, in order to obtain clarity on the players operating under the SRD2 framework and where they place their establishments across different MSs, the Commission should consider the introduction of a basic registration mechanism at EU level (i.e., one where proxy advisors with at least an establishment in the EU would need to notify their activities on EU listed companies).
- (i) In order to provide better visibility and comparability to market participants over practices adopted by proxy advisors subject to the SRD2, the Commission should consider whether the registration mechanism proposed under letter (h) could be associated with the publication of a list of such proxy advisors, specifying whether or not they apply a code of conduct and, in the latter case, providing the link to their report published under Article 3j(2) of the SRD2.

4 Investment chain

4.1 Analysis

4.1.1 Introduction

77. Shares of listed companies are often held through complex chains of intermediaries and the effective exercise of shareholder rights depends to a large extent on the efficiency of the investment chain, especially at cross-border level. In this context, the SRD2 (and the IR) introduced rules on shareholder identification, transmission of information, facilitation of shareholder rights and transparency and non-discrimination of costs, with the aim of facilitating the exercise of shareholder rights and of removing existing obstacles to long-term shareholder engagement in EU listed companies.

78. Input received via the Call for Evidence confirmed that the SRD2 and the IR are recognised as key steps that have strengthened the legal framework by setting out a number of operational requirements to improve the flow of information throughout the investment chain. Nevertheless, input to the Call for Evidence also indicated an uneven level of effectiveness of the SRD2 rules across the EU. While the functioning of the investment chain is recognised as relatively smooth as regards the exercise of dividends rights, practices regarding shareholder voting still do not appear completely satisfactory. In

particular, difficulties arise from the unharmonised practices in the flow of information related to shareholder identification, the notice for corporate events and the entitlement of shareholders.

79. In the following, the main points raised by stakeholders are analysed according to the order of the legislative text.

4.1.2 Article 3a – Identification of shareholders

80. The SRD2 provides for the right of issuers to identify their shareholders. According to Article 3a(1):

“Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0,5 %.”

81. With regard to the effectiveness of the new shareholder identification provisions, the most recurrent concerns that respondents raised, stem from the minimum harmonisation nature of the SRD2 provisions themselves and certain gaps in the IR. Differences observed among national jurisdictions as well as among practices of market players within the same MS are reported to create obstacles to the processing of shareholder identification requests in a timely and consistent manner across the EU²⁹. Those differences are considered to be mainly related to the following issues:

- a) The lack of a common definition of shareholder and the lack of certainty on securities falling under the scope of the SRD2;
- b) The lack of sufficiently strict and harmonised requirements for the communication between issuers, Central Securities Depositories (CSDs) and intermediaries across the investment chain and

²⁹ Please note that the Corporate Events Group (CEG) of the Advisory group on Market Infrastructure for Securities and Collateral (AMI-SeCo) conducts a compliance monitoring exercise to assess current levels of compliance with corporate event standards in Europe. As per the SRD2, this group is in charge of monitoring compliance with shareholder identification market standards elaborated by the industry after the adoption of the IR (so it does not cover GMs). Regular reports are issued by the CEG. Reference is made to the last one issued: “Corporate Events Compliance Report 2022 Monitoring exercise – December 2022”.

- c) The possibility for MSs to opt for the introduction of a minimum threshold to identify shareholders.

a) Lack of a common definition of shareholder and lack of certainty on the securities falling under the scope of SRD2

82. In relation to the lack of a definition of the term “shareholder”, preliminarily, it is worth recalling that the SRD2 did not harmonise this definition across Europe. As mentioned in recital 13, the SRD2 is:

“without prejudice to national law regulating the holding and ownership of securities and arrangements maintaining the integrity of securities and does not affect the beneficial owners or other persons who are not shareholders under the applicable national law”.

At the same time, it should be noted that Action 12 of the Commission’s 2020 Action Plan on CMU provided that the Commission will need to assess:

“the possibility of introducing an EU-wide harmonised definition of shareholder”.

83. Almost all participants in the survey highlight that a harmonised definition would be helpful in reducing divergent practices and increasing alignment of processes and efficiency throughout the custody chain³⁰. To this end, the majority of the respondents considered that the beneficial owner should be identified as the shareholder. However, it is generally acknowledged that the harmonisation of the shareholder definition might entail certain implications on national law (in particular securities law, company law and tax law), including the regulation on rights attached to the securities, as well as on market practices. Besides the shareholder notion, it was often argued by different types of respondents that, to ensure the effectiveness of shareholder identification, issuers should be able to identify both beneficial shareholders and nominee shareholders, so as to be able to understand who exercises the shareholder rights as well as on whose behalf.

84. Even some of those who do not agree with the need for a harmonised shareholder definition suggested alternative tools to overcome some of the difficulties encountered in the identification process. For example, one respondent suggested that an alternative and

³⁰ In this area, please also see the conclusions drawn in the following reports: European Commission, “*Commission Staff Working Document on possible national regulatory barriers to the use of new digital technologies in the interaction between investors, intermediaries and issuers (Action 12 of 2020 Capital Markets Union Action Plan)*” (2022), page 6 and Informal Company Law Expert Group (ICLEG), “*Report on virtual shareholder meetings and efficient shareholder communication*” (2022), page 20.

more pragmatic strategy could be to focus on determining who in the custody chain should be identified according to the relevant provisions, without the need to define that person as “the shareholder”. That would entail introducing a specific definition for the sole purpose of shareholder identification, in order to clearly specify whose identity data must be disclosed to the issuer to comply with the SRD2 obligations³¹. Another respondent suggested that each MS report its definition of shareholder to an EU body and that those national definitions should then be publicly disclosed at the EU level. This was presented and can be seen as a potential quick fix that could be put in place to improve certainty on the different legal frameworks, while addressing the broader discussion on the shareholder definition.

85. In ESMA’s view, there is no doubt that a common definition of the term “shareholder” would have a significant impact on MSs’ legal systems and that MSs will need to examine this very thoroughly. At the same time however, the discussion does seem to be necessary, as confirmed by the CMU Action Plan.
86. Uncertainty on the categories of securities eligible for the identification process under the SRD2 has also been reported by many respondents, often from the intermediaries’ side. Such uncertainty reportedly generates inconsistencies and difficulties in verifying whether a disclosure request is valid or not and what the applicable law is, especially for CSDs and intermediaries operating in a cross-border context³². Moreover, some respondents also stated that it would be helpful if investor identification were not merely limited to owners of listed shares, in line with what certain MSs have provided for when transposing the SRD2. In particular, according to some of those respondents (mainly CSDs), issuers should be allowed to identify all holders of securities registered on a CSD account (e.g. units of funds and debt securities) on the basis of the identification processes provided by the SRD2, across all EU jurisdictions.
87. In this regard, ESMA considers that a clearer and more EU-harmonised scope of eligible securities may represent a valuable step towards the harmonisation of practices among MSs, avoiding uncertainty on the applicable law pertaining to identification requests regarding securities other than listed shares of EU companies.

³¹ An alternative approach, suggested by ICLEG, refers to the possibility of addressing the issue of identifying the particular rights attached to the shares rather than attempting to harmonise the definition of shareholder overall. In this regard, reference is made to ICLEG (2022), pages 20-21.

³² It should be noted that NCAs also received a few requests by market participants seeking to confirm whether specific cases of shareholder identification processes were captured by the provisions of the SRD2 and the IR.

b) Lack of sufficiently strict and harmonised requirements in the communication between issuers, CSDs and other intermediaries in the chain

88. A second point raised by stakeholders relates to the communication among all the entities involved in the identification process (issuers, CSDs and other intermediaries). Almost all the respondents underlined the opportunity to further mandate the use of a unique standard format – such as ISO20022 – for both flows of information, i.e., the identification request sent by issuers and the response on shareholder identity sent by intermediaries to issuers. This would ensure an automated flow of information with no manual intervention (which is defined as straight-through processing or STP) along the custody chain and reduce the risk of delay and the provision of non-standardised information.
89. In particular, many respondents on the intermediaries' side insisted on imposing a fully harmonised obligation on the issuers to initiate a shareholder identification process by sending the CSD a "golden operational record"³³ in electronic and machine-readable format with all the necessary information. It is worth noting that such an obligation would also entail that shareholder identity data cannot be requested by issuers (or issuer agents) directly from intermediaries outside the intermediaries' chain³⁴, as currently allowed according to the option provided to MSs in Article 3a(3).
90. ESMA also observes that, as a side effect, the use of mandatory ISO formats by issuers could reduce the need for intermediaries, including CSDs, to require additional documentation and connected processes, for instance to verify that shareholder identification requests are valid and within the scope of the SRD2. Further harmonisation of formats could also cover issues such as the use of the Legal Entity Identifier (LEI), disclosures received that are not always compliant with mandatory identification thresholds, the usage of optional fields, differences in the identification data required by issuers (e.g.: tax residence, citizenship, date of birth)³⁵.

³³ The golden operational record, as referred to commonly by market participants, is a single record of operational information, sent by the issuer to initiate a corporate action or a GM event, transmitted in STP and in a machine-readable format that allows all parties in the intermediary chain to process the event in exactly the same manner. In the above context, it refers to the initiation of the shareholder identification process, but the golden operational record can also serve to initiate any kind of corporate event.

³⁴ According to Article 3a(3) of the SRD2, "Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries."

³⁵ One connected challenge relates to the transmission of shareholder identity data without delay. In fact, a certain number of intermediaries reportedly either do not respond to the shareholder identification request at all or respond after the deadline and often need a dedicated follow-up to provide the answer. In particular, one respondent to the consultation flagged that between 5-10% of intermediaries do not respond to shareholder identification requests, and more than 20% respond after the deadline and often need a dedicated follow-up.

A specific example of a national practice that, although compliant with the SRD2, one respondent finds sub-optimal, regards those cases where shareholder identification responses must be routed by intermediaries via their CSD system, which may result in unnecessary transmission delays and additional costs to all affected parties. Incidentally, ESMA notes that the Corporate Events

91. As for the flow of information related to the responses to shareholder identification requests, input collected by ESMA from a few NCAs point out the importance of complying with the specific industry market standard³⁶ providing that each intermediary in the chain must respond to a such requests (in line with Article 3a(3) of the SRD2³⁷). This is seen as a crucial step to facilitate the functioning of shareholder identification and its supervision since it allows issuers (and NCAs) to have a better view of the entire chain.
92. Furthermore, it has been shared by a few NCAs that intermediaries do not always follow the market standard developed by market participants. These circumstances among other technical details make it difficult to monitor the shareholder disclosure process for both the issuer and the NCAs. It should also be noted that service providers are reported to furnish issuers with information that is partly collected from other sources (e.g. additional queries to intermediaries and investors) which may lead service providers to sometimes show the issuers identification results that are higher than what they can effectively identify via the SRD2 mechanism.
93. With regard to the communication between issuers and CSDs, one more element of complexity raised by certain respondents, including intermediaries, refers to situations in which issuers rely on third parties designated to transmit the identification request and to receive identification data. It should be recalled that especially in these cases, according to Article 10(2) of the IR, CSDs and intermediaries must verify “*that the request or information transmitted originates from the issuer*”. In practice, it has been reported that the verification process needs to be performed manually based on authorisation documents, signature checks and other documents. Moreover, when the issuer is not registered in the home market of the CSD, the information and legal details are often provided in a foreign language or are not available. Even on this point, many respondents such as CSDs and issuer agents would welcome further harmonisation on the documentation to be provided by the issuers or the third party in order to reduce as far as possible the differences among CSDs’ practices. This last proposal was also raised by the NCAs providing input on this point.

Compliance Report published in December 2022 by the ECB’s AMI-SeCo also concluded that leaving the option for issuers to require intermediaries to channel the shareholder identification responses through the intermediary chain is not fully in line with the shareholder identification market standards elaborated by the industry.

³⁶ ECSDA, “*Market Standards for Shareholder Identification*” (2020).

³⁷ “Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information” (i.e., information regarding shareholder identity data).

c) Possibility for the MSs to opt for the introduction of a minimum threshold to identify shareholders

94. A third issue that was raised in the consultation relates to the possibility for the MSs to opt for the introduction of a minimum shareholding threshold (not above 0.5% of the voting share capital) to identify shareholders³⁸. Especially in the answers provided by issuers and their service providers, this option is often seen as an obstacle to dialogue between issuers and shareholders. As represented in the Evidence section, this is particularly the case for companies based in MSs opting for the threshold and that have a dispersed investor base, since the application of the threshold prevents issuers from obtaining a full picture of their shareholder base, often allowing them to receive only shareholder data already at their disposal. Moreover, one respondent also noted that the threshold reduces the possibility of identifying shareholders who may hold more shares than the threshold but still stay beneath it by distributing them onto several accounts.
95. On the other hand, input coming from investors indicates that the threshold is not considered an obstacle to the dialogue with issuers, with one respondent suggesting that such dialogue rather depends on the corporate governance practices followed by issuers. It is also interesting to observe that even in those MSs that did not opt for the application of any threshold, the Call for Evidence did not provide evidence of an increased frequency of shareholder identification processes, apart from the exceptional increase of such requests observed in Germany. In the few cases where respondents reported that a shareholder identification process was initiated, they indicated that they were able to identify shareholders representing less than 90% of their share capital (which was the lowest option available in the questionnaire)³⁹. In this regard, a few NCAs providing input to ESMA observe that the frequency of use of shareholder identification processes may also be impacted by the availability of other tools to identify shareholders (see for example paragraph 117 and the related footnote, in connection to the use of GM minutes).
96. NCAs providing input to ESMA also confirmed that issuers face uncertainty regarding the total cost of a shareholder identification process, which reduces their incentive to initiate such a process. One issuer representative suggested that not only a “full disclosure” but also a so-called “selective disclosure” may be beneficial to improve shareholder identification, mainly for cost reasons. To this end, it has been suggested that setting

³⁸ This issue was also raised in European Commission (2022), page 6.

³⁹ An NCA reported to ESMA that it analysed two cases in detail and found that the shareholder identification process under the SRD2 led to only 20% and 27% additionally identified shares. In the first case 31% had already been disclosed under the major shareholdings regime (Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC - Transparency Directive). As a result, in the first case 49% and in the second case 73% of the remaining shares were not identified. This NCA deems these numbers to be representative for the whole functioning of the shareholder identification regime at least in its MS, where an 0.5% threshold is also in place, and questions the current effectiveness of the shareholder identification process.

a threshold for shareholder identification should be entirely left to issuers, not to legislators or regulators. Along these lines, issuers would be able to decide how to customise the identification request to their specific needs, even with other characteristics (e.g. requests to identify shareholders holding shares registered in certain countries or by certain intermediaries above specific thresholds, or shareholders that are not yet recorded in the share register). One NCA reported on issuers voluntarily setting a threshold in the disclosure process to save costs, due to intermediaries charging them for each shareholder identified.

4.1.3 Article 3b – Transmission of information

97. According to Article 3b(1), (2) of the SRD2:

“Member States shall ensure that the intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder: (a) the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or (b) where the information referred to in point (a) is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.

Member States shall require companies to provide intermediaries in a standardised and timely manner with the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph [...].”

98. Overall, input received on the implementation of Article 3b shows general improvements in the transmission of information to clients in a timely and standardised manner. This appears to be the case as regards shareholder identification and GMs, due to the minimum harmonised requirements and STP flow of information, as introduced by the SRD2. Nevertheless, almost all respondents indicate certain shortcomings in the communication between issuers and intermediaries/ CSDs and suggest further harmonising the use of ISO formats in this area.

99. In many countries, issuers are reportedly still not releasing corporate event information in a standardised and timely manner, reducing the benefits of the actual adoption of the ISO

format by intermediaries in the chain, as required by Article 2(3) of the IR. In addition, the possibility for issuers to fill in Tables 3 and 8 only partially (respectively, meeting notice and notification of corporate events other than GMs) is reported to significantly affect the efficiency of the STP flow of information, as it implies that intermediaries may be obliged to resort to different sources of information to be compliant with any further legal obligations towards their clients, in their respective jurisdictions.

100. Issuers note that they did not put in place many changes in the way they provide the indicated information to shareholders for the exercise of their rights, although they assert that information necessary to the exercise of shareholder rights is transmitted in a format which allows STP. Overall, input provided by issuers might suggest that communication practices between issuers and CSDs were already somewhat in line with the SRD2 before its entry into application and that SRD2 provisions have not been able to significantly reduce the variety of practices across issuers or majorly improve the use of ISO formats among them⁴⁰.
101. Also, intermediaries and issuer agents argue for clearer rules on issuer communication and further steps to encourage standardisation of data to be transmitted as both are deemed essential to achieve full and effective communication across the custody chain, from the issuer to the end investor. To this end, the introduction of a fully harmonised obligation on the issuer to provide its CSD with a "golden operational record" in machine-readable format with all the information necessary to initiate any corporate event ("event notice") is largely indicated as the first measure to adopt. As noted for the shareholder identification requests in paragraph 89, such an obligation would reduce manual intervention by intermediaries in transmitting information and increase the completeness of the information available to investors.
102. Even from the perspective of investors, the transmission of information still shows room for improvement, despite the fact that they recognise the SRD2 has been able to impact this area in a positive way. In particular, investors indicate that they still experience issues in receiving information via the intermediary chain. This is due to several factors, such as: lack of digitalisation, uneven formatting, failures in the transmission of information, divergent national requirements, and separation between the legal title holder of the shares and the beneficial owner. At times shareholders either do not receive information in relation to corporate actions or GMs or receive it too late for it to be actionable. This situation is exacerbated in a cross-border context where the chain of intermediaries tends to be longer and information from a non-local issuer must be processed by the last intermediary (often

⁴⁰ ESMA also received input from NCAs that, as part of market practice developed in line with the SRD2 goals, custodians have set up platforms allowing issuers to enter the required information to launch a shareholder identification request or initiate a GM in ISO standards. Once this step has been completed by issuers, the platforms are reported to automatically send the information to intermediaries in the investment chain using the relevant ISO format, catering for interoperability and STP.

involving a translation of the information or a transposition into paper form) before its transmission to shareholders.

103. Furthermore, according to a few respondents from different groups, some intermediaries seem to not be passing on all the meeting announcement information to downstream clients. For example, it was reported that they have in certain cases removed resolution data and replaced it with hyperlinks to the relevant information. It was also reported that the flow of information between the issuer and investors gets blocked in the chain at times, preventing information from flowing down to the shareholder or up to the issuer, especially in instances where the record date (which must be set between 1 and 30 days before the GM, as provided for in the SRD1) is too close to the meeting date.
104. One further point raised by many respondents – mainly intermediaries and asset managers – concerns the implementation of the deadlines included in the IR. More specifically, intermediaries highlighted that the interplay with shareholders, especially retail, can cause delays and discontinuity of format because they often cannot receive information routed via electronic ISO formats.
105. It should be borne in mind that intermediaries are legally required under MiFID2⁴¹ to provide (retail) shareholders with easily understandable information, which often means that documents are sent to them by post (MiFID2 Article 24(5)). Accordingly, it has been widely recognised by respondents that the IR should take into account that different tools (paper, email, etc.) may be used by the last intermediary at the end of the chain to transmit the required information to the (retail) shareholder. This may have an impact in particular on intermediaries' ability to comply with the deadlines set out in Article 9 of the IR.
106. Additionally, it has been observed that Article 9 deadlines themselves may not always be in line with national company law, leading to inefficiencies in the transmission process itself. As a result, intermediaries often suggested reviewing these deadlines to provide them with more flexibility to deal with each step of the transmission of information along the investment chain, both downwards and upwards.
107. It is also notable that a few NCAs providing input to ESMA reportedly receive requests from market participants to play a role in ensuring that information is always transmitted in accordance with the rules provided for by the SRD2 and the IR. In this context, NCAs flag that when trying to address these issues, they are bound by the fact that the different

⁴¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

systems in place for transmitting information often remain incompatible, especially at a cross-border level.

108. Finally, the SMSG highlighted the critical role of omnibus accounts in creating obstacles in identifying proprietary interests of beneficial owners, in processing the information between issuer and shareholder and for the exercise of voting rights, as well as in connection with voting confirmation. While ESMA understands the concerns raised, it also observes that the use of omnibus accounts is a current structural market feature that, according to several market participants, responds to efficiency considerations. The SMSG has also referred to whether the CSDR⁴² framework may need to be reassessed when it comes to the use of omnibus accounts. ESMA would like to point out that the CSDR is neutral regarding the use of omnibus accounts. According to its Article 38, CSDs should enable the use of both "individual client segregation" and "omnibus client segregation". According to the same Article, a CSD participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option. As such, ESMA does not find that the CSDR framework is necessarily the right place to address the issues mentioned by the SMSG. ESMA considers that, as also raised by several participants to the consultation, existing obstacles to shareholder identification, transmission of information and exercise of voting rights, as also identified by the SMSG, may ultimately be the result of an uneven application of the SRD2 and related IR requirements, that is the focus of this report.

4.1.4 Article 3c – Facilitation of exercise of voting rights

109. According to Article 3c(1) of the SRD2:

"Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following: (a) the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights; (b) the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit. Member States shall ensure that when votes are cast electronically an electronic

⁴² Regulation (EU) 909/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

confirmation of receipt of the votes is sent to the person that casts the vote. Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them [...].

110. Overall, most respondents confirmed that there have been improvements following the entry into application of the SRD2 with respect to the facilitation of the exercise of rights, especially in relation to GMs. However, when looking more in detail, stakeholders flag a number of issues still hampering the level of effectiveness of the SRD2 provisions in this area.
111. Input provided by investors and intermediaries indicates that the exercise of shareholder rights at GMs in a cross-border context is still associated with complex manual processes and divergent practices across jurisdictions. For instance, there are differences in how the proof of entitlement, or the notice of participation is released which still hinder communication with issuers. In addition, custodians/ sub-custodians reportedly ask for a number of different documents that are required by national law (e.g. Power of Attorney – PoA; certificate of holdings, etc.).
112. On this point, a general consensus emerged that one of the main obstacles is the lack of harmonisation in the documentation required by last intermediaries and custodians to prove the shareholders' entitlement to exercise the rights attached to their shares. Therefore, further harmonisation is considered necessary by most respondents, mainly investors and intermediaries. This could entail, for example, mandating the use of ISO formats to communicate the proof of entitlement, the notice of participation in GMs and possibly voting instructions.
113. National requirements related to granting PoAs have been indicated by many respondents as largely unharmonised as well – not being in the scope of the SRD2 – and hampering the seamless exercise of voting rights. However, harmonising the provisions on PoAs appears particularly complex as it is strictly related to the national company and civil law of the different MSs ⁴³.
114. Another general concern affecting the exercise of voting rights is the fact that cut-off dates vary by custodians and are sometimes set very early for shareholders to engage with

⁴³ It should be noted that in case of electronic voting and holding virtual meetings the issue of PoAs could prove less problematic. For an analysis of this tool and any potential drawbacks, please see ICLEG (2022).

the company on specific voting resolutions and to take informed voting decisions. In particular, some asset managers refer that they often must vote 10 to 15 days before the GM due to intermediaries' cut-off dates along the chain. In addition, it is worth highlighting that, according to the SRD1, the deadline for calling the meeting and publishing the meeting documentation is 21 days before the GM⁴⁴, which together with custodians' cut-off dates reduces time available to shareholders to properly engage and vote on the GM's resolutions. Also, intermediaries claim that communication of votes often takes place at the deadline, making it difficult to comply with the obligation for the entire chain to forward votes/instructions "without delay"⁴⁵.

115. As regards the aforementioned concerns, further harmonisation of the deadlines provided for the publication of meeting materials and of the record date to the entitlement of shareholder rights has been largely indicated as a first positive measure to facilitate the exercise of shareholder rights⁴⁶. On this point, ESMA notes that the harmonisation of timelines does not require major changes in the SRD and can therefore be seen as a quick fix.

116. Furthermore, responses – in particular those by investors – have focused on potential shortcomings in the receipt of vote confirmation. However, the issue seems to be more related to the different practices in the market than to specific issues resulting from the applicable regulatory framework.

117. Vote confirmations from issuers are essential to asset managers in order to record their vote, prove their compliance with their policies and show their engagement on ESG. Nonetheless, confirmations are still not being provided for a large number of markets, and sometimes they are provided only in paper-based form. In certain cases, vote confirmation is in practice currently being transmitted by means of market solutions such as platforms provided by proxy advisors or service providers other than intermediaries. Moreover, input collected by ESMA shows that MSs may use different models, i.e., by providing for disclosure regimes as an alternative to vote confirmation, as allowed by Article 3c(2)(2)⁴⁷,

⁴⁴ According to Article 5(1) of the SRD1: "[...] Member States shall ensure that the company issues the convocation of the GM in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting. [...]"

⁴⁵ As a side note, it is worth noting that the issues raised by respondents can affect the ability of shareholders to fully exercise their rights, a topic that is also illustrated in paragraph 56 in the section on proxy advisors.

⁴⁶ Incidentally, the Commission may wish to consider providing more clarity regarding timelines under Article 5 of the SRD2 in the context of salvaging financial institutions in distress (e.g. when that leads to a GM being called at very short notice). While this is not part of the mandate for this report strictly speaking, it may be worth clarifying some of the rules here.

⁴⁷ "[...] Member States shall ensure that after the GM the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them [...]". In Italy, for example, there is no obligation for issuers to send vote confirmations, since all the votes cast are completely disclosed in the meeting minutes published on the issuer website.

which can in such cases explain the lack of a specific obligation on the issuer to send such a confirmation.

118. Some NCAs reported a lack of due diligence by intermediaries in how they process voting instructions, which has an impact on the GM quorum and on the voting decisions themselves. These NCAs consider that a lack of such obligations in the SRD2 framework makes it unlikely that intermediaries perform due diligence checks and at the same time may hinder NCAs' effectiveness in protecting shareholder rights.
119. Overall, it emerges that even after the entry into application of the SRD2, most shareholders are still not able to automatically verify whether their votes have been correctly registered at the GM. There is however a lack of clarity in relation to how to address this issue. Generally, ESMA observes that further automation of the process would be helpful, both at institutional and retail level, with the aim of simplifying the process and harmonising regulatory oversight.

Transversal considerations in relation to shareholder identification, transmission of information and facilitation of the exercise of voting rights

120. A few transversal considerations have surfaced in connection with Articles 3a-3c in the consultation and are summarised below:

a) Use of a Regulation and NCA identification

121. One transversal point that has been raised in response to different questions included in the Call for Evidence regards the legislative tool used by the co-legislators to harmonise the area of shareholder rights. It has often been argued that the implementation of the SRD2 provisions may be hindered by the fact that the SRD2 is a Directive, thereby allowing for different transpositions at the MS level, while a Regulation would be more effective in prompting harmonised practices. Of course, there are different aspects to take into consideration, when deciding whether to use a Directive or a Regulation. That said, it seems quite clear that a Regulation is more likely to reduce divergences between MSs effectively, especially in connection with the most technical aspects. Moreover, ESMA observes that with the SRD2 and the IR, there is already a combination of different legislative tools being used.
122. Further to that, the NCAs that provided insights into the practical implementation as well as into the supervision of SRD2 provisions in their respective jurisdictions noted that the SRD2 very recently entered into application after its transposition into national legislation, leading to limited visibility on potential issues that may have arisen. In addition, they stressed that monitoring the flow of information across the investment chain as well

as compliance with communication standards is difficult, unless EU or national legislation provides the NCA with specific powers to scrutinise SRD-based processes. At any rate, it remains difficult for NCAs to monitor cross-border processes in practice, even within the EU.

123. Moreover, respondents call for improved clarity on the institutional framework surrounding the SRD2, arguing that the supervision of different SRD2 provisions is not always allocated to a specific NCA. At a cross-border level, this problem is reportedly exacerbated by the lack of clarity on how competence is allocated between the NCAs responsible for issuers and the ones in charge of intermediaries, welcoming guidance by the Commission on the matter. ESMA can only support this line of argument.

b) Use of new technologies in the investment chain

124. Another transversal point that has surfaced in the consultation is whether new technologies could help in overcoming any persisting obstacles along the investment chain. Most respondents concurred with the view that new technologies can indeed be of help and can facilitate engagement between issuers and shareholders. In particular, distributed ledger technology is referred to as a possible solution to bring clarity to the share ownership system reducing the need for intermediary services between investors and issuers. However, in ESMA's understanding, to date there has been very limited evidence in terms of practical application of such new technologies⁴⁸.

125. In this regard, ESMA considers that it can be useful to see if the applications under Regulation (EU) 2022/858 (Distributed Ledger Technology Regulation – DLTR) on a pilot regime for market infrastructures based on distributed ledger technology may bring any innovative solutions regarding securities holding structures. These applications may in turn simplify current processes and facilitate the exchange of information between issuers and shareholders and the exercise of shareholder rights. As things stand, for the purposes of this report, ESMA considers that a technologically neutral approach remains the most suitable regulatory strategy to preserve flexibility and innovation.

c) Neo-brokers

126. Finally, it should be noted that a few stakeholders, including the SMSG, raised the issue of whether services provided by online brokerage platforms (“neo-brokers”) fully comply

⁴⁸ ESMA takes note of the SMSG suggestion to investigate whether the use of new technologies could facilitate direct dialogue between issuers and investors while taking into account risks in relation to investor protection. In this context, ESMA notes that such an investigation is not covered by the current mandate (and would not be feasible in the envisaged timeframe) as provided by the Commission to ESMA and the EBA. At the same time, ESMA observes that a related workstream was undertaken by the Commission (please see European Commission, 2022), investigating the national barriers to the use of digital technology in the interaction between intermediaries, investors and issuers. This paper also confirms that there has been limited use of DLT.

with the SRD2 provisions, particularly in connection with the transmission of information and the exercise of voting rights. The input gathered in this regard was, however, limited. Most respondents indicated that they have not used such services, while the few who did provide input highlighted that due to a lack of internal resources, these platforms are more prone to the risk of unsatisfactory compliance with the provisions of the SRD2. As such, they suggest that neo-broker services related to the transmission of information and the exercise of voting rights should be monitored more closely by NCAs. ESMA generally agrees that it would be important for NCAs to keep this issue in view and continue monitoring the compliance of neo-brokers also in connection with the effective provision of voting services to their clients.

4.1.5 Article 3d – Non-discrimination, proportionality, and transparency of costs

127. Article 3d of the SDR2 provides that MSs:

“shall require intermediaries to disclose publicly any applicable charges for services provided for under this Chapter separately for each service”.

The article also provides that MSs:

“shall ensure that any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services”

and that:

“any differences between the charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.”

Finally, Article 3d allows MSs to:

“prohibit intermediaries from charging fees for the services provided for under [Chapter Ia]”.

128. Respondents to the Call for Evidence were of the view that the Directive has not brought many improvements in these areas. In particular, the nature, terminology and level of fees is reported to be highly divergent across EU MSs; the level of the charges is said to be

untransparent; the information often difficult to find, the structure of the charges is too complex to understand; and charges for cross-border holdings of shares are at times higher than at the domestic level, a difference that is then often also not explained.

129. Respondents' views were complemented by views expressed in discussions with the industry, where participants explained that charges are often negotiated individually with clients, with some big clients benefitting from better rates than the figures published on the issuer's website.

130. Participants also explained the different types of costs that may accrue, such as the cost for participating in a shareholder meeting. Reference was also made to the recovery cost for shareholder identification along the chain. The views expressed by investor associations, in turn, confirmed that cross-border voting incurs very high costs that are discouraging the shareholder to vote and that these costs are often not explained.

131. Retail investors raised two suggestions in the area of enforcement:

- i. Firstly, enforcing intermediaries' compliance with the provisions and spirit of both the Treaty of Rome (consolidated version TFEU 2016/C 202/01) and of the SRD2; in particular by not charging shareholders more fees for cross-border voting than for national voting within the EU, unless duly justified.
- ii. Secondly, enforcing compliance by entrants (i.e. FinTech), such as neo brokers, and address the implications of their business model on shareholders' rights.

132. The EBA also acknowledges the SMSG's proposal to review the regulatory oversight of costs and charges connected to GM-related processes and harmonise it. As a first step, a central database of intermediaries' custody service fee structures, that could be established at the European level, is suggested by the SMSG. Should such a database be established, the allocation as to which entity should oversee such a database is best decided by the co-legislators. As shares are financial instruments and therefore do not fall within the EBA's consumer protection remit, the EBA is prima facie not a suitable place for such a database. Also, any such central database would need to be accompanied with commensurate financial resources to carry out the IT development. Regarding the merit of such a database, the EBA notes that the vast majority of share transactions are done by residents of the same country where the entity is authorised. Akin to the provisions in other Level 1 texts (such as Article 7 of Directive 2014/92/EU – Payment Accounts Directive or PAD on payment accounts, which required individual MSs to develop databases of all payment accounts for their respective jurisdiction, and not at EU level, so that consumers can compare costs), it should be considered that the SRD, too, foresees the development

of national databases, as a possible precursor to a single EU database to be developed at a later stage, which should fall under the remit of the appropriate body concerned.

133. On aggregate, the views summarised above suggest that the disclosure and comparability of costs remain limited across the EU MSs, which may also reduce the competitiveness among players. A lack of harmonisation of the types of fees or services that can be charged and a lack of detailed disclosure requirements regarding costs are often indicated as the main obstacles to a better comparability and transparency of costs. The EBA notes that on these aspects there is room for improvement to reduce the negative impact of costs on investors' engagement.

4.1.6 Article 3e – Third-country intermediaries

134. According to Article 3e of the SRD2:

“This Chapter also applies to intermediaries which have neither their registered office nor their head office in the Union when they provide services referred to in Article 1(5).”

Article 1(5) of the SRD2 states:

“Chapter Ia shall apply to intermediaries in so far they provide services to shareholders or other intermediaries with respect to shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.”

135. Overall, respondents to the Call for Evidence were of the view that it was only to a limited extent that the practices of third-country intermediaries are in line with the provisions of Chapter Ia and the IR. In particular, the relationship with intermediaries from non-EU countries is complicated by the fact that these intermediaries often do not consider themselves obliged to comply with the SRD2 and its IR. However, while larger intermediaries seem to already be in line with the SRD2 provisions, smaller entities outside the EU seem to be gradually adjusting.

136. In general, third-country intermediaries either do not adhere to, or have limited capability to, leverage recommended ISO messaging under the SRD2 / IR due to the cross-border nature of the investment chain involving EU and non-EU players. For shareholder identification, third-country intermediaries are often not using SRD2 compliant formats and

request responses in non-ISO formats. Some third-country intermediaries still reply via email and do not accept to use or do not have access to the ISO messages or web-based solutions and are also not using STP communication methods.

137. Third-country intermediaries have yet to build a standardised process for responses, but they also have to build a separate process to handle SRD2 responses for the custody chain. Confidentiality rules may also impact the efficiency of the process, as when data are deemed confidential, it may be difficult to convey them through the custody chain without using a standardised process.
138. With regards to the question on the general application of Chapter Ia provisions by third-country intermediaries, more than half of respondents did not have an opinion, while the majority of the remaining respondents who expressed an opinion (mainly intermediaries), were of the view that practices of third-country intermediaries are in line with the relevant provisions only to a limited extent. A few respondents affirmed that third-country intermediaries' practices are "not at all aligned" with the SRD2 provisions.
139. Practically all respondents noted differences in the practices followed by third-country intermediaries compared to European intermediaries, albeit to a limited extent. A few of them noted that the misalignment occurs with small local third country intermediaries, while the operators of a more global nature seem more in line with the European requirements. A few others mentioned the issue of non-usage of ISO20022 formats; a couple of asset managers said that third-country intermediaries often impose shorter cut-off dates on investors, limiting their ability to exercise their rights as shareholders.
140. A few intermediary associations asserted that third-country intermediaries do not consider themselves as being in the scope of the SRD2. Global operators, mostly central security depositories and other global custodians, stated that an improvement occurred in the non-EU intermediaries' practices and that misalignments are mainly due to the lack of standardised processes among European MSs, contending a higher standardisation would benefit non-EU and EU entities alike.
141. A few respondents commented on issuers' ability to identify third country shareholders when compared to the regime in place prior to the SRD2. One respondent did not identify any meaningful improvement compared to the framework prior to the SRD2, the other did.
142. A concern raised was that regarding meetings and voting, a portion of third-country intermediaries do not use the appropriate format and fields to communicate their voting instructions to issuers. Responses are not always accurate as details shared are more on intermediaries' level than on end investor's level. A couple of issuers stated that most third-

country intermediaries providing services within the EU do not appear to comply with the SRD2 rules, including the obligation to pass on information to the end-investor.

143. Another concern raised was that there is confusion driven by the varying applications of the SRD2 by MSs, particularly based on who is the “shareholder”, which complicates efforts to standardise compliance. The view of one intermediary was that stakeholders are increasingly dealing with the SRD2 requirements, and this will continue to progressively improve. However, third-country intermediaries would benefit from resolution of the uncertainties to allow further standardisation, similar to EU counterparts.
144. One industry organisation representing CSDs stated that some of its members note 50% of requests sent by central securities depositories to third-country intermediaries do not receive a response. A request was made by an industry organisation for regulatory guidance in respect to the method in dealing with third-country intermediary unresponsiveness. Individual private shareholders still do not receive any GM information cross-border and voting is not facilitated through the chain of intermediaries cross-border which also applies to shareholders in a third country.
145. A CSD noted a high interest from bank customers from outside of Europe to receive shareholder identification disclosure messages from them as their depository in order to comply with European regulation and the national transposition. It stated that even pre-SRD2, bank customers acting as a global custodian have received all GM messages; they also noted that several European banks extended their reporting to receive meeting information from additional markets. Furthermore, they noted less interest from intermediaries outside of Europe to receive GM information from European issuers.
146. Retail investor representatives claim there is a monopoly in the market by one entity for proxy voting services via its institutional investor’s platform⁴⁹. Shares of major EU companies are often voted by international custody banks operating “a blanket proxy” from EU-banking institutions that hold securities on account of their client.
147. A few industry respondents stated that all valid identification requests submitted using ISO20022 format concerning securities covered by the scope of the SRD2 are processed in the same way. Requests not covered by the SRD2, i.e., requests for securities following national rules or requests from third-countries, are processed manually.
148. To sum up it seems that practices of third-country intermediaries are in line with the relevant provisions, but only to a limited extent, with the view of a few being that third-

⁴⁹ Incidentally, the EBA recalls that competition matters on a European scale fall within the remit of the European Commission and that the EBA does not have specific enforcement powers in this area.

country intermediaries' practices are "not at all aligned" with the SRD2 provisions. There is consensus that there are differences in the practices followed by third-country intermediaries compared to European intermediaries: this mainly applies to small local third country intermediaries, whilst larger more international entities seem to be more in line. The (non) use of ISO20022 formats is an issue, whilst third-country intermediaries often impose shorter cut-off dates on investors, limiting their ability to exercise their rights as shareholders. Some third-country intermediaries seem not to consider themselves as falling within the scope of the SRD2. An improvement seems to have taken place in the non-EU intermediaries' practices and differences may be due to the lack of standardised processes among European MSs; a higher standardisation would benefit non-EU and EU entities alike.

4.2 Advice

149. On the basis of the above considerations, ESMA and the EBA present their advice to the Commission below.

4.2.1 Article 3a – Identification of shareholders

In the area of shareholder identification, ESMA recommends that:

- (a) In line with Action 12 of the CMU Action Plan, while being mindful of the potential interaction with national law, the Commission should consider the possibility of introducing an EU-wide harmonised definition of shareholder, encompassing beneficial owners, in order to ensure full effectiveness of shareholder identification rules (as well as to improve the exercise of shareholder rights) especially at cross-border level.
- (b) At this juncture, as a more pragmatic solution to a fully-fledged harmonised definition, the Commission could consider providing issuers with the right to identify beneficial owners in addition to nominee shareholders and/ or providing an ad-hoc definition of the term "shareholder" only for the purpose of identification.
- (c) Given the time constraints pertaining to the above actions under (a) and (b), as a temporary measure, ESMA recommends to the Commission to publish a list of shareholder definitions as applicable across MSs to improve market certainty.
- (d) As part of an effort to facilitate cross-border identification processes, the Commission should evaluate the opportunity of providing for a clearer and more EU-harmonised indication of eligible securities under the scope of the SRD2. Once the current regime has proven to be fully effective, the Commission should consider whether an

expansion of that scope may be beneficial to allow the identification of investors holding securities other than shares.

- (e) As a shorter-term action and in light of the different national regimes currently in place, the Commission should publish which specific securities (at MS level) fall under the scope of Chapter Ia of the SRD2, thereby facilitating the identification of the issuers who can initiate an investor identification process.
- (f) As a way to further harmonise the information flow related to the shareholder identification request, the Commission should consider amending the IR by clarifying possible requirements for issuers or third parties when launching a shareholder identification process (also with a view to facilitating the verification process provided for under Article 10(2) of the IR). For example, this could entail a modification of Article 3 and Table 1 by mandating issuers to launch a shareholder identification process by sending a “golden operational record” to the relevant CSD (or the first intermediary).
- (g) As a way to further harmonise the information flow related to intermediaries’ responses, the Commission should consider improving the rules on shareholder identification (such as by modifying Table 2 of the IR) to make sure that any intermediaries in the chain provide such responses in a standardised manner and with all information necessary for issuers to easily track the chain of intermediaries. In connection with this, the Commission could consider clarifying that every intermediary should indicate whether the shares are held in its own account or on behalf of a third party (e.g. as custodian or sub-custodian).
- (h) With a view to improving the interest and cost effectiveness for issuers of launching a shareholder identification process, the Commission should consider providing them with the right to make identification requests limited to their specific information needs (e.g. in terms of percentage of shares held) by sending customised requests for shareholder identity data. However, such customised requests, whose cost is in any case borne by the requester, should not come at the detriment of a machine-readable format that allows interoperability and STP.
- (i) Considering the limited input received, the Commission should further investigate the impact of MSs’ optional shareholder identification thresholds, as allowed by Article 3a(1) of the SRD2, on issuers’ actual ability to engage with their investors and on NCAs’ ability to effectively monitor the full shareholder identification processes, especially in a cross-border context, before any review of the current regulatory approach.

4.2.2 Article 3b – Transmission of information

In the area of transmission of information, ESMA recommends that:

- (j) The Commission should consider amending the IR by introducing a “golden operational record” requirement on the issuer, also in connection with the fulfilment of Article 3b duties regarding the transmission of information along the chain. This should encompass the duty to transmit to the CSD (or to the first intermediary) all the information necessary to initiate any corporate event in machine-readable format (that allows interoperability and STP) and would entail further harmonising and removing existing optional fields of the relevant tables, especially Tables 3 and 8 (respectively, meeting notice and notification of corporate events other than GMs). This transmission protocol should be in line with internationally applied industry standards.
- (k) The Commission should consider the need to amend the deadlines under Article 9 of the IR to ensure the compatibility of the envisaged timeline for the transmission of information along the chain with intermediaries’ compliance duties (such as those under MiFiD), while taking into account both investors’ ability to scrutinise meeting materials and exercise their rights and the issuers’ need for time to draw up the relevant information, as seen below under point (n).

4.2.3 Article 3c – Facilitation of exercise of voting rights

In the area of facilitation of exercise of voting rights, ESMA recommends that:

- (l) Based on the clear input collected, the Commission should evaluate the possibility to better harmonise the documentation required for the entitlement of shareholders to exercise their rights, for example by providing that the confirmation of entitlement (also as included in the notice of participation) is accepted as the EU-wide form to allow shareholder participation in GMs.
- (m) Regardless of what is provided for in connection with the previous point (l), the Commission should in any case consider to further mandate the use of machine-readable formats that allow interoperability and STP to communicate the confirmation of entitlement, the notice of participation in GMs and, as applicable, voting instructions (also leveraging on European industry standards).
- (n) The Commission should consider carrying out a detailed investigation to map national rules and practices, and on this basis, further harmonise and potentially

extend across the EU the timeline provided for the publication of meeting materials to provide shareholders with more time to perform their analysis and exercise their rights, while taking into consideration the issuers' need to draw up the relevant information.

- (o) The Commission should consider shortening the time lag in which record dates are currently allowed across MSs by the SRD1 to improve harmonisation of the entitlement process in the EU. In doing so, it could explore gradually harmonising record dates, taking into consideration the concurrent interests of avoiding major empty voting phenomena⁵⁰ vis-à-vis the need for a technically feasible timeframe for issuers and intermediaries.
- (p) Taking into consideration the mixed evidence on the effectiveness of the current voting confirmation framework, coupled with little indications of potential fixes, the Commission should consider improving regulatory mechanisms for voting confirmation, including by explicitly recognising different strategies such as the publication of voting records.

Transversal considerations in relation to shareholder identification, transmission of information and facilitation of the exercise of voting rights

In terms of the transversal considerations in relation to shareholder identification, transmission of information and facilitation of the exercise of voting rights, ESMA recommends that:

- (q) When reviewing the SRD2, the Commission should consider whether the more direct nature of a Regulation could justify its use for harmonising some of the more technical aspects, pertaining specifically to shareholder identification, transmission of information and exercise of shareholder rights. This would complement both the Directive itself and the IR.
- (r) In the context of the broader SRD2 review, the Commission should also consider whether NCAs have been always identified in national legislation and whether their powers and responsibilities on Chapter Ia are clear, especially in the context of cross-border shareholder identification and voting.

⁵⁰ It should be noted that, when a record date is set well in advance of the GM, it may be more frequent that shareholders vote for more shares than those they actually own at the time of the GM.

4.2.4 Article 3d – Non-discrimination, proportionality, and transparency of costs

In the area of non-discrimination, proportionality and transparency of costs, the EBA recommends that:

- (s) The Commission should consider enhancing the transparency and comparability of charges by bringing about a harmonised terminology of the types of charges, a harmonised terminology of the services for which such charges are levied (e.g. for the identification of the investor, the transmission of information between intermediary and issuer, the exercising of the investor's voting right, the attendance at a GM), and a harmonised format through which this information is required to be disclosed to prospective investors and other relevant actors.
- (t) The Commission should consider introducing such harmonisation in a way that explicitly distinguishes between different variants of charges and underlying services. The requirements should also clearly state that, in cases where cross-border and domestic shareholdings deviate from one another, charges should be explicitly disclosed.
- (u) The Commission should consider introducing a harmonised format for the disclosure of such charges in a way that accommodates different media through which such disclosures might be made, e.g. website, mobile app, hardcopy.
- (v) When doing this, the Commission should consider taking inspiration from the approach chosen in the PAD, through which a standardised disclosure of charges for payment accounts was successfully implemented across the EU. Applying the PAD approach to shareholdings by analogy, the Commission should consider the following three sequential steps:
 - i. ESMA and the EBA could be mandated to issue Guidelines that require NCAs to develop provisional lists of the most representative services connected with the SRD2 that are subject to a charge and offered by at least one legal entity in their respective jurisdiction. The Guidelines could describe the procedures as well as factors to be taken into consideration by NCAs when drawing up their lists. These factors would include the services that are most commonly used by investors in relation to their shareholding and that generate the highest cost for consumers.

- ii. The lists established by NCAs could then assist ESMA/EBA in developing technical standards containing a standardised terminology that will be applicable across the EU single market
- iii. Finally, the standardised terminology could be the basis for a disclosure document in which intermediaries have to use said terminology. The disclosure document could be defined in a second set of Technical Standards. To ensure that intermediaries make this information available to clients (i.e., shareholders, issuers, other intermediaries) in a clear, easy-to-understand, and standardised way across the EU, the Technical Standards should prescribe a standardised presentation format and template.

4.2.5 Article 3e – Third-country intermediaries

In the area of third-country intermediaries, the EBA recommends that:

- (w) The Commission should consider addressing the uncertainty due to varying applications of the SRD2 across MSs, particularly based on the lack of a definition of the term who is the “shareholder”, as proposed under point (a) of the Advice, as this would be beneficial also as regards third-country intermediaries’ conduct, facilitating their work and allowing for further standardisation.
- (x) Taking into account the potential scope of the SRD2 regarding intermediaries on a global scale, the Commission should consider the opportunity to publish guidance or to undertake other informative initiatives to better highlight and explain the scope of the SRD2 and requirements applicable to third-country intermediaries.

5 Annex I : Acronyms and definitions

AMI-SeCo	Advisory Group on Market Infrastructures for Securities and Collateral
BPP	Best Practice Principles for Providers of Shareholder Voting & Research Analysis
BPPG	Best Practices Principles Group
CEG	Corporate Events Group
CMU	Capital Markets' Union
Commission	European Commission
CSD	Central Securities Depository
CSDR	Regulation (EU) 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
EBA	European Banking Authority
EEA	European Economic Area
ESA	European Supervisory Authority
ESG	Environmental, Social, Governance
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority (UK)
FRC	Financial Reporting Council (UK)
GM	Shareholder General Meeting
IOC	Independent Oversight Committee (Best Practice Principles for Providers of Shareholder Voting & Research Analysis Oversight Committee)
IR	Commission Implementing Regulation 2018/1212, laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights
ISS	Institutional Shareholder Services
KPI	Key Performance Indicator
L1/L2	Level 1/ Level 2 on the scale of the European Union legislative framework
LEI	Legal Entity Identifier

MiFID 2	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
MS	Member-State
NCA	National Competent Authority
PAD	Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.
PoA	Power of Attorney
SMSG	ESMA's Securities and Markets Stakeholders Group
SRD / SRD1	Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.
SRD2	Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement
STP	Straight-through processing
UK	United Kingdom
US	United States

6 Annex II: Call for Advice from the European Commission

Please find the link to the Call for Advice [here](#).

7 Annex III: Questions from ESMA's Call for Evidence

Please find the link to the questions [here](#).

8 Annex IV: Respondents to ESMA's Call for Evidence

Please find the link to the list of respondents who agreed to have their answers made public [here](#)

9 Annex V: Input received via the ESMA's Call for Evidence

9.1 Proxy advisors

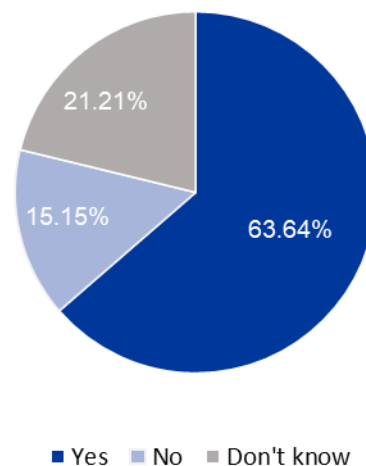
9.1.1 General input

150. The Call for Evidence includes a set of general questions addressing the market of proxy advisory services, especially in connection with the application of the SRD2 and the relevant trends that have emerged in recent years. Evidence on these matters was collected from 40 respondents, though some of them did not respond to all questions⁵¹. Most proxy advisors operating in Europe provided their input (15% of the total respondents, or 6). Nearly one out of four responses (23% or 9) came from asset managers and – to a minor extent – from retail investors (5% or 2). Issuers also provided their input (12% or 5) as well as other market participants (CSD/ intermediaries and credit institutions accounting for 8% or 3 and 5% or 2 of answers, respectively). The largest group of respondents (33% or 13), not classifiable within a specific category, included a variety of industry associations as well as the IOC.

⁵¹ It should be noted that, while in the section 2.4.1“Categorisation of respondents”, the respondents are classified according to their own chosen classifications, i.e., reflecting that several entities selected more than one category, in this section, a single classification was attributed to each respondent, based on their main characteristics and on the capacity in which their input was provided.

151. Question 16

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



152. In question 16, the Call for Evidence examines whether the definition of proxy advisors set out by the SRD2 has enabled the identification of the relevant players of the industry⁵². Most respondents (64% or 21) considered the SRD2 definition of proxy advisors effective in identifying the relevant players who provide voting research and voting advice. On the other hand, a few respondents (15% or 5), especially among issuers' representatives, found the definition not effective, while 21% of respondents (7) did not take a view.

153. Overall, several respondents, especially issuers representatives and local proxy advisors (including some of those who consider the definition effective), reported the need for the definition to be clarified or broadened to make sure it fully considers evolving market practice. First of all, it is argued that the provision of ESG or governance-related advisory services and of services for the actual exercise of voting rights (voting platforms with pre-tabulated votes in accordance with proxy advisors' recommendations) should be included among the activities of proxy advisors; such services should also be addressed by the BPP and monitored by the IOC. Moreover, it is highlighted that new participants have entered the market, such as those making use of new technologies to issue their advice (e.g. artificial intelligence tools), or any professionals (not only "legal persons") offering

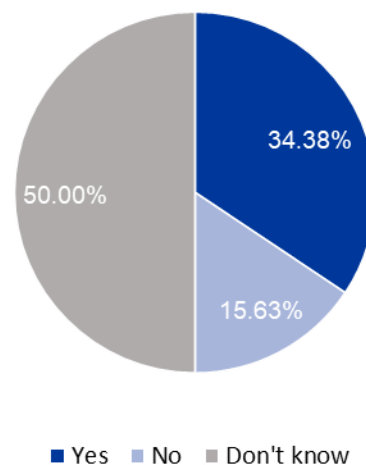
⁵² Under this definition a proxy advisor is "a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights". See Article 2(g) of the SRD2.

similar services or non-profit organisations providing recommendations that are not made “on a commercial basis”. On the basis of the above, a few respondents asked for a fine tuning of the definition to clarify whether such market players are “proxy advisors” (although it is notable that a local proxy advisor highlighted the risk that too broad a definition may not reflect the differences among service providers and might raise barriers to new entrants). In addition, they argued in favour of clarifying whether an entity is to be considered a proxy advisor if the research and advice are provided only as ancillary services.

154. Calls for proper registration mechanisms of proxy advisors were made by some respondents (namely local proxy advisors and issuers’ representatives). The need for a level playing field between proxy advisors and ESG data and ratings providers was also pointed out by some proxy advisors, together with a request to take this into account for regulatory purposes.

155. Question 17

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



156. A more fragmented picture emerged from question 17 which investigates the effectiveness of the definition of competent Member State (MS) under the SRD2 in

providing a common framework for all proxy advisors covering EU listed companies⁵³. While half of the respondents (16) did not express any opinion on this, most of the others (34% or 11) considered the framework adequate overall, while an opposite view was held by a smaller group of respondents (16% or 5).

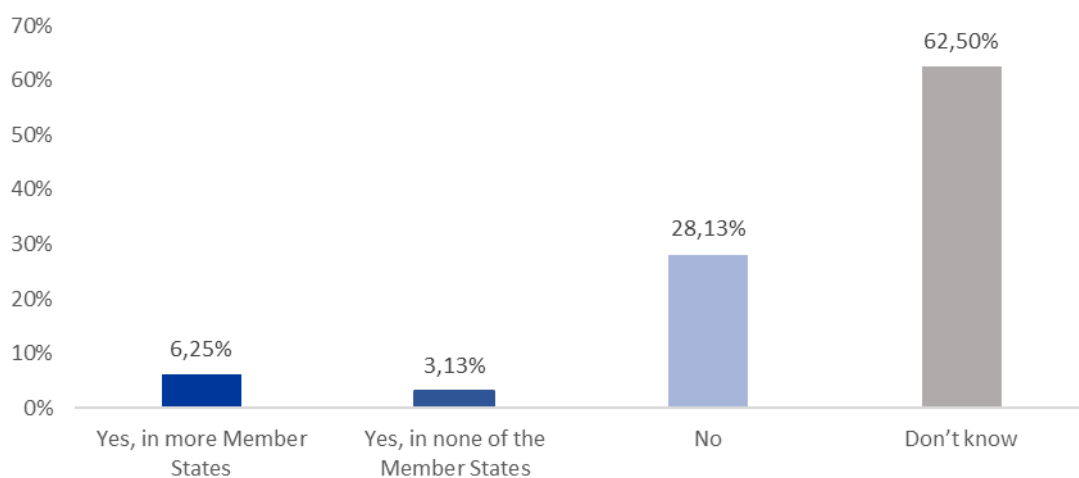
157. Some respondents, including proxy advisors and investors and issuers' representatives, emphasised the cross-border nature of proxy advisors' activities and the limits of a national-level supervision framework as provided by the SRD2. In this respect, an asset managers' association pointed out the importance of the BPP and of centralised IOC monitoring, rather than local monitoring depending on where the proxy advisors are incorporated or based.

158. Further to that, two local proxy advisors highlighted that the implementation of the SRD2 differs across EU jurisdictions, making each player subject to different supervisory rules (e.g. in terms of powers of control or sanctions). In their view, further harmonisation could be achieved through common supervision by ESMA of all proxy advisors operating in the EU (including entities having no establishment in the Union). A few other respondents (namely issuers' representatives) also suggested that common supervision be established by ESMA or, as a second-best option, that ESMA be empowered to manage a complaint mechanism. This would be either complementary or alternative to that currently performed by the IOC, and EU issuers could use it in case of critical matters or alleged violations by proxy advisors, while NCAs should be expressly entrusted with the task of monitoring market practices at the national level and reporting their findings to ESMA.

⁵³ Under such definition, for proxy advisors the competent Member State is: "[...] that in which the proxy advisor has its registered office, or, where the proxy advisor does not have its registered office in a Member State, the Member State in which the proxy advisor has its head office, or, where the proxy advisor has neither its registered office nor its head office in a Member State, the Member State in which the proxy advisor has an establishment.[...]". See Article 1(2)(b) of the SRD.

159. Question 18

Q18: Are you aware of proxy advisors^[54] which carry out their activities through establishments located in the EU and that may be subject to two or more MSs legislation or no MSs legislation at all?

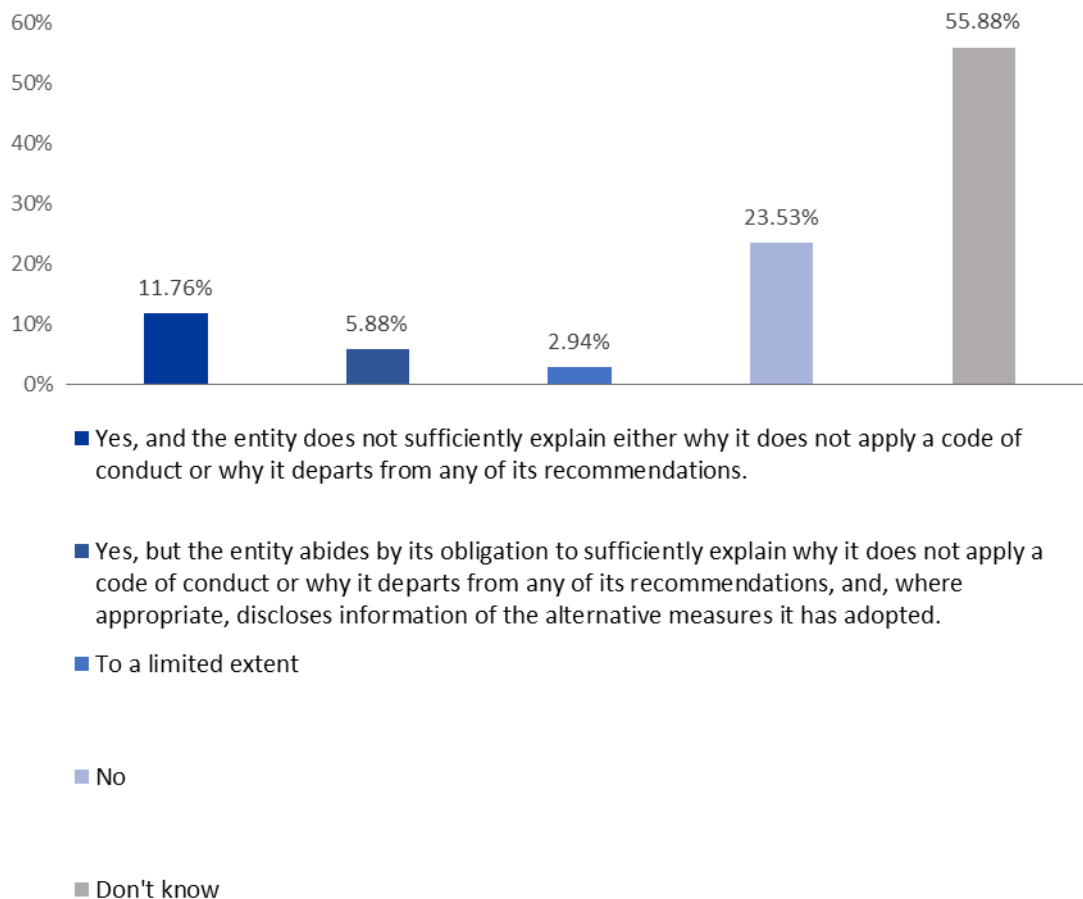


160. Question 18 looks into the existence of proxy advisors that have neither their registered office nor their head office in the EU and which carry out their activities through establishments located in the Union. The question asks whether such proxy advisors are subject to two or more MSs' legislation or to no legislation at all. Most respondents were unaware of proxy advisors falling into the described categories (63% or 16 and 28% or 5 flagging "don't know" and "no", respectively), while the very few answering "yes" provided examples of market players based in the UK and were unsure about the nature of their presence in the EU.

⁵⁴ [that have neither their registered office nor their head office in the EU]

161. Question 19

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

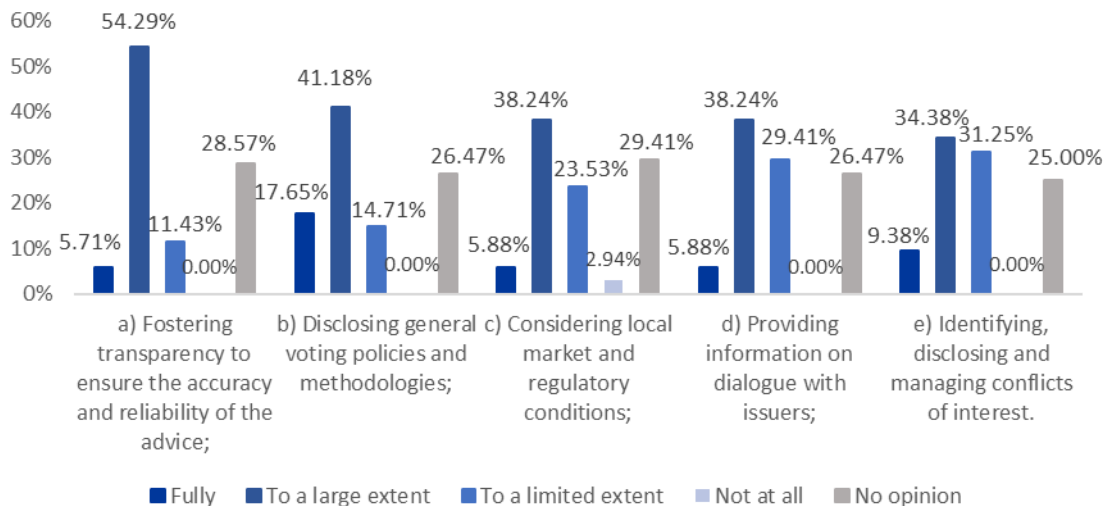


162. Question 19 explores the existence of entities providing proxy advice or voting research on EU listed companies that do not fully apply and/ or fully report on the application of a code of conduct. Only a few market participants answered positively to the question (18% or 6, while 56% or 20 and 24% or 8 answered “don’t know” and “no”, respectively). 2 respondents, both asset managers, reported that the proxy advisors that do not (or not fully) apply a code of conduct, provide adequate disclosure on the reasons they choose to do so and, where appropriate, on alternative measures in place. On the other hand, according to 4 respondents (a proxy advisor, two issuers’ associations and the IOC),

appropriate disclosures on the reasons for departing from a code of conduct and/ or on alternative safeguards in place were not provided by some proxy advisors, especially new entities offering advisory services or proxy advisors that are not subject to any monitoring by the IOC (i.e., since they are not signatories to the BPP).

163. Question 20

Q20: Do you consider that the disclosures provided by proxy advisors have reached an adequate level following the entry into application of SRD2? Please specify in relation to:



164. Question 20 investigates whether the disclosures provided by proxy advisors has reached an adequate level following the entry into application of the SRD2 in various areas.

165. Most respondents provided a positive picture of market practice in terms of **increased transparency to ensure the accuracy and reliability of the advice**. 54% of respondents (18) and 6% of respondents (2) reported, respectively, adequacy to a large extent, and full adequacy. At the same time, only 11% of respondents (4) reported adequacy to a limited extent and the remaining 29% of respondents (10) had no opinion. A similarly positive picture was provided in terms of proxy advisors' **adequate disclosure of voting policies and methodologies**. More specifically, 41% or 14 and 18% or 6 of respondents reported, respectively, adequacy to a large extent, and full adequacy. At the same time, 15% of respondents (5) acknowledged improvements only to a limited extent, and the remaining 26% of respondents (9) had no opinion. This improvement is acknowledged by several respondents coming from multiple categories (investors, proxy advisors, issuers), and the role of IOC monitoring is recognised as key by most respondents in fostering adherence to

best practice⁵⁵, including proxy advisors themselves. Certain calls for improvement have nonetheless been made, including by the IOC that encourages robust disclosure on internal controls over research (fact-checking, error-tracking, remediation practices, sources used in research) and further progress on service quality, integrity and accountability.

166. Evidence was more split on the **adequacy of disclosure by proxy advisors regarding how they consider local market and regulatory conditions**. In detail, almost the majority of respondents expressed a positive assessment of market practice (38% or 13 and 6% or 2 of answers reporting adequacy to a large extent and full adequacy, respectively), while over a quarter of respondents considered disclosure on such matters limited or not adequate (24% or 8 and 3% or 1, respectively). 29% of respondents (10) had no opinion. A few respondents (namely asset managers and proxy advisors) observed that reflection of market conditions varies depending on the market and the width of the geographical area for which voting policies are designed by global proxy advisors. Interestingly, this is an area where the IOC explicitly encourages further disclosure on how the proxy advisor's work is organised to address local, sectoral, or company-specific issues.

167. A less positive picture was drawn by respondents on the **disclosure provided by proxy advisors on dialogue with issuers**. Disclosure on dialogue with issuers was flagged by less than half of respondents as adequate (38% or 13 and 6% or 2 of answers reporting adequacy to a large extent and full adequacy, respectively) and a significant percentage of respondents (29% or 10) pointed out that the quality of such disclosure is limited. The remaining 26% of respondents (9) expressed no opinion. Although recognising that dialogue has improved over the years, especially issuers' representatives call for more transparency on how proxy advisors engage with them and take into account their views and comments in a timely manner. In light of the variety of practices on if, how and when proxy advisors engage in such a dialogue with issuers, representatives of the latter also propose that either the BPP or the SRD2 provide a harmonised model for dialogue which ensures that issuers can correct factual errors, comment on reports, and submit a request for receiving the draft report before its publication and that such interaction is disclosed to the recipients of the report⁵⁶. Transparency on the dialogue with issuers and on consequent changes in research and advice has also been identified as an area of improvement by

⁵⁵ The IOC provides an annual assessment of the statements of the signatories to the BPP and sends confidential, signatory-specific comments and recommendations to each of them.

⁵⁶ Similar issues were found in the report published by (inter alia) the FRC in the UK – Morrow Sodali, Durham University Business School and Financial Reporting Council (2023), [page 36](#).

some asset managers. Notably, the IOC highlights its encouragement to proxy advisors to explain:

- i. If they have a process for issuer feedback and its features (whether it varies by market, company size or other factors), or, if not, why such a process is not in place;
- ii. What document is provided to the issuer (full report, research only, etc.);
- iii. Whether the issuer is provided with any advance notice as to when the report will be sent for review;
- iv. The time given to the issuer to respond and
- v. Whether the issuer has to pay any fees to have access to the report before its publication.

168. On the management of complaints by proxy advisors⁵⁷, the IOC points out that the principles call for effective procedures by their signatories for handling complaints in a responsive and timely manner. However, more detailed disclosure on procedures for handling complaints, as recommended by the IOC in recent monitoring, would be beneficial to increase the accountability of the whole process⁵⁸.

169. **Identification, management, and disclosure on conflicts of interest was considered adequate** only to a limited extent by several respondents (31% or 10, while 34% or 11 and 9% or 3 of answers, respectively, still reported full adequacy or adequacy to a large extent and 25% or 8 provided no opinion). Most concerns were expressed about the situations in which proxy advisors analysing issuers serve at the same time as consultants of the same listed companies. One issuer association warned about the risk that a proxy advisor might use its market power to create the need for issuers to be advised to obtain more favourable voting recommendations (and make reference to possible marketing of consultancy services targeted to issuers receiving negative recommendations). They also argued that, in addition to the publication of a conflict of interest policy, proxy advisors should adequately inform their clients about individual conflicts that have emerged in the preparation of the research and advice, and that this information should be presented in the same report. Some respondents (an issuer

⁵⁷ Under the BPPG procedures, complaints should first be filed with the relevant proxy advisor, then, as a second step, by addressing the BPPG and thirdly, if the previous steps have not been dealt with by proxy advisors in due time or in all material respects, complaints can be escalated to the IOC.

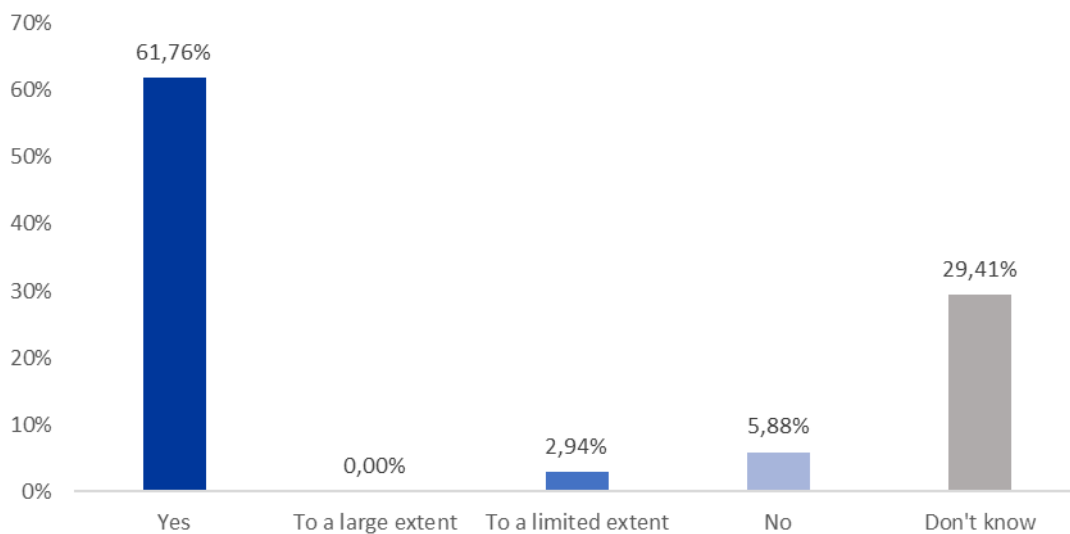
⁵⁸ In particular, the IOC encourages each signatory to detail whether it offers one or more channels for complaints (and if they differ depending on the complainant or the market), how it manages such complaints and the timing it commits to respond, and whether and how it offers an appeal process.

association, an asset manager association and a couple of local proxy advisors) emphasised the importance of disclosure by proxy advisors, as recommended by the IOC in its monitoring, on the comparative size and nature of revenue sources, so that investors can assess how much is earned through additional services such as consultancy, ESG data provision and voting services (i.e., platforms to cast votes for the meetings).

170. A couple of local proxy advisors called for a stricter approach on the provision of consultancy services to the same issuers that are the object of research and voting advice, suggesting that such an activity should be forbidden or, alternatively, accompanied by full transparency on issuers that purchased consultancy services and on the fees charged. Finally, according to one issuer association, provisions aiming at a more granular identification of potential conflicts of interest, including the ancillary services provided such as governance or ESG advice and voting services, would be welcome additions to the SRD2 framework.
171. It is noted that similar questions are addressed specifically to investors, issuers and proxy advisors themselves, in the sections where they provide their own input (i.e., Question 37, Question 55 and Question 75, respectively).

172. Question 21

Q21: Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria^[59]?



173. This question investigates whether improvements have been made by proxy advisors in the way they take ESG criteria into account in the preparation of their research and advice or customised policies. 65% of respondents (22) reported that improvements have been made (29% or 10 did not express an opinion while only 6% or 2 flagged “no”).

174. Looking at the qualitative feedback received, all proxy advisors acknowledged that they have been increasingly including ESG considerations in the preparation of their research and advice. In detail, while the analysis of meeting agendas has by its nature concentrated on governance aspects, environmental and social issues have progressively become the focus of research and voting advice. These issues have become part of proxy advisors and/ or asset managers’ voting policies and in some cases of the meeting agendas (e.g. say on climate, ESG-related KPIs in remuneration policies, etc.) as well. Such progress has also been recognised by several asset managers and their representatives, who noted that proxy advisors’ research now includes more information on E and S issues and ratings, as well as more detailed analysis on shareholder proposals on non-financial issues. According to an asset manager, however, the integration of ESG issues in voting

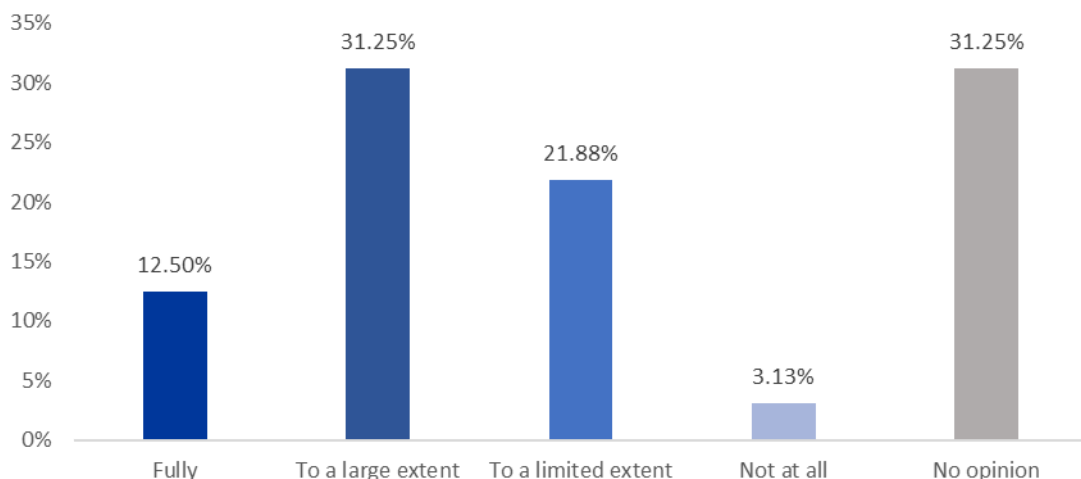
⁵⁹ [in the preparation of their research, advice and voting recommendations or in the preparation of customized policies]

research and advice is still in progress and shows different levels of maturity. Some criticism has also been expressed by an issuers' representative and a service provider on the transparency of the sources of ESG-related data and of relevant assessments.

175. Lastly, it is noted that a similar question is addressed specifically to proxy advisors themselves, in the section where they provide their own input (i.e., Question 77).

176. Question 22

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



177. Question 22 asks respondents whether they consider the level of harmonisation achieved under the SRD2 sufficient to ensure that investors are adequately and evenly informed about the accuracy and reliability of the activities of proxy advisors.

178. 31% of respondents (10), mainly investors and proxy advisors, considered that harmonisation is sufficient "to a large extent". 22% of respondents (7), mainly issuers' representatives and local proxy advisors, considered that it is sufficient "to a limited extent". A smaller proportion of the respondents considered that harmonisation is "fully" sufficient (13% or 4 – 2 investors and 2 proxy advisors), while 3% (1 investor) rather considered that it is "not at all" sufficient. The remaining 31% of respondents (10) expressed no opinion on the subject.

179. Among asset managers, some respondents acknowledged that the accuracy and reliability of the activities of proxy advisors have improved, while others encouraged further

transparency on this issue (e.g. a mandatory reporting of factors negatively affecting accuracy). For the purpose of increasing the quality of research, some investors also suggested other improvements. In particular, they called for the timelier disclosure of General Meeting (GM) documents, that would grant proxy advisors more time to perform their analyses before the cut-off date for submitting votes actually set by custodians in some EU markets (between 10 and 15 days prior to the GM date). In addition, they requested more transparency by issuers on the GM's items. Moreover, conflicts of interest, especially those stemming from the provision of consultancy services to companies, are flagged by some investors as an area where there is still room for improvement.

180. Several respondents (notably issuers' associations and an asset manager association), having also answered "to a limited extent" to this question, highlighted that to ensure that investors receive accurate and reliable information, proxy advisors should correct any erroneous data in due course and at the latest before releasing their voting recommendations to their clients and should also make reference to any existing conflicts of interest and interaction with the issuer in their draft reports.

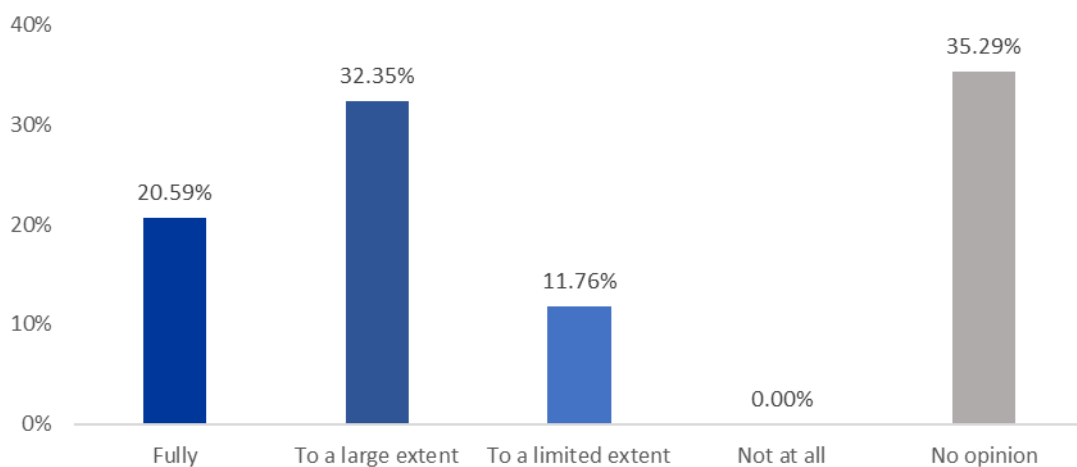
181. The assessment of proxy advisors themselves is differentiated according to their size and scale. On the one hand, large international players emphasised the importance of the BPP in driving harmonisation of market practice and of the oversight by the IOC in providing assurance and transparency as to whether and how signatories are complying with the BPP. On the other hand, following-up on what was argued in previous questions, local proxy advisors pointed out the limits of the framework resulting from the SRD2 in terms of lack of harmonised supervision and limited handling of conflicts of interest⁶⁰.

182. Lastly, it is noted that a similar question is addressed specifically to investors, in the section where they provide their own input (i.e. Question 38).

⁶⁰ In particular, reiterating some of the points raised elsewhere in their response to the consultation, they flagged the following issues: i. It lacks harmonised supervision, a unified register of market players and a public European code of conduct (i.e., that does not come from the industry itself), ii. It leaves room for confusion on who actually is a proxy advisor and on whether entities offering voting research as ancillary services are subject to the SRD2 and iii. It is weak on the matter of conflicts of interest.

183. Question 23

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



184. Question 23, which asks respondents whether, in their experience and in light of developments affecting the proxy advisory market, they consider that the EU approach to regulation of proxy advisors, currently based on the “comply or explain” principle, sufficiently addresses any market failures existing in this area. A majority of respondents (52% or 18), consisting primarily of investors and proxy advisors (and notably including the IOC), considered that the EU approach has addressed market failures either fully or to a large extent. 11% of the respondents (3 issuers’ associations and 1 proxy advisor) held that it addresses market failures “to a limited extent”. The remaining 35% of respondents (12) expressed no opinion on this question.

185. Respondents that are overall satisfied (i.e., responding either “fully” or “to a large extent” to the question) with the EU approach to regulation of proxy advisors considered that the SRD2 “comply or explain” framework and the BPP, combined with the oversight now in place, constitute the appropriate mechanism to promote accountability in the proxy advisory industry.

186. In particular, most investors considered the current legal framework developed by the SRD2 and the role of the BPPG and IOC as enablers of a robust self-regulation and monitoring system. In fact, all main proxy advisors publish annual publicly available statements featuring detailed information on how they comply with the BPP, and this reporting is overseen by the IOC (comprised of both investor and issuer representatives,

as well as of academics and the independent Chair). The IOC publishes its findings on an annual basis to hold all signatories accountable and foster improvements. Overall, the self-regulatory system currently in place is deemed by these respondents as credible and effective. It is also seen as able to ensure proportionality and flexibility, particularly in terms of adaptability to different situations and features.

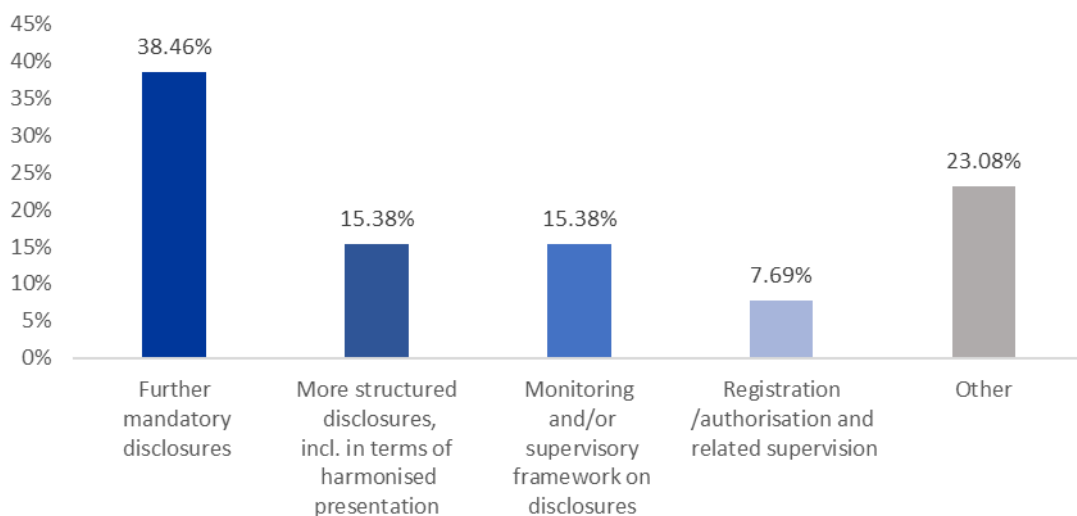
187. The IOC considered that the process of monitored self-regulation has begun to bear fruit as demonstrated by the 2022 statements, when signatories included reactions to IOC recommendations in the first cycle of reviews (2021), and that further time is needed before policy makers can determine if signatories continue to sufficiently meet market expectations. The IOC also highlighted that greater market awareness will be the focus of its activity, after work done in the last two years for strengthening its independence and implementing work protocols. Progress along these lines is seen as able to increase its capacity to respond to market concerns.
188. Global proxy advisors echoed the benefit of the self-regulation framework that combines a principles-based approach seen as better suited to adapt to evolving practice, different business models and the global nature of proxy advisors' work, with ongoing oversight. In their view, the "comply or explain" framework avoids the fixed costs and potential anti-competitive effects of prescriptive conduct regulation. In this respect, some respondents (again proxy advisors and investors) also recalled that, consistently with ESMA's findings in 2013⁶¹, no evidence of market failures has emerged, which would require a regulatory intervention. They also highlighted that more prescriptive regulatory approaches in other jurisdictions (US and Australia) have been reconsidered in favour of (monitored) self-regulation as embodied in the BPP initiative.
189. Local proxy advisors again raised the point that clarification of proxy advisors' definition and registration through ESMA, which would also be acting as the common EU supervisor, would avoid the offering of proxy advisory services that are not subject to any transparency requirements. One of them envisaged another solution, i.e. for ESMA to keep a register and initiate a new code of conduct, once the definition of proxy advisors is clarified.
190. From the issuers' side (as noted in responses to previous questions), certain industry associations suggested some improvements to the current framework based on the comply or explain principle, by:
- i. Providing for a complaint system managed by ESMA;

⁶¹ ESMA (2013), page 6.

- ii. Entrusting NCAs with the task of monitoring developments at the domestic level and the impact on GMs and reporting to ESMA and/ or issuing an annual report;
- iii. Clarifying and strengthening some SRD2 principles by clearly stating the right for issuers to be heard and get mistakes corrected and by further improving conflicts of interest prevention and management and
- iv. Increasing issuers' representation on the IOC.

191. Question 23.1.

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

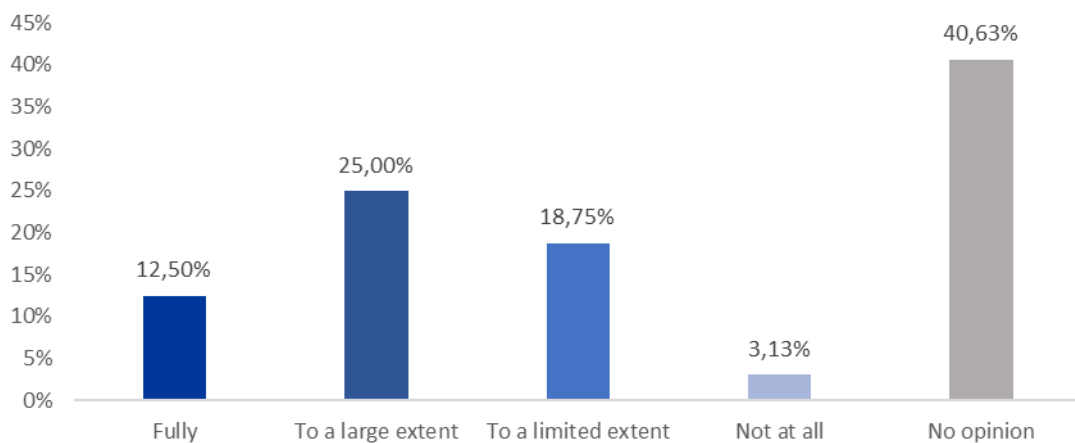


192. Question 23.1 looks into further measures needed according to respondents who are not fully satisfied with the current EU “comply or explain” approach to the regulation of proxy advisors (i.e., those ticking the answers “not at all”, “to a limited extent” or “to a large extent” on this question). Feedback was provided by only 13 respondents, some of which echoed the comments already made in the previous question. Additional measures needed according to respondents are mostly “further mandatory disclosures”, flagged by 38% of respondents (5), “more structured disclosures, including in terms of harmonised presentation” (15% or 2), “monitoring and complaints system and/ or supervisory framework on disclosures” (15% or 2), “registration/authorisation and related supervision” (7% or 1). 23% of respondents (3) argued that “other” further measures should be taken.

193. Among those calling for further mandatory disclosures, local proxy advisors flagged the need for full transparency on potential conflicts of interest incurred by proxy advisors, namely the advisory services provided to listed companies and the structure of related fees. Certain investors also suggested that the accuracy of research might benefit from envisaging that all issuers are given a standard time (for example a full day to avoid any delays in the release of the proxy report) to flag possible errors in the draft research (where source documents should also be referenced).
194. On the other side of the spectrum, other investor representatives generally warned about the risks of further regulating the proxy advisory industry which may lead to additional barriers to entry in this market. This, in turn, may affect the competitiveness of the industry and ultimately negatively impact investors' ability to fully exercise their stewardship activities, for example in the form of fewer or less informed voting.
195. Calls for registration of EU proxy advisors, harmonised ESMA supervision and improvements in the framework have been reiterated by local proxy advisors and issuers' representatives (see above Question 17).

196. Question 24

Q24: Having in mind the ESG and technological changes in progress in the voting services market ^[62] do you consider that the scope of application of the SRD2 is still adequate to cover the full relevant set of market players and services provided?



197. Question 24 asks respondents whether they consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided (having in mind the ESG and technological changes in progress in the voting services market as well as certain investors' tendency to internalise voting research and/ or provide clients with voting options). Several respondents provided a positive assessment, as 25% of them (including 2 proxy advisors) considered that the scope of the SRD2 is adequate "to a large extent" and an additional 13% (mainly from the investor community) that it is "fully" adequate. 19% of respondents (namely proxy advisors and issuers' representatives) stated that it is adequate "to a limited extent" and 3% (1) considered that it is "not at all" adequate. The remaining 40% (13) expressed no opinion on this question.

198. As regards evolving practice, a global proxy advisor noted that stewardship programmes adopted by asset managers have become increasingly sophisticated (also in terms of using technology and ESG considerations to exercise shareholder voting rights) and a custom policy or a custom process for making voting decisions have become the

⁶² [as well as certain investors' tendency to internalise voting research and/ or to provide clients with voting options]

standard practice among asset managers. Accordingly, investors demanding custom policies increasingly rely on the proxy advisor for data and analyses rather than for mere voting recommendations. In addition, a few asset managers are exploring ways to give their institutional investor-clients the option to vote their shares themselves. In this proxy advisor's view, these elements do not call into question the scope of the SRD2 but instead suggest retaining its approach, which better fits proxy advisors' evolving practices and different business models than prescriptive conduct regulation.

199. Local proxy advisors and an asset manager association highlighted the need for ensuring consistent transparency requirements for all entities providing voting-related services, including ESG data and service providers, asset managers and other entities offering proxy advisory or engagement services. In their view, this should also encompass disclosure and management of potential conflicts of interest, as well as description of how they apply specific clients' guidelines in the analysis of agendas and voting execution.

200. Moreover, issuers pointed out that there are other market participants who should be considered, such as ESG rating providers. Considering the importance of ESG ratings and of the market shortcomings in terms of reliability, comparability and transparency of rating methodologies, issuers asked for regulation of these activities. In their view, rules should address:

- i. Conflicts of interest, notably in terms of ownership and services offered;
- ii. Quality of ratings and
- iii. Transparency of rating methodologies.

201. Question 25

202. Question 25 of the Call for Evidence asks respondents whether they have any other issues that they want to raise. Here, it is reiterated that proxy advisors' analyses are seen as a useful tool for asset managers to elaborate their voting decisions, given that they generally invest in hundreds or thousands of listed companies, and are called upon to exercise the rights arising from the shares (including voting rights) in each of these. However, respondents stressed that the exercise of these rights and the decision-making process remain within asset managers' prerogatives and the use of a proxy advisor cannot substitute the investors' own responsibility to ensure that votes are cast in an informed and responsible manner and in accordance with their own publicly disclosed voting policies. It is also highlighted that if an investor is not satisfied that proxy advisors' standards and practices are met, it is in any case free to change to another proxy advisor. Finally, it is noted that the accuracy and quality of research conducted by proxy advisors would benefit

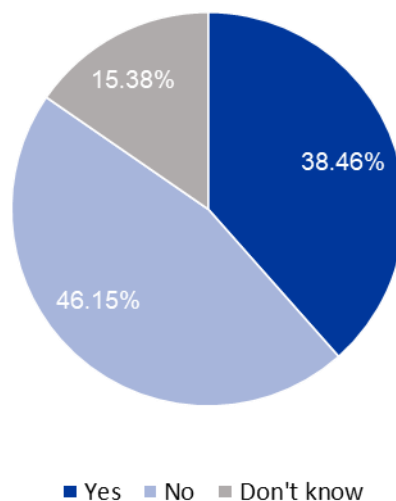
from timelier disclosure of corporate documents by issuers and from an increase in the minimum period for convening GMs according to the SRD (21 days).

9.1.2 Input from investors

203. 13 respondents answered the section on investors relating to Article 3j for Proxy Advisors. The breakdown of the respondents by category is the following: 71% (10) are asset managers, 4% (2) are individual retail investors, and the remaining 14% (1) fall under the category “other”.

204. Question 36:

Q36: Have you been notified of possible conflicts of interest by proxy advisors following the introduction of the SRD2?



205. As shown in the graph, 46% of the respondents (6), all investors, indicated that they were not notified of possible conflicts by proxy advisors following the introduction of the SRD2. 38% (5) shared that they were, and 15% (2) did not express an opinion.

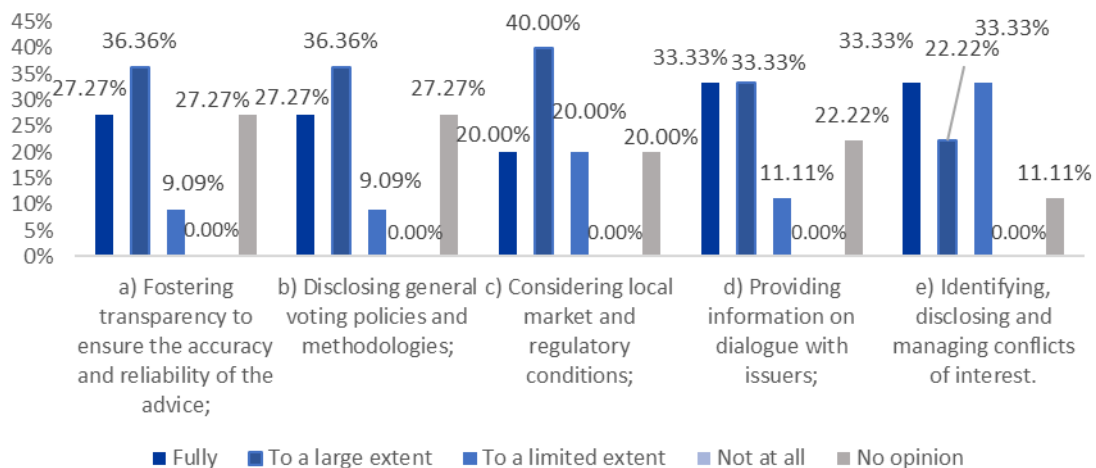
206. Qualitative comments indicate that respondents who answered the question negatively considered that the current legal framework set by the SRD2 regarding proxy advisors is sufficient. One asset manager shared that proxy advisors are generally transparent in disclosing their conflicts and that the IOC is an adequate mechanism to monitor a system of self-regulation. Another one said that their proxy advisor was transparent and that they

believe the disclosures they implement existed before the entry into application of the SRD2.

207. Respondents who answered “yes” to the question explained that conflicts of interest are generally disclosed by proxy advisors but that they are not always mentioned in the recommendations themselves. One asset manager association highlighted that some of its members can see whether issuers subscribe to their proxy advisor’s products. Moreover, one asset manager added that within its proxy advisor’s voting platform, it is possible to also see whether an issuer subscribes to any products and services of the proxy advisor and, if so, the value of those services.

208. Question 37

Q37: Do you consider that the introduction of the SRD2 resulted in greater transparency from proxy advisors and improved your ability to assess the quality of their services in the following areas:



209. Question 37 asks whether respondents consider that the introduction of the SRD2 has resulted in greater transparency from proxy advisors, as well as whether it has improved the respondents’ ability to assess the quality of proxy advisors’ services in several areas.

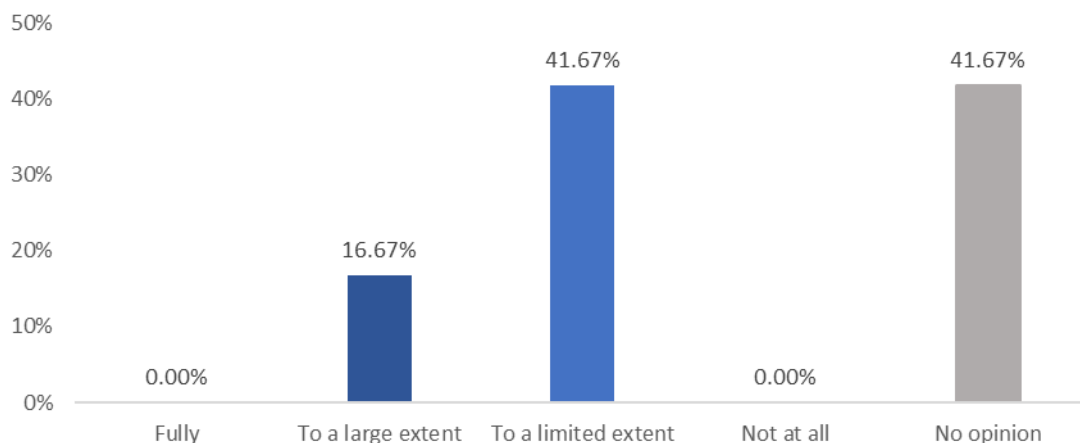
210. A majority of the respondents (55% or 6) considered that the introduction of the SRD2 resulted in greater transparency from proxy advisors in terms of improving investors’ ability to assess the accuracy and reliability of proxy advisors’ advice. 9% of the respondents (1) shared that they believe the introduction of the SRD2 resulted in greater transparency in that regard only to a limited extent, and another 9% (1) considered that it had not resulted in greater transparency at all. 27% of the respondents (3) expressed no opinion.

211. Regarding **disclosure of general voting policies and methodologies**, 64% of the respondents (7) considered that the introduction of the SRD2 resulted in better disclosure, either fully or to a large extent. 9% of the respondents (1) believed that the introduction of the SRD2 resulted in better disclosure only to a limited extent. 27% of the respondents (3) expressed no opinion.
212. As for consideration by **proxy advisors of the differences in local market and regulatory conditions**, 60% of the respondents (6) were of the view that the introduction of the SRD2 resulted either fully or to a large extent in greater transparency and improved investors' ability to assess proxy advisors' efforts in that regard. 20% of the respondents (2) shared that the introduction of the SRD2 resulted in better transparency and consideration of local market and regulatory conditions only to a limited extent. 20% of the respondents (2) provided no opinion.
213. **With reference to disclosure on dialogue with issuers**, 70% of the respondents (7) considered that the introduction of the SRD2 resulted, either fully or to a large extent, in greater transparency on proxy advisors' dialogue with issuers. 10% of the respondents (1) believed this was the case only to a limited extent. 22% of the respondents (2) expressed no opinion on this point.
214. **As for conflicts of interest**, 56% of the respondents (5) considered that the introduction of the SRD2 resulted in greater transparency from proxy advisors on conflicts of interest, either fully or to a large extent. 33% of the respondents (3) shared that they believed so to a limited extent. 11% of the respondents (1) provided no opinion.
215. The qualitative comments referring to Question 37 as a whole indicated that two respondents, both asset managers, considered the BPP provides for a robust level of disclosure. One of them also highlighted the role of the IOC in that regard. Another also explained that the provisions on transparency of the SRD2 have not increased their reliance on the advice of proxy advisors, due to their own internal voting procedures⁶³. Moreover, a third asset manager shared that, due to their longstanding relationship with the proxy advisors they are employing, they were experiencing a strong level of disclosure even prior to the implementation of the SRD2.

⁶³ In particular, this asset manager noted that it implemented a four-step voting process which incorporates the fundamental research that is central to its investment process as an active manager. It also indicated that votes are cast solely in the interest of clients and a member of the governance team reviews every vote.

216. Question 38

Q38: In your experience, in addition to transparency aspects as covered in the previous questions, do you consider that the entry into application of the SRD2 has led to an overall improvement in the accuracy of research and the way errors are handled?



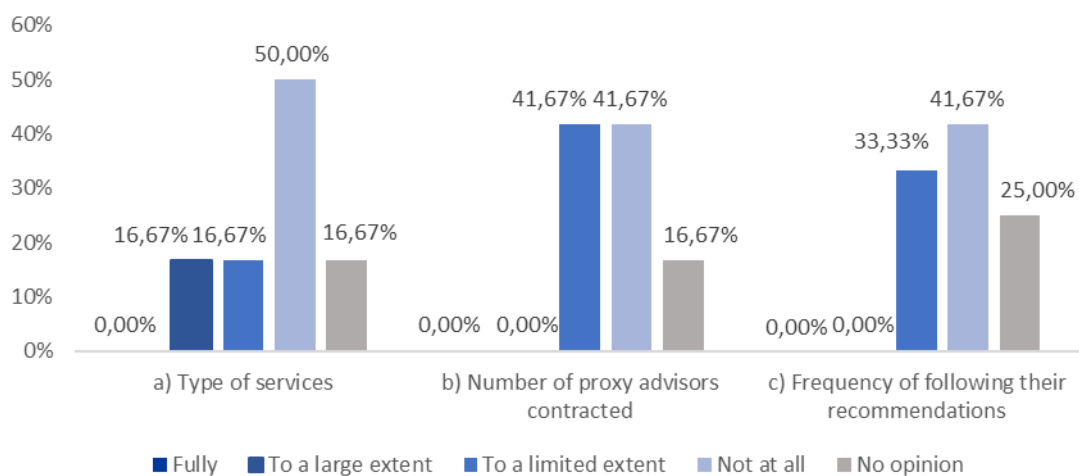
217. As shown in the graph, two respondents were of the view that the introduction of the SRD2 resulted in a large improvement in the accuracy of research and the way errors are handled by proxy advisors. 42% of the respondents (5) considered that this was the case only to a limited extent. Another 42% of the respondents (5) expressed no opinion on the subject.

218. The qualitative comments coming from respondents choosing “to a limited extent” indicated that it is not fully clear whether improvements took place due to the entry into application of the SRD2 or for other reasons.

219. The qualitative comments provided by respondents choosing “to a large extent” indicated that the accuracy of proxy advisors’ research and the level of errors may also depend on the cut-off date required by custodians and that the implementation of the SRD2 has not changed the fact that these dates are still very early in some markets. This was also highlighted in the responses to Question 22.

220. Question 39

Q39: Following the entry into application of the SRD2, have you changed the way you make use of the services provided by proxy advisors for the purpose of AGM voting (i.e., in terms of research, advice, or recommendations)?



221. Question 39 asks whether respondents have changed the way they use services provided by proxy advisors for the purposes of GM voting, in terms of research, advice or recommendations, after the SRD2's entry into application.

222. As shown in the graph, only two respondents indicated that, following the entry into application of the SRD2, they did change to a large extent **the way they made use of the type of services provided by proxy advisors for the purpose of GM voting**. 67% of the respondents (8) shared that they did not change this at all or changed it only to a limited extent. Two respondents did not express an opinion. Most qualitative comments indicated that the respondents had already established voting policies and processes which did not change after the entry into application of the SRD2⁶⁴.

223. As also shown in the graph, 83% of the respondents (10) considered that, following the entry into application of the SRD2, they did not change (or changed only to a limited extent) **the number of proxy advisors contracted**. None of the respondents chose to answer

⁶⁴ Notably, one asset manager said that it had a custom policy in use before the SRD2 entered into application. A second one shared that it has their own in-house voting guidelines but uses its proxy advisor's voting platform to cast its votes. A third one indicated that it has maintained a custom set of voting guidelines, administered with the assistance of a proxy advisor, for a number of years, and that the custom policy is underpinned by the expectations from local corporate governance codes and other market norms. As many of these expectations are widely held, its annual voting outcomes are typically about 90% aligned with both the board's recommendations and the proxy advisor's benchmark recommendations.

this part of the question by “fully” or by “to a large extent”, and 17% of the respondents (2) expressed no opinion.

224. With reference to the qualitative comments, those who answered “to a limited extent” shared that they had:

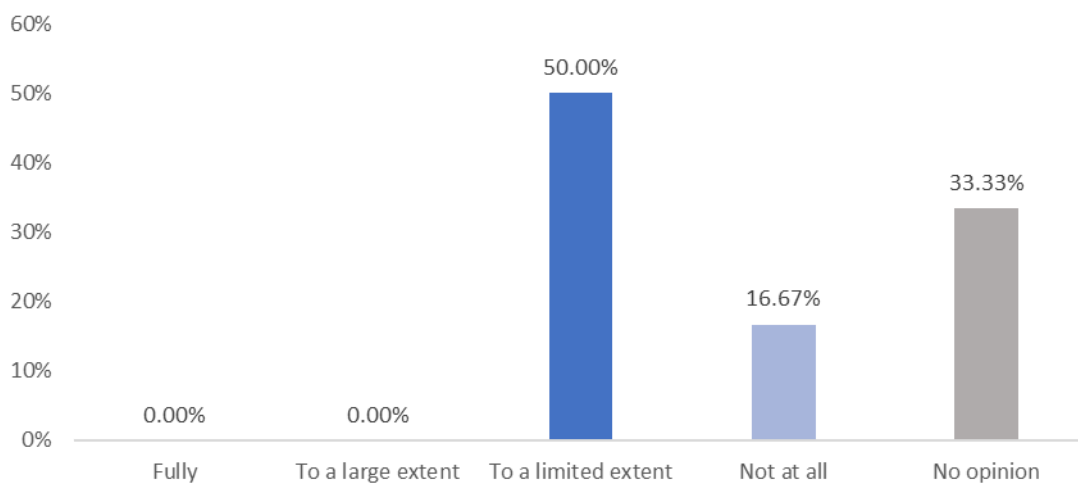
- i. Hired a new proxy advisor offering a dedicated service to design custom policies, or
- ii. Subscribed to research from other providers from time to time, often on a market-specific basis, or
- iii. Used additional advisors to get in depth-analysis.

225. As shown in the graph, 75% of the respondents (9) considered that, following the entry into application of the SRD2, they did not change (or changed only to a limited extent) **the frequency of following recommendations made by proxy advisors**. None of the respondents chose to answer this part of the question by “fully” or “to a large extent” and 25% of the respondents (3) provided no opinion.

226. Among those who answered “to a limited extent” or “not at all”, most (5) indicated in their qualitative comments that they already had their own policies or voting guidelines in place before the entry into application of the SRD2 and have continued to follow them since.

227. Question 40

Q40: Do you believe that the increasing offer of ESG-related services by proxy advisors and other players may lead to new conflicts of interest that may have an impact on the reliability of their advice?

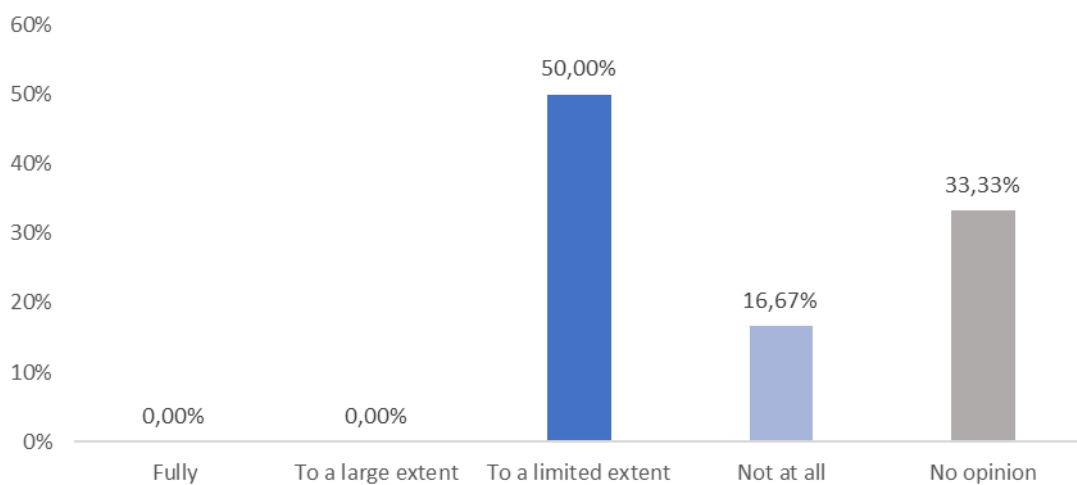


228. As shown in the graph, 67% of the respondents (8) considered that the increasing offer of ESG-related services by proxy advisors and other players cannot lead to new conflicts of interest that may have an impact on the reliability of their advice or can do so only to a limited extent. 33% of the respondents (4) expressed no opinion and none of the respondents chose to answer “fully” or “to a large extent”.

229. In their qualitative comments, respondents explained that while the ESG services provided by proxy advisors may in principle lead to increased potential conflicts of interest, they trust their proxy advisors to be transparent on this topic and that investors are able to identify and handle issues. In addition, one respondent sees a potential issue in that proxy advisors still need to fully develop their ESG capabilities.

230. Question 41

Q41: Having in mind the ESG and technological changes in progress^[65], have you changed or are you planning to change the extent to which you use the services of proxy advisors, the type of services you use or your reliance on their advice?



231. As shown in the graph, 67% (8) of the respondents (8) answered that, having in mind the ESG and technological changes in progress in the voting services industry as well as certain investors' tendencies to internalise voting research and/ or provide clients with voting options, they were not planning, or were planning to change only to a limited extent, the degree to which they used the services of proxy advisors, the type of services they used or their reliance on their advice. 33% of the respondents (4) did not provide an opinion. None of the respondents opted to respond either "to a large extent" or "fully".

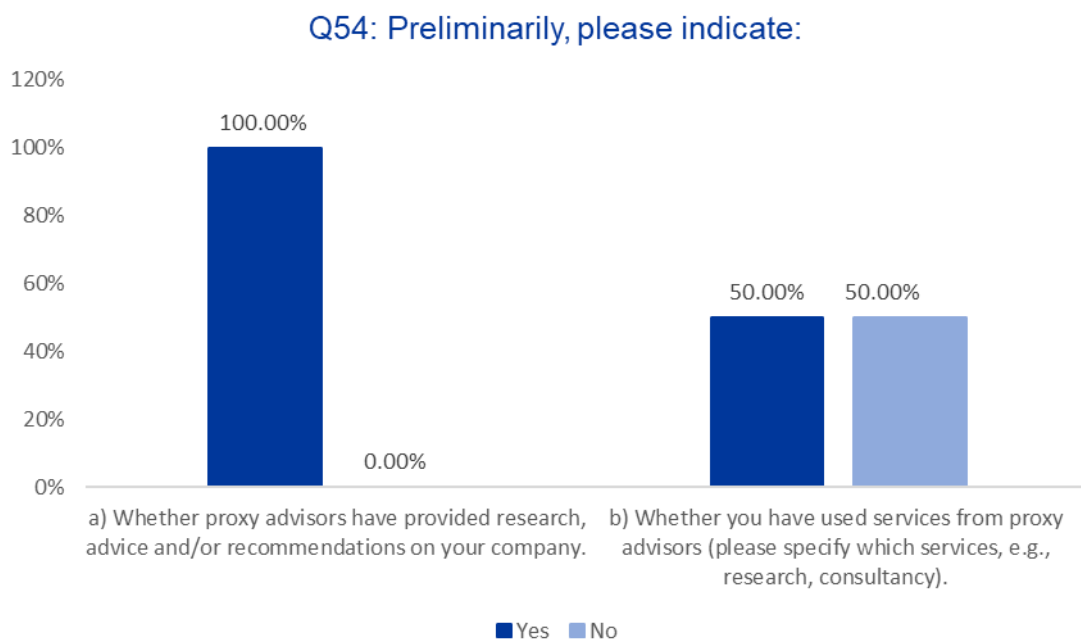
232. In their qualitative comments, most respondents reiterated that their voting process is not outsourced or that they have the final say on the voting decision even if they use a proxy advisor's services.

⁶⁵ [in the voting services industry as well as certain investors' tendencies to internalise voting research and/or to provide clients with voting options]

9.1.3 Input from issuers

233. This section was answered by 7 respondents, comprising 4 industry associations⁶⁶ and 3 listed companies.

234. Question 54



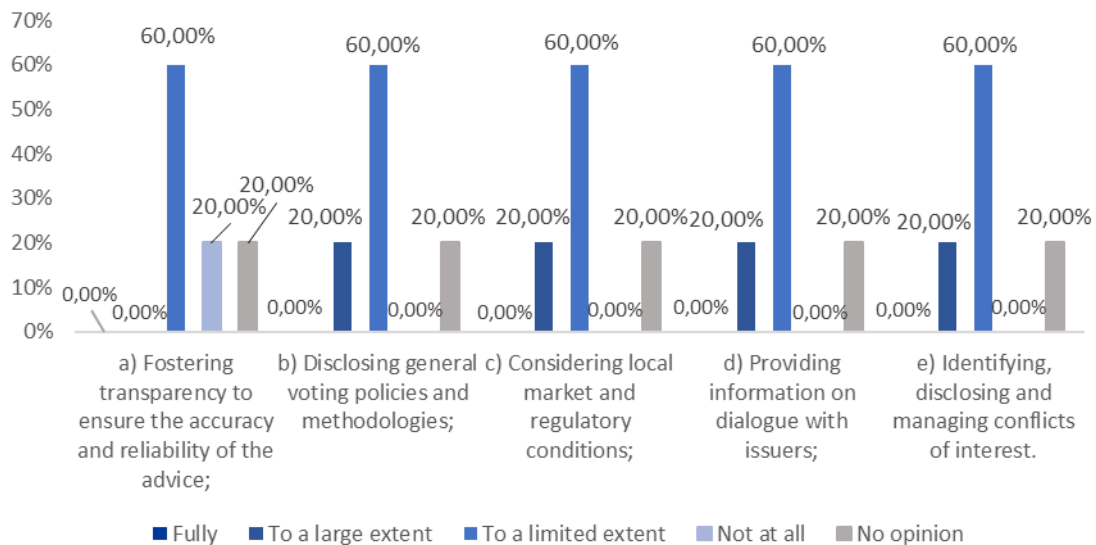
235. When asked to indicate whether proxy advisors have provided research advice and/ or recommendations on their company, 100% of the respondents (6) to this question answered affirmatively. Only two answers (one positive and one negative) were received in connection with the second part of the question asking issuers whether they have purchased services, such as consultancy or research, from proxy advisors.

236. In terms of the qualitative comments received, two respondents, both industry associations, reported that, prior to the GM, proxy advisors share with issuers data of central importance to the analysis of their remuneration and corporate governance, such as board composition, compensation practices, compensation data and equity plans. While these data do not contain any analysis or voting recommendations, it is reported that issuers are given limited time to review them and provide feedback.

⁶⁶ Two of them represent financial firms, several of which are listed.

237. Question 55

Q55: Do you consider that the entry into application of the SRD2 has improved:

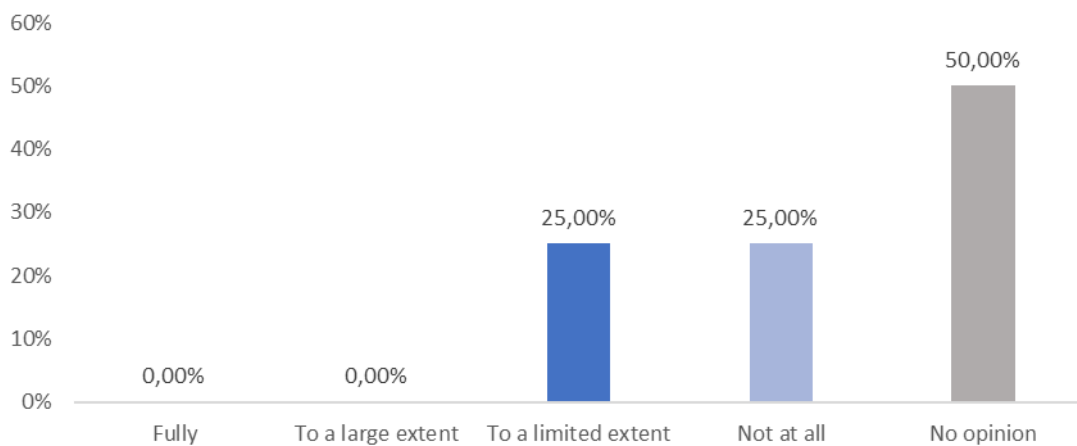


238. Question 55 asks if issuers consider that the entry into application of the SRD2 has improved several aspects of proxy advisors' disclosures and conduct. 5 respondents answered this specific question. With reference to "Fostering transparency to ensure the accuracy and reliability of the advice", 60% of them (3) considered that this area has improved to a limited extent while the remaining respondents were split between "No opinion" (20% or 1) and "Not at all" (20% or 1). Regarding the second area "Disclosing general voting policies and methodologies", most of the respondents replied that improvements were limited (60% or 3), while one argued that there were improvements to a large extent and the remaining respondent did not express an opinion. The same range of answers was identified for the third area "Considering local market and regulatory conditions", as well as the fourth, "Providing information on dialogue with issuers", and the fifth, "Identifying, disclosing and managing conflicts of interest". Most issuers considered that the improvements in these areas were limited too.

239. Looking at the qualitative comments, one respondent referred to the points brought up in response to Question 20.

240. Question 56

Q56: In your experience, do you consider that the entry into application of SRD2 transparency requirements on proxy advisors has improved your ability to assess^[67] proxy advisors' research, advice and/or recommendations as regards your company?



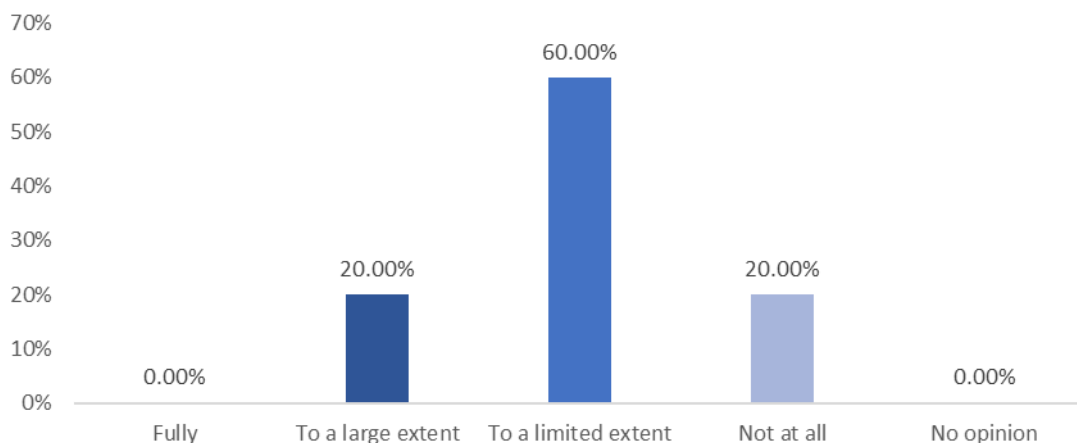
241. This question evaluates to what extent issuers think that the entry into application of SRD2 transparency requirements on proxy advisors has improved their ability to assess the accuracy and reliability of proxy advisors' research, advice and/ or recommendations as regards their company. 4 entities answered this question. Half of the respondents (50% or 2) replied that they had no opinion. The remaining answers were split between "Not at all" (25% or 1) and "To a limited extent" (25% or 1).

242. One respondent, an association representing issuers, explained that these aspects had already been partially addressed before the SRD2, although recognising that the SRD2 has brought some improvement.

⁶⁷ [the accuracy and reliability of]

243. Question 57

Q57: In your experience, following the entry into application of SRD2, do you consider that the dialogue between proxy advisors and issuers on the analysis and recommendations in research reports ahead of their distribution to investors has improved?



244. In this question the issuers are asked if, in their experience, the dialogue between proxy advisors and issuers on the analysis and recommendations in research reports ahead of their distribution to investors has improved. 5 respondents replied to this question. Most of them selected “To a limited extent” (60% or 3). The other selected options include “Not at all” and “To a large extent”, both accounting for one respondent each.

245. Two respondents noted that indeed some of the proxy advisors contact issuers in advance of the GM and issuers can then provide comments. However, it is underlined that although dialogue with proxy advisors has improved, the time frame given to issuers to make comments is too short while issuers’ comments are not always incorporated by proxy advisors.

246. Question 58

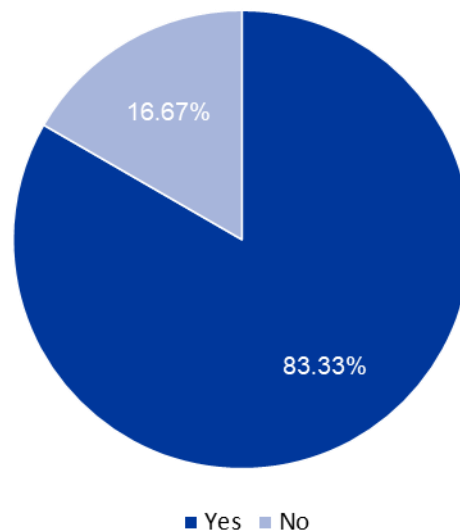
247. Question 58 asks whether issuers have filed a complaint under the BPP framework as regards research reports. Here, all respondents (5) reported not to have done so.

9.1.4 Input from proxy advisors

248. A total of 6 participants, who identify as proxy advisors, responded to this section. One of those is not a proxy advisor itself, but an entity that holds a majority stake in one of the proxy advisors.

249. Question 72

Q72: Are you a signatory to a code of conduct for proxy advisors?



250. All 6 respondents answered to question 72, on whether they are a signatory to a code of conduct for proxy advisors. All but one indicated that they are signatories to a code.

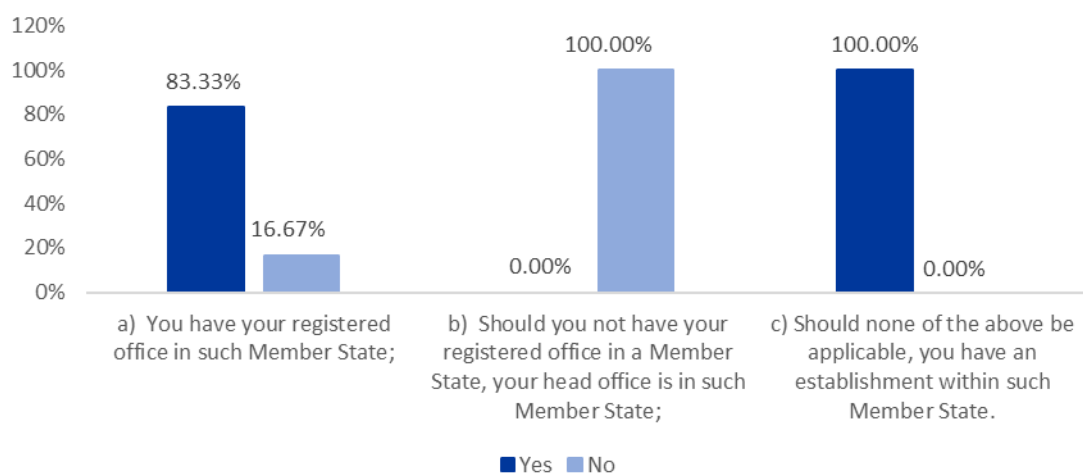
251. According to the comments provided, two respondents are founding signatories of the BPP, two are signatories to the UK Stewardship Code (one also being a signatory to the BPP and one also to the Japanese Stewardship Code). One participant indicated it is fully compliant with the BPP but has decided not to become a signatory, inter alia because its structure as a sole owner firm would make it expensive and ineffective. This participant also pointed to overlaps between the BPP and SRD2-requirements. Finally, one respondent reported that it has issued and published its own code of conduct⁶⁸.

⁶⁸ ESMA understands that this proxy advisor has later joined a local Stewardship Code.

252. One of the aforementioned respondents added that it publishes annual reports on its compliance with the BPP, which are reviewed and publicly analysed by the IOC. Along the same lines, another respondent highlighted that it reports on the fulfilment of its code annually. Finally, one respondent explained that the annual BPP compliance statements reflect the changes adopted in response to the introduction of Article 3j of the SRD⁶⁹.

253. Question 73⁷⁰

Q73: Please specify which Member State is competent for your activities according to the definition of competent Member State for proxy advisors set forth in Article 1) (2)(b). Please further specify which of the following applies:



254. Question 73 deals with which MSs are competent for the respective proxy advisors' activities and whether respondents have their offices and establishments there. 5 participants, representing 4 proxy advisors, responded that their registered office is in the MS competent for their activities (one in Italy and one in Spain, while the others have not specified the information). Two of these entities also reported that to their knowledge, they are the only proxy advisors supervised by their respective NCAs, but not the only ones

⁶⁹ Which the respondent describes inter alia as: i. Public disclosures by each BPP signatory of its commitment to the code of conduct as well as ii. Public disclosures relating to accuracy and reliability of research activities and iii. Identification and disclosure to clients of actual or potential conflicts of interest, which may influence the preparation of research, advice or voting recommendations as well as actions taken to eliminate, mitigate or manage them.

⁷⁰ For the sake of clarity, it should be noted that the 3 sub-questions a), b) and c) are interconnected. More specifically, sub-question b) is to be answered on the condition that the response to question a) is negative, and question c) is to be answered only if both a) and b) are answered negatively.

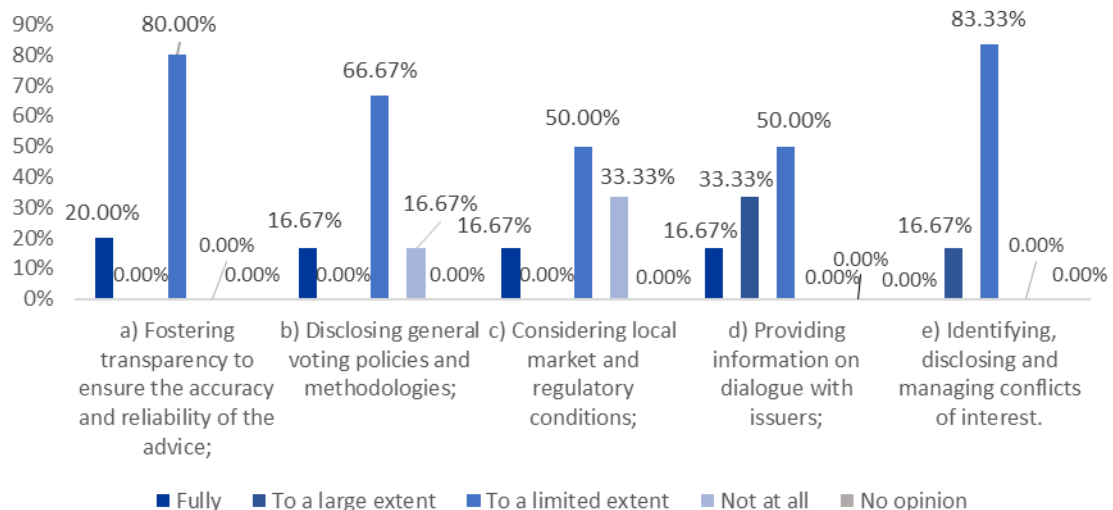
offering services in the Italian and Spanish markets, respectively. One respondent (which has its head office in the US) indicated that it has establishments in Ireland and Germany.

255. Question 74

256. In response to question 74, which asks if participants are required to notify being subject to SRD2 provisions to an NCA or if they have liaised with one at all, all 6 participants, representing 5 proxy advisors, responded affirmatively. According to their answers, two have notified the Swedish Financial Supervisory Authority and one of them has also notified the UK FCA, in compliance with the local laws. One respondent indicated that it is a global business and has informal contacts with various NCAs. Another indicated that it does not have formal or informal discussions with the relevant (Italian) NCA but added that under Italian law it is required to publish reports on its transparency.

257. Question 75

Q75: Has your practice in the following areas been revised after the entry into force of SRD2? Please clarify which specific changes were made in the following areas:



258. Question 75 deals with whether participants' practice has been revised in certain areas after the SRD2 came into force.

259. **In terms of fostering transparency to ensure accuracy and reliability of advice**, one respondent reported that its practice has been fully revised, and it offers listed companies an opportunity to comment on its research and is prepared to incorporate such comments into its reports). 4 of the other 5 participants indicated that they have revised their practices to a limited extent. One of them explained that the BPP address proxy

advisors' practices in all areas mentioned in Question 75. In addition to reporting under the BPP, this proxy advisor makes information on these topics, including its methodology for a considerable number of markets, available on its website. It further pointed out that the BPP reporting process is now overseen by the IOC, which provides reviews of the signatories' reports on an annual basis. One respondent said it has included additional details on the professional profile of analysts and the analysis process in its publications after the SRD2 was introduced, while another stated that most of its information was disclosed even before the SRD2, but now additional information has been included.

260. One participant stated that its practice has been fully revised as far as **disclosing general voting policies and methodologies** is concerned. It also pointed out that these policies and methodologies are reviewed and updated annually and disclosed in separate documents on its public website. 3 other respondents indicated that they conducted a revision of their practice to a limited extent and one of those explained that it already used to disclose its voting policies annually but has improved the disclosure on methodology and other aspects after the SRD2 was implemented. Finally, one respondent said that it did not revise its general voting policies and methodologies and that those have all been publicly available on its website ever since it was founded.
261. In the context of **considering local market and regulatory conditions**, one respondent maintained that its practice has been fully revised, whereas in two other cases, the answer was that this has been done to a limited extent and two participants replied that they have not done so at all.
262. With reference to **providing information on the dialogue with issuers**, one respondent said that its practice has been fully revised, whereas two others said this has been done to a large extent and two more flagged that this has been done to a limited extent. The first respondent, who reported to have fully revised its practice, also asserted that it undertakes dialogue with issuers in 3 areas, pointing inter alia to matters such as engaging with companies that are linked to violations of international norms and standards, ESG risks and systemic ESG issues from climate change to modern slavery. One of the respondents answering "to a large extent" indicated that it has adopted and published a policy on dialogue with issuers since 2016, but since 2019 (after the approval of the SRD2, but before its transposition into national legislation), it has annually disclosed the full list of companies it engaged with during the previous year, including information on the main topics that were discussed in this context.
263. Regarding changes pertaining to **identifying, disclosing, and managing conflicts of interest**, all participants said that their practice has been revised to a limited extent, with only one indicating a revision to a large extent. One respondent added that at the product level, its research is accompanied by a conflict-of-interest statement, indicating whether it

has a relationship with the company on which it is offering voting recommendations and describing the nature of such relationship. At firm level, the respondent said it uses a combination of conflict management policies, procedures, and measures. Another respondent also made reference to its policies on conflicts of interest and specifically pointed out that potential conflicts can result from activities carried out by its clients, which it said it discloses in voting recommendation reports. Following the SRD2's entry into application, it also publishes a detailed annual report with all potential conflicts of interest that arose in the course of the previous year. A third participant indicated that it doesn't provide any kind of consulting services to companies under its research coverage and that other potential conflicts of interest are analysed and disclosed in its annual report.

264. Question 76

265. Question 76 asks what new measures respondents have put in place since the SRD2 came into application to identify and handle conflicts of interest properly and provide transparency towards clients.

266. One of the respondents indicated that it continually seeks to improve and refine its conflicts of interest policies and procedures. In 2021, it enhanced its mechanisms to keep a check on compliance by retaining a third-party service to electronically monitor over 70% of its employee accounts across the globe. One participant asserted that no additional measures were required, as it does not provide any advisory services to listed companies in its sphere of analysis. It further explained that transparency towards clients has improved thanks to the annual report on conflicts of interest, which is publicly available. Similarly, another respondent asserted that its practices pre-SRD2 were such that no significant changes were necessary except for annual disclosure. One of the participants pointed out that in line with the BPP updates prompted by the SRD2, the proxy advisor, in which it acquired a stake, put in place several non-interference policies to ensure it continues to operate with the same editorial independence as before. These policies include one on non-interference and potential conflicts of interest related to the acquirer, an updated policy regarding disclosure of significant relationships and director affiliated companies as well as a policy related to the acquirer's affiliated companies.

267. Question 77

268. In response to Question 77, which asks if proxy advisors' practice has evolved to integrate more ESG elements, all respondents answered in the affirmative, showing the increasing importance of ESG-related issues.

269. Respondents held that while taking ESG factors (especially governance factors) into account is not new, ESG-related topics (climate-related investment risk in particular) are

becoming increasingly important. Analyses of ESG-related risks are requested by proxy advisors' clients more and more. As a result, the scope of analysis has been enlarged and there has been an increase in ESG governance research. ESG criteria have been progressively incorporated into research and voting recommendations.

270. Question 78

271. In the case of Question 78, which asks if respondents' practice has evolved to provide new services, particularly in the ESG sphere, all responses were affirmative. Some participants provided that they have started coupling services pertaining to ESG voting with already existing services, thereby offering new ESG packages. Others maintained that they do not provide any ESG advisory service as such but include the respective factors in their analyses. One proxy advisor specifically pointed out that it produces periodic reports on its engagement activities, so investor participants can track progress on ESG and other topics. Some of the topics at issue include climate change, sustainability reporting on social issues and executive pay. Overall, respondents indicated that they are mindful of the fact that introducing new products and services can create new issues with respect to conflicts of interest.

9.1.5 SMSG input

272. Overall, the SMSG finds that the SRD2 has not been fully able to achieve more transparency when it comes to proxy advisors, or at least has been able to do so only marginally. The SMSG advice recognises the progress that has been made since the BPP's update in 2019 and its monitoring by the IOC, though the picture on the implementation of the three principles of the BPP, addressing service quality, conflicts of interest and communication with issuers, respectively, still appears unsatisfactory to them.

273. On service quality, adequate disclosure of methodologies and policies is acknowledged by the SMSG, though it sees room for improvement on the process for their development and review (consultation with stakeholders, phases of the process) as well as on transparency on the application of the procedures in place to ensure that voting recommendations are of appropriate quality and not deviated from in case services are being provided to both issuers and investors. Furthermore, it is emphasised that disclosure on how proxy advisors consider local and legal regulatory conditions should be improved (and also on how the same practice may lead to diverging recommendations in Europe and the US).

274. On the dialogue with issuers, the SMSG considers it important to ensure that a structured dialogue procedure is put in place by proxy advisors, allowing for correction of potential factual errors before the voting deadline. On this matter, the SMSG notes that

actual dialogue with issuers and its extent should be mentioned in the voting report provided to the investor client and that when proxy advisors do not engage with issuers, they should explain why. As improvements of the framework that could be addressed more specifically by the BPP, the SMSG suggested that:

- i. Dialogue with issuers, with adequate time for issuers themselves to provide comments, should take place if so requested by them, especially where contentious issues are at stake and
- ii. Engagement with issuers throughout the year should be encouraged.

275. On the handling of issuers' complaints, the SMSG notes that they are not sufficiently considered and examined by proxy advisory firms.

276. Finally, the area that raises most concerns in the view of the SMSG is that of conflicts of interest. In line with the input gathered via the Call for Evidence, concerns arise in the provision of ancillary or overlay services, such as consultancy to issuers, voting platform services to investor clients, ESG services and ratings to investor clients and issuers. Market practice reportedly shows that some proxy advisors actually provide consulting services to issuers in parallel to their proxy activities and/ or offer ESG data service both for issuers and investors. The SMSG also points out that the BPP should better address one of the major potential or existing conflicts of interest, i.e., that related to the provision of consultancy on corporate governance matters (e.g. on executive remuneration policies) to issuers that are also the object of voting advice to investors.

277. In this respect, it is the opinion of the SMSG that "Chinese walls" between proxy voting teams and consulting teams are not an effective response to distortions caused by conflicts of interest and that "comply or explain" is not a strong enough tool to address all the problems generated by conflicts of interest. In light of this, the SMSG would further strengthen the SRD2 approach on conflicts of interest. In its view, proxy advisors should avoid offering consultancy services to issuers when they are mandated by investors to carry out research on the same companies⁷¹, or, if not prevented, the offering of such services should be at least clearly identified and disclosed to clients, together with the actions undertaken to prevent, avoid, eliminate, mitigate or manage them and information confirming the non-materiality of the revenues generated by the additional services offered to the relevant issuers.

⁷¹ According to the SMSG, as the audit framework states some incompatibilities between the provision of audit and other services, the same should apply to proxy advisors that should not offer consulting advice to analysed companies on topics that are part of the GM agenda.

278. Going forward, the SMSG would favour a reinforced voluntary approach, where the “comply or explain” principle is coupled with NCAs’ oversight. The SMSG would also consider it helpful if any review of the proxy advisory market looked into the oligopolistic nature of the market. Finally, the SMSG considers it important that any future legislative or regulatory actions on proxy advisors are coordinated with the upcoming review on ESG rating providers.

9.2 Investment chain

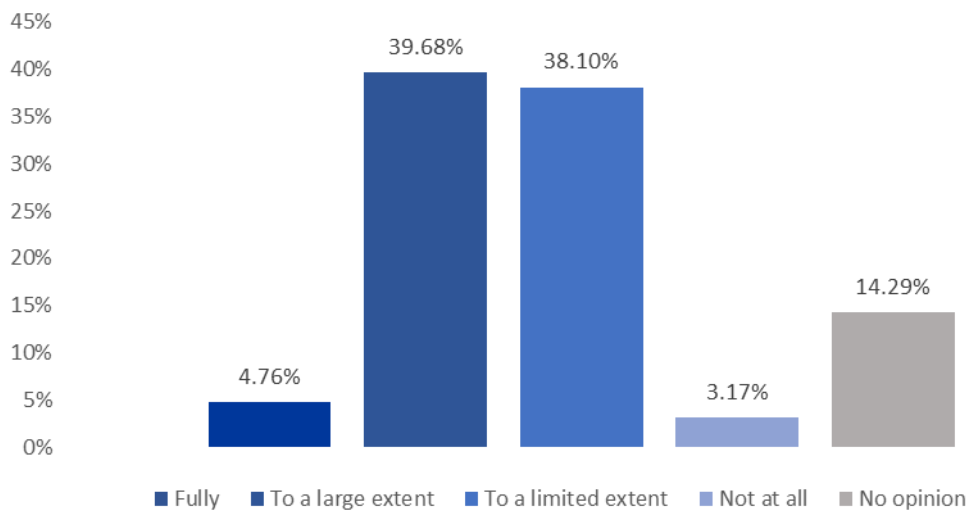
9.2.1 General input

279. This section aims to provide a general understanding of the practices currently put in place and the difficulties that may arise from the practical application of Chapter Ia of the SRD2. Evidence on these matters was collected from 72 respondents, though some of them did not respond to all questions⁷². Some responses to the questions included in this section came from asset managers, which represented 15% (11) of the total respondents to the section. To a minor extent, input was received from retail investors too (3% or 2 of the respondents). Furthermore, several responses came from intermediaries, with CSD and credit institutions accounting for 11% (8) and 22% (16) of the total respondents to the section, respectively. Associations representing intermediaries and investment firms, as well as an entity classified as both, also provided their input (7% or 5 of the respondents). Issuers accounted for 8% (6) of the total respondents to the section. Most proxy advisors operating in Europe provided their input (7% or 5). The largest group of respondents (27% or 20) not classifiable within a specific category, included service providers, law firms, NGOs and a variety of industry associations.

⁷² It should be noted that, while in section 2.4.1 “Categorisation of respondents”, the respondents are classified according to their own chosen classifications, i.e., reflecting that several entities selected more than one category, in this section, a single classification was attributed to each respondent, based on their main characteristics and on the capacity in which their input was provided.

280. Question 3

Q3: Do you consider that shareholder identification, within the meaning of Article 3)(a), has improved following the entry into application of this provision and the IR?



281. 63 respondents answered Question 3 on the improvement of shareholder identification after the entry into application of the SRD2 and the IR. As the graph shows, 45% of respondents (28) considered that shareholder identification has improved, either to a large extent or fully. Another 38% of respondents (24) were of the view that shareholder identification has improved, albeit to a limited extent. Only 3% of respondents (2 – one issuer representative and a law firm) considered that there has been no improvement at all due to the possibility provided to MSs to opt for a threshold for shareholder identification capped at 0.5% (in 2020, ESMA published the list of thresholds in place above which shareholders can be identified in the different EU MSs⁷³). This makes shareholder identification quite difficult for highly-capitalised issuers. 14% of respondents (9) answered “no opinion”, with 44% of these respondents (4) being asset managers and arguing that they had no visibility on the shareholder identification processes.

282. According to several respondents, many of them coming from the intermediaries’ community, the minimum harmonisation approach of the SRD2 has led to some inconsistencies in the shareholder identification processes. Those arise mainly from both the lack of a common definition of shareholder and the lack of a common model for shareholder identification requests resulting in differences in the required data (e.g. tax

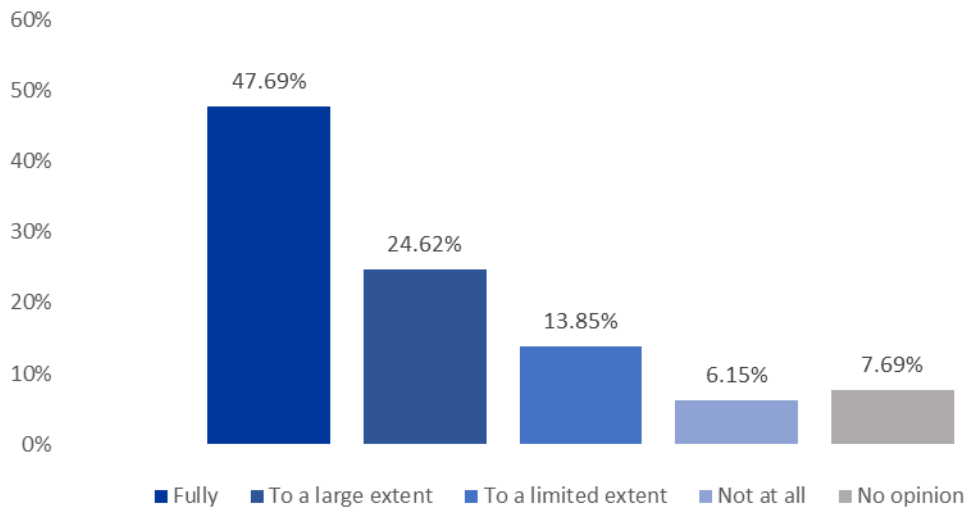
⁷³ESMA, “National thresholds for shareholder identification under the Revised Shareholder Rights Directive” (2020).

residence, citizenship, date of birth) and the use of different formats (other than ISO20022). In fact, it is highlighted that requests sent in non-machine readable (mail, paper based, etc.) or other formats such as ISO15022 do not permit automated processing without manual intervention (which is defined as straight-through processing or STP). Overall, it has emerged that ISO20022 standards have not yet been universally embraced, and many participants continue to use legacy communication methods in relation to shareholder identification requests, despite the development of new messaging standards established to support the SRD2.

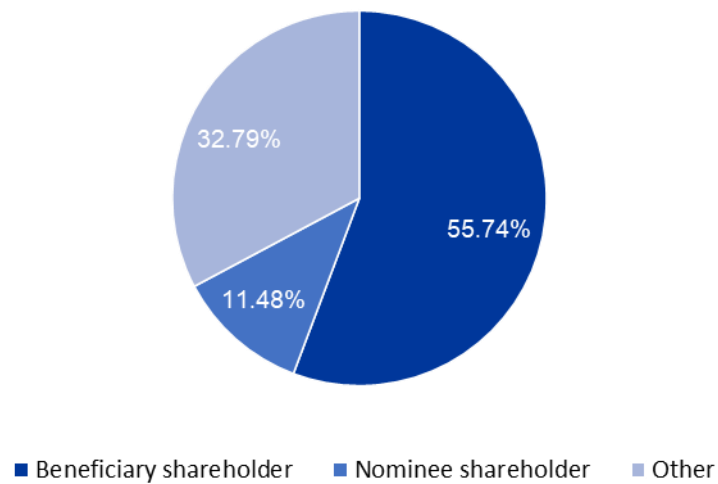
283. As anticipated above, another main concern from respondents in connection with shareholder identification regards the possibility left by the SRD2 for MSs to opt for setting thresholds for identifying shareholders above 0.5%, which reduces access to comprehensive shareholder information, inhibiting issuer engagement and complicating ID administration.
284. As such, it is argued that the impact of the SRD2 on shareholder identification varies across MSs. For instance, the Dutch market is reported to have changed little with thresholds for disclosure being too high to give issuers any meaningful information as to who their shareholders might be, whereas in France, the process seems faster than under the previous regime.
285. Lastly, it is noted that questions referring to the threshold for shareholder identification are addressed specifically to investors and issuers, in the sections where they provide their own input (i.e., Question 30 and Question 45 respectively).

286. Questions 4 and 5

Q4: Do you consider that harmonising the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3)(a) provisions?



Q5: In your opinion, who should be regarded as "shareholder" for the purposes of the SRD if this definition was to be harmonised across the EU?



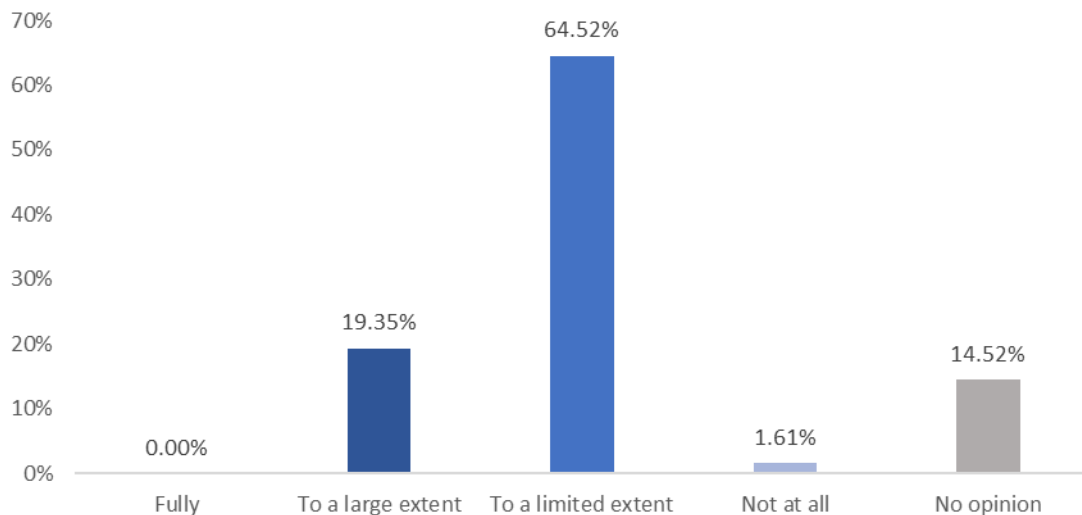
287. 65 respondents answered Question 4 asking if the harmonisation of the definition of shareholder across the EU is a necessary step to ensure the full effectiveness of Article 3a provisions. 48% of respondents (31) fully agreed that a common definition of the term “shareholder” would be necessary to ensure the effectiveness of the SRD2. Along the same lines, 25% of respondents (16) considered that a common definition would be needed to ensure the effectiveness of the SRD2 to a large extent. Just a few respondents, around 14% (9), believed that the harmonisation of this definition is necessary only to a limited extent and around 6% (4, including 2 issuers) did not consider it a necessary step. Finally, 8% of respondents (5) opted for “no opinion”.
288. Although a large majority of respondents considered that the introduction of a harmonised “shareholder” definition will help reduce differing interpretations and increase alignment and efficiency of processes throughout the custody chain⁷⁴, some voices coming from various categories of respondents (issuers, asset managers, CSDs and the service provider industry) highlighted that the implications of such a definition on EU laws, national laws (in particular securities laws and company laws but also tax law) and more generally on security rights and market practices will have to be thoroughly analysed in order not to create unintended issues. In this regard, a service provider suggested an alternative approach to reconcile these concerns by focusing on identifying which party in the ownership chain should be subject to the specific shareholder identification provisions, without the need to define that party as “the shareholder”.
289. Coming to Question 5 about who should be regarded as shareholder, 61 respondents provided answers. As shown in the relevant graph, 56% (34) agreed that the “shareholder” should be the natural or legal person on whose account or behalf the shares are held, even if it is in the name of another who acts on behalf of this person (i.e. the “beneficial shareholder”). 11% (7) retain that the “nominee shareholder” (i.e., the natural or legal person holding the shares in their own name, even if on behalf of another legal or natural person) should be considered as the shareholder. 33% of respondents (20) opted for “Other”, with some among them considering none of the options provided to be able to clearly identify the person who should be entitled to exercise the rights attached to the shares, and others not deeming a harmonised definition of “shareholder” necessary.
290. Alternative definitions have been suggested by respondents who answered “Other”. For example, a few of them, all intermediaries, suggested defining the “shareholder” as the “ultimate account holder”⁷⁵, considering this concept easily applicable and usually matching with the person who invested money in the shares. Another suggested leveraging on the

⁷⁵ Where the “ultimate account holder” is defined as the account holder who does not act as intermediary or on behalf of an intermediary.

notion of “end investor” but specifying that it should be applied regardless of how shares are held. With respect to investment funds, it is often argued that they (and not the ultimate beneficiaries, i.e., the individual investors) should be regarded as shareholders.

291. Question 6

Q6: Do you consider that the transmission of information along the chain of intermediaries has improved following the entry into application of Article 3(b) and the IR?



292. Of the 62 respondents that answered Question 6 on the transmission of information along the chain of intermediaries, 84% (52) considered that there has been some level of improvement, either to a limited or to a large extent, following the entry into application of Article 3b of the SRD2 and of the IR. Overall, it is argued that the information flow has been enhanced thanks to the standardisation of data transmitted.

293. In detail, 65% of the respondents (40, including 10 credit institutions and 6 CSDs) considered that improvements have been made only to a limited extent because information is already transmitted effectively, and most intermediaries already comply with many of the requirements in Article 3b. It is argued that communication in the intermediary chain was already generally organised with ISO formats and SWIFT channels prior to the implementation of the SRD2. On the other hand, 19% (12) observed an improvement to a large extent due mainly to the transmission of information related to General Meetings (GMs). Only one respondent, a law firm, did not see any improvement. 15% of respondents (9) opted for “no opinion”, providing different reasons: no improvement or worsening observed regarding the transmission of information, a lack of visibility or experience in order to reach a conclusion on the topic. Lastly, no respondents considered

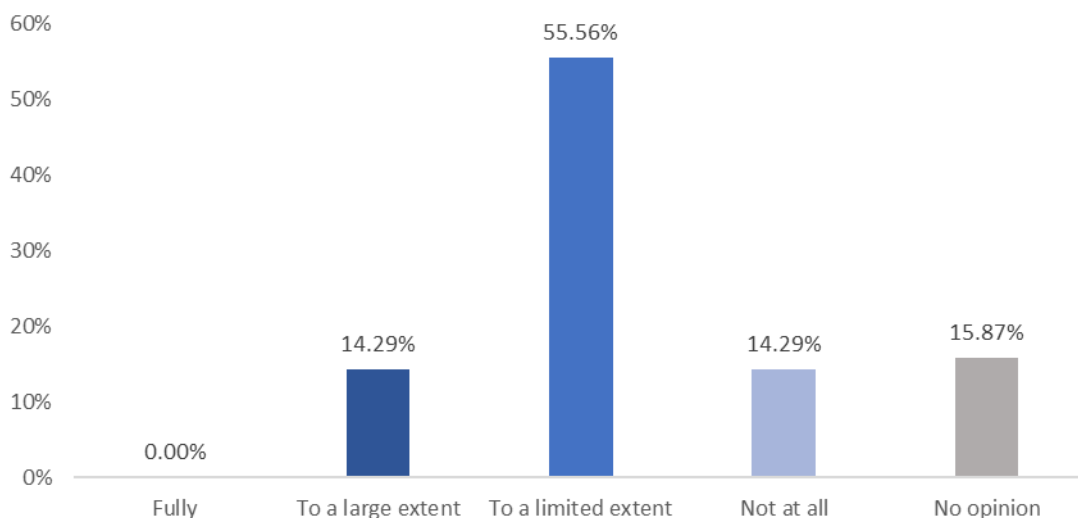
that the entry into application of Article 3b led to a full improvement in the transmission of information.

294. Although the transmission of information between intermediaries is not seen as particularly problematic, it is reported that the transmission of information between issuers, CSDs and the intermediary chain remains challenging due to the fact that not all members of the chain use the same format of messages. For instance, it is argued that issuers are still not issuing corporate event information in a standardised and timely manner and, should therefore be legally obliged to use the same ISO formats as in the intermediary chain and to respect the same deadlines and operational requirements. Furthermore, according to few respondents, some intermediaries are not passing on all the meeting announcement information to downstream clients (e.g. resolutions data is removed and replaced with hyperlinks to the relevant information).

295. Lastly, it is noted that similar questions, focusing on how investors transmit and receive information, are addressed specifically to investors and intermediaries, in the sections where they provide their own input (i.e., Question 26, Question 65 and Question 66, respectively).

296. Question 7

Q7: Do you consider that the facilitation of the exercise of shareholder rights by intermediaries has improved following the entry into application of Article 3)(c) and the IR?



297. 63 respondents answered to Question 7 on whether intermediaries have facilitated the exercise of shareholder rights following the entry into application of the SRD2 and the IR.

298. The majority of respondents (56% or 35, more than a third of them being credit institutions) saw an improvement only to a limited extent since Article 3c leaves wide discretion to MSs in the transposition of the SRD2, which results in an uneven application of its provisions.
299. A few respondents (14% or 9, a third of them being issuers) observed an improvement to a large extent due to a significant increase in the use of ISO20022 format messaging for GMs, leading to significantly better transmission of information. One such respondent observed that there are more intermediaries proactively offering GM notification and voting services to their investor clients following the entry into application of the SRD2, which results in a significant increase in the transmission of voting instructions. In addition, many intermediaries that previously submitted votes via different processes now appear to submit all votes in STP flow of information and in accordance with SRD2 standards.
300. It is interesting to note a case brought up in the consultation in which the implementation of a secured electronic platform in a European country allowed for broadening the number of issuers using this electronic facility to announce their GMs under an ISO format and in some cases to also offer electronic voting facilities. Nevertheless, in the case at hand, there was no increase in the answer rate from shareholders, which calls into question the real effectiveness of the tool.
301. 14% of respondents (9, several of which being asset managers), did not observe any improvement at all, arguing that individual private shareholders still do not receive cross-border GM information and voting is not facilitated when the chain of intermediaries includes cross-border market players. In their view, Article 3c fails to truly facilitate the exercise of shareholder rights in the EU.
302. Moreover, as the graph shows, 16% of the respondents (10) selected “no opinion” citing lack of access to the relevant information or that further experience was needed in relation to the implementation of SRD2 provisions in order to conclude whether it facilitates the exercise of voting rights. Finally, none of the respondents considered that the facilitation of the exercise of shareholder rights fully improved.
303. Looking at the comments received, one respondent made a general remark that the exercise of shareholder rights is highly dependent on the effective transmission of information between issuers and shareholders. Shortcomings in the transmission of information by intermediaries thus impairs the exercise of shareholder rights. Interestingly, evidence has been raised that in certain instances voting instructions were incorrectly

processed in the voting chain⁷⁶. On the basis of the above, a few respondents call for electronic voting to be available to investors, noting that it is not currently the case across several MSs.

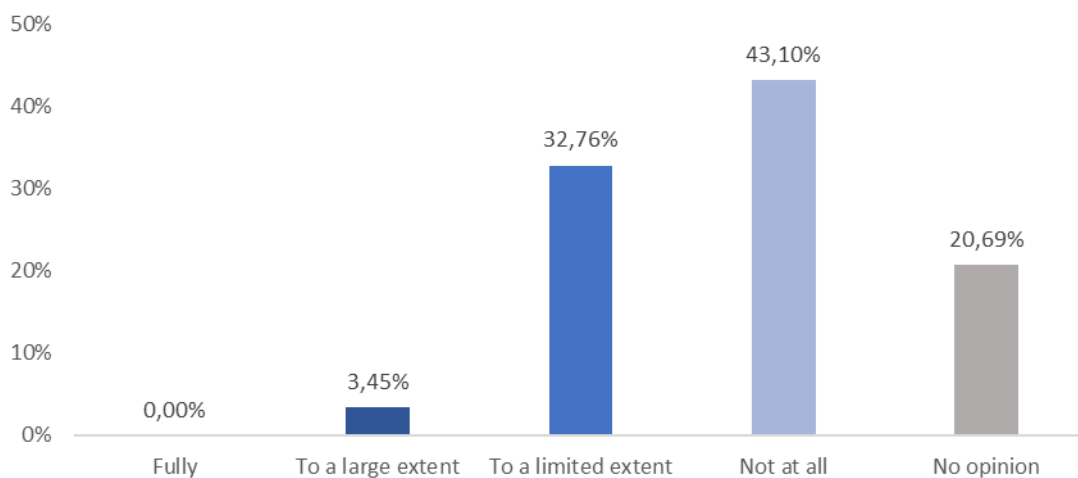
304. One respondent added that in many instances, shareholders reportedly either do not receive information in relation to corporate actions or GMs or receive it too late for it to be actionable. In its view, this situation is exacerbated in a cross-border context where the chain of intermediaries tends to be longer.
305. Finally, some respondents highlighted issues in connection with direct voting confirmations. Vote confirmations are reportedly still not being provided in many markets and sometimes are provided in a paper-based form⁷⁷. This represents an obstacle (or at least a disincentive to vote) to shareholders and to all those institutional investors who need a clear confirmation of their votes for reporting reasons, in particular if they delegate their voting powers to third parties, such as asset managers.
306. It is noted that a similar question is addressed specifically to investors, in the section where they provide their own input (i.e., Question 27).

⁷⁶ To illustrate this, it was reported to ESMA that at the 2022 annual GM of a major issuer, some 13.5 million votes (almost 6.1% of the total number of votes cast at this shareholders meeting) were mistakenly counted as “against votes” on a certain subject, while the shareholder concerned intended to vote in favour.

⁷⁷ For example, a major service provider requests confirmations of outgoing voting instructions from all upstream intermediaries. However, the response rates are less than what is necessary to ensure end-to-end vote confirmation on a system-wide basis. This is especially the case with post meeting vote confirmations from issuers which should otherwise be passed down the chain of intermediaries which shareholders require. This respondent saw 28% “Cast” and 7% “Confirmed” status responses.

307. Question 8

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries^[78] have improved following the entry into application of this provision?



308. 58 respondents answered Question 8 about the improvement of transparency, non-discrimination, and proportionality of charges for services provided by intermediaries regarding shareholder identification, transmission of information and facilitation of shareholder rights. None of them saw a full improvement on this topic.

309. 43% of the respondents (25, including investor associations, issuers, CSDs and other intermediaries) considered there was no improvement at all and pointed out that there is no visibility of charges to investors and issuers, an excessive variety of costs across the EU for similar services and no clear rules on which services can be charged and to which entities, especially in a cross-border context⁷⁹. With particular regard to the shareholder identification process, it is highlighted that issuers cannot be fully informed of the cost of

⁷⁸ [In connection with shareholder identification, transmission of information and exercise of shareholder rights (i.e., in compliance with Article 3d of the SRD2)]

⁷⁹ In particular, some operators have pointed out the difficulties coming from the circumstance that the SRD2 allows intermediaries to charge issuers for services provided (to them or to investors) without having any kind of contractual relationship with the issuers themselves. This, of course, can make it hard for issuers validating the invoices received, especially in cross-border situations, and for intermediaries being paid for the services provided.

a disclosure request before submission, inter alia because the layers of intermediaries involved in the process are not known beforehand.

310. 32% of respondents (19, several of them being intermediaries) agreed that there was an improvement on transparency of fees to a limited extent. Only 2 respondents, an intermediary and an issuer, saw an increase to a large extent, in the transparency of charges for services provided following the entry into application of Article 3d, but with a limited impact due to the fact that fees associated with the exercise of shareholder rights are often complex (as the underlying processes for the exercise of such rights is also complex). Finally, 21% of respondents (12) opted for “no opinion”.
311. Looking at the qualitative comments, most of the respondents highlighted the great variety of fee structures and levels across MSs raising the issue of their proportionality and comparability. Whereas in Germany, for instance, a specific legal framework is reportedly in place, capping the cost of services rendered by intermediaries, other MSs are not reported as providing specific requirements on caps.
312. A lack of harmonisation with respect to rules regarding invoicing practices by intermediaries is also observed, resulting in a lack of upfront transparency for issuers on what a shareholder identification request or other corporate events will cost and difficulties for intermediaries when collecting fees for their services. In fact, a few respondents both from the issuer and CSD communities claim that invoices can be sent to issuers by intermediaries whom the issuer has no contractual relationship with. In these cases, the possibility for an issuer to validate if the invoice/claim is legitimate seems very limited. One service provider argues that where charges are invoiced, intermediaries should at the very least be obliged to provide documentary evidence to support claims that allow reconciliation and validation by the issuer before payment. Moreover, it suggested that intermediaries should be prohibited from charging issuers and investor-clients for the same services.
313. Generally, some respondents found evidence in EU capital markets of higher cost of managing cross-border shareholdings, which implies cost disincentives, for instance, to vote abroad for individual investors. Nationally, shareholders are often not required to pay for their voting or the transmission of information by intermediaries. However, when holding shares in a cross-border context, the cost associated with exercising shareholder rights and even simply receiving information from issuers is increased significantly⁸⁰. In view of

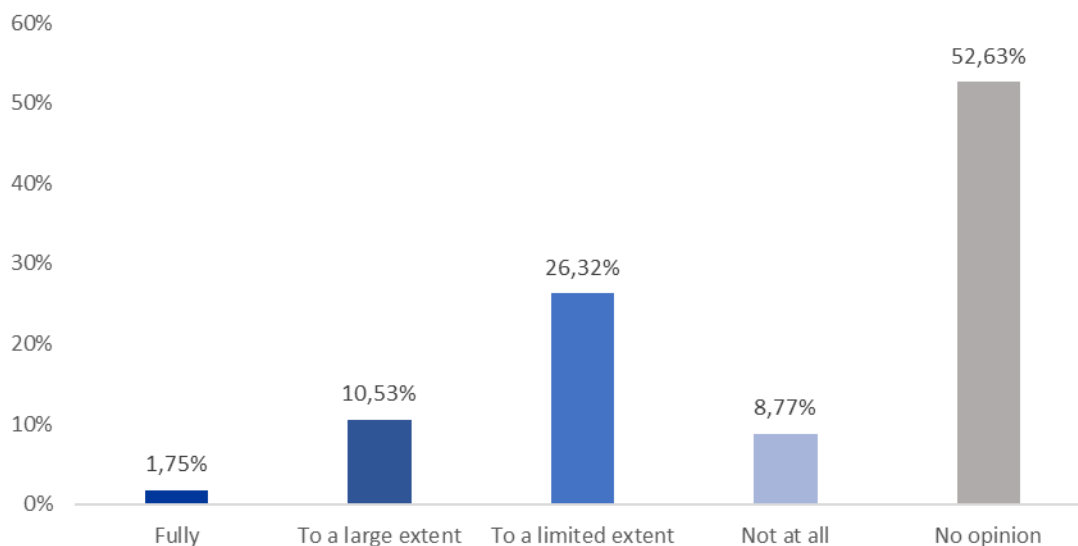
⁸⁰ According to Better Finance research, in 2021, the fees charged to investors (from the bank or broker) ranged from EUR 20 to EUR 250. In 2022, the reported costs even exceeded EUR 250 per annual GM (the highest fees were in Luxembourg and Denmark). Better Finance & DSW, “*Barriers to Shareholder Engagement 2.0: SRDII Implementation Study*” (2022), page 16.

these responses, shareholders should not be charged higher fees in a cross-border context (unless duly justified).

314. Finally, a few indications were received with reference to the fees imposed by intermediaries and CSDs that ultimately bear the risk of deterring issuers from trying to identify their shareholders. One respondent argued that some CSDs apply different fees to issuers for transmission of information to intermediaries if the issuer has appointed another party as their agent rather than the CSD itself.

315. Question 9

Q9: Do you consider that the practices of third-country intermediaries^[81] are in line with the provisions of Chapter Ia and the IR?



316. 57 respondents answered question 9 on the general application of Chapter Ia provisions by third-country intermediaries (i.e., intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares

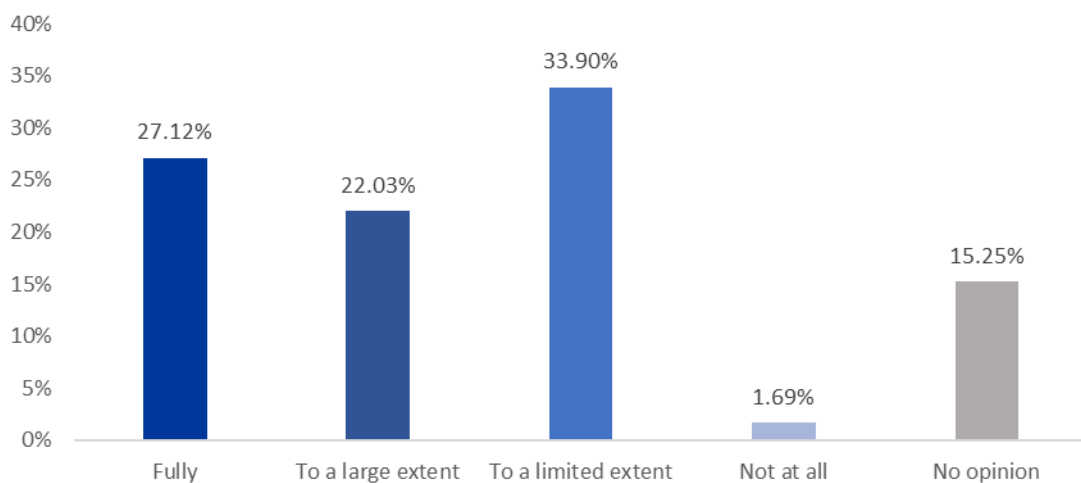
⁸¹ [Third-country intermediaries refers to intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies].

of EU listed companies). 53% (30) expressed no opinion on the topic, while the majority of the remaining respondents who expressed an opinion (54% or 15, most of them being intermediaries), considered that the practices of third-country intermediaries are in line with the relevant provisions only to a limited extent. 9% of the respondents (5) affirmed that third-country intermediaries' practices are "not at all aligned" with the SRD2 provisions.

317. Looking at the comments made by respondents on the subject, the picture is less fragmented. Almost all the respondents, including those who expressed "no opinion", admitted having noted or experienced differences in the practices followed by third-country intermediaries versus European ones, albeit to a limited extent. A few of them noted that the misalignment occurs mainly with non-EU local intermediaries, while the operators of a more global nature seem more in line with the European requirements. A few others mentioned the recurring issue about the (non) use of ISO20022 formats and a couple of asset managers said that third-country intermediaries often impose shorter cut-off dates on investors, limiting their ability to exercise their rights as shareholders. Three intermediary associations affirmed that third-country intermediaries do not consider themselves as being in the scope of the SRD2. However, global operators, mainly central security depositories and other global custodians, indicated that an improvement occurred in the non-EU intermediaries' practices and that misalignments are mainly due to the lack of standardised processes among European MSs, suggesting that a higher level of standardisation would benefit both non-EU and EU operators.

318. Question 10

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia are working in line with the relevant provisions of the SRD2 and the IR?



319. 59 respondents answered Question 10 on the level of compliance with the SRD2 and the effectiveness of processes put in place by the intermediaries since the entry into application of the Directive, with 15% (9) of them expressing no opinion on the subject. The majority of respondents expressed a positive view on the level of compliance with the SRD2 provisions by the industry, since 49% (29) retained that the processes put in place by the intermediaries are working “fully” or at least “to a large extent” in line with the SRD2 and the IR. Nevertheless, for 34% of the respondents (20), the picture is less positive, and they maintain that intermediaries are operating in line with the SRD2 only “to a limited extent”.

320. Looking at the qualitative comments, asset managers, issuers’ associations and a few CSDs are those who see more issues in the level of compliance of the intermediaries’ operations. In particular, problems raised – and room for improvement – relate to:

- i. The delayed transposition by some MSs coupled with differences in interpretation and a lack of consistency among MSs and also among intermediaries within the same MS;
- ii. The differences among CSDs’ practices, particularly as to the management of shareholder identification requests;

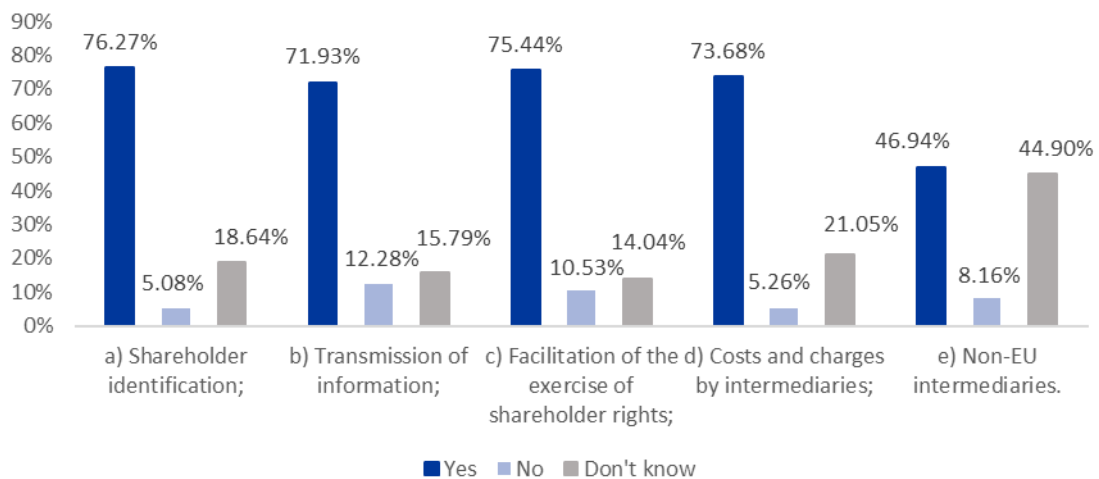
iii. The ability of shareholders to receive information on GMs on time and in a consistent manner and to exercise their votes through the chain of intermediaries, particularly in a cross-border context and

iv. The difficulties shareholders experience in receiving vote confirmations.

321. Intermediaries and intermediaries' associations express a more positive view on their level of compliance. Nevertheless, even those operators reported shortcomings stemming from the differences still existing among national jurisdictions (e.g. the shareholder notion, the requirements to participate in GMs, the application of market standards by intermediaries). One respondent specifically noted that in its view, the IR provided limited support to end users.

322. Question 11

Q11 : Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the IR, also in light of the SRD2's transposition in MSs' national law, in relation to the following areas ?



323. Question 11 investigates whether respondents encountered difficulties or obstacles in the practical application of the relevant provisions in the areas regulated by Chapter Ia of the SRD2 and the IR.

324. As for **shareholder identification**, the majority of respondents (77% or 45) reported having encountered practical difficulties. In their qualitative comments, respondents indicated that these are related to the following:

- i. The lack of a harmonised notion of “shareholder”;
- ii. The uncertainty on categories of securities in the scope of the SRD2, particularly in relation to units of investment funds and securities of foreign issuers listed on EU markets;
- iii. The difficulties in verifying (in due time) that shareholder identification requests are valid and made on behalf of the issuers, according to Article 10(2) of the IR⁸²;
- iv. The complexity added to the process by the application of the shareholding threshold provided in some MS⁸³;
- v. Uneven use of ISO formats along the intermediary chain and
- vi. The variable level of compliance by non-EU intermediaries as last intermediaries.

325. All these elements reportedly still lead to a somewhat inefficient, slower, and not fully automated flow of shareholder identity data along the chain up to the issuer.

326. In connection with **the transmission of information**, the majority of respondents (72% or 41) also reported having encountered specific obstacles. In detail, a lack of harmonisation regarding the implementation of ISO formats by either intermediaries (including non-EU operators) or issuers is a recurring claim in this area. Moreover, several respondents noted that information sent by issuers to the CSDs to initiate a corporate event (“event notices”) are not always in line with the IR provisions and often require manual intervention by intermediaries to be transmitted. For a few respondents (coming from the intermediaries’ community), the deadlines provided in the IR for the transmission of information obligations are not consistent with all MSs company laws, leading to inefficiencies in the transmission process itself.

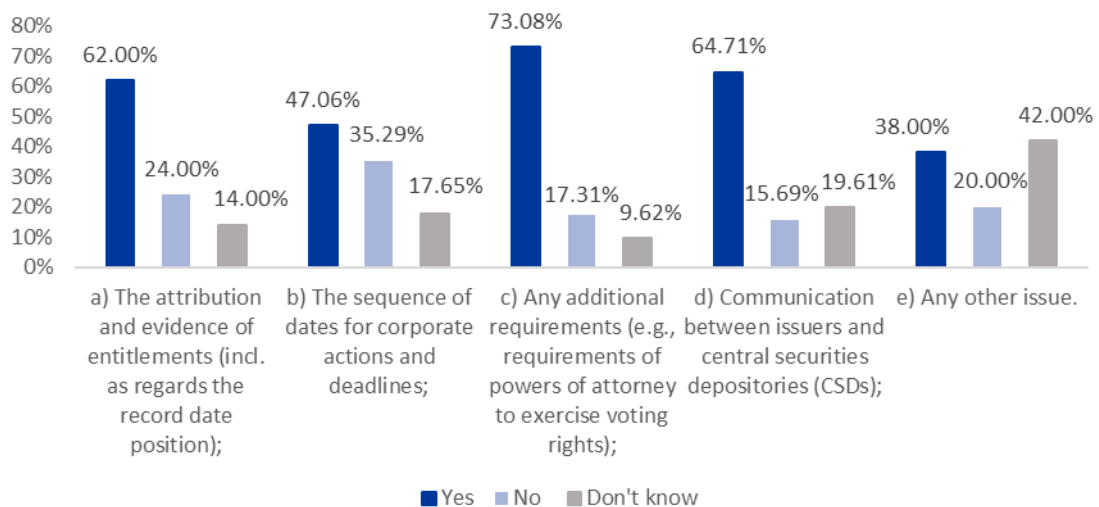
⁸² Or vice versa, difficulties arisen from the excessive documentation requested by CSDs in order to verify the validity of the request, according to two stock exchanges.

⁸³ Interestingly, an issuer association claimed that the possibility to apply a shareholding threshold to the shareholder identification request should be up to the issuers, and not to MSs. Moreover, issuers should also be allowed to carry on a selective disclosure, requesting data on shareholder identity directly to the preferred intermediaries.

327. As for the application of provisions related to the **facilitation of the exercise of shareholder rights**, once again a large majority of respondents (76% or 43) reported having experienced difficulties. Some of these respondents, coming from various categories, indicated that the lack of harmonisation on the documentation required to the entitlement to the exercise of shareholder rights by some last intermediaries and custodians as well as across national jurisdictions was an obstacle. A few asset managers and intermediaries also reported incorrect processing of voting instructions along the custody chain as a major impediment encountered with respect to easily voting in GMs. Moreover, the unharmonised deadlines provided for the publication of meeting materials and a limited use of electronic voting in some jurisdictions are noted as further obstacles to the facilitation of the exercise of voting rights. Again, shortcomings in the receipt of vote confirmation are referred to as a problem by some respondents, mainly asset managers, as in previous questions.
328. On **costs and charges applied by intermediaries**, the majority of respondents (74% or 42) reported having encountered obstacles. In their qualitative comments, they refer to a general lack of transparency on costs and charges applied by intermediaries, particularly with regard to the management of shareholder identification processes as a driver of less competition and therefore increased costs. Several operators indicate also that uncertainty on the law applicable to costs and charges in a cross-border context and the lack of standards for cost reimbursement to intermediaries represent a relevant problem in practice.
329. **Interestingly, the presence of non-EU intermediaries in the investment chain** appears less problematic when it comes to the practical application of the relevant SRD2 and IR provisions, even though almost a majority of respondents (47% or 23) still reported some difficulties or obstacles.

330. Question 11.1 and Question 12

Q11.1: If you have answered positively to at least one of the points listed in Q11, please specify if it was in relation to the following:



331. Question 11.1 follows-up on Question 11, further specifying the areas in which obstacles were encountered. Answers to this question are generally in line with the qualitative comments described in the previous question.

332. **The attribution and evidence of entitlements** is referred to by 62% of respondents (31). In their qualitative comments these respondents argued that there is some confusion – possibly generated by the IR itself – between the “confirmation of entitlement” provided for in Article 5 of the IR and the “proof of entitlement” required by issuers to allow shareholders to participate in GMs, contributing to making practices in this field less harmonised and more complex.

333. **The cut-off dates and deadlines provided for corporate action processes** were considered less sensitive for respondents, even though 47% of them (24) pointed to them as a source of obstacles. In this context of practices related to the GMs, several intermediaries also suggested that unharmonised record dates regarding the attribution of entitlement, sometimes too close to the GMs, may be problematic. One respondent retained that the minimum deadline provided by the SRD2 for the publication of GM materials is too strict too, reducing shareholders’ ability to express a fully informed vote.

334. **Additional national requirements related to granting Powers of Attorney (PoAs)** are seen as problematic by a majority of respondents (74% or 38). Several of these

respondents, in their qualitative comments, noted that these requirements are largely unharmonised and are hampering the exercise of voting rights by different types of respondents. A few respondents also criticised other requirements related to the exercise of voting rights and the lack of a harmonised regime for GMs.

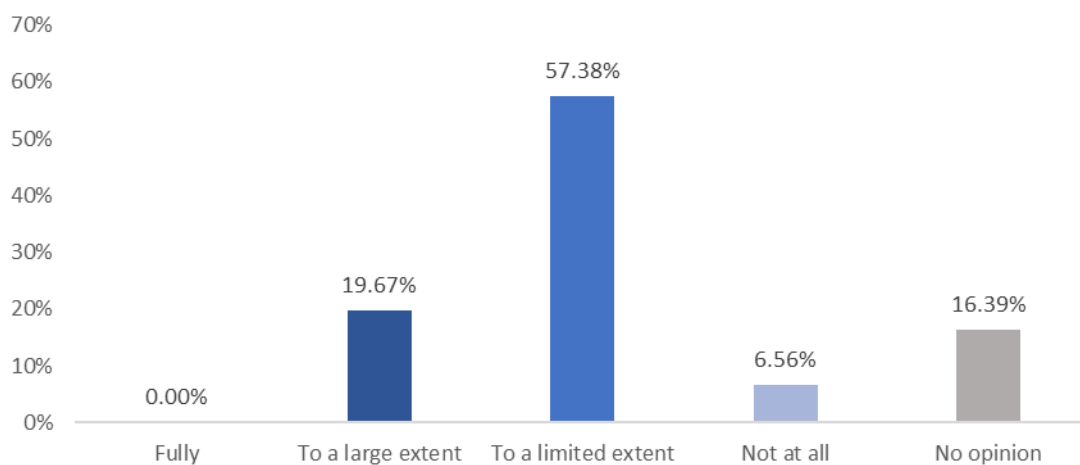
335. A majority of respondents (65% or 33) also identified obstacles with regard to the **communication between issuers and CSDs**. In their qualitative comments, several of these respondents (notably intermediaries, including CSDs) complained about the lack of a fully harmonised obligation on the issuer to provide its CSD with a "golden operational record" in machine-readable format containing all the information necessary to initiate any corporate event⁸⁴. A few respondents, mainly intermediaries, suggested that issuers should provide the CSDs with all the documentation necessary to verify the legitimacy of the issuer requests according to Article 10(2) of the IR, while a service provider reported that such documentation requirements imposed by some CSDs are cumbersome and time consuming. One respondent blamed the complex account structures of intermediaries, suggesting that the CSDR be revised to ensure that communication between issuers and shareholders is not hindered by holding omnibus account structures.

336. Qualitative comments provided in connection with Question 12 mirror positions expressed under Question 11.1. Therefore, they are not summarised separately.

⁸⁴ Table 3 and 8 of IR would have improved the event notice communication but respondents referred to a rare and irregular application of such forms and of ISO formats.

337. Question 13

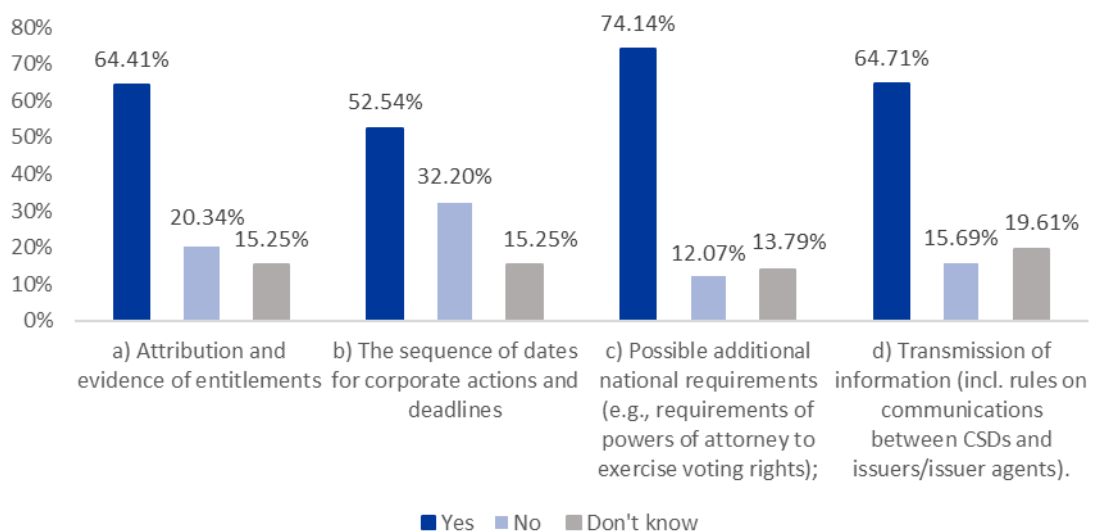
Q13: Overall, do you consider that Chapter Ia provisions have improved shareholder engagement, thereby supporting the long-term value creation and sustainability objectives established by the SRD2?



338. 61 respondents answered to Question 13, providing an overall assessment of the effectiveness of Chapter Ia provisions in improving long-term shareholder engagement and thereby supporting sustainability objectives. For the majority of respondents (57% or 35), these SRD2 provisions have been effective to a limited extent, while a third of the respondents expressed a more positive assessment (i.e., that the provisions have been effective to a large extent) on this point. Only 7% of respondents (4) retained that the SRD2 provisions have not been effective at all to this end.

339. Question 14

Q14: Do you believe that rules on the following points should be further clarified and/or harmonised:



340. Question 14 asks respondents for indications on possible improvements to Chapter Ia provisions. In accordance with feedback provided to previous questions, almost three-quarters of respondents (74% or 43 out of 58 respondents) indicated that further clarification and harmonisation is needed with regard to national rules on PoAs. A large majority of the respondents retained that further clarification and harmonisation would also be needed for rules on the attribution of entitlement (64% or 38 out of 59 respondents) and on the transmission of information (65% or 33 out of 51 respondents), while the rules on the sequence of dates for corporate actions should be improved as well, according to 53% (31 out of 59) of the respondents.

341. Suggestions on possible further harmonised rules are provided in the qualitative comments. Most of them are consistent with indications already provided with regard to previous questions. Several respondents, mainly intermediaries, expressed preference for a harmonised rule on the proof of entitlement and on PoAs, being somewhat connected topics, in particular in order to:

- i. Avoid confusion between “confirmation of entitlement” and “proof of entitlement” in the shareholding registration process and
- ii. Avoid the possibility for MSs or issuers to require additional documents (especially in paper form) to be submitted by investors to participate in GMs

and exercise their rights, based on the understanding that the proof of entitlement is implicitly included in the voting instructions or in the notice of participation in GMs⁸⁵.

342. Equally, a more harmonised record date – not too close to the GM – for the attribution of entitlement is considered necessary by several respondents, especially by asset managers, as well as further harmonisation on the cut-off dates applied by issuers and intermediaries within the process of corporate actions. One respondent emphasised that the record date should nonetheless not be too far from the GM in order to avoid empty voting risks⁸⁶.
343. In order to improve participation in GMs, a few respondents believe that forcing companies to have hybrid/ virtual meetings and/ or mandating the use of electronic voting would be beneficial. Moreover, some intermediaries and custodians reiterated the need to harmonise obligations on issuers to transmit “golden operational records” to initiate any corporate event using STP format. Finally, one respondent stigmatised the possibility for MSs to provide a threshold on the issuers’ right to identify their shareholders, arguing that it hampers shareholder engagement.
344. Question 15
345. Question 15 sought feedback from the respondents on potential further issues arising from Chapter Ia or the IR, not covered explicitly in the previous questions. 40 respondents provided comments to Question 15, even though few of them actually raised further issues not covered in previous questions.
346. In particular, some respondents suggested the publication of a list of securities falling under the SRD2 in order to clarify the scope of the European legal framework and possibly empowering ESMA with this task.
347. A couple of respondents also highlighted the existing differences among retail investors, one suggesting that most of them are not interested in receiving all the information required by the SRD2, thus levying unjustified costs on the industry; with the other arguing that the right to participate in GMs should be “tailored” depending on the shareholding percentage of retail investors, since not all such investors have equal ability/interest for an engagement⁸⁷.

⁸⁵ The recent change to the Danish Companies Act which removes the need to present PoA documents, led to an increased participation in GMs and is mentioned as a good example in this sense.

⁸⁶ When a record date is set well in advance of the GM, it is less unlikely that certain shareholders sell all or part of their shares before the GM, thereby being able to vote for more shares than those they actually own at the time of the GM.

⁸⁷ An association representing investors and other market participants expressed advice contrary to this proposal in question 13.

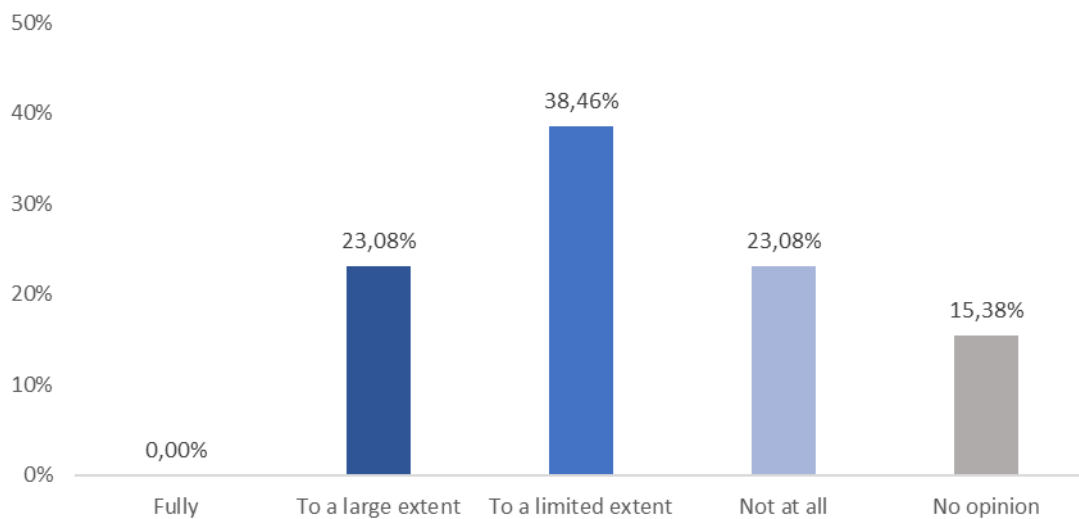
348. A few asset managers insisted on the necessity to facilitate shareholder engagement and voting in investee companies as much as possible, also from a corporate sustainability perspective. To this end, an industry association and a service provider suggested improving the deadlines provided for issuers' disclosure before GMs, in order to ensure fully informed shareholder voting. Finally, one asset manager and a shareholder association also considered that further facilitating the shareholder right to propose resolutions at GMs, allowing proposals on social or environmental matters or eliminating thresholds, where provided, would be beneficial.

9.2.2 Input from investors

349. Evidence on this matter was collected from 13 respondents (though some of them did not respond to all questions). As reported in the Call for Evidence, in addition to individual (retail) investors, both asset managers and institutional investors as defined in Article 2 of the SRD are included in the categories of respondents to this chapter. The breakdown of the respondents by category is the following: 77% (10) are asset managers (including one European association and one national associations of such entities), 15% (2) represent individual retail investors and the remaining 8% (1) is an association of financial analysts.

350. Question 26

Q26: Do you consider that the SRD2 has improved your ability to receive and transmit the information necessary for the exercise of your shareholder rights^[88]?



351. Question 26 asks investors their opinion in relation to the effectiveness of the SRD2 in improving their ability to receive and transmit information along the intermediary chain, in order to facilitate the exercise of their rights. It is interesting to note that 23% of respondents (3) stated that the SRD2 did not improve this ability at all, and the exact same number of respondents answered that it generated improvements to a large extent. At the same time, 38% (4) thought that the SRD2 was effective only to a limited extent and 15% (2) provided no opinion.

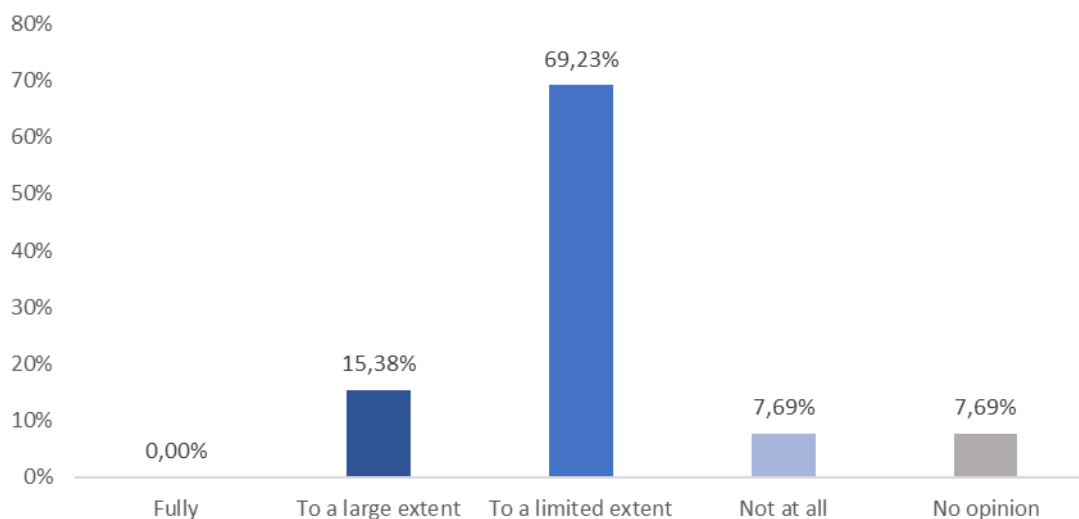
352. One asset manager responding to the consultation reported, as a positive aspect, that the SRD2 improves awareness in the market about the need to facilitate the exercise of shareholder rights. However, most investors pointed out that, on a practical level, they do not see real improvements and still encounter issues, such as the lack of digitalisation/ technical issues about electronic communication and transmission of information along the intermediary chain, divergent national requirements, and the separation between the legal title holder of the shares and the beneficial owner. Concerning this last aspect, two respondents (one of which is an association of asset managers) suggested providing that

⁸⁸ [via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares]

the intermediaries holding shares as legal title holders on behalf of underlying beneficial owners should be obliged to pass on information along the voting chain to these ultimate beneficial owners, to enable the end investor to exercise a voting preference. Finally, one investor underlined, as a positive example, certain custodians' practice of using proxy providers to streamline the process.

353. Question 27

Q27: Do you consider that the SRD2 has improved the exercise of your rights as a shareholder, including the right to participate and vote in general meetings^[89]?



354. This question aims at investigating the investors' opinion about the ability of the SRD2 to improve the exercise of their rights, with a specific focus on the right to participate and vote in GMs along the intermediary chain. 69% of respondents (9) thought that the SRD2 was effective only to a limited extent. One of them explained that it experiences no material change in the ability to participate and vote in GMs, as voting is exercised electronically and, in many cases, this runs smoothly. However, this respondent pointed out that it continues to have occasional issues with the provision of electronic voting ballots and votes being transmitted to issuers incorrectly. Only one respondent thought that the SRD2 was not effective at all. Lastly, two respondents found that the SRD2 was effective to a large extent, while 1 of them had no opinion.

⁸⁹ [via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares]

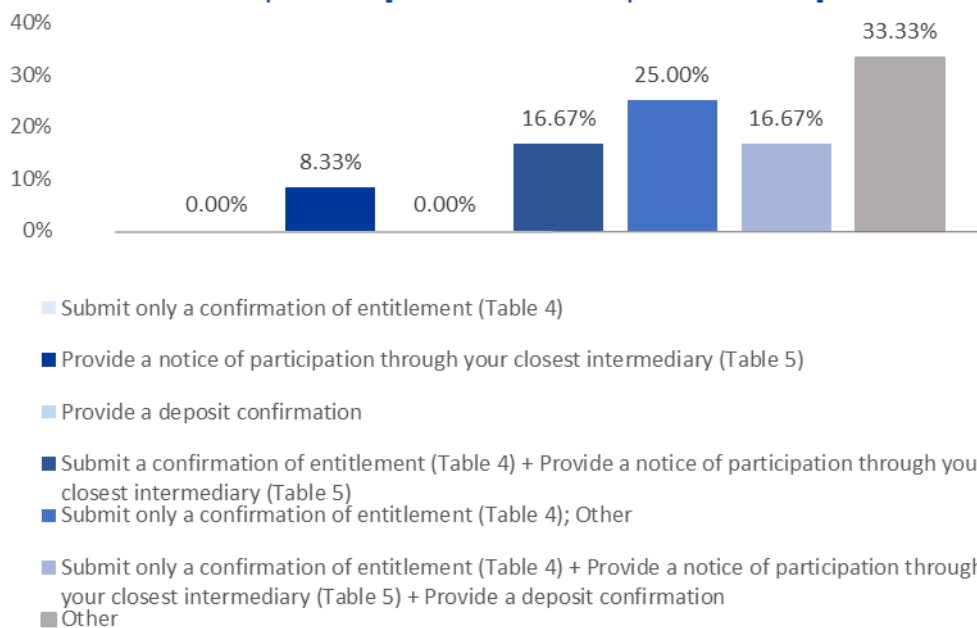
355. In their qualitative comments, several investors pointed to some operational and administrative impediments that shareholders are still facing, above all when they exercise their voting rights, i.e.:

- i. Custodians/ sub-custodians asking for unnecessary documents;
- ii. In some markets custodians sometimes using sub-custodians that do not process votes;
- iii. Intermediaries not always following voting instructions given by the investors and
- iv. Timeline obstacles to the exercise of voting rights along the chain of intermediaries.

As far as this last aspect is concerned, a few investors noted that they often must vote 10 to 15 days before the GM due to intermediaries' deadlines, which limits the possibility to properly engage and vote in the GM, especially when companies must convene the meeting and publish documents 21 days before the GM. On this basis, one respondent suggested providing for mandatory electronic votes and forbidding paper votes or introducing a requirement for an ad-hoc representative of the absent shareholders being present during the GM, who would cast votes received from them remotely.

356. Question 28

Q28: What are you requested to do in order to be allowed to participate in the general meetings of your investee companies? [More than one option allowed]



357. Question 28 looks for input on requirements for investors to participate in the GM, providing a number of alternative options.

358. 25% of respondents (3) indicated that they were requested to submit only a confirmation of entitlement. One of those respondents pointed out the different procedures in place (i.e., regarding how an investor has to register) and suggested the standardisation and simplification of the procedures provided for the participation in the GM. Furthermore, an association representing asset managers pointed out that vote entitlements for them are often generated passively, as custodian banks are obliged to determine which investors are entitled to vote and facilitate the transmission of the electronic vote instruction form/ ballot.

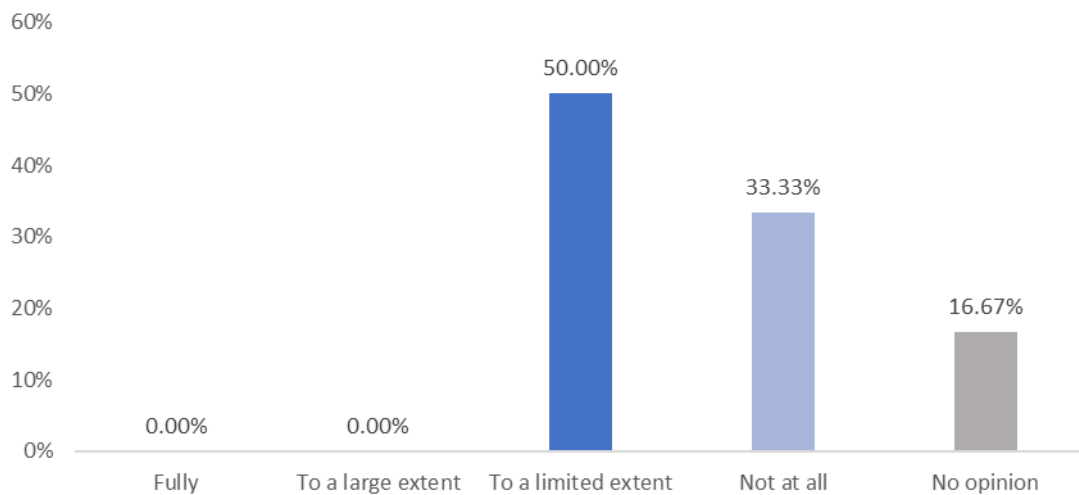
359. 17% of the respondents (2) were requested both to submit a confirmation of entitlement and to provide a notice of participation through their closest intermediary; two other respondents were requested to submit a confirmation of entitlement, to provide a notice of participation through their closest intermediary and to provide a deposit confirmation. 8% (1) had to provide a notice of participation through its closest intermediary. Finally,

33% (4) indicated “other” for a number of reasons, e.g. that these requirements depend on the specificities of the respective market or that they vote electronically through specific platforms.

360. Furthermore, two respondents (one of which representing asset managers) pointed out that in a small number of instances, investors may be required to register shares or submit a PoA to participate in the GM and they suggested addressing the issue as such a procedure represents an impediment to voting. Lastly, they also suggested ensuring greater interconnection between the voting platform of proxy advisors and the relevant custodians to improve participation in GMs.

361. Question 29

Q29: Do you consider that 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?

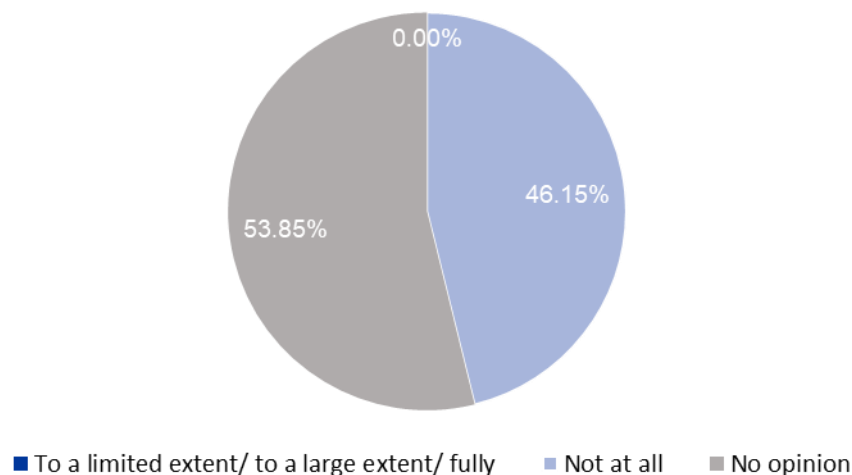


362. Question 29 focuses on whether the provisions of Chapter Ia have effectively allowed shareholders to receive confirmation about the recording and counting of their votes cast, after the implementation of the SRD2.

363. Most of the investors did not seem to have a positive experience: half of the respondents (5 asset managers and a related association) said that this happened only to a limited extent while a third of respondents (4) noted that they received no confirmation of their votes at all (however one of them clarified that it has not attended any GMs of EU companies). The remaining 17% of the respondents (2) did not express an opinion.

364. Two respondents (one of them being an investor association) corroborated their answer “to a limited extent” by referring to the need for more transparency in all steps of the voting chain. Furthermore, they pointed out that communication of the voting confirmation is not an automatic step in the electronic proxy voting process and flagged the need for investors to be notified on how to obtain such information. In this regard, a few other respondents indicated that they are not able to receive a voting confirmation through the voting platform and that a confirmation still needs to be requested from the custodians, as their system is not connected with the investors’ voting platform.
365. Lastly, a few respondents pointed out a possible role of proxy advisors in this area, reporting that a new "voting confirmation" field has been developed by some proxy advisors on their voting platform, but this is hardly ever utilised.
366. Question 30

Q30: Do you consider that the thresholds for shareholder identification, when put in place under Article 3)(a) (1), have been an obstacle to dialogue with issuers (or among investors in those jurisdictions allowing for that)?



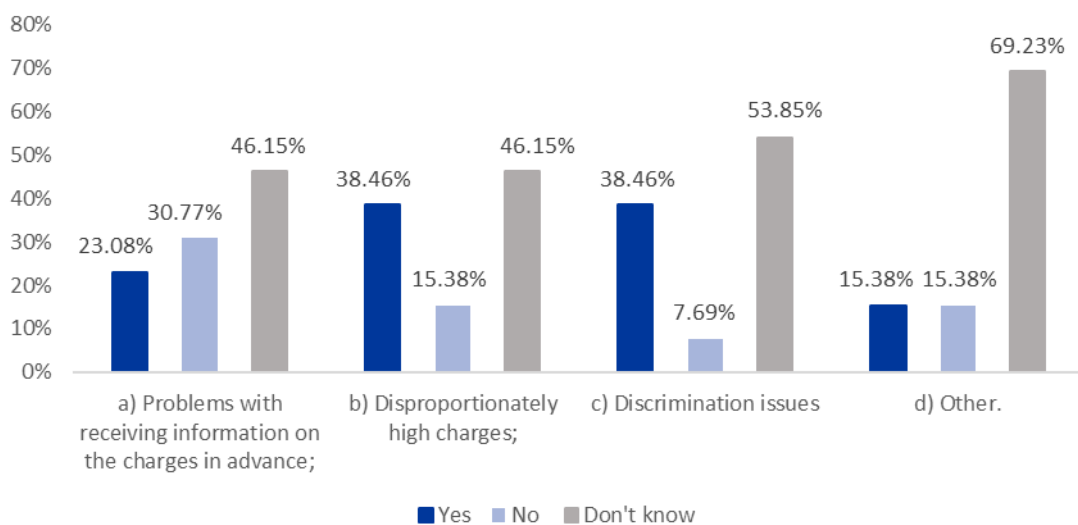
367. Question 30 aims at investigating investors’ opinion about the threshold for shareholder identification (when put in place according to the SRD2) and if it is considered an obstacle to dialogue with issuers (or among investors, if applicable).
368. It is interesting to note that almost half of the respondents (46% or 6) thought that the threshold could not be considered an obstacle at all while a majority of the respondents

(54% or 7) expressed no opinion on the issue. No respondents to this question considered the threshold an obstacle to dialogue.

369. From the few qualitative comments raised, it can be derived that investors do not encounter obstacles to dialogue with the issuers. One respondent added that problems in establishing dialogue with the issuers depend on their governance rather than the shareholder identification threshold.

370. Question 31

Q31: Have you experienced any issues relating to the fees and charges applied by intermediaries for services provided under Chapter Ia? Please specify your response in relation to:



371. Question 31 seeks input on whether investors have experienced any issues relating to the fees and charges applied by intermediaries for services provided in the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights. 13 investors provided responses.

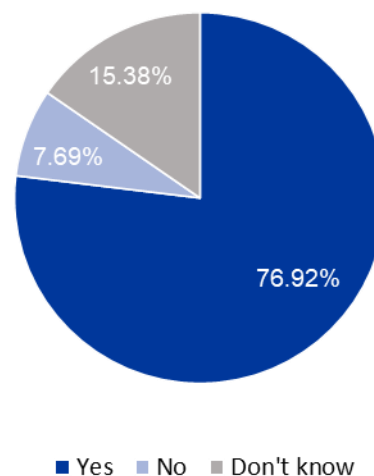
372. Most of the respondents were not aware of, or had not experienced, any of the specific issues relating to the fees and charges applied by intermediaries as expressly mentioned in this question, with the respective percentage rising to 85% for issues other than those specifically mentioned. 38% of the respondents (5) identified issues related with the disproportionately high charges and with discrimination, while 23% (3) flag problems with receiving information on the charges in advance. Only 15% (2) flagged other issues, such

as fee schedules differing from one provider to another and, in some countries, costs linked to representation, PoA or physical attendance, which remain a strong barrier.

373. Overall, the main issue experienced by investors is the difference of fees and charges when they participate and vote in GMs at a national level when compared to doing so abroad. At the national level, participation is generally free of charge while it may become very costly when the same rights are to be exercised abroad because complementary fees are applied: due to higher costs of informing shareholders, legal representation and more intermediaries are reported to be involved in a cross-border situation.

374. Question 32

Q32: Following the entry into application of the SRD2, can you identify any persisting obstacles to the exercise of your rights?

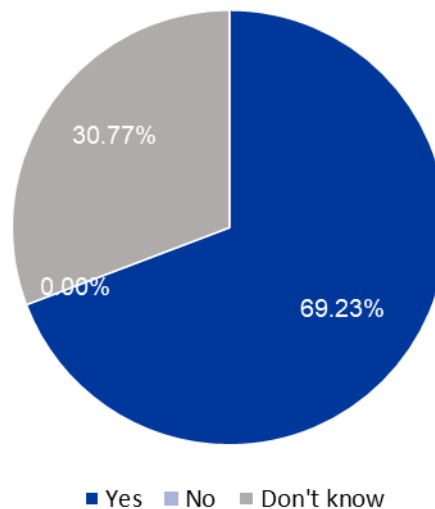


375. In response to Question 32, 77% of respondents (10) identified persisting obstacles to the exercise of their rights after the entry into application of the SRD2, while 7% (1) did not identify any obstacle and 15% (2) did not provide an answer.

376. Investors pointed out that there are still regulatory and technical barriers which limit access to voting. The most frequent obstacles mentioned by investors are in terms of their identification (requirement of proof by personal ID or PoA requirements), the blocking of shares in some markets, differences in cut-off dates, difficulties with respect to digitalisation and small companies' documents which are still not translated into English.

377. Question 33

Q33: Do you consider that new digital technologies could help in overcoming any persisting obstacles along the investment chain?



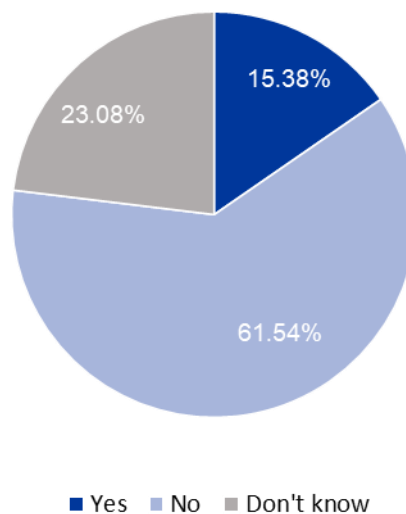
378. In responding to Question 33, which asked whether new digital technologies could help in overcoming persistent obstacles along the investment chain, 69% of respondents (9) considered that they could be useful, while the remaining 31% (4) expressed no opinion on the subject.

379. Those that responded affirmatively often pointed to blockchain/ DLT technology as a possible solution for monitoring the voting validation at each step and as such for tracking potential issues along the voting chain.

380. One respondent flagged that a major obstacle in its view is centred around the limited competition in this market. In its view, a leading service provider continues to retain a very large market share as a ballot distribution and voting services provider for custodians and local intermediaries, even though another player has recently emerged as well.

381. Question 34

Q34: Have you made use of the services provided by online brokerage platforms ('neo-brokers')?

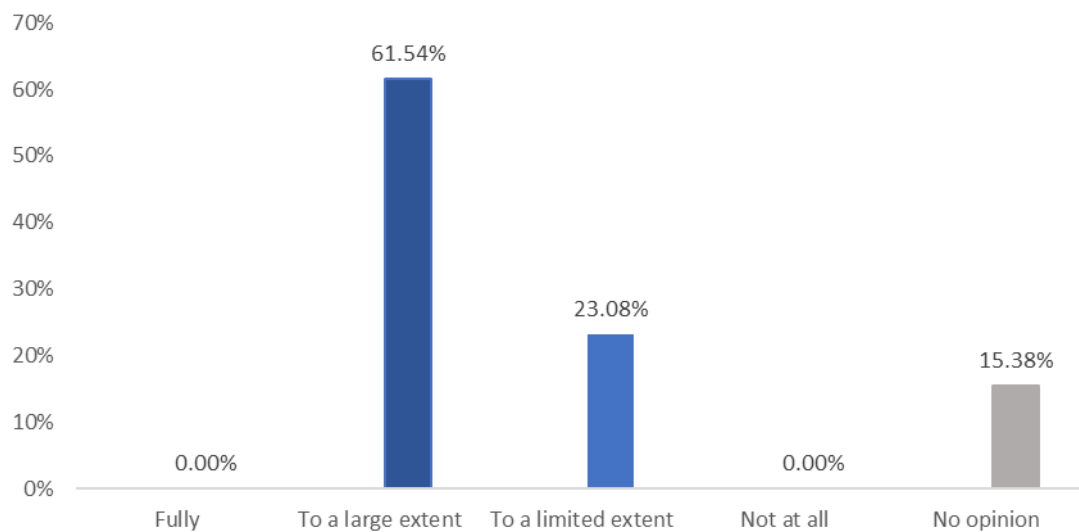


382. Question 34 seeks input on whether respondents have made use of the services provided by online brokerage platforms. Only 15% (2) provided an affirmative answer, while 62% (8) indicated that they have not used these services. The remaining respondents were not able to answer this question.

383. Only one respondent provided further input, raising the question as to whether neo-brokers fully comply with the SRD2 and if any lack of compliance is derived from inadequate implementation and supervision of the SRD2 at the national level, from non-compliance of market participants hampering the intermediation process or more directly from FinTech companies (neo-brokers) that may choose not to mobilise appropriate resources to enforce shareholder rights. This respondent considered that obstacles to voting services are likely due to a lack of proper resources mobilised by neo-brokers and thus, more generally, to the absence of clear processes in place to enable shareholder engagement.

384. Question 35

Q35: Overall, do you consider that the SRD2 has improved communication and engagement between investors and issuers?



385. Question 35 seeks input on whether the SRD2 has improved communication and engagement between investors and issuers. According to 62% of the respondents (8), the SRD2 has improved these aspects to a large extent, while 23% of respondents (3) considered that improvement has been limited. The remaining 15% of respondents (2) expressed no opinion on the subject.

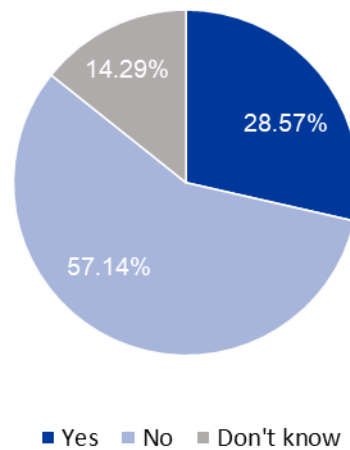
386. Interestingly, comments received by some investors identified another SRD2 area, i.e., executive compensation, as the one with the greatest improvements, noting that there has been a reported increase in transparency, attributable to improved disclosure under SRD2 requirements.

9.2.3 Input from issuers

387. Seven companies responded to this section. Respondents include four associations (3 from the issuers' community and one mainly representing banks), two issuers and a market operator.

388. Question 42

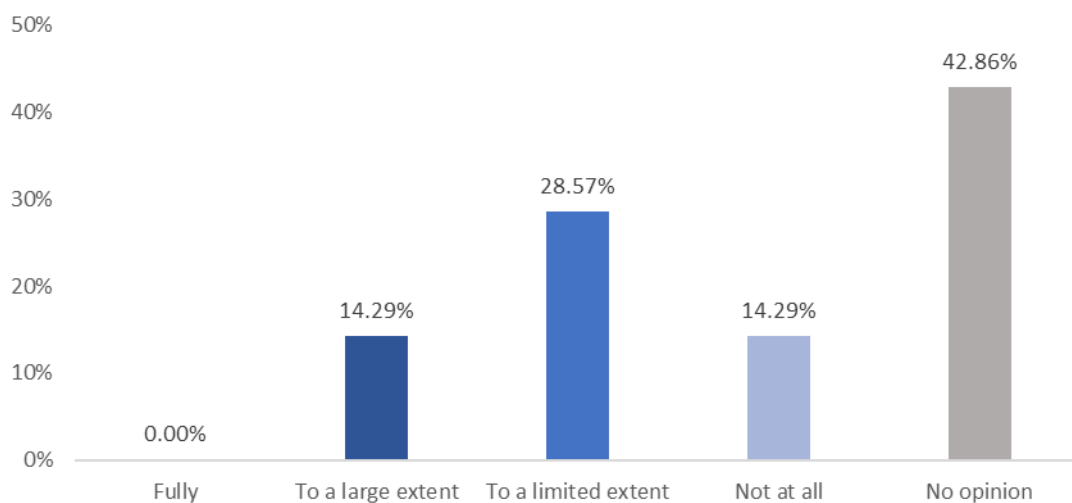
Q42: Are you aware of any questions or ambiguity in assessing which Member State and NCA is competent with regard to markets players involved in corporate actions (e.g., shareholder identification, shareholder voting, etc.)?



389. Question 42 asked about the possible ambiguity faced by issuers in assessing which MS and NCA is competent with regard to market players involved in corporate actions. 57% of the respondents (4) were not aware of any such ambiguity in securities transactions. 14% of the respondents (1) selected “don’t know” as an answer. 29% of the respondents (2), who chose “yes”, did not, however, identify any specific issues. Lastly, it is noted that a similar question is addressed specifically to intermediaries, in the section where they provide their own input (i.e., Question 59).

390. Question 43

Q43: Have you encountered any difficulties in identifying your shareholders and in obtaining other information regarding shareholder identity (as defined by Article 2)(j) of the SRD) from intermediaries in accordance with Article 3)(a)?



391. Question 43 asks whether issuers encountered difficulties in identifying shareholders and in obtaining other information regarding shareholder identity. 29% of respondents (2) answered they encountered difficulties to a limited extent and 14% (1) to a large extent. 43% of the respondents (3) did not express an opinion on the subject.

392. For respondents who encountered difficulties to a large and to a limited extent, the issue is multifaceted. In particular, one respondent is concerned about the high quantity of information received in relation to the shareholder identification procedure, which could be in direct contradiction to the GDPR and its principle of minimising disclosure of personal data. In addition, this respondent underlined that it is not clear which authority could ensure that the receipt of shareholders' personal information is compliant with the GDPR.

393. Another respondent noted that, as the shareholder identification procedures initiated by the end of 2021 were the first ones under the new SRD2 regime and that more time is needed to analyse the full effect of the introduction of the Directive and whether it results in any improvement compared to the previous regime. However, as a preliminary indication, it is reported that some issuers are unable to fully identify their shareholders due to the absence of responses from some intermediaries.

394. Lastly, most respondents who opted for “no opinion” argued that they have not initiated a shareholder identification procedure due to the introduction of a threshold in certain countries, which prevents issuers from obtaining a full picture of their shareholder base⁹⁰.

395. Question 44

396. Question 44 requires the few respondents that have submitted a request for identification of shareholders under the SRD2 to specify a number of elements:

- i. To whom the request was made (e.g. CSD or other intermediaries);
- ii. For what purpose the request was made;
- iii. If and when they were provided with all the required information on shareholder identity;
- iv. The predictability and proportionality of the costs incurred;
- v. How many shareholders the respondents were able to identify;
- vi. If they have noticed any improvement in the ability to identify non-EU shareholders compared to the pre-SRD2 framework.

397. Only three respondents answered the first two questions. With regard to **whom the identification of shareholders request was made**, two solicited the CSD while one contacted their intermediary. **On the purpose for which the shareholder identification request was made**, beyond the need to identify their shareholders, one respondent initiated the process to steer investor relations activities and for internal reporting purposes. Another respondent, an issuer association, wanted to have a picture of the shareholder base of a limited number of issuers as at the end of that year.

398. Four respondents answered the question on the **completeness of the information received in relation to shareholders’ identity** and provided different indications. One respondent stated that its members do not always receive all the required shareholder information. Another underlined that the feedback received following the identification request provided much more information than required, including about shareholders already identified by the issuer due to the absence of any customisation of the possible

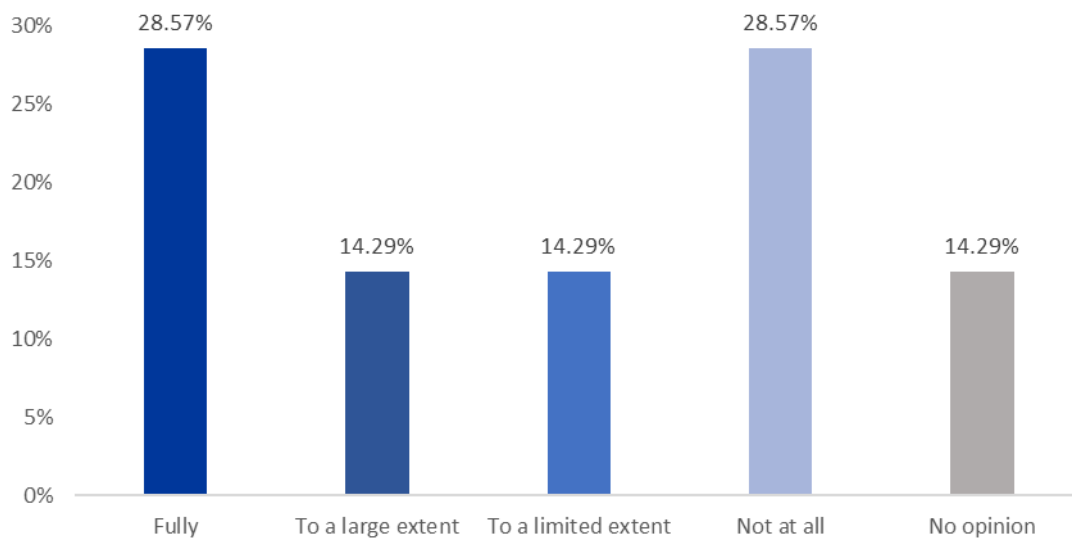
⁹⁰ Interestingly, a respondent from Germany underlined the importance for regulation to encourage the direct registration of shareholders in the issuer’s share register, which in the respondent’s view could also be applied on a cross-border basis. In addition, it is specified that in Germany, intermediaries support two types of identification requests: i. The full request for all shareholders and ii. Information about the identification of shareholders above a certain threshold set by the issuer. It is therefore suggested that the CSD as the first intermediary should allow for the customisation of shareholder identification requests.

scope of the request. However, it was flagged that shareholders holding less than a certain threshold of capital or distributing their shares to several intermediaries de facto remain under the threshold and cannot be identified. One respondent reiterated its recommendation that regulation should foster the direct registration of shareholders with the issuer's share register on a cross-border basis. Finally, according to another respondent, the process appears to be seamless with information received in accordance with the terms of the contract with the service provider.

399. Only two respondents provided input on the predictability and proportionality of costs incurred for the shareholders' identification procedure. Again, the indications provided seem quite diverse. On one hand, a respondent found there is a high predictability of costs due to contractual agreements in place with service providers. On the other hand, another respondent highlighted the lack of any cost predictability when initiating a shareholder identification procedure, which could discourage issuers from engaging in such a procedure.
400. Three respondents **indicated that they were able to identify shareholders representing** less than 90% of their share capital (<90% being the lowest possible answer provided in the questionnaire). The response is consistent for domestic, European and non-European shareholders.
401. Two respondents provided **input on issuers' ability to identify non-EU shareholders when compared to the regime in place before the SRD2**. While one respondent identified meaningful improvements compared to the pre-SRD2 framework, the other did not.

402. Question 45

Q45: Do you consider that thresholds for shareholder identification, when put in place under Article 3)(a) (1), have been an obstacle to dialogue with your shareholders?



403. Question 45 asks issuers whether they consider thresholds for shareholder identification an obstacle in the dialogue with their shareholders. 29% of respondents (2) considered it to be “fully” – and 14% of respondents (1) “to a large extent” – a barrier in countries where it is in place. On the other hand, 29% of respondents (2) answered, “not at all” and 14% (1) indicated “to a limited extent”, arguing that no threshold was put in place in their country.

404. Article 3a(1) of the SRD2 specifies that MSs may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0.5%. As noted previously, ESMA published the list of thresholds in place above which shareholders can be identified in the different EU MSs in 2020⁹¹.

405. Among the explanations provided, notably one respondent who picked “fully” argued that such threshold prevents issuers with a dispersed and fragmented investor base from

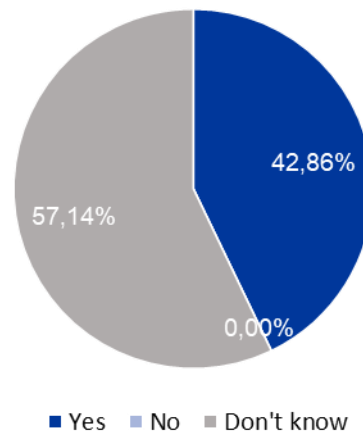
⁹¹ ESMA, 2020.

having a comprehensive view of their ownership structure and discourages issuers from initiating an identification request.

406. Another respondent, who opted for “to a large extent”, reiterated that in its country (Germany) the issuer is allowed to choose a full request or specify a certain threshold for the identification of shareholders. In its view, such flexibility is particularly important as the cost of the respective identification is calculated per investor, therefore giving companies with a large shareholder base a possibility to mitigate costs.

407. Question 46

Q46: Following the entry into application of the SRD2, do you always submit your request to disclose information regarding shareholder identity in a format which allows straight-through processing within the meaning of Article 2) (3) of the IR?

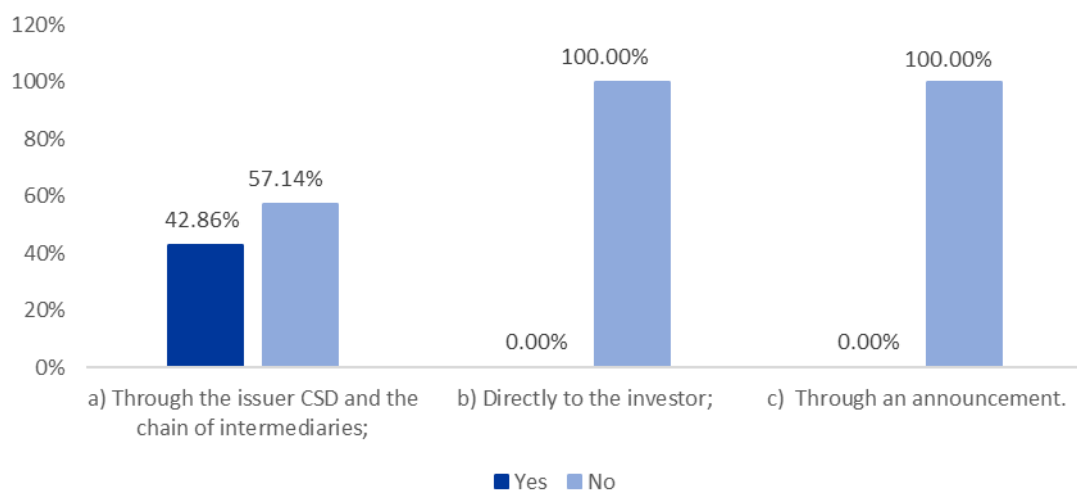


408. Answering Question 46 on whether the shareholder identification request is always submitted in a format that allows STP, 57% of respondents (4) answered, “don’t know”. These answers are motivated either by the absence of any shareholder identification request or because the request is submitted directly by the service provider and not the issuer.

409. 43% of the respondents (3) answered “yes” to the question arguing that they submit the request through the CSD and as a result, the format necessarily allows STP.

410. Question 47

Q47: Following the entry into application of the SRD2, pursuant to Article 3)(b), have you changed the way you provide the required information to shareholders for the exercise of their rights?



411. Answering Question 47 on whether the entry into application of Article 3b of the SRD2 made issuers change the way they provide the required information to shareholders for the exercise of their rights, 57% of the respondents (4) indicated that no change took place, highlighting that it is provided through the CSD and the subsequent chain of intermediaries. However, 43% of respondents (3) reported some changes either in the format, which allows STP, or – in one case – in the publication of the so-called “golden operational record”⁹². Another respondent noted that the implementation of Article 3b of the SRD2 does not change the way the information is provided, neither through the chain of intermediaries nor directly to the shareholder, with the only noticeable evolution being that the announcement has also to be sent through the CSD, which increases costs.

412. No respondents noticed changes with regard to the transmission of information directly to shareholders or through an announcement. Some country-specific rules have been highlighted, although they are not the result of the entry into application of the SRD2⁹³.

⁹² However, it is reported that such a record does not reach private investors on a cross-border basis, and they therefore do not receive meeting information and voting material.

⁹³ It is reiterated that in Germany, the direct registration of shareholders in the issuer’s share register removes the need for intermediaries to transmit such information and the annual GM is also convened via an announcement in the Federal Gazette.

413. Question 48

414. With reference to Question 48, all 7 respondents confirmed they communicate to shareholders the information necessary for the exercise of their rights in a way which allows STP, however they did not notice changes following the entry into application of the SRD2.

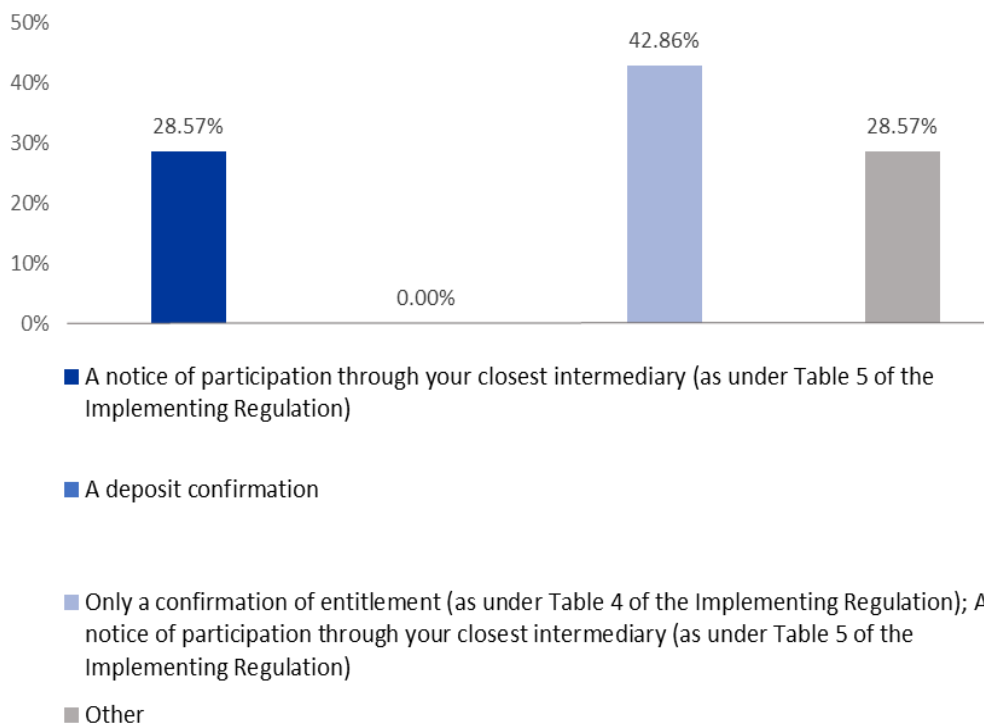
415. One (German-based) respondent noted that where shareholders register directly with the issuer's share register, direct communication can take place. Such a registration removes the need for intermediaries to issue a confirmation of entitlement, as it will be derived directly from the share register. In contrast, the same respondent argued that, for companies with bearer shares, the communication takes place through intermediaries until the registration for the GM. Once the registration is complete, communication can take place directly via a shareholder portal for larger companies, allowing voting rights to be confirmed and votes to be cast directly.

416. Question 49

417. Answering Question 49 asking which other corporate events – in addition to GMs – fall under the scope of Article 8 of the IR in their experience, three respondents indicated that corporate actions should be included in the scope. Two respondents went further and suggested that the applicability of the Directive should be clarified as Table 8 of the IR is not appropriate for all corporate actions and that standard formats should be designed for the most recurring ones.

418. Question 50

Q50: What documents do you require to allow shareholders to participate in a general meeting? [More than one option allowed]



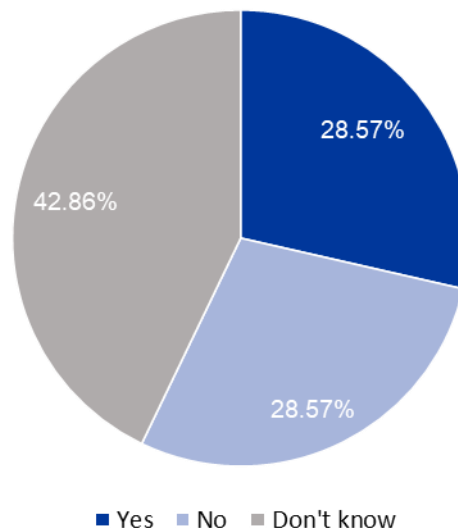
419. Question 50 asks which documents issuers require the shareholders to submit in order to participate in a GM. 43% of respondents (3) to this question indicated that they require a confirmation of entitlement (as under Table 4 IR) and a notice of participation through the closest intermediary (as under Table 5 IR) to participate in a GM. Responses depend on the jurisdiction: for instance, in Italy the legislation provides that a statement from the intermediary to the issuer, based on its accounting records, must confirm shareholders' legitimate attendance at GMs and the exercise of voting rights. The Italian secondary regulation defines the procedure for such statement and therefore one single communication fulfils both the purposes of confirmation of entitlement and notice of participation. Under French law, each intermediary in the chain must reconcile the positions held with those of the previous intermediary. Consequently, the last intermediary facing the shareholder is able to confirm the shareholder's entitlement.

420. With reference to the other options, 29% of respondents (2) require only a notice of participation through the closest intermediary while another 29% of the respondents (2), both German-based, require other types of documentation (for companies with bearer

shares, it is noted that the process is similar to the previously highlighted process where the last intermediary sends the confirmation of entitlement directly to the company, while for shareholders registered with the issuer's share register, no other evidence of entitlement is required).

421. Question 51

Q51: Following the entry into application of the SRD2, have you experienced an increase/decrease in participation at your general meetings?



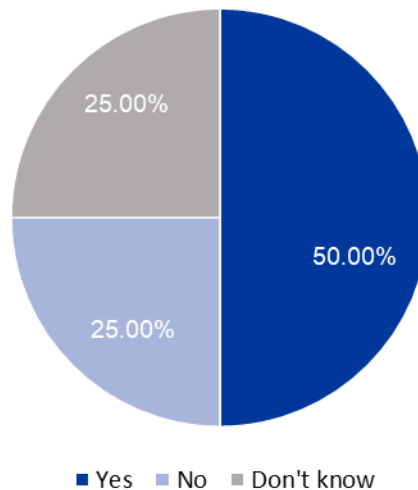
422. Question 51 seeks input on whether issuers had noticed any change in the participation rate at GMs following the entry into application of the SRD2. According to one respondent, while a slight decrease in participation was recorded in 2020 due to the COVID-19 pandemic, the years of 2021 and 2022 showed that participation is growing again. 29% of the respondents (2) noticed a decrease in the participation also in the 2022 annual GMs.

423. 29% of respondents (2), both German-based, did not notice any change, with a participation rate that appears stable. One respondent noted a gradual increase in asset managers' and institutional investors' presence, which can, in its view, be connected to the introduction of virtual GMs. At the same time, however, this respondent also observed that foreign investors' participation remains low. Therefore, the respondent concluded that in its view the goals of the SRD2 to facilitate the cross-border transmission of information for shareholders to exercise their rights have yet to be achieved.

424. Finally, 43% of respondents (3) did not indicate whether they had experienced a decrease or an increase in attendance at their GMs since the implementation of the SRD2.

425. Question 52

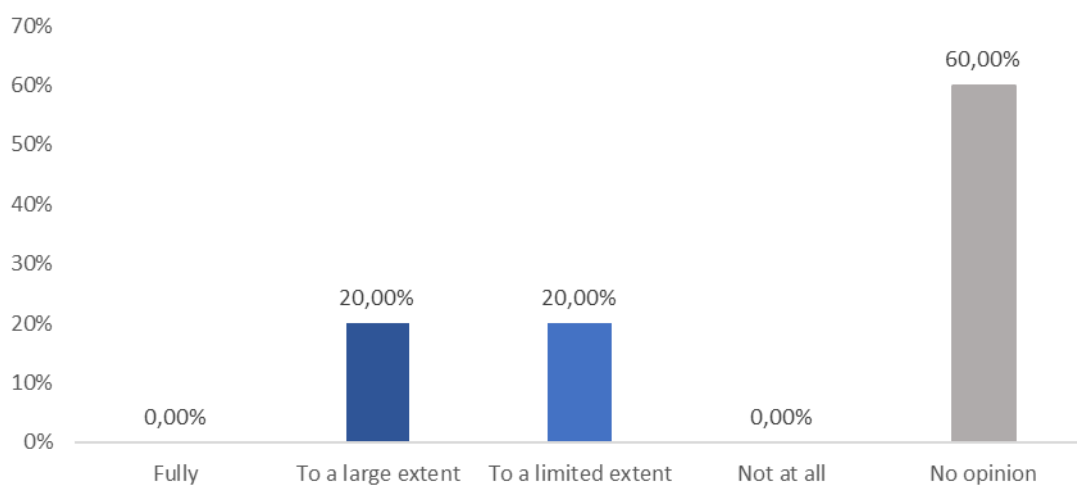
Q52: Following the entry into application of the SRD2, have you received any request by shareholders to confirm that their vote has been validly recorded and counted, as per Table 4 and 6 of the IR?



426. Only four respondents answered Question 52, asking if, after the entry into application of the SRD2, they have received any request by shareholders to confirm that their vote has been validly recorded and counted, as per Tables 4 and 6 of the IR. Two of the respondents indicated having received requests by shareholders to confirm that their votes have been validly recorded and counted. One respondent indicated not having received any requests.

427. Question 53

Q53: Do you consider that Market Standards elaborated and used by the industry for the application of the provisions of Chapter Ia^[94] are useful to complete the regulatory framework in this area?



428. Question 53 asks whether market standards elaborated and used by the industry for the application of provisions of Chapter Ia are in fact useful to complete the regulatory framework. 20% of respondents (1) chose “to a large extent”, arguing, as raised also in the responses to previous questions, that ISO20022 has been useful to facilitate shareholder identification but should be further developed to allow additional customisation where the issuer can decide the scope of the request. 20% (1) answered “to a limited extent” due to the cost related to the implementation of such market standards as well as the difficulties faced in limiting the scope of the identification process. Lastly, 60% of the respondents (3) did not express an opinion. It is noted that a similar question is addressed specifically to intermediaries, in the section where they provide their own input (i.e., Question 71).

9.2.4 Input from intermediaries

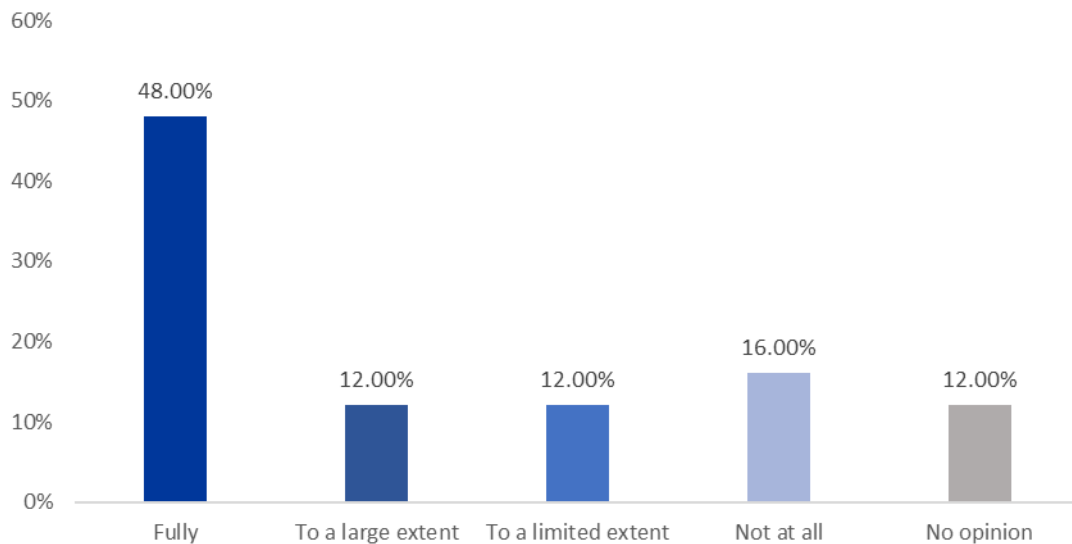
429. This section was answered by 30 respondents. These include 26 different intermediaries such as international and national banks, CSDs (either individually or as

⁹⁴ [e.g. ISO20022, market standards for shareholder identification, etc.]

part of their group) and relevant industry associations. A few responses (4) were also received from the investor community, namely a representative of an asset manager, a representative of alternative investment managers and two service providers.

430. Question 59

Q59: Have you encountered any doubt or ambiguity in assessing which Member State and NCA is competent over your activities in this area?



431. 25 respondents answered to Question 59, which investigates the existence of doubts or ambiguities about the MS or NCA competent for intermediaries' activities. 60% of respondents (15) indicated that they encountered doubts or ambiguities either fully (48% or 12) or to a large extent (12% or 3). A few respondents found either no (16% or 4) or limited (12% or 3) doubts and ambiguities while 12% (3) expressed no opinion.

432. Among those falling in the first group, explanations pointed to the diversity of national transpositions. In particular, it is raised by a few respondents that no NCA has been identified in certain countries, such as in Germany or in the Netherlands. Generally, it is indicated that it is unclear which MS and authority is responsible especially when multiple jurisdictions are involved, creating risks of both non-compliance and over-compliance. This happens for example when the issuer's registered seat is in another country than the country of issuance and/ or the country or countries where the shares are listed. In addition, the obligations to transmit information, to forward requests and to answer them, as well as to facilitate the exercise of rights, apply to intermediaries in multiple jurisdictions. In this

regard, a few respondents asked that ESMA be charged with maintaining a register with the distribution of competences in MSs⁹⁵.

433. Among those replying either “not at all” or “to a limited extent” it is often argued that in their own MS the transposition of the SRD2 has brought clarity on the applicable law and authorities involved.

434. Question 60

435. Question 60 asks about the frequency with which respondents receive shareholder identification requests, when compared to the pre-SRD2 period. All 27 respondents answering Question 60 indicated that they have been receiving such requests more frequently than during the pre-SRD2 period, often observing that increases have been higher in markets where there had been no well-functioning disclosure processes available before the entry into application of the SRD2. One respondent added that shareholder identification has become more frequent where no threshold has been implemented into national transposition law.

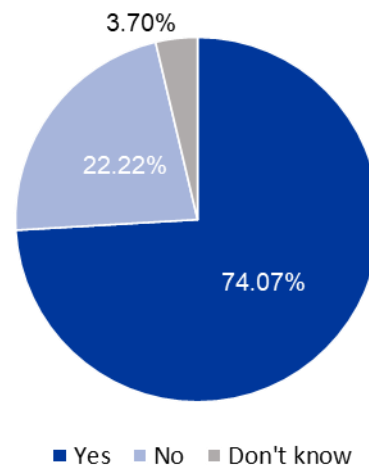
436. Numbers provided by respondents are not easily comparable but are in the range of a few thousand unique disclosure requests within the EU, with material variation across MSs (ranging from more than a thousand to a handful of requests). In terms of geographical allocation, one international bank responding to the questionnaire indicated that it has seen the most significant volume of shareholder identification requests from the Western European markets, in particular from Portugal, the Netherlands and France.

437. A few respondents indicated that in their jurisdiction, the number of requests did not increase particularly, but the number of responses did. A few other respondents also noted that there is still a large volume of requests received which cite historical national legislation as their basis, rather than SRD2 provisions, or do not meet the necessary requirements and as such cannot be processed.

⁹⁵ Incidentally, ESMA notes that it has carried out an ad-hoc survey that is summarised in Annex VII: SRD2 transposition.

438. Question 61

Q61: Following the entry into application of the SRD2, when receiving a shareholder identification request, have you encountered obstacles in providing all the required information regarding shareholder identity to requesting issuers?



439. Question 61 asks whether respondents have encountered obstacles in providing all the required information regarding shareholder identity to the requesting issuers. A large majority of respondents (74% or 20) answered affirmatively.

440. According to several respondents, one of the main obstacles is uncertainty as to the legal basis of the request, in particular whether the national definition of shareholder allows for a response, whether a security is within the scope of the SRD2, and whether an issuer agent is duly authorised to act on behalf of the issuer. In addition, a few respondents indicated that the proof for authentication of the request is not always provided on time, so that it would be helpful to have at least a general requirement to promptly have a letter of authorisation signed by the issuer. Finally, one respondent mentioned that some issuers make shareholder identification requests in formats other than the ISO20022 shareholder identification disclosure messages.

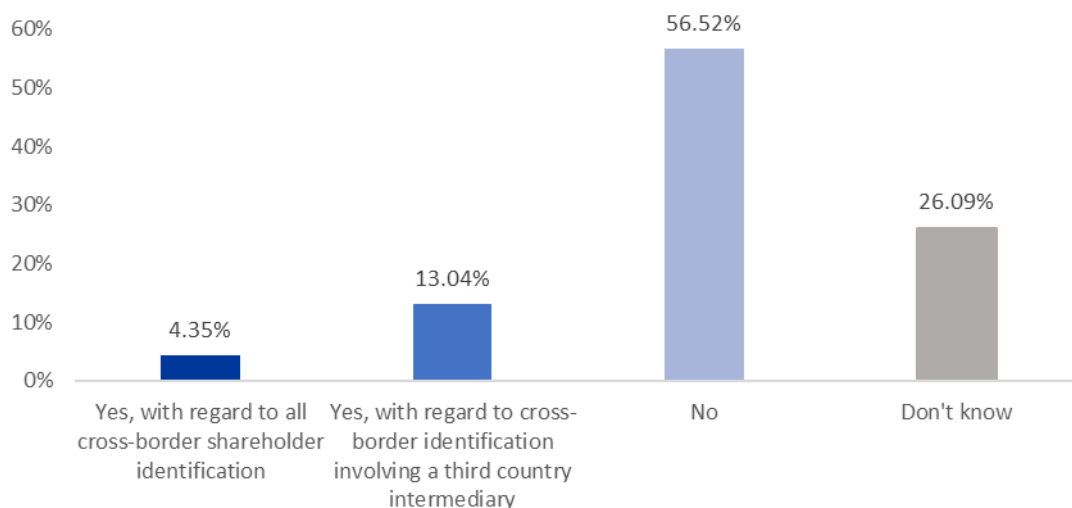
441. Overall, while the amount of shareholder information issuers can expect to receive and subsequently the quantity of information intermediaries are required to disclose have increased, differences in national transpositions may result in delays and in certain information not being provided by foreign intermediaries where there is no legal basis in their jurisdiction. According to one major service provider, unfamiliarity with the local transposition can also lead certain intermediaries to either under-disclose with filler

information thus diminishing the quality of the disclosure data or over-disclose in other markets by sending data that is not required. One respondent, an intermediary, added that certain response collectors request additional information beyond that required by the SRD2 or proprietary formats and timeline requirements that differ from the ones defined in both the SRD2 and the industry standards.

442. On the other side of the spectrum, 22% of respondents (6) flagged that they have not encountered obstacles in providing all required information regarding shareholder identity to requesting issuers, mentioning for example that the data provision in itself is not an issue and that data quality and information speed have generally improved.

443. Question 62

Q62: With reference to the previous question, can you please describe if your response would change in connection to cross-border shareholder identification, especially when involving third-country intermediaries?



444. Question 62 follows up on the previous question by asking if the respondents' answer would change in connection with cross-border shareholder identification processes (rather than national processes), especially when involving third-country intermediaries. Here, the great majority of respondents either responded negatively (56% or 13) or did not express an opinion (26% or 6).

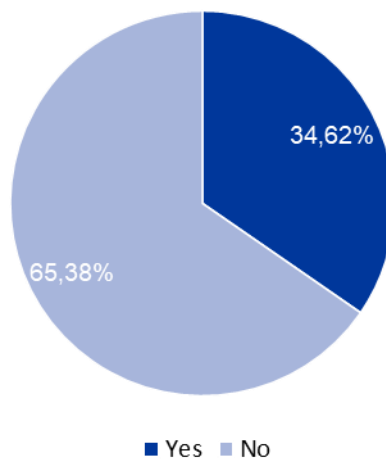
445. A few respondents (17% or 4) explained that this is not so much dependent on the country of the intermediary but on the processes implemented by each intermediary, such as whether they use internal or third-party solutions and whether their clients can send/

receive ISO20022 messages. One respondent clarifies however that requests not covered by the SRD2, i.e., requests for securities following national rules or from third (non-EEA) countries, need to be processed manually.

446. Positive answers were provided by 17% of respondents (4), either pointing to all cross-border shareholder identification or with regard to cross-border identification involving a third country intermediary.
447. One of these respondents, an international bank, noted that the answer would change with respect to all cross-border identification, specifying that the additional challenges come from the complexity of third-country intermediaries not following SRD2 formats or not using STP communication methods (arguing in particular that requests are being sent via email and disclosure responses are requested to be returned in such a manner too).
448. Similarly, according to the three respondents that pointed to cross-border identification involving in particular a third country intermediary, requests from such intermediaries clearly do not follow the SRD2 and exacerbate issues in terms of authentication, inclusion of minimum information and formatting.

449. Question 63

Q63: Following the entry into application of the SRD2, is the shareholder identification request and the relevant information required^[96] always transmitted to you in a format which allows STP within the meaning of Article 2) (3) of the IR?



450. Question 63 asks whether after the entry into application of the SRD2, shareholder identification requests and the relevant information required are always transmitted to intermediaries in a format which allows STP. 65% of respondents (17) reported that it is not the case. On the other side of the spectrum, 35% of respondents (9) concurred that this is currently the market practice.

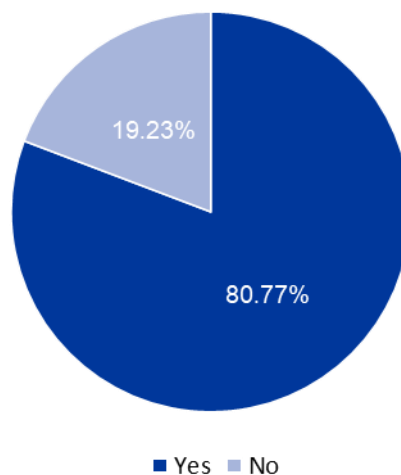
451. Among those answering negatively to this question, several argued that while intermediaries generally use ISO20022, in line with market standards for shareholder identification, requests to them still come at times in formats which do not allow STP. More specific issues such as letters of authority lacking digital signatures are also flagged. There seems to be no consensus on the typical situation when requests are not transmitted in an STP flow of information, but it is often indicated that this happens mainly when issuers or their agents (rather than intermediaries in the custody chain) are directly involved.

452. On the other hand, positive responses pointed to improvements that have taken place in the industry with ISO20022 messaging having become common in the market, in line with market standards for shareholder identification.

⁹⁶ [e.g. shareholder identity data, etc.]

453. Question 64

Q64: Following the entry into application of the SRD2, do you communicate the information necessary for the exercise of shareholder rights (i.e., Article 3)(b)) in a format which allows STP within the meaning of Article 2) (3) of the IR?



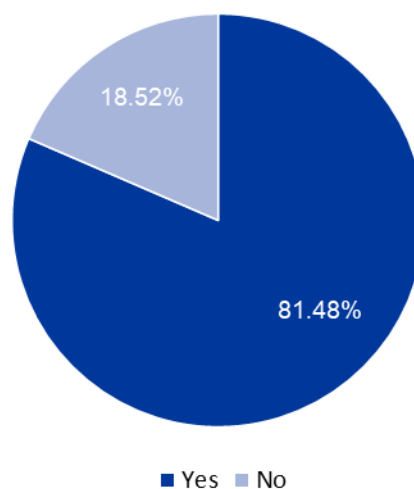
454. Question 64 asks whether intermediaries communicate the information necessary for the exercise of shareholder rights (such as the GM notice, the notice of participation, etc.) in a format which allows STP. 81% of respondents (21) indicated that they indeed do so. Conversely, 19% (5) indicated that they do not.

455. Among those answering positively, one international bank clarified that when their clients are not ready to process messages in ISO20022 format, they instead send messages in ISO15022 format (where agenda points are included in the free text field). An industry association reported that in other cases online portals can also be used to that effect. Two respondents also highlighted that, as issuers and their proxy agents are not mandated to use ISO messaging, the STP flow of information is often interrupted.

456. Among those responding negatively to Question 64, the notification sent to institutional shareholders in ISO messaging via STP is considered to generally work well. However, retail shareholders cannot be contacted using ISO formats. The last intermediary therefore informs retail clients electronically or by post using continuous text.

457. Question 65

Q65: Following the entry into application of Article 3)(b), have you experienced any improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries?



458. Question 65 asks whether respondents have experienced improvements in the downstream transmission of information to investors for the exercise of their rights along the chain of intermediaries thanks to the entry into application of the SRD2. 81% of respondents (22) argued that they have experienced such improvements. On the other hand, 19% (4) did not see any improvements.

459. Among those answering positively, one respondent replied that they have experienced a significant improvement in the downstream transmission of information to investors for the exercise of their rights namely for meeting notices.

460. A couple of respondents made a more general remark, noting that a greater number of intermediaries provide proxy voting services to their underlying clients/ investors and as such, a greater number of shareholders is being alerted to governance events and to the exercise of voting rights, although some practical obstacles regarding the latter still remain. In addition, shareholders now reportedly receive GM-related information in connection with all EEA MSs.

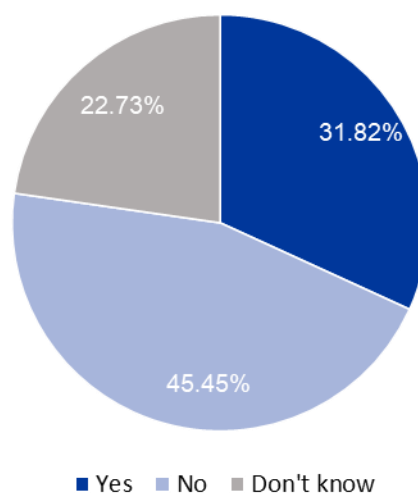
461. Rather than due to the new formatting standards, the improvements in downstream transmission of information to investors seem to be mainly connected to the amount of information now being proactively distributed through the chain to investors as a result of

the Directive, as specifically flagged by one proxy advisor responding to the consultation. The same respondent further highlighted that the industry seems to lack alignment and standardisation throughout the custody chain which can create inefficiencies and challenges along the chain, due to varying interpretations of the Directive and scattered compliance by intermediaries. Also, a couple of respondents highlighted that issuers are generally unable to receive and process ISO formats causing delays and/ or interruptions in the flow of communication.

462. On the other side of the spectrum, the few respondents that answered negatively to the question generally argued that even before the entry into application of the SRD2, information would flow well along the chain including via ISO/ SWIFT, although they recognised that more information is currently transmitted, as well as more quickly. With respect to the quality of the information transmitted, one respondent mentioned that the mandatory information set out in the IR's Annex tables in relation to both GMs and corporate actions falls short of market standards, including language requirements, and as such should be improved. Although positively responding to the general question, a few stakeholders considered that messages are still often incomplete, received in local language and not in ISO format.

463. Question 66

Q66: Following the entry into application of the SRD2, have you experienced any changes in how frequently you receive upstream voting indications from investors at any level of the chain of intermediaries?

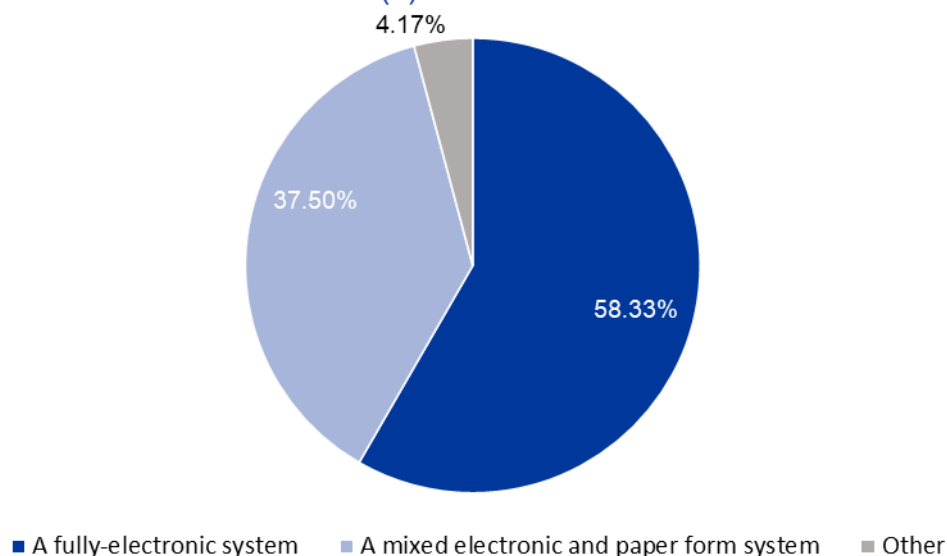


464. Answering Question 66, almost a majority of respondents (45% or 10) indicated that they have not experienced changes in how frequently they receive upstream voting indications from investors at any level of the chain of intermediaries. Only less than one third (32% or 7) responded positively and 23% (5) did not provide any indications.

465. Among those answering negatively, most mentioned that the exercise of voting rights has not increased significantly mainly due to differences in the process applied across MSs and costs involved. On the other hand, respondents experiencing changes in the frequency of voting generally saw an increase, especially with regard to asset managers and also due to intermediaries being more active in providing notification and voting services.

466. Question 67

Q67: What type of system(s) have you put in place to communicate with shareholders in compliance with Article 2) (4) of the IR?



467. Question 67 investigates what systems have been put in place by intermediaries to enable the communication between issuers and shareholders in compliance with Article 2(4) of the IR. The majority of respondents (58% or 14) have put in place a fully electronic system while a little more than a third (37% or 9) have implemented a mixed (electronic and paper form) system. 4% of respondents (1) provided a different explanation.

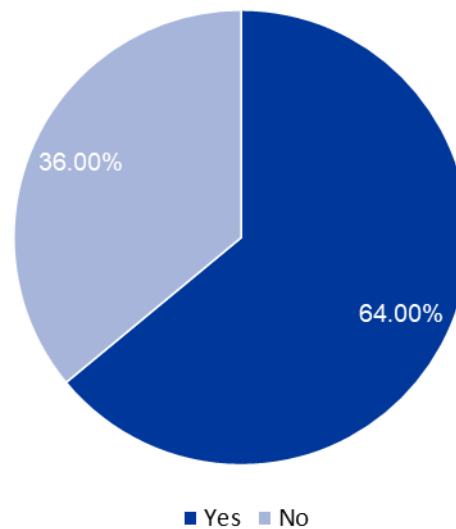
468. Generally, most intermediaries who responded to this question, indicated that they fully use electronic tools. Also, service providers, often supporting intermediaries, argue that

they distribute information electronically through their platform with tools such as SWIFT, STP or API.

469. However, several respondents (including a few among those using a fully electronic system) flagged that on certain occasions there are still some requirements for paperwork that originate from the issuer or from national legislation applicable to it, such as in the case of a requirement for a PoA, or also at times because retail shareholders do not have the capability to receive electronic communication (or at least not in ISO20022). In effect, the issuer's communication with shareholders in another jurisdiction than the country of issuance still seems to depend to an extent on national legislation and practices.
470. Question 68
471. Consistently with the picture emerging from the previous question, responses to Question 68 confirmed that intermediaries (either themselves or with the support of a service provider) make electronic tools available to their clients to facilitate the exercise of shareholder voting, including at a cross-border level. All twenty-four respondents to this question responded positively.
472. However, a couple of comments clarified that electronic tools are not always used, e.g. when it comes to retail investors. In addition, it is flagged that cross-border voting may depend on whether the CSD or depository agent offers electronic cross-border voting, which is not always the case. Nonetheless, service providers in the area of proxy collection or foreign intermediaries generally support intermediaries in addressing issues at cross-border level.

473. Question 69

Q69: Have you experienced difficulties in complying with the timelines envisaged by Article 9) of the IR (e.g., the cut-off date)?



474. Question 69 enquires whether intermediaries have experienced difficulties in complying with the timelines envisaged by Article 9 of the IR, such as the cut-off date. Here, the picture looks a bit more scattered, as around two thirds (64% or 16) responded affirmatively, while a little more than a third (36% or 9) responded that they did not find any issues.

475. Among those responding affirmatively, typically CSDs and major intermediaries, some reported receiving disclosure and meeting requests on or even after the deadline, especially when information flows are not in STP, such as when informing retail shareholders. Reportedly, this is either due to late announcement by the issuer or due to delays in the chain of intermediaries, e.g. when notifications are received late on the previous day. As such, it sometimes can be difficult to meet the requirement to not provide end investors with a deadline that is earlier than three business days prior to market deadline. Overall, it is argued that the SRD2 deadlines (Article 9 IR) may lead to information being sent multiple times and pose the risk of losing quality of information for the sake of timeliness.

476. Conversely, those answering affirmatively are often service providers and they generally saw major improvements to processes made in order to comply with timelines.

477. Question 70

478. Question 70 asks intermediaries in which way they ensure that the costs charged for providing the services of Chapter Ia are: a) transparent, b) proportional and c) non-discriminatory as provided for by the SRD2. In addition, stakeholders are asked to clarify what further steps could be taken to address any difficulties encountered by intermediaries in complying with the rules and to improve compliance with Article 3d. Generally, this question collected only limited input, especially with reference to its second part on what further steps could be taken to improve compliance in this area.

479. Regarding **transparency**, several respondents indicated that they ensure transparency by disclosing the fee structure on their website. A few respondents also clarified that national rules often provide transparency and proportionality requirements on the costs that can be charged by intermediaries. Finally, a few respondents did not provide clarity on this issue, in one case citing competition law as the reason.

480. A few respondents from the banking community emphasised that even in cases of clear cost regulation, intermediaries are often only partially reimbursed for their expenses and often only after several reminders, arguing that in such cases intermediaries effectively bear the costs of issuers' investor relations.

481. Regarding **proportionality**, several respondents did not provide clarity on this point, citing again in one case reasons of competition law.

482. The majority of explanations provided indicated that prices are set in such a way that they compensate the costs incurred. One respondent added that following the entry into application of the SRD2, intermediaries have reviewed their costs and fee structure to improve proportionality while at the same time having to make certain investments to comply with the new rules. According to the same respondent, the costs incurred vary widely, depending on a number of market-specific costs such as sub-custodians, the registration, requested representation to the GM by attorney, the notary process, etc.

483. With reference also to **non-discrimination**, several respondents did not provide clarity, in one case referring once again to reasons of competition law.

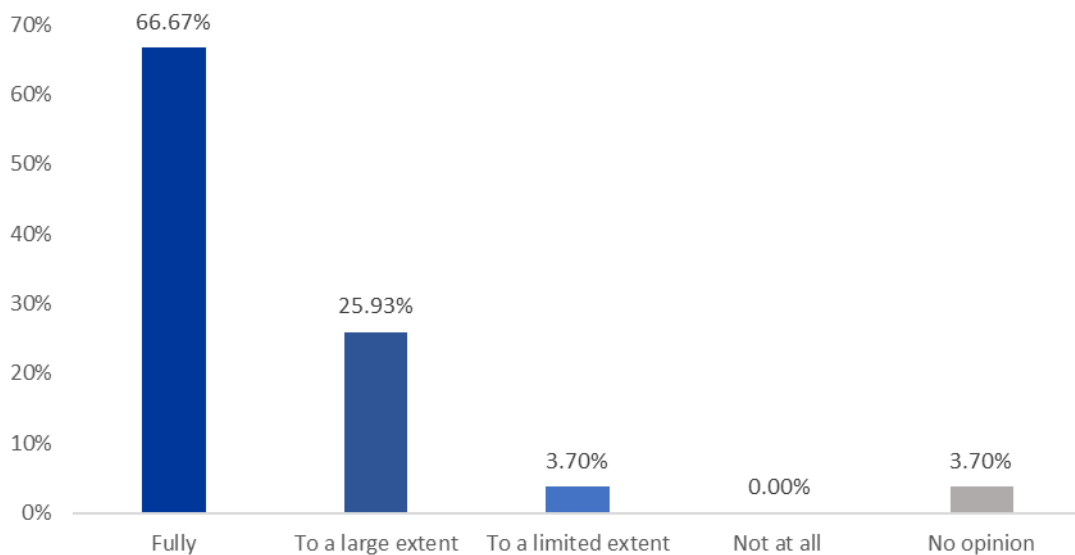
484. Most respondents providing explanations on this point reported that they have standard rates applying across clients.

485. Interestingly, one respondent indicated that fees take into account existing difficulties to access foreign markets, although it is not always possible to fully pass on such costs to clients. This seems to confirm that cross-border provision of services remains more difficult and expensive. Finally, it should be noted that for all the 3 points this question addresses,

a few respondents (both banks and CSDs) mentioned that they do not request fees from issuers at all due to the difficulties in collecting them.

486. Question 71

Q71: Do you consider that Market Standards elaborated by the industry for the application of the provisions of Chapter Ia are useful to complete the regulatory framework in this area?



487. Answering Question 71, respondents indicated that they consider market standards elaborated by the industry useful to complete the regulatory framework in this area. In particular, two thirds of respondents (18) found those fully helpful and around a quarter (almost 26% or 7) considered them helpful to a large extent. Only two respondents either did not express an opinion or agreed only to a limited extent.

488. Comments received from respondents pointed to the greater level of detail (in terms of additional information requirements) that market standards (such as the Standards for Shareholder Identification and the market standards for Corporate Actions) have when compared with EU Level 1/Level 2 legislation. Generally, respondents also saw a positive contribution to develop common practices across the Union, although, according to a couple of respondents, implementation remains uneven as the standards are not binding. Further market standards such as in the area of Article 3c are seen as a potential tool to improve implementation of Chapter Ia. In addition, it is flagged that market standards advocate for shareholder identification requests to be routed through the issuer CSD, although the SRD2 allows for alternative arrangements.

489. At the same time, it is recognised that there are areas for further improvement to allow for more effective investor communication, especially at cross border level, also due to the SRD2 being a Directive and as such allowing for somewhat differing transpositions across MSs. In particular, one respondent emphasised that improvements should focus on harmonising national differences, such as the definition of shareholder, as also raised in responses to previous questions.
490. According to a few respondents, there is a need for a comprehensive review of existing standards to adapt them to market developments and issuers' activities, as well as for a rethinking of governance in terms of supranational bodies (that should be made up of representatives of all parties in the intermediary chain, issuers and CSDs) delegated to review and create new standards. The issuers community is particularly seen as not sufficiently engaged in such work.
491. Finally, a respondent highlighted that the industry Corporate Events Group (CEG) is conducting work to assess non-compliance with market standards, namely in the context of the AMI-SeCo advisory group on market infrastructure⁹⁷. This group is in charge of monitoring compliance with financial corporate actions and shareholder identification (although it does not cover GMs). Regular reports identifying progress towards compliance as well as persisting gaps and issues are issued by the CEG.

9.2.5 SMSG input

492. The SMSG advice provides remarks on several elements included in Chapter Ia.
493. A preliminary comment addresses the right for issuers to identify their shareholders and considers that the way some MSs have transposed the option provided by the SRD2 limits the scope of shareholder identification to holdings exceeding a given threshold is questionable and should be repealed as it has created fragmentation of the market and has not proven to work in practice.
494. According to the SMSG, if such a system is kept and MSs apply the option, the determination of the holdings exceeding the threshold should solely be made at the level of the first intermediary, not at that of each intermediary in the holding chain as construed by some MSs, so as to ensure that shareholdings are captured correctly.
495. Overall, in the view of the SMSG, the shareholder identification process has not significantly improved since the introduction of the SRD2. The main reason for this is that the term "shareholder" continues to be defined by applicable national company law,

⁹⁷ For more details, please see the following link: [Advisory groups on market infrastructures.](#)

meaning that the determination of the shareholder depends on the MS of the issuance. This results in diverse “shareholder” concepts which cause an unlevel playing field, and thus makes shareholder identification incomplete as well as more complex and costly.

496. In line with some respondents who are of the view that the end investor should be identified as the shareholder, the SMSG considers that the definition should set as shareholder the “legal or natural person [which,] having invested his/ her own money directly into a share, bears the financial risk and is entitled to the dividends/ corporate actions”. In the SMSG’s view, this definition should be able to capture the end investor into shares. In addition, the SMSG considers that the IR needs to be strengthened in its language to ensure that the information flow does not end at the nominee level but that the end investor, i.e., the “final” shareholder, receives the information from the issuers through the chain of intermediaries and is able to exercise his/ her rights emanating from the shares.
497. In addition, it is reported that in many countries, issuers are still not issuing corporate event information in a standardised and timely manner, thus affecting the transmission of information across the custody chain. Intermediaries still need to resort to multiple sources of information to be able to issue timely and complete notifications.
498. Coming to the transmission of information along the intermediaries’ chain, in the view of the SMSG this remains not fully satisfactory even after the entry into application of the SRD2 and its IR on 3 September 2020 regarding corporate actions’ messages. In this regard, the SMSG infers that there is a de facto blocking of communication between the issuer and investors in the chain, preventing information from passing down to the shareholder, especially in instances where the record date is close to the meeting date. In this regard, the SMSG highlights that both direct and intermediated communication channels between issuers and shareholders should have equal footing.
499. Nevertheless, in line with other respondents to the Call for Evidence, the SMSG members find that there has been an improvement in the transmission of information for GM notifications, with the implementation of ISO20022 meeting messages. Differently, for corporate action events, ISO15022 and ISO20022 messages are seen as both fit for purpose, and accordingly the CSDs’ and non-CSD intermediaries’ implementation projects were primarily devoted to GMs and shareholder identification.
500. The SMSG nonetheless highlights that the lack of “same language” format for GMs hampers the communication between issuers and shareholders, creating significant problems for all parties in the chain and may lead to a break in STP. In fact, as the input received shows, many issuer agents and intermediaries are not yet able to process shareholder identification requests in the correct ISO20022 reporting format. The SMSG

advice points out that the introduction of ISO20022 format, originally planned for November 2021 was delayed with a full implementation not expected before November 2023.

501. Regarding GM processes and shareholder identification, it is argued that the transmission of information needs to be improved in a cross-border context due to remaining country-specific market practices (especially regarding meeting notification), the number of identification documents provided and the information therein, the way of receiving such information (i.e., sometimes in a non-standardised format) and the identification of the securities accounts of clients/ intermediaries, especially in cases in which CSDs do not have any relationship with them.

502. The SMSG identifies some additional reasons for this lack of effectiveness, as follows:

- i. The late implementation of the SRD2 in some MSs;
- ii. The late enforcement of SRD2 rules. In relation to this aspect, the SMSG sees a need to review the regulatory oversight of GM-related processes to ensure that shareholder rights become enforceable in all MSs and
- iii. The market structure. According to the SMSG, problems have been encountered regarding omnibus accounts, which is the predominant account model in the EU and still creates obstacles in identifying proprietary interests of beneficial owners⁹⁸.

503. Coming to the exercise of shareholder rights, the SMSG identifies the documentation requirements as an issue noting that shareholders have to provide various documentation (e.g. a proof of entitlement) to their last intermediary to be able to participate in GMs and exercise their voting rights. The SMSG suggests that intermediaries and issuers should consider an EU wide form of proof of share ownership at record date as sufficient, which could simplify processes for shareholders. This could help simplify processes and foster STP as foreseen by the IR.

⁹⁸ The SMSG therefore calls on ESMA to examine whether current intermediated systems and the current CSDR framework need to be reassessed to ensure that omnibus accounts no longer create (factual) obstacles to the processing of information between issuer and shareholder and for exercising voting rights. With specific regard to vote confirmation, the SMSG quotes literature which suggests that omnibus accounts may even lead to issuers' registrars having to disregard votes because there is no means to ascertain that votes had been validly cast, as an accurate reconciliation of holdings to votes in omnibus accounts may be close to impossible. In line with this, the SMSG notes recital 11 of the CSDR stating that "*Immobilisation and dematerialisation should not imply any loss of rights for the holders of securities and should be achieved in a way that ensures that holders of securities can verify their rights*" Please refer to paragraph 108 of the "Analysis" section.

504. In this regard, the SMSG observes that academic research finds that the “*permissioned blockchain solution*” may offer shareholders:

“real-time transmission of the information and direct communication between issuers and shareholders as it would make it ‘possible to remove all intermediaries involved in the proxy votes collection and instructions process if all ownership information from different tiers is uploaded to the distributed ledger”⁹⁹.

505. The SMSG suggests to ESMA to investigate whether the use of new technologies could facilitate direct dialogue between issuers and investors while taking into account risks in relation to investor protection. It is argued that there is also a need to further specify in the SRD2 that both direct and intermediated communication channels between issuers and shareholders have an equal footing.

506. A further comment raised by the SMSG points to recent research¹⁰⁰ finding that several neo brokers, according to their terms and conditions, do not always comply with the legal requirements of the SRD2, i.e., to facilitate the transmission of information between issuers and investors. For the SMSG it remains unclear whether some neo-brokers grant themselves the right to execute voting rights on behalf – or instead – of the client (e.g. due to a securities lending business model, for instance).

507. The SMSG therefore recommends to further investigate the impact of neo-brokers’ practices on the governance of the proposed issuers, also in relation to the business model on which they are based.

508. Moreover, the SMSG notes that costs and charges for GM-related services continue to be a deterrent, especially for individual shareholders. While at the national level, participating in and voting at GMs is generally free of charge, it may become very costly when the same rights are to be exercised abroad. In this sense, the SMSG considers that any difference between the charges levied for the domestic and the cross-border exercise of shareholder rights should be allowed only if they are duly justified and reflect the variation in actual costs incurred for delivering the services by intermediaries.

509. The SMSG also notes that issuers perceive a lack of transparency regarding fees for services provided to them by intermediaries. In their view, not only is the fee calculation not always fully transparent, but there is also no clarity on whom the task of invoicing should

⁹⁹ Lafarre, A., Van der Elst, C., “*Shareholder Voice in complex intermediated proxy systems: Blockchain technology as a solution?*” (2021).

¹⁰⁰ In this regard, please see Better Finance & DSW (2022).

be attributed to (the CSD or a separate intermediary service provider). The group considers it important that, like for other banking services, where fees are charged by intermediaries for GM-related services, these are made transparent for investors in advance.

510. On this basis, the SMSG invites the Commission to review the regulatory oversight of costs and charges connected to GM-related processes and harmonise it. As a first step, they suggest that a central database of intermediaries' custody service fee structures be established at the European level, for example at the EBA.

511. Finally, the SMSG suggests that ESMA undertake an in-depth analysis of whether GM-related costs and charges invoked by intermediaries are indeed transparent, duly justified and reflect the variation in actual costs incurred for delivering their services.

10 Annex VI: SMSG Advice

512. The Executive Summary of the SMSG Advice is presented below. For the full Advice, please click [here](#).

Executive summary

513. The SMSG welcomes the opportunity to respond to the call for evidence on certain provisions of the SRD2 and considers that the cross-border voting process should become simple, cost effective, and efficient.

514. In view of the SMSG, the shareholder identification process has not significantly improved, as the term ‘shareholder’ continues to be defined by applicable national corporate law, which makes shareholder identification incomplete. The SMSG therefore considers that the definition of the ‘shareholder’ should be harmonized and aim at capturing the end-investor.

515. Moreover, the option provided by the SRD2 to limit the scope of shareholder identification to holdings exceeding a given threshold should be repealed and be made at the level of the first intermediary, not at each intermediary in the holding chain to ensure that shareholdings are captured correctly.

516. The SMSG also considers that the transmission of information along the intermediaries’ chain remains not fully satisfactory and may have had an impact on the flow of information between issuers and investors around a general meeting. The main reasons for this are:

- i. The late implementation: Not all Member States had transposed the SRD2 into national law by 3 September 2022;
- ii. The lack of ‘same language’ format: The format to achieve a “same language” purpose, ISO 20022, originally foreseen for 22 November 2021, had been postponed and ‘go live’ is now planned for November 2023. The reason for the delay is unclear and will hamper the communication between issuers and shareholders for a further general meeting season (2023);
- iii. The late enforcement: Neither shareholders nor issuers, have any valid means to accelerate the harmonisation process nor do (national) regulators often have the option yet to enforce the rules of the SRD2 and its IR which are being delayed by the late ISO 20022 implementation effectively at least until four years after transposition. The SMSG sees a need to review the regulatory

oversight of general meeting-related processes to ensure that shareholder rights become enforceable in all Member States;

- iv. The market structure: While information regarding corporate action processes are flowing smoothly through the intermediaries' chain, for general meeting processes, omnibus accounts still create obstacles as they make it difficult to identify proprietary interests of beneficial owners. Moreover, in many systems, the separation of legal ownership and beneficial ownership creates additional difficulties. The SMSG calls on ESMA to assess whether the intermediated systems currently in place and current CSDR framework needs to be reassessed to ensure that omnibus accounts do no longer create (factual) obstacles to the processing of information between issuer and shareholder;
- v. Costs and charges: The SMSG notes that costs and charges for general meeting-related services continue to be a deterrent, especially for individual shareholders. While at national level, participating in and voting at general meetings is generally free of charge, it may become very costly when the same rights are to be exercised abroad. The SMSG suggests ESMA to undertake an in-depth analysis on general meeting-related costs and charges invoked by intermediaries considers important that fees are made transparent for investors in advance;
- vi. Lack of harmonised oversight: Next to that, there is a lack of harmonised regulatory oversight of intermediaries' general meeting-related processes;
- vii. Neo brokers: Certain provision deviating from the legal requirements of the SRD2, i.e., to facilitate the transmission of information between issuers and investors could be found in some neo brokers' terms and conditions. The extent to which neo brokers comply with the legal requirements of the SRD2 should be further investigated in their involvement in the governance of the proposed issuers, also in relation to the business model on which they are based;
- viii. Simplification of documentation requirements: As of today, shareholders have to provide various documentation (e.g., a proof of entitlement) to their last intermediary when wanting to exercise their shareholder rights at a general meeting. The SMSG considers that an EU wide form of proof of share ownership at record date accepted by any intermediary in the chain as well as any EU issuer could help to simplify processes and foster a straight-through processing (STP) as foreseen by the SRD2 IR and

- ix. Direct communication between shareholders and issuers: The SMSG recommends ESMA to investigate further whether the use of modern technology, could improve the information flow between issuers and investors while taking into account potential risks for investor protection as both direct and intermediated communication channels between issuers and shareholders have equal footing.

517. Whilst proxy advisors are not subject to mandatory regulation beyond the requirements laid down in Article 3j of SRD2, the Best Practice Principles (BPP) were formed to establish voluntary best practice principles. The SMSG considers that the latter's impact on the three principles (services quality, conflicts of interest and communication with issuers) remains unsatisfactory.
518. In the area of ESG services, the SMSG considers it important that any future legislative or regulatory actions on proxy advisors are coordinated with the upcoming review on ESG rating providers.
519. Also, the SMSG considers it important to ensure that a structured dialogue procedure, proper and transparent engagement is put in place by proxy advisors; so that factual errors in the report can be corrected by proxy advisors after a dialogue with issuers before the voting deadline.
520. The SMSG sees a need for more disclosure to ensure that the methodology and procedures put into place to ensure that voting recommendations are of appropriate quality and are not deviated from in case of services for both issuers and investors.
521. In addition, the SMSG further sees a need to clarify how voting recommendations and policies are being developed and reviewed, whether an investor/stakeholder consultation process been established, and what the main features of the process justifying revisions of the voting policy are.
522. The SMSG considers that conflicts of interest should be avoided by any circumstances and that proxy advisor should not offer consulting advice to analysed companies in particular on topics that are part of the general meeting agenda and should inform their clients individually about any actual or potential conflicts before or at the same time as the voting recommendations are made available to clients.
523. The SMSG furthermore would consider it helpful if any review of the proxy advisory market would look into the de facto duopoly in this market preventing smaller, local service providers to compete with the existing market players.

524. The SMSG notes that the SRD2 did not achieve more transparency when it comes to proxy advisors, or at least only marginally. When reviewing the SRD2, the SMSG therefore would favour a reinforced voluntary approach, based on the “comply or explain” principle with the NCAs being in charge of the supervision.

11 Annex VII: SRD2 transposition

525. The below four tables summarise ESMA’s survey into the transposition of the SRD2 by EU MSs (as well as the implementation by other EEA countries).

Table 2: Transposition of Chapter Ia at national level

Has Chapter Ia of the SRD2 been transposed at national level?	Respondents	Countries
Primary law only	23 countries	AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, LI, LU, LT, LV, NL, PL, PT, RO, SE, SI, SK
Thereof: Also via non-legislative tools	3 countries	EE, HU, PL
Primary and secondary law	6 countries	BG, FR, IE, IT, MT, NO
Thereof: Also via non-legislative tools	1 country	FR
No transposition yet	1 country	IS

Table 3: Transposition of Article 3j at national level

Has Art. 3j of the SRD2 been transposed at national level?	Respondents	Countries
Primary law only	24 countries	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, LI, LU, LV, NL, NO, PL, PT, RO, SI, SK
Thereof: Also via non-legislative tools	1 country	HU
Primary and secondary law	4 countries	FR, IE, IT, SE
Thereof: Also via non-legislative tools	0 countries	
No transposition yet	2 countries	MT, IS

Table 4: NCAs in charge of monitoring and/ or supervising the transposition of Chapter Ia

Is there any National Competent Authority in charge of monitoring and/or supervision of the relevant legislation transposing Chapter Ia of the SRD2?	Respondents	Countries
ESMA NCA	19 countries	AT, BG, CY, CZ, EE, EL, ES, FI, FR, HU, IT, LT, LV, MT, NO, PT, RO, SE, SK
ESMA NCA in addition to other NCAs	1 country	DK
NCA different from the ESMA NCA	2 countries	LI, SI
No NCA in charge of monitoring	8 countries	BE, DE, HR, IE, IS, LU, PL, NL

Table 5: NCAs in charge of monitoring and/ or supervising the transposition of Article 3j

Is there any National Competent Authority in charge of monitoring and/or supervision of the relevant legislation transposing Art. 3j of the SRD2?	Respondents	Countries
ESMA NCA	16 countries	AT, BG, CZ, DK, EE, EL, ES, FI, IT, LT, LV, NO, PT, RO, SE, SK
ESMA NCA in addition to other NCAs	0 countries	
NCA different from the ESMA NCA	3 countries	IE, LI, SI
No NCA in charge of monitoring	11 countries	BE, CY, DE, FR, HR, HU, IS, LU, MT, NL, PL