



European Securities and  
Markets Authority

# Report on shareholder identification and communication systems



## Contents

1. Executive Summary .....	5
2. Background.....	8
2.1. Methodology.....	9
2.2. Analysis of responses .....	9
3. Results of the review .....	10
3.1. Shareholder identification .....	10
3.2. Entitlement to vote and to the exercise of other corporate rights .....	12
3.3. Transmission of information between issuers and shareholders.....	14
Annex I: Feedback to the questionnaire .....	18
1. Shareholder identification .....	18
2. Entitlement to vote and to the exercise of other corporate rights .....	26
3. Transmission of information between issuers and shareholders.....	31
Annex II: Tables .....	42
Annex III: List of questions from questionnaire .....	49



## Country acronyms

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IS	Iceland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovak republic
UK	United Kingdom

## Other acronyms and definitions used in the document

CSD	Central Securities Depository
EBA	European Banking Authority
EEA	European Economic Area
ESMA	European Securities and Markets Authority



EU	European Union
Final layer of holders (beneficial owners)	The final layer of holders is composed by end-investors, namely the natural or legal persons that hold the shares for their own account and ultimately enjoy the benefits of owning such shares. The end-investor is also referred as beneficial owner and both terms are used synonymously.
First layer of holders	The first layer of holders is defined as the CSD participants holding own, omnibus segregated or individually segregated accounts at the CSD level.
GM	General Meeting
Hard law / soft law / prevailing regulations	When referring to hard law, reference is made to primary and secondary legislation. When referring to soft law, reference is made to listing rules and other sources of self-regulation and market practice. These latter can include industry codes as well as other sources of best practice for the market such as industry guidelines or circulars. When referring to prevailing regulations, reference is made to both hard and soft law.
IT systems enabling straight-through processing	By IT systems enabling straight-through processing reference is made to an electronic process for capital markets that is fully automated and as such does not require any manual intervention. It may make use of ISO 20022 or similar formats.
NCA	National Competent Authority
Revised Shareholder Rights Directive (SRD II)	Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement.
Shareholder Rights Directive (SRD I)	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

---

<sup>1</sup> Please note that some countries have a two-tier registry system whereby the registry of the securities is managed by both the CSD and its participants. In such case, we also define those holders whose securities are held separately in sub-accounts at the lower tier of the registry run by the CSD participants as first layer.



Standard form or format	By standard form or format reference is made to any structured way through which information is consistently transmitted by the sender to the recipient.
Transparency Directive (TD)	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market as amended by Directive 2001/34/EC.

---

## 1. Executive Summary

This report presents a general assessment of the level of harmonisation of national regulatory frameworks for shareholder identification and communication systems across the EEA. This aims at providing input to the EC in relation to the preparation of the implementing acts to specify minimum requirements on the process, format and timeline for shareholder identification and transmission of information as required by Art. 3(a)(8), 3(b)(6) of SRD II.

As a first step, the report shows that, following the introduction by SRD II of an issuer's right to identify its shareholders, it would be useful if issuers and intermediaries were to follow harmonised processes on key aspects for the identification of shareholders.

Harmonisation may be achieved by leveraging on existing regulatory frameworks, as shareholder identification processes already exist in half of the jurisdictions. Such harmonisation should ensure interoperability and focus on: i) the minimum information to be transmitted (the name and contact details of the shareholders and, where the shareholders are legal persons, their unique identifier, if any), ii) the format of the identification request and of the answers provided (on the basis of formats already used in practice by issuers and intermediaries), iii) the compatible use of IT systems (which are increasingly used across countries) and iv) the deadlines to comply with (here, SRD II provides for a transmission of the identification request between intermediaries without undue delay).

The report also finds that there are different national approaches that limit in practice the outcome of the identification process, either by letting shareholders opt out or by imposing a minimum threshold for identification of shareholdings. It should be noted that SRD II provides countries with the possibility to set a threshold not higher than 0.5 percent for such purpose. The selection of different thresholds by different countries may have important practical consequences for the functioning of the identification process.

Regarding the opportunity to ensure that rules are enforced in a cross-border context, the report has found limited evidence of specific difficulties in countries where an issuer's right to identify its shareholders is in place. Yet legal issues seem to exist in some countries and further harmonisation could be reached once intermediaries' duties are defined via the SRD II implementing acts. Defining these duties could at the same time facilitate the effective application of sanctions to foreign and third country intermediaries in case of breach of provisions related to shareholder identification.

It would be equally useful, for shareholders particularly, to harmonise key aspects of the transmission of information and shareholder communication. The report shows that issuers mainly convey information to shareholders by publishing it on their website, which is clearly an efficient solution for issuers to make information publicly available. However, to the extent that this tool does not fulfil the requirements under company law regarding notification to shareholders, in several jurisdictions the company is further obliged to combine website

---

---

publication with other communication/publication tools, such as emails or traditional post and advertisements in some designated media including those provided for by the TD. Here, SRD II implementing measures could be particularly helpful if they facilitate a wider use of electronic means and thereby streamline and reduce the burden of communication duties for issuers and shareholders.

Harmonisation efforts should focus not only on general communication tools but also on the procedures and minimum information to be transmitted to the shareholders (those that are necessary to exercise their rights) and to the issuers (the instructions received from the shareholders related to the exercise of their rights and the subject delegated). This can be done at level 2 drawing on a framework which in some areas is already partly harmonised.

As per the communication to shareholders, the concept and functioning of the record date seem well established. Most countries have established rules concerning the record date as required by EU legislation. However, the range of dates and the way they are calculated vary significantly. Moreover, it seems that the definition and the implications of the ex-date in connection to the record date for voting rights purposes are not always commonly understood and communicated in the same way. This might be improved through more explicit and common disclosure of this information by issuers and trading venues.

Regarding communication from the shareholder to the issuer, there seems to be a relatively high level of harmonisation in relation with the procedures followed by shareholders in order to convene a GM, to include new items in the agenda and to ask questions pursuant to Art. 9 of SRD I, where communicating to the issuer directly is the most common practice. Conversely, there is a relatively low level of harmonisation among procedures followed by shareholders in order to communicate to the issuer other information related to the GM. In particular, concerning vote delegations and notification of attendance, jurisdictions follow different models, showing a relatively low degree of harmonisation. Here there could be room for promoting the application of common standards in order to facilitate the flow of such information through the chain of intermediaries to the issuer.

Furthermore, while most countries have deadlines in place with respect to the overall process of communication from shareholders to issuers, only a very few jurisdictions envisage specific timelines for the different steps of the transmission of information because of the lack of provisions in this area in SRD I. As such, this is an area where further harmonisation of process and timeline would be useful at level 2, leveraging on the existing practices developed in those countries.

As for the format of the information transmitted, the report shows that some standard forms and formats are available in almost all jurisdictions, although in various ways and with non-harmonised content. Only if formats are at least to a certain extent harmonised, then there can also be room for a wider and more consistent use of electronic tools for communication of information in this area.

---



---

Finally, when it comes to the enforcement of the transmission of information process, specifically in respect to foreign/third country intermediaries, the picture is quite fragmented. Here again, the cross-border application of sanctions already in place in most countries could be facilitated by the partially harmonised regime against breach of provisions envisaged by SRD II.

---



## 2. Background

1. The revised Shareholder Rights Directive (SRD II) is expected to be published on the Official Journal in June 2017. Building on a proposal published in early 2014, this revision updated and widened the contents of the original directive, introducing a number of new provisions affecting the investment chain and several other aspects of the corporate governance of listed companies.
2. The European Securities and Markets Authority (ESMA) embarked on a study regarding the investment chain and in particular the functioning of shareholder identification and transmission of information between issuers and shareholders. The aim of the study was to gain a better understanding of national rules and practices across the European Economic Area (EEA) so as to provide input to the European Commission (EC), particularly in relation to the implementing acts provided for by Art. 3(a)(8) and 3(b)(6) of SRD II to be drafted within 15 months from the entry into force of the Directive.
3. The report is structured according to the following three main sections:
  - a. Shareholder identification;
  - b. Entitlement to vote and to the exercise of other corporate rights;
  - c. Transmission of information between issuers and shareholders.
4. These areas have been selected on the basis of three considerations. Firstly, the relevant SRD II articles provide for significant work at level 2 in order to specify the practical functioning of the processes envisaged at level 1. Such work can benefit from sound up-to-date evidence<sup>2</sup>. Secondly, shareholder identification and communication are core areas of corporate governance and are strongly connected to the Transparency Directive (TD) provisions in the area of notification of major shareholdings and disclosure in connection to general meetings. Most National Competent Authorities (NCAs) have a mandate in this area and in addition ESMA will be required to cooperate with the EC and the European Banking Authority (EBA) on the review of the implementation of the relevant SRD II provisions<sup>3</sup>. Thirdly, these matters are particularly connected to the facilitation of cross-border investments and therefore contributing to strengthen the Capital Markets Union.

---

<sup>2</sup> Earlier evidence in this area was collected by the T2S Advisory Group (available at: [https://www.ecb.europa.eu/paym/t2s/progress/pdf/subtrans/st\\_analysis\\_regimes.pdf?37612a2ca2536d82208128d7711f4bfd](https://www.ecb.europa.eu/paym/t2s/progress/pdf/subtrans/st_analysis_regimes.pdf?37612a2ca2536d82208128d7711f4bfd)).

<sup>3</sup> Art. 3(f)(2) of SRD II establishes that: "The Commission shall, in close cooperation with ESMA and the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council, submit a report to the European Parliament and to the Council on the implementation of this Chapter, including its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the Union and international level. The report shall also address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries. The Commission shall publish the report by [six years after the date of entry into force of the amending directive]".

## 2.1. Methodology

5. Relevant information for the study was collected by means of a questionnaire sent by ESMA to its NCAs, answers to which were received from 27 out of the 28 European Union (EU) Member States and IS<sup>4</sup>. Considering the transversal nature of the topic, NCAs were invited to co-operate with other relevant national entities as needed. These could include non-public entities, especially when it was necessary to shed a light on soft-law provisions.
6. In drawing up the questionnaire, ESMA firstly considered Art. 3(a) and (b) of SRD II as the reference for selecting the scope. As such, the purpose was to review national prevailing regulations designing the process for shareholder identification and transmission of information between issuers and shareholders.
7. Secondly, it was decided to include a number of questions investigating the underlying corporate law provisions especially regarding the entitlement to vote and exercise other corporate rights, therefore touching on a few elements of Art. 3(c) of SRD II. Some of the entitlement provisions have to a certain extent been harmonised by Member States as a result of the implementation of the TD and SRD I, although leading to different practical outcomes as both are not maximum harmonisation directives.
8. The findings of the questionnaire formed the basis for an assessment of the level of convergence in each area and potential for further harmonisation through level 2 measures, which is summarised in the following .
9. For the purpose of describing convergence levels in a uniform manner across the different areas, a distinction between 'relatively low', 'medium' and 'relatively high' levels of convergence is made. The label 'relatively low' is used in areas where rules or practices are dispersed and no clear trend is visible. The label 'medium' is used in areas where one or two majority rules/practices are identifiable but where there are nonetheless noteworthy amounts of jurisdictions following alternative paths. The label 'relatively high' is used in areas where there is a clearly dominant trend in Member States' rules/practices and where only a small number of Member States falls outside this trend.

## 2.2. Analysis of responses

10. ESMA has endeavoured to provide a sufficiently detailed picture of the prevailing regulations as well as any noteworthy outliers while at the same time maintaining a level of generality in descriptions to allow for an overall assessment. While analysing the responses received, it was sometimes necessary to undertake a level of interpretation,

---

<sup>4</sup> As such, in the following reference will be made to the EEA or EEA countries. Answers were received by AT, BE, BG, HR, CY, CZ, DK, EE, EL, ES, FI, FR, DE, HU, IS, IE, IT, LV, LT, LU, MT, PL, PT, RO, SK, SI, NL, UK. In the case of NL, the following answers were not submitted: B-17, C-1, C-2, C-3, C-4, C-5, C-7, D-5, D-6, D-7, D-15, D-16, D-17, D-18, D-19, D-20, D-21, D-22, D-25, D-26.

for example to group different jurisdictions into meaningful categories. A summary of the responses received is attached as Annex I.

### 3. Results of the review

#### 3.1. Shareholder identification

11. Companies may want or need to know the identity of their shareholders for various reasons. These may include to better understand their interests so that directors can discharge their duties appropriately, understanding how investors are judging the prospects of the company as evidenced by changes to sizes of shareholding and to be able to proactively seek out the view of shareholders as well as to anticipate how votes are likely to be cast at General Meetings (GMs).
12. This section enquires into who is legally recognised as “shareholder” and the closely associated matters of who has the entitlement to exercise voting rights and to receive the dividends that the company may pay out to its equity holders. As the SRD II does not introduce a common definition of shareholder, it remains challenging to introduce a fully converged system of shareholder identification. The following describes the way shareholder identification systems are currently designed across EEA jurisdictions and provides pragmatic suggestions to improve the functioning of the new right to identify shareholders in the EU provided for by Art. 3(a) of SRD II.

##### *Definition of shareholder*

13. The well-known relatively low degree of convergence as to whom is identified as shareholder reflects differences in national company laws as regards the attribution of the entitlement to voting or economic rights to the first and final layer of holders. As beneficial owners seem not to experience legal impediments in connection with dividend entitlement, it might not be necessary to explore harmonisation since the entitlement should be clear from the details of the transaction where the shares were last bought. However, in the case of the exercise of voting rights, there seems to be more potential for both inertia and practices such as empty voting and over-voting, either deliberate or accidental. Some harmonisation of good or required practice at EU level could improve conduct in these regards.

##### *Issuers’ entitlement to access information on the identity of shareholders*

14. The level of harmonisation regarding the right to identify shareholders appears significantly constrained by the lack of agreement on who the law recognises as the shareholder and consequently the practical aspects and outcome of the identification process. Nonetheless, the level of convergence can be considered medium as half of the countries do provide issuers with a specific right to initiate a shareholder identification process at any time, in line with the SRD II provisions of Art. 3(a)(1).

### *Characteristics and limitations of the shareholder identification process*

15. While in half of the targeted countries there is a right for the issuer to initiate a shareholder identification process, there are different approaches that limit in practice the outcome, making the level of harmonisation relatively low. In particular, these may regard which shareholders can be identified and the details that can be actually requested, including whether information covers the first or final layer. Identification of shareholders may be limited through two main tools: either by imposing a threshold on their holdings or by letting them opt out from the identification process.
16. It is worth recalling that the SRD II provides countries with the possibility to set a threshold not higher than 0.5 percent for such purpose. The selection of different thresholds by different countries may have important practical consequences for the functioning of the identification process. Under Art. 3(a)(7) of SRD II ESMA will be in charge of collecting and publishing information on the thresholds introduced across countries.

### *Top-down and bottom-up shareholder identification process*

17. There seems to be a relatively low level of harmonisation regarding the process for top-down requests and bottom up transmission of information on shareholder identity. However, in most countries, the Central Securities Depository (CSD) plays a central role between issuers and other intermediaries. With reference to the communication means, it is encouraging to observe that several countries already use IT systems for such purpose. Deadlines for transmitting information along the chain exist in the majority of countries but are very diverse ranging from under one day to no limit.
18. Overall, while the actors involved are dependent on the national features of the shareholder identification process (e.g. systems based on CSDs vs. other intermediaries), which are difficult to streamline, some further clarity and homogeneity around timeline and means of communication seems less complex to reach. Against this background, SRD II provisions for level 2 work regarding timelines and formats for the information to be transmitted can reach further convergence, e.g. by allowing for increased compatibility between different IT systems, which are increasingly used across countries.

### *Access to shareholder identity data by others than the issuer*

19. Room for further harmonisation can also be found with reference to the access to shareholder identity data, as gathered through the identification process. Here, ESMA observed a relatively high level of harmonisation as most of the countries do not provide access to the results obtained through the identification process to anyone other than the issuer. Also the revised Directive does not provide for such provision, for example in terms of a specific right for all the shareholders of a company to access the information on shareholder identity.

### *Legal and practical barriers to the shareholder identification process*

20. Based on the input from the 14 jurisdictions having an issuer's right to identify in place, the majority of answers on legal and practical barriers in shareholder identification processes seems to provide no strong evidence of major barriers in a cross-border context. Yet, it is worth noting that the few answers pointing to limitations generally refer to legal issues existing in a cross-border context, typically provisions applicable to the intermediaries in the chain.
21. Likewise, the shareholder identification processes envisaged across the EEA appear to be generally supported by adequate enforcement tools, including a set of sanction provisions. However, among the few respondents reporting difficulties in practical application of those tools when in a cross-border context, in two cases (IT and NL) such difficulties are clearly attributed to the scope of national legal provisions which cannot encompass foreign or third country intermediaries.
22. From this perspective, it is likely that some harmonisation of the intermediaries' legal obligations could improve the cross-border identification process in the EU context. Such envisaged harmonisation could be achieved via the implementing acts provided for by Art. 3(a)(8) as regards the specification of the minimum requirements to transmit the shareholders' data and of the deadlines to be complied with for the transmission.

### *Sanctions*

23. Finally, even though the level of convergence among enforcement frameworks seems relatively high among the 14 jurisdictions, at least in key aspects, harmonisation via EU law appears useful in order to facilitate that sanctions provided by the different jurisdictions are effectively applied to foreign and third country intermediaries in case of breach of provisions related to shareholder identification. Actually, it must be highlighted that the enforcement of the new provisions of SRD II, in particular of the new Art. 3(a)(3)<sup>5</sup>, shall be ensured by Member States also as regards to "third country intermediaries"<sup>6</sup>.

## **3.2. Entitlement to vote and to the exercise of other corporate rights**

24. This section reviews three main topics: the responsibility for maintaining a shareholder register, the establishment of voting rights for GMs and the requirements for shareholders to notify their intention to attend the GM. These are all company and

---

<sup>5</sup> Art. 3 (a) (3) of SRD II establishes that: "Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. 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".

<sup>6</sup> Art. 3 (e) of SRD II establishes that: "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)". In turn, Art. 1 (5) provides that Chapter I (a) 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".

securities law issues underlying shareholder identification and communication systems. As such, while they are not directly connected to the implementing measures that will be drafted in connection with Art. 3(a) and (b) of the revised SRD, they are relevant to enabling a full understanding of the results of this investigation. They also allow for a better understanding of the level of harmonisation that some key rules introduced by the original SRD (and, to a limited extent, the TD) have brought about.

#### *Entitlement and notification*

25. As regards who maintains the shareholders register and who establishes the voting rights, the regulatory framework and practices in the EEA jurisdictions seem to be split, showing a low level of harmonisation. In some countries, this is the issuer, in others it is the CSD or another service provider, elsewhere it can be a combination. As such models seem to work well, there should be no need to limit this flexibility. This would also allow for some competition between different service providers in the development of efficient systems across the EU.
26. With regard to a prior notification of attendance, the jurisdictions follow different models, showing a medium degree of harmonisation. As the requirement of a prior notification of attendance and the requirement to register the shareholding as a precondition for attendance serve in essence the same purpose, some level of harmonisation as regards the deadlines and processes could be beneficial in order to achieve common practices.

#### *Record date and ex-date*

27. As opposed to economic rights, it seems that the definition and the implications of the ex-date for voting rights purposes applicable on the relevant trading venue are not always commonly understood and communicated in the same way, showing a relatively low degree of harmonisation across the EEA. This might be improved through more explicit and common disclosure of this information by issuers and trading venues. By contrast, the concept and functioning of the record date seems more commonly understood. Most countries have established rules concerning the record date as required by EU legislation, however the way the actual date is calculated varies significantly, hence a medium level of convergence.
28. While not necessarily possible in the context of SRD II, it would be useful to reach a common understanding of the ex-date concept and provide clarity on national choices and their implications. Regarding the record date, the timeline would be an important element to harmonise to facilitate the smooth functioning of the exercise of shareholders rights in the EU and, in turn, the efficiency of financial markets. This aim could be reached not only by future hard law but also by soft law, e.g. by EU-wide market standards, if adequate incentives were to be set.

#### *Remote vote*

29. Jurisdictions contemplate various ways for the shareholders to cast their votes in case of non-attendance, showing a relatively low level of harmonisation. In particular, ESMA noticed two common ways in which countries allow for remote voting: either by a third party acting as a proxy or allowing communication of the vote directly to the issuer. In a number of countries both options are possible, usually in combination with other solutions. In a considerable number of countries shareholders can also be represented by the intermediaries at the GM.
30. Although it is uncommon for countries to mandate companies to provide electronic means to the shareholders in order to attend the meeting, in practice it seems that some companies voluntarily allow for the use of such.

#### *Vote delegation and execution*

31. While this is again an area where heterogeneous company law frameworks naturally lead to diversity, it seems that SRD I and the TD have been able to bring about a relatively high level of harmonisation with respect to vote delegation and execution. However, due to the existence of many different service providers and technological environments, they are provided for through a variety of mechanisms across countries. Here, there could be room for common standards in order to facilitate the flow of instructions in the chain of intermediaries and to the issuer.

#### *Sanctions*

32. There is a relatively highly harmonised enforcement framework in the EEA jurisdictions in respect of the entitlement to vote and to exercise other corporate rights. The majority of jurisdictions provide for either administrative or civil sanctions, or both, while criminal sanctions are very rare across the countries.
33. Regarding cross-border enforcement of entitlement rules, it is worth noting that in broadly half of the targeted countries the nationality of the intermediaries does not seem to impact on the ability to enforce, at least from a strictly legal standpoint. However, the other half reported that sanctions provided in their jurisdictions do not apply to (foreign/third country) intermediaries. Moreover, some countries where cross-border enforcement is legally possible have expressly indicated the existence of practical barriers. In such context, as SRD II contains a partially harmonised minimum regime on national sanctions applicable to infringements of national law adopted pursuant to Art. 14(b) of SRD I, the cross-border application of sanctions is likely to be facilitated in the EU.

### **3.3. Transmission of information between issuers and shareholders**

34. The third section focuses on the transmission of information between issuers and shareholders, namely the use by issuers of different information channels in order to



communicate with the shareholders and enable them to exercise the rights relating to their shares. However, as indicated in par. 2, the scope of the report does not include voting transmission and confirmation, which therefore is not part of the following analysis.

#### *Communication channels between issuers and shareholders*

35. Overall, this area shows a relatively high level of harmonisation as most jurisdictions mandate companies to make the information available to the public and/or to communicate to individual shareholders through direct means. In contrast, only eight countries mandate companies to (also) communicate to individual shareholders through the chain of intermediaries. In all the three cases, hard law is the option preferred by the great majority of countries.
36. In such context, Art. 3(b) of SRD II provides for a duty for intermediaries to transmit information (or a notice with reference to the website) from the company to the shareholders. Based on the responses received by ESMA, currently there are very few countries that provide for that because national company/securities law traditionally encompasses publication through newspapers and other methods. However, under SRD II this new duty is waived if the issuer can send the information or the notice directly to all the shareholders. This flexible approach should reduce one-off costs for market participants in the implementation of the new rules while ensuring that information is effectively transmitted between issuers and shareholders.

#### *Top-down channels of communication between issuers and shareholders*

37. ESMA also observes that issuers mainly convey information to the shareholders by publishing it on their website. When communicating directly to shareholders, IT systems (including straight-through processing and others, as required by hard and soft law) are used in around half of the countries. By contrast, information is rarely provided through the chain of intermediaries and in such few cases different tools of communication are used. In conclusion, the website is clearly an efficient and widespread solution for issuers to make information publicly available and in such regard there is a relatively high level of convergence.
38. However, to the extent that this tool does not fulfil the requirements under company law regarding notification to shareholders, in several jurisdictions the company is further obliged to combine the publication on the website with other communication/publication tools, such as emails or traditional post and advertisements in some designated media including those provided for by the TD. Regarding these communication channels, the level of harmonisation is much lower. While IT systems or other forms of electronic communication (e.g. email) to transmit the information directly or indirectly (through the chain) to the shareholders are used by several jurisdictions, the systems are diverse and more harmonised EU rules would be useful to achieve further convergence. Here, a wider use of electronic and fully automated communication means could help developing an effective communication system in the EU.



#### *Top-down communication process through the chain of intermediaries*

39. The downwards communication process through the chain of intermediaries is diverse and based either on national practices or legal frameworks, hence a relatively low level of harmonisation. However, possibly due to the provisions of SRD I, there is a clear tendency to provide an overall timeline for the communication from the issuers to shareholders, which is a good basis for further harmonisation in this context. Implementing acts by the EC, as provided for by Art. 3(b)(6) of SRD II, will be able to specify the minimum requirements with regard to the deadlines for the different steps of the transmission of information. Also, SRD II provides that intermediaries transmit without delay information (or notice with reference to the website) to the shareholders.
40. Based on such provisions, it would be possible and useful for future level 2 work to provide for a framework of specific deadlines for communication between the issuer and the shareholder. In doing so, it would be important to also leverage on some existing good national practices that go beyond the minimum requirement on the overall timeline, such as the 21-day notice for the GM. At the same time, it could be considered to allow for some flexibility when setting specific deadlines for the different sub-steps, as only a few countries have put in place granular timelines.

#### *Bottom-up channels of communication between issuers and shareholders*

41. Based on the findings of the questionnaire, there seems to be a relatively high level of harmonisation regarding the procedures followed by shareholders in order to: i) convene a GM, ii) include new items in the agenda and iii) ask questions pursuant Art. 9 of SRD I. Conversely, there is a relatively low level of convergence among procedures followed by shareholders in order to notify their intention to attend the GM.
42. Similarly to above, most countries have deadlines with respect to the overall process of communication from shareholders to the issuers, while only very few countries have more granular deadlines. The reason why the harmonisation of cut-off dates for notifications and instructions to be sent up the chain is relatively low might be found in the lack of provisions in this area in SRD I. This is a long-standing issue that was discussed already in the context of the Giovannini Group<sup>7</sup> and remains a challenge to date. As such, it is an area where further harmonisation of process and timeline would be useful, using the existing patterns. However, this has not been explicitly addressed by level I of SRD II.

#### *Standard forms or formats*

43. Some standard forms and formats are available in several jurisdictions, although in various ways (they are either based on hard law or developed by the industry) and with non-harmonised content, hence a relatively low level of convergence. Standard forms are communicated by issuers to shareholders, or vice versa, also through very different means, while intermediaries seem to play a limited role in this area. The most commonly

---

<sup>7</sup> See in particular European Commission, Consultation paper on shareholder rights, September 2004.

used standard forms or formats are those for proxy purposes, which are envisaged in 19 different jurisdictions. Here, level 2 work could facilitate more harmonised communication processes and formats based on few but quite developed market or public practices which can be observed in a few jurisdictions such as FR and IT. Only if formats are at least to a certain extent harmonised, there can also be room for a wider and more consistent use of electronic tools for communication of information in this area.

### *Sanctions*

44. Based on the findings of the questionnaire, ESMA has observed a relatively high level of convergence in terms of the existence of administrative and civil sanctions while criminal sanctions are uncommon. However, when it comes to the enforcement of the same sanctions in respect of foreign/third country intermediaries, the picture is quite fragmented, showing a relatively low level of harmonisation. As noted in the previous sections, here again cross-border application of sanctions might be facilitated by the partially harmonised minimum regime applicable to infringements against national provisions adopted pursuant to Art. 14(b) of SRD I.

### *Market standards for general meetings*

45. Finally, evidence available to ESMA indicates that industry work on standards for general meetings<sup>8</sup> is less advanced than that related to corporate actions and that problems in relation to standards' implementation persist at least in some countries. SRD II can be the way forward to relaunch such work by providing a harmonised legal framework where industry standards can effectively fit.

---

<sup>8</sup> Market Standards on General Meetings, Final Version subject to implementation (MSGM, No 2, 2010) 18.

## Annex I: Feedback to the questionnaire

### 1. Shareholder identification

46. As a first step, ESMA gathered the different definitions of shareholder according to national laws and enquired the role of the first and final layer of holders in the exercise of voting and economic rights in each jurisdiction. ESMA also investigated the existing mechanisms for initiating a shareholder identification process and the legal or practical barriers that may represent impediments to such identification.

#### 1.1. Definition of shareholder

47. In the answers to the first question [Q. B-1] there was an even split between countries tending to view the first layer as the shareholder and those tending towards recognition of the final layer, but also a significant number of responses that did not provide a distinct answer or which signalled that more than one layer enjoyed recognition.

48. Four countries (FR, IT, LT and SK) provided a straightforward answer that the final layer was generally regarded as the shareholder and a further group of seven<sup>9</sup> provided a more qualified answer that the final layer was so regarded. At the other end of the spectrum, ten countries<sup>10</sup> answered that the first layer, generally corresponding to the registered holder, was recognised as shareholder<sup>11</sup>. Seven countries<sup>12</sup> provided other answers, which in most cases tended to provide that the first layer was recognised but that the law strained in some way to achieve a look-through toward the beneficial owner.

49. As to the entitlement to exercise votes [Q. B-2], answers leaned more clearly toward a recognition of the final layer. Thirteen countries<sup>13</sup>, answered that the final layer had the entitlement to exercise the vote, six countries<sup>14</sup> said that the first layer had this entitlement, two countries (PT and UK) specified that the first layer had this entitlement but also specifically commented that the right could be passed through to (or instructions received from) the final layer while seven countries<sup>15</sup> provided an answer that did not indicate a single choice of one or other of the binary answers.

50. The pattern of responses regarding entitlement to receive the dividends [Q. B-3] was very similar to that of voting rights but with some differences in detail. Sixteen countries<sup>16</sup>

---

<sup>9</sup> AT, BE, HR, CZ, HU, LV and RO.

<sup>10</sup> PT, SI, ES, BG, CY, EE, DE, EL, IE, and UK.

<sup>11</sup> Some of the respondents also addressed the qualification of the fund managers and clarified that the fund manager is not regarded as the shareholder though the fund itself may be (ES, PT, SI).

<sup>12</sup> DK, FI, IS, LU, MT, NL and PL.

<sup>13</sup> AT, BE, BG, HR, DK, FI, FR, IE, IT, LV, LT, PL, SK.

<sup>14</sup> CY, CZ, ES, HU, IS and SI

<sup>15</sup> EE, DE, EL, LU, MT, RO and NL.

<sup>16</sup> AT, BE, BG, HR, DK, FR, HU, IE, IT, LV, LT, LU, PL, RO, SK, NL.

answered that the final layer or end-investor was entitled to receive the dividend payments, seven countries<sup>17</sup> answered that the first layer or registered holder is entitled to receive the dividends. UK, for instance, answered that the first layer has the entitlement but specific reference was made for the facility for this right to be passed through to the end-investor<sup>18</sup>.

## 1.2. Issuers’ entitlement to access information on the identity of shareholders

51. Responding to Q. B-4, fourteen countries (see Table 1) indicated that issuers are legally entitled to initiate a process at their own request, and three of these (IT, MT, and SK) added that one or more of the other available options also apply. On the opposite, thirteen countries<sup>19</sup> answered that issuers can access information on the identity of their shareholders at or around the time of a general meeting (GM) or corporate actions or that this information was automatically provided at those times. In the case of LU the issuer may only receive information about shareholders who have actually indicated an intention to attend the GM, and in EL, FI and IE there are other types of limitation around the issuer’s ability to initiate identification. Only one country (BE) explained that there is no right of the company to access information on the identity of its shareholders.
52. The analysis in the following of this section is conditional on the existence of a shareholder identification process that can be initiated at the issuer’s request and go further in detail by looking into specific elements of such process<sup>20</sup>. Therefore, from Q. B-7 to Q. B-24 only the 14 countries that affirmed that a shareholder identification process could be initiated at the issuer’s request were further analysed.

*Table 1: Issuers’ entitlement to access information on the identity of shareholders*

Do companies have the right to access information on the identity of their shareholders, and what is the process?	Respondents	Countries
Issuers are legally entitled to initiate a process at their own request	14 countries	BG, CY, EE, ES, FR, HU, IS, IT, MT, NL, RO, SI, SK and UK
Issuers receive information on the identity of their shareholders at the time of general meetings or of corporate actions and/ or after participating in the GM <sup>21</sup>	13 countries	AT, CZ, DK, DE <sup>22</sup> , HR, IT, LT, LU, LV, MT, PL, PT, SK
A different system exists	3 countries	EL, FI and IE
No, a system does not exist	1 country	BE

<sup>17</sup> CY, CZ, EE, EL, ES, PT, SI.

<sup>18</sup> The answers from four countries (DE, FI, IS, MT) did not provide a specific choice for one or other of the binary answers.

<sup>19</sup> AT, CZ, DE, DK, HR, IT, LV, LT, MT, PL, PT, SK.

<sup>20</sup> It was also [Q. B-25] enquired whether, regardless of the shareholder identification systems described in Q. B-4, issuers have a right to require any individual or legal entity to declare whether it owns any of their shares. The question aimed to verify if there is a possibility for the issuer to get identification data directly from specific undisclosed shareholders. Only three countries (BE, IE, UK) provide for such right, possibly indicating a different rationale of this tool as opposed to shareholders’ identification general aim to improve dialogue between issuers and all the shareholders as well as to promote the exercise of shareholders’ rights.

<sup>21</sup> For some countries the information only comprises those shareholders which registered in the GM or exercised other corporate rights.

<sup>22</sup> However, please note the existence of registered shares as well as bearer shares in some countries like DE. Therefore, a different system exists in case of registered shares whereupon issuers are entitled to access information on the identity of their shareholders.

### 1.3. Characteristics and limitations of the shareholder identification process

53. The questions in this section aimed at gathering more information concerning the characteristics and limitations of the shareholder identification process.
54. In the first question [Q. B-5], respondents were asked whether this information on shareholder identity covers the first and/or the final layer of shareholders. An even split in the answers among countries could be observed here. Nine countries<sup>23</sup> pointed to the first layer of holders and nine countries<sup>24</sup> to the final layer of holders. In five countries (DE, LV, MT, NL and SK) the information can cover both the first and the final layer of holders. Similarly, five countries (FI, LT, LU, RO and UK) indicated that one of the two answers applies depending on the specific case and the nature of the shares. One example is the UK, where public companies are allowed to identify any person with an interest in the shares by issuing a notice, which will generally be to the next identifiable layer in the holding chain. Interestingly, although some countries indicated the final layer as shareholders, they can only identify the first layer (HR) or vice versa (BG, IE).
55. The following question [Q. B-6] related to the source of information on identification of shareholders. For nineteen countries<sup>25</sup>, the main source of information are the CSDs, However, in thirteen countries<sup>26</sup>, other intermediaries and/or other sources, such as custodians<sup>27</sup>, are also relevant. Four countries (DE, FI, IE and IT) answered that the source of information depends on the specific circumstances such as the type of shares or the type of the request.
56. The third question [Q. B-7] of this section depended on respondents positively indicating under Q. B-4 the existence of an issuer's right to initiate at their request a shareholder identification process and enquired about the existence of limitations or conditions to such right. Most of the 14 respondents to this question (nine countries<sup>28</sup>) indicated that no such limitations or conditions exist. In NL, identification can be requested only with respect to shareholders holding more than 0,5% of the shares or voting rights and the process can be only activated once a year until 60 days before the GM. In IT, the right to initiate a shareholder identification process can be exercised by the issuer only if provided by the company memorandum and articles of association. In FR and IT, corporate by-laws can also further provide limitations or conditions to the right of the issuer to initiate a process of shareholder identification. In HU and IT, shareholders retain the right to object to their

---

<sup>23</sup> CZ, CY, EE, EL, ES, HR, IS, PT, SI. In CY, in the vast majority of cases the registered shareholder is also the beneficial owner.

<sup>24</sup> AT, BG, DK, FR, HU, IE, IT, PL, RO.

<sup>25</sup> BG, CY, CZ, EE, EL, ES, FR, HR, HU, LV, LT, MT, NL, PL, PT, RO, SK, SI, and UK.

<sup>26</sup> AT, CZ, DK, ES, FR, HU, IS, LV, LU, MT, NL, SK and UK. Nine of those countries combine the CSD with other sources or intermediaries (CZ, ES, FR, HU, LV, MT, NL, SK, UK).

<sup>27</sup> For instance, Danish sub-custodians normally provide the Danish registrar with an electronic file from global proxy distributors. This file includes 1) the specific voting instructions and 2) the identification of the underlying shareholders.

<sup>28</sup> BG, CY, EE, ES, HR, MT, RO, SK and UK.

identification without any limitation. Further specific cases were mentioned by other countries<sup>29</sup>.

57. Again, depending on the respondents answering affirmatively to Q. B-4 (i), the next question [Q. B-8] inquired as to the items of information that are provided to issuers concerning shareholder identity in the context of a shareholder identification process. Table 2 below provides an overview of the answers given by respondents.

*Table 2: Information items provided to issuers*

Item of information	Number	Countries
Name	14	BG, CY, EE, FR, HU, IS, IT, MT, RO, SK, SI, ES, NL, UK
Address	13	BG, CY, EE, FR, HU, IS, IT, MT, RO, SK, SI, ES, NL
Email address	3	CY, EE, FR
National registration number	8	BG, CY, EE, MT, RO, SK, SI, ES
Legal Entity Identifier (LEI)	4	BG, MT, SK, SI
Unique identifier other than LEI	5	CY, MT, RO, SK, SI
Number of shares held	13	BG, CY, EE, FR, HU, IT, MT, RO, SK, SI, ES, NL, UK
Number of voting rights attached to the shares held	5	CY, EE, RO, SK, UK
Category or class of shares	6	EE, MT, RO, SK, ES, UK
Date of acquisition of shares	2	CY, SK
Other	9	BG, CY, FR, HU, IS, MT, SK, ES, UK

58. It was interesting to note that in 6 countries issuers are provided with the legal entity identifier (LEI) and/or another unique identifier; these tools are able to minimise the risk of misidentification and they facilitate interaction with other data sources. Among the 9 countries who have given specifications under “Other”, most indicated that information regarding any limitation to the rights attached to shares (e.g. share lending, suspension of voting rights, other liens) as well as other granular elements concerning the identity of the owner, such as tax residence, citizenship, date of birth, etc. must be provided.
59. The last question of this section [Q. B-9] inquired who (other than the issuer) is legally entitled to initiate a shareholder identification process. In five countries (ES, IT, NL, SK and UK), a shareholder identification process can be initiated by shareholders holding more than

<sup>29</sup> IS indicates that, in the case of a nominee registration/custodian, there have been problems identifying the beneficial owner of shares due to certain definition issues regarding a regulation on nominee registration and the custody of financial instruments in nominee accounts. In SI, a condition to obtain data from records maintained by KDD is to pay due compensation as set forth under the tariff. In UK, there can be in exceptional cases an exemption by the Secretary of State following consultation with the Governor of the Bank of England. This does not prevent an issuer from initiating the process.

a certain percentage of the shares or voting rights<sup>30</sup>. In four countries (FR, IS, MT and SI) only the issuer can initiate a shareholder identification process while other conditions applied elsewhere<sup>31</sup>.

#### 1.4. Top-down and bottom-up shareholder identification process

60. This section aimed at gathering more information concerning the two phases that constitute the shareholder identification process in those countries where issuers have such right: request of information from issuers to shareholders (top-down) and transmission of the response from shareholders to issuers (bottom-up).
61. In the first question of this section [Q. B-10], it was asked which process(es) is/are envisaged for the top-down request of information for the purpose of shareholder identification. Nine countries<sup>32</sup> replied that intermediaries must transmit the request of the issuer along the chain down to the intermediary closest to the shareholder. In the UK, the requirement to disclose any other person who has an interest in the shares means that any intermediary (or service provider) must at least be obliged to disclose to the issuer the next person or intermediary in the chain. In three countries (EE, IT and NL), the issuer can request the information on shareholder identity from any intermediary of the chain that holds the information. Three other countries (BG, CY and MT) indicated that the top-down identification process is limited to an exchange between the issuer and the CSDs.
62. Among the 14 responses to Q-B11<sup>33</sup>, eight countries<sup>34</sup> confirmed that the issuer is able to request the information from the CSD and another four countries<sup>35</sup> indicated that the issuer is able to request the information from the CSD, which in turn requests the information from its participants or from other intermediaries. Two countries selected both options (FR, SK) and only in one country (IS), is the CSD not involved in any of the steps in the top-down shareholder identification process.
63. Regarding the timeframe in which the intermediary should transmit down the chain the request of the issuer [Q B-12], in ES and SI, such request must be transmitted in less than one day. Four countries (EE, HU, MT and SK) indicated that no time limit exists for the

---

<sup>30</sup> In the UK and NL, a shareholder identification process can only be initiated by shareholders holding at least 10% of the share capital. In ES, shareholders who jointly or individually hold at least 3% of the share capital, and shareholders' associations established within the relevant issuer and who represent a minimum of 1% of the share capital, are legally entitled to initiate a request of shareholder identification. In Italy, the threshold varies depending on the size of the company and its ownership structure. SK provides for a 5% threshold.

<sup>31</sup> Several countries indicated that public bodies or authorities can initiate such process under specific conditions such as a prosecution or in the context of a judicial process and we assume this might be the case in virtually all jurisdictions.

<sup>32</sup> ES, FR, HU, IS, IT, MT, RO, SK, SI.

<sup>33</sup> BG, CY, EE, ES, FR, HU, IS, IT, MT, RO, SK, SI, NL, UK.

<sup>34</sup> BG, CY, EE, MT, SI, NL and UK.

<sup>35</sup> ES, HU, IT, RO.



transmission of such information. Among the eight countries who have indicated “other”, a number of different cases apply<sup>36</sup>.

64. The questionnaire also investigated which process(es) is/are envisaged for the bottom-up transmission of information regarding shareholder identity [Q. B-13]. In eight countries<sup>37</sup>, the CSD or another intermediary collects the information regarding shareholder identity and sends it to the issuer. In three countries (IS, IT<sup>38</sup> and NL) the party which holds the information regarding shareholder identity must transmit such information directly to the issuer, whereas in FR the intermediary must transmit the information to the issuer through the chain of intermediaries. In the SI, SK and UK, no specific process exists for the bottom-up transmission of shareholder information through the chain of intermediaries<sup>39</sup>.
65. The following question [Q. B-14] concerned again the timeframe in which the intermediary should transmit up the chain the information regarding shareholder identity towards the issuer. In six countries<sup>40</sup>, such information must be transmitted within one week. Six countries<sup>41</sup> indicated that no time limit exists<sup>42</sup>. Other countries indicated different timeframes<sup>43</sup>.
66. In relation to both top-down requests and bottom-up transmission of information [Q. B-15], the questionnaire also investigated the means of communication for the transmission of information. The table below gives an overview of the different answers provided by respondents, showing a general preference for email/post but also the existence of several IT systems, either straight-through processing with ISO 20022 or similar formats or others, mostly based on CSD systems.

*Table 3: Means used for top-down requests and bottom-up transmission of information*

Communication of information	Number	Countries
Fax	2	CY, SI

<sup>36</sup> Two countries (BG and CY) replied that it is not applicable in their case; in three (FR, IS and RO), the time period in which the information is transmitted down the chain is not specified; SK emphasised that the time limit to transmit the request may depend on contractual conditions; in the UK, the transmission should be done “within a reasonable time”; in IT, in case where identification request is transmitted through the chain, the time limit is 20 trading days to complete the whole process (request and answers), while in the case where the identification request can be addressed to any intermediary, the time limit is three days and refers only to transmission of information bottom-up.

<sup>37</sup> BG, CY, EE, ES, FR, HU, RO, SK.

<sup>38</sup> In IT, depending on the issuer request, the CSD can also collect the information in order to send the identification data to the issuer.

<sup>39</sup> In MT, the information is transmitted from the Manager/Registrar of an issuer to the CSD at the time of the issue to the CSD, which is then responsible to retain the register and to update it with information provided by the shareholder.

<sup>40</sup> BG, ES, IT, SK, SI, NL. In NL, responses to a request should be provided within 3 working days. In IT, when the information on shareholder identity is transmitted through the chain of intermediaries, the time limit is twenty trading days to complete the whole process (top-down & bottom-up); in case where information on shareholder identity is requested from a given intermediary in the chain, intermediaries must transmit the information within three trading days since the issuer's request.

<sup>41</sup> CY, EE, HU, IS, MT and SK. SK is indicated in both groups because they ticked both answers.

<sup>42</sup> CY replied specified that there is no specific time limit but that in practice, information is normally transmitted within one working day from the day of the request.

<sup>43</sup> For example, in FR, the intermediaries must transmit their responses to the CSD within ten working days, and the CSD must transmit the information to the issuer within five working days. RO indicated that the bottom up transmission must be made within three working days from the CSD request. The UK indicated this question was not applicable.



Email	9	CY, FR, IS, IT, MT, RO <sup>44</sup> , SK, SI, UK
Post	7	BG, CY, IS, MT, SK, SI, UK
IT systems enabling straight-through processing (i.e. an automatic process without manual intervention) using ISO 20022 or similar formats	5	BG, EE, HU, SK, ES
Other IT system/s	6	FR, IT, MT, RO <sup>45</sup> , SK, NL

67. Results to Q. B-16-17 finally indicated that four countries (ES, FR, HU, RO) have a specific form or format for the bottom-up transmission of information and four countries (ES, IT, NL, RO) (also) have one for the top-down transmission of information. In eight countries<sup>46</sup>, no specific form or format for either of the two forms of transmission exists.

## 1.5. Access to information by others than the issuer

68. Evidence collected by ESMA in Q. B-18 indicated that the information gathered on shareholders' identity is generally available only to the issuer and sometimes to other public authorities or entities. This is the case for a considerable number of countries while a few jurisdictions (IS, IT, SI, UK) provide for some form of disclosure of the data on shareholder identity gathered by the issuer.

69. While the shareholder identification process is mainly designed to improve dialogue between issuers and shareholders, it is worth noting that full transparency on shareholder identity might also result in strengthened activism for the exercise of shareholder rights through information sharing and coordinated action. In this regard, it can be noticed that the current level of access to information on shareholder identity across the EEA, being mostly limited to the issuer, might hinder effective coordination by minority shareholders, which are below the TD threshold.

## 1.6. Legal and practical barriers to the shareholder identification process

70. Questions in this section aimed at gathering information about the effectiveness of the various shareholder identification processes envisaged across those 14 jurisdictions that have an identification system in place. The analysis was developed based on two dimensions: cross-border context, on the one hand, and the legal definition of shareholder, on the other.

<sup>44</sup> RO specified that email is used for the communication of the information from the issuer to the CDS and from the CSD to the issuer.

<sup>45</sup> RO specified that an IT system is used for both top-down and bottom-up transmission of information between the CSD and its participants.

<sup>46</sup> BG, CY, EE, IS, MT, SK, SI, UK.

71. Considering the cross-border context, ten respondents<sup>47</sup> answered to the first question of the section [Q. B-19] that in their jurisdictions issuers are not experiencing legal or practical barriers, restrictions or technical impediments to identify non-resident shareholders<sup>48</sup>. Likewise, nine countries<sup>49</sup> answered that issuers are not experiencing legal or practical barriers, restrictions or technical impediments in obtaining information on shareholders from third country or foreign intermediaries [Q. B-20]. These responses would suggest that the shareholder identification processes do not seem to encounter major legal or practical barriers in a cross-border context. However, five countries<sup>50</sup> recognised that barriers or restrictions exist both as regards identification of non-resident shareholder as well as obtaining information on shareholders from a third country or foreign intermediaries, attributing these limitations to legal arrangements (IS<sup>51</sup>, IT<sup>52</sup>, NL) or to practical/technical reasons (FR<sup>53</sup>, MT<sup>54</sup>).
72. Regarding the impact of the definition of “shareholder” on the effectiveness of the identification process, the next question [Q. B-21] enquired about the issuer's right to identify beneficial owners even in those jurisdictions where they are not qualified as “shareholders”. Nine countries<sup>55</sup> answered that no such right exists, whereas five countries<sup>56</sup> declared to have such a provision.
73. However, it should be highlighted that answers provided on this topic are to be read in light of answers provided to Qs. B-1 and B-2 on the definition of shareholder. In particular, it should be noted that respondents to Q. B-21 include jurisdictions where the beneficial owners are already qualified as “shareholders”. With the exclusion of these jurisdictions<sup>57</sup>, the only jurisdiction providing for the right envisaged in Q. B-21 is the UK, where despite the fact that beneficial owners are not recognised as shareholders they can still be identified by issuers. The UK also reported that, even though specific barriers do not exist, the exercise of this right can be time-consuming for issuers.

---

<sup>47</sup> BG, CY, EE, ES, HU, IT, RO, SK, SL, UK.

<sup>48</sup> By non-resident shareholders, this report refers to shareholders with residence in a country different from that of the issuer.

<sup>49</sup> BG, CY, EE, ES, HU, RO, SK, SL, UK.

<sup>50</sup> FR, IS, IT, MT, NL. In the case of NL, the provision of email address of/by (resident and non-resident) shareholders is optional in the law and it was reported that issuers would like to have access to their email address.

<sup>51</sup> Icelandic legislation is not decisive enough so that it is possible to require information on the beneficial owner in case of a custody/nominee registration. IS reported that this has been problematic due to the regulation on nominee registration and the custody of financial instruments.

<sup>52</sup> In IT, according to the Post-trading Regulation adopted by Consob/Banca d'Italia, obligations provided in order to identify shareholders apply only down to the third country intermediaries closest to the shareholders who have a branch in the country.

<sup>53</sup> France pointed out that: “Despite the legal requirement, issuers sometimes face difficulties to obtain the identity of non-resident shareholders since some intermediaries may not respond to the disclosure request or only disclose their immediate client information (which may not be the beneficial owner)”.

<sup>54</sup> MT reported that “Issues may arise where shareholders have changed their address and have not informed the Issuer or their respective financial advisor of such a change.”

<sup>55</sup> CY, EE, ES, IS, IT, MT, RO, SK, SI.

<sup>56</sup> BG, HU, LT, NL and UK, which also specified the content of such right.

<sup>57</sup> Answers provided under B-22 have been jointly considered for the purposes of this section.

## 1.7. Sanctions

74. This section also aimed at gathering information about the level of enforcement of the shareholder identification process, mainly verifying the existence of sanctions in case of breach of identification rules and their nature. Answers received to the first question inquiring as to the sanctions for shareholders and intermediaries in case of non-compliance [Q. B-23] show a good level of enforcement across the jurisdictions. In fact, only two countries declared that no sanctions are in place at all (BG, MT), while a small group of jurisdictions establish one kind of sanction applicable to shareholders or intermediaries in case of non-compliance with shareholder identification rules<sup>58</sup>. By way of example, in HR only criminal sanctions are provided for such a case, whereas other jurisdictions envisage civil sanctions (HU, NL) or administrative ones (EE, IS, RO, SI) . Moreover, a significant group of countries<sup>59</sup> provided a combination of enforcement measures of different nature, depending on the person or entity concerned. It was observed that in order to enforce intermediaries' duties, jurisdictions seemed to rely more on administrative or criminal sanctions, whereas suspension of voting and dividend rights appears to be a preferred tool in order to penalise non-compliant shareholders.
75. The following question [Q. B-24] focused on the level of enforcement of the sanctions mentioned above in respect of non-resident shareholders or any other foreign/third country intermediaries (or service provider). In line with the evidence from the previous paragraph, only three countries (IT, NL, SK) clearly answered that sanctions provided in their jurisdictions do not apply to non-resident shareholders or foreign intermediaries. However, it should be noted that some countries (FR, UK) have expressly indicated that the enforcement of sanctions in respect of foreign intermediaries or individuals (in case of criminal sanctions) is perceived as more complex and costly, even though legally possible.

## 2. Entitlement to vote and to the exercise of other corporate rights

76. This section collected information on the procedures in place across EEA jurisdictions in relation with shareholders' entitlement to exercise voting and other corporate rights. It also focused on the regulatory framework for the enforcement of such rules.

### 2.1. Entitlement and notification

77. Firstly, the questionnaire [Q. C-2] enquired as to who is in charge of the maintenance of the shareholder register: in seven countries<sup>60</sup>, this obligation lies with issuers, while in six other countries<sup>61</sup> it is an obligation of the CSD. Other jurisdictions have systems, which adopt one or more of the solutions above simultaneously. In the UK, for instance, there are two parts

---

<sup>58</sup> In the case of LV suspension of voting rights can be a consequence of shareholders not disclosing their identity to the issuer in connection with the GM.

<sup>59</sup> ES, FR, IT, LT, SK, UK.

<sup>60</sup> AT, BE, DK, IS, IE, LU, PT.

<sup>61</sup> BG, CY, EE, FI, PL and SI.

to the register, the CREST portion (the operator record) and the issuer record: together they form the whole register and do not overlap each other<sup>62</sup>. Other countries such as DE and HU allow the issuer to indicate in its by-laws who is in charge of maintaining the shareholder register.

78. At the same time, the establishment of voting rights was investigated [Q. C-1]. Only in EE, HU and IS entitlement records are kept by issuers. In a broader set of countries<sup>63</sup>, special systems of recording entitlement are kept outside the issuer (via intermediaries). In five countries (AT, LT, LU, PL and PT) shareholders provide the issuer with the proof justifying their entitlement to vote while seven other countries<sup>64</sup> have systems which adopt one or more of the solutions above depending on whether the shares are in dematerialised, bearer or certificated form.
79. Furthermore, in relation with shareholders' duty to notify the issuer of their intention to attend the GM [Q. C-3], it was observed that in 16<sup>65</sup> jurisdictions this does not apply while in 11 countries an explicit notification is required<sup>66</sup>. In eight countries<sup>67</sup> the notification coincides with the proof of the entitlement to the shares. In some countries, this is not a requirement, as it is up to the company to introduce a notification duty for its shareholders in the by-laws (e.g. FI).

## 2.2. Record date and ex-date

80. This section analysed whether "record dates"<sup>68</sup> and "ex-dates"<sup>69</sup> are established, how they are calculated as well as whether these provisions are provided for by hard or soft law.
81. The results of ESMA's questionnaire [Q. C-4] indicate that a broad majority of countries caters for a "record date" as basis for the entitlement to vote and does so through hard law provisions<sup>70</sup>. All "record dates" subject to our analysis are calculated with reference to the date of the GM and in calendar/business/trading/working days. Timeframe varies from 2 to 30 days and reflects no specific trends on this particular area<sup>71</sup>, as indicated in the following table:

---

<sup>62</sup> The issuer has the responsibility in law but in practice the issuer record is outsourced to a commercial registrar.

<sup>63</sup> BG, HR, CY, DK, FI, EL, IT, RO.

<sup>64</sup> BE, FR, SK, UK, DE, ES and CZ; although IT has a shareholder register system in place, the entitlement to vote is not based on it, but on the CSD recording system.

<sup>65</sup> BG, CY, CZ, EE, HU, IS, IE, LT, LV, MT, RO, SK, SI, ES, NL, UK

<sup>66</sup> BE, HR, LU, AT, DK, FR, DE, EL, IT, PL, PT.

<sup>67</sup> AT, DK, FR, DE, EL, IT, PL, PT.

<sup>68</sup> By Record Date, reference is made to a specified date prior to the general meeting in respect of which the rights of a shareholder to participate in a general meeting and to vote in respect the shares owned by such shareholder are determined.

<sup>69</sup> By Ex-Date, reference is made to an explicit time at which trading on a regulated market will move from cum- to ex- the entitlement to attend and vote at a forthcoming general meeting, i.e. a date, prior to the general meeting, on or after which a share is traded without the entitlement to attend and vote at a forthcoming general meeting

<sup>70</sup> As provided in the Article 7 of the shareholder rights directive, which requires Member States to define a record date which should lie not more than 30 days before the GM.

<sup>71</sup> According to their answer, IS does not have this provision in its regulation. The same conclusion can be drawn from HR answer.

Table 4: Time range for record date<sup>72</sup>

Country	Time range
AT	GM-10d
BE	GM-14d
BG	GM-14d
CY	GM-up to 2bd
CZ	GM-7d
DE	GM-21d
DK	GM-7d
EE	GM-7d
EL	GM- Up to 5d
ES	GM-Up to 5d
FI	GM-8bd
FR	GM-2td
HR	GM- At least 6d
HU	GM-up to 2bd
IE	GM-up to 2bd
IS	N. A.
IT	GM-7td
LT	GM-5bd
LU	GM-14d
LV	GM-6bd
MT	GM-30d
PL	GM-16d
PT	GM-5td
RO	GM-3d up to 30d
SI	GM-4d
SK	GM-at least 5d
UK	GM-up to 2d

82. Regarding the “ex-date” [Q. C-5], the picture is mixed. While the majority of jurisdictions have this provision in place, in some cases through hard law (major trend), in others via soft law<sup>73</sup>, four countries (AT, MT, PL and RO) have not established such a provision at all and in others (BE, BG, LU and PT) the “ex-date” coincides with the “record date”. A wide dispersion of practices can be observed on how the ex-date is calculated<sup>74</sup>.

### 2.3. Remote vote

83. The first question in this section [Q. C-6] assessed whether issuers are obliged to provide electronic means to enable shareholders to attend the GM. Out of the 28 respondents, only two countries reported that issuers have such obligation (HR, IS), including for voting

<sup>72</sup> In Calendar Days (d), Business Days (bd) or Trading Days (td), as specified.

<sup>73</sup> Some countries (CY, DE, ES, IT, LU, SI) did not specify if their provision were based on hard or soft law, and DK pointed out that the Danish NCA only applies hard law in this area.

<sup>74</sup> The majority of countries calculates this with reference to the date of the GM (CZ, DK, EE, FR, EL, HU, IT, SK, SI, IE), others with reference to the “record date” (CY, LV, LT, ES) and many are also based on T+2 settlement timetable (CY, CZ, DK, FI, LT, UK). Timeframe varies from GM - 9 days (DK) up to the first trading date after GM+21 (DE) and reflect no other trends on this particular subject matter.

purposes<sup>75</sup>. However, this does not preclude of course the possibility in several jurisdictions for companies to provide such means even when this is not legally mandated.

84. The second question [Q. C-7] concerned the issue of how the shareholders that do not physically attend the GM can cast their vote. It should be noted that answers varied to a great extent among the different jurisdictions and, in most cases, showed a combination of tools for casting votes from remote. The table below provides an overview of the different answers given by respondents.

*Table 5: Different ways to cast the vote for shareholders that do not attend physically the vote [Q. C-7]*

Ways to cast the votes	Countries
By a third party acting as a proxy	BE, BG, CZ, DK, EE, ES, FR, HR, HU, IE, IT, LU, LV, PT, RO, SI, SK, UK.
Communication of the vote directly to the issuer	BE, BG, CZ, DK, EL <sup>76</sup> , ES, FR, HU, IE, IS <sup>77</sup> , IT, LT, LU, PT, RO, SI, SK.
By an intermediary acting as a proxy	BE, CZ, DK, ES, FR, HR, HU, LT, LU, LV, PT, RO, SI, UK.
Through the intermediaries' chain	DK, ES, FR
One or more of the given options depending on the by-laws	AT, BE, CY, DE, EE, LU, MT, PL, SK.
Other ways	FI, HR, NL, UK.

## 2.4. Vote delegation and execution

85. The first question in this section [Q. C-8] queried whether it is legally possible for a shareholder or for a proxy to vote different shares in different ways. Out of the 28 respondents only IS and HR answered negatively. In 13 jurisdictions<sup>78</sup>, shareholders are allowed to cast votes attached to their shares in different ways as per art. 13 (4) of SRD I only<sup>79</sup>. A group composed of 13 jurisdictions<sup>80</sup> extends this possibility to other specific cases, including those under art. 10 (2) second subparagraph and/or under art.10(5) of SRD I, such as when a person acting as a proxy holder holds a proxy form from more than one shareholder<sup>81</sup>.

<sup>75</sup> HR stated that according to their Corporate Governance Code, shareholders are allowed to participate and vote at the GM using modern communication technology. IS indicated that the Board of Directors can determine that shareholders may participate electronically. Companies registered on a regulated securities market are, however, obliged to afford shareholders an opportunity of casting votes on issues on the GM agenda by letter or electronically. Finally, IE reported that if a GM is held outside IE, technological means to participate must be provided at the company's expense; however, it also indicated that section 1106 modifies these provisions for traded PLCs.

<sup>76</sup> In EL and IS, communication of the vote directly to the issuer is the only way that the shareholders have to cast their vote in case of non-attendance.

<sup>77</sup> In EL and IS, communication of the vote directly to the issuer is the only way that the shareholders have to cast their vote in case of non-attendance.

<sup>78</sup> BG, DK, EE, HU, IE, LT, LU, LV, MT, PL, PT, RO and SK.

<sup>79</sup> Art. 13 (4) of SRD I provides that "a shareholder (...) shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares".

<sup>80</sup> AT, BE, CY, CZ, DE, EL, ES, FI, FR, IT, NL, SI and UK.

<sup>81</sup> Some respondents indicating other cases six of them (AT, BE, FR, DE, SI and UK) stated that shareholders and/or proxies are allowed to vote differently for different shares, one referred to this possibility for different classes of shares, two other jurisdictions (EL and FI) explained that shareholders may have several proxies who represent the shares held on different book-entry accounts, other

86. When asked [Q. C-9] if an intermediary with more than one underlying investor could delegate the right to attend the GM to more than one representative, three countries (FI, IS and LV) responded negatively. However, as far as FI and LV are concerned, the holder recorded in the first layer is not recognised as the shareholder. Therefore, the lack of ability to "delegate" the right to attend has to be understood against this background. Sixteen countries<sup>82</sup> answered that this was possible only under Art. 13 (5) of SRD I, i.e. the intermediary recognised as a shareholder can grant a proxy to each of his clients or to any third party designated by a client. A group composed of nine respondents<sup>83</sup> answered that they extend this possibility also to other specific cases further specifying the nature of them<sup>84</sup>. Interestingly, no respondents reported specific procedures concerning the execution of voting rights at the GM by non-resident shareholders [Q. C-10].
87. Finally, regarding the requirement to designate a financial institution as the agent through which shareholders may exercise their financial rights [Q. C-11], most of the respondents (20 countries<sup>85</sup>) indicated that this is mandatory and additionally, in two of them (EL and PT), the agent needs to be based in the jurisdiction of the issuer. On the contrary, in eight other jurisdictions<sup>86</sup> there is no such obligation in place.

## 2.5. Sanctions

88. Questions in this section aimed at gathering information about the enforcement framework for the rules on entitlement to vote and exercise other corporate rights, mainly verifying the existence of sanctions on this matter and the nature of such provisions.
89. Answers received under Q. C-12 showed a good level of enforcement across jurisdictions and that a variety of sanctions are envisaged in case of non-compliance by issuers or intermediaries with the entitlement rules. In particular, administrative sanctions and civil sanctions are widely applied<sup>87</sup>, while criminal sanctions are very rarely put in place across the jurisdictions<sup>88</sup>. Only two countries declared that no such provisions exist (HU and UK)<sup>89</sup>.

---

two (NL and SI) indicated that there are no restrictions in their laws, and finally, two (ES and IT) mentioned this possibility for proxies representing multiple shareholders.

<sup>82</sup> BE, BG, CY, CZ, DK, EE, ES, FR, HU, LT, LU, MT, PT, RO, SK and UK.

<sup>83</sup> AT, DE, EL, HR, IE, IT, NL, PL, SI.

<sup>84</sup> Three of them (DE, NL and PL) indicated that shareholders are entitled to appoint more than one proxy; IT explained that shareholders can appoint a proxy for every account on which shares are recorded; EL indicated that shareholders can appoint up to three proxies or a proxy for every account on which shares are recorded; in IE a member of a company shall not be entitled to appoint more than one proxy to attend on the same occasion unless the company's constitution otherwise provides; in SI that depends on the contractual agreement between clients; AT pointed out that this applies only to listed companies and HR responded that if provided for by a Power of Attorney granted by a shareholder an intermediary may grant another Power of Attorney for representation to persons who are not its employees.

<sup>85</sup> AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HR, IE, IS, LT, LU, LV, PT, RO, SI and UK.

<sup>86</sup> DK, EE, HU, IT, MT, NL, PL, SK.

<sup>87</sup> Seventeen countries responded they have administrative sanctions in place (BG, CY, CZ, EE, EL, IE, IS, IT, LV, LT, LU, MT, PT, RO, SK, SI). Fifteen countries responded they have civil sanctions in place (AT, BE, CZ, DK, FI, FR, DE, ES, IT, LV, LT, LU, PL, SK, ES and NL and PL). Some countries apply both civil and administrative sanctions (CZ, ES, IT, LT, LU, LV and SK).

<sup>88</sup> Criminal sanctions can be applied either as the sole sanction (HR) or combined with other types of sanctions (FR, LU, PT and SK).

<sup>89</sup> Although it could be assumed that civil actions might be brought anyway in order to request restoration for damages caused by unlawful conduct of intermediaries or issuers.



90. The second question of this section [Q. C-13] focused on the level of enforcement of the sanctions mentioned above in respect of foreign/third countries intermediaries. While in 13 jurisdictions<sup>90</sup> the same sanctions may be enforced in respect of foreign intermediaries, in another 13 countries<sup>91</sup> cross-border enforcement is not possible, either because they have no sanctions in place for intermediaries in general, or because of the foreign nature of the intermediary<sup>92</sup>.
91. Interestingly, some countries highlighted that cross-border enforcement of entitlement rules, although possible, may be actually difficult to achieve due to different legal systems (DE and FR). Other respondents specified that cross-border enforcement might be possible only with respect to civil or criminal sanctions, but not with respect to administrative sanctions (IT, LU and SK<sup>93</sup>).

### 3. Transmission of information between issuers and shareholders

92. This section focused on the transmission of information between issuers and shareholders. In particular, it investigated the information channels used by issuers and the information available to shareholders for the exercise of rights related to their shares. However, as indicated in section 2, the scope of the questionnaire did not include voting transmission and confirmation. In addition, the questionnaire also considered the procedures for the exercise of some corporate rights and the forms or formats provided in the different jurisdictions for the exercise of these rights. Finally, this section included a review of the applicable sanctions in case of non-compliance by issuers or intermediaries.

#### 3.1. Communication channels between issuers and shareholders

93. As a first step [Q. D-1], the questionnaire investigated the use of the three main information channels for communication: (i) communication to the public (e.g. on issuers' or institutional websites, national official journal, press releases, newspapers), (ii) direct communication to the individual shareholders by the issuer, or (iii) communication to the individual shareholders through the chain of intermediaries. Results are reflected in the following table.

---

<sup>90</sup> AT, BG, DE, EE, ES, FR, IS, IT, LU, NL, RO, SK and SI. IT pointed out that "According to the Post-trading Regulation adopted by Consob/Banca d'Italia, administrative sanctions apply only down to the third country intermediaries closest to the shareholders who have a branch in Italy. Civil remedies on issuers or intermediaries can apply without any difference."

<sup>91</sup> CY, CZ, DK, HR, EL, HU, IE, LV, LT, MT, PL, PT and UK. PT clarified that cross-border enforcement of sanctions is not possible because the sanctions foreseen in their legislation are applicable only to issuers.

<sup>92</sup> There are also two countries indicating that civil sanctions might be enforced depending on contractual provisions between the parties and based on international private law provisions (BE and FI). While this was not specified by other countries, we assume it applies to every jurisdiction.

<sup>93</sup> Again, IT pointed out that "According to the Post-trading Regulation adopted by Consob/Banca d'Italia, administrative sanctions apply only down to the third country intermediaries closest to the shareholders who have a branch in Italy. Civil remedies on issuers or intermediaries can apply without any difference."



Table 6: Channels of communication from the issuer to the shareholder [Q. D-1]

	Hard law	Soft law	Mandatory for the issuer <sup>94</sup>
Making the information available to the public (e.g. on issuers' or institutional websites, national official journal, press releases, newspapers)	27: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IS, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK, UK,	2: IE, LV,	20: AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, HU, IT, LU, LV, MT, NL, PT, RO, SI, SK,
Communicating to the individual shareholders through means of direct communication	22: AT, BE, CY, CZ, DE, DK, EL, FI, FR, HR, HU, IS, IT, LU, LV, MT, NL, PL, PT, RO, SI, UK,	3: IE, SK, EL,	8: BE, CZ, DK, FI, FR, HU, LU,
Communicating to individual shareholders through the chain of intermediaries	5: DE, FR, HR, LV, MT,	3: FI, LV, SK,	1: FI,
Other	1: IE,	0:	0:

### 3.2. Top-down channels of communication between issuers and shareholders

94. This section of the questionnaire gathered evidence in connection to the three aforementioned top-down channels of communication. Regarding the way in which issuers make information available to the public, Q. D-2 investigated the content and channel through which such information is released. Table 1 in Annex I provides a full picture of different frameworks in place across jurisdictions. At first sight, ESMA observed that in the vast majority of cases the requirements are defined through hard law and that the issuer's website is the most used venue followed by press releases. It also appears that official national journals and newspapers are quite commonly used to deliver information relating to the logistics of the GM and the timeframe to communicate different elements including the intention to attend and exercising voting rights (directly or through proxies).
95. Direct communication of information to the shareholders is provided for in rather different ways in the respective jurisdictions. For a comprehensive overview, Table 2 in Annex II summarises answers to Q. D-3. Typical communication patterns are post/email and IT systems. FR and CZ are the only countries requiring on a hard law basis communication solely by post. Other communication systems run through the trade register (BG) or the respective exchange (MT).

<sup>94</sup> This third column indicates if the use of a certain communication channel is mandatory for the issuer as opposed to optional (first and second columns).

96. As respondents to Q. D-4 indicated, when issuers communicate directly to shareholders through electronic means, they need to comply with a number of conditions as per article 17 of the TD. Firstly, identification arrangements are in place in 12 jurisdictions<sup>95</sup>, allowing shareholders to be effectively informed, and the use of electronic means in no way depends upon the location of shareholders' residence. Secondly, 18 countries<sup>96</sup> require shareholders' consent in writing for the use of electronic means for conveying information and the cost of conveying of this information is determined by the issuer. Thirdly, in 12 jurisdictions<sup>97</sup> direct communication through electronic means must be foreseen in the issuers' by-laws.
97. Question Q. D-5 inquired as to the communication through the chain of intermediaries, which is clearly not envisaged in the majority of jurisdictions. Results are presented in Table 3 in Annex II. CZ, DK, LV and SK are the only countries with a strict hard law approach, whereas others like DE, FR and LT are following an overall soft law approach relating to the flow of information in this area. While the venues are diverse, ESMA observed a small cluster of countries where specific IT systems ("other IT systems) are envisaged by soft law at least for communicating the information concerning logistics and exercise of voting rights (ES, FR, IT).

### 3.3. Top-down communication process through the chain of intermediaries

98. This section further investigated the top-down communication process through the chain of intermediaries. As a first step, in line with the content of Q. D-6 ESMA asked whether, in those jurisdictions where the definition of shareholder focuses on the first layer (see Q. B-2), the information sent through the chain nonetheless reaches the final layer. In most of such countries there are no provisions relating to the communication through the chain of intermediaries until the final layer. In most cases, national law does not include final layers and refers only to first layers. For example, in DE, SK and UK the transmission of information until the final layer depends on the respective contractual arrangements between first layer and final layer. Interestingly, LV is an example of a "first layer" country providing (soft law) rules for transmission of information until the final layer.
99. The next question [Q. D-7] analysed the role of CSDs in the transmission of information through the chain. In most countries (16<sup>98</sup>), CSDs have no role in the communication through the chain of intermediaries until the final layer. In the remaining jurisdictions, CSDs usually disseminate the information received from the issuer/ intermediary, but may not act or transmit information on behalf of shareholders.
100. As a next step, the timeframes in which information must be provided down the chain (from the issuer to shareholders; from the issuer to intermediaries; from the intermediary to

---

<sup>95</sup> AT, CY, EE, EL, FI, FR, HR, IE, LU, MT, RO, SP.

<sup>96</sup> AT, BE, BG, CY, CZ, DE, DK, EE, FI, HU, IE, IS, IT, MT, RO, SI, SK, UK.

<sup>97</sup> BG, CZ, DE, DK, EE, FI, IE, IT, MT, SI, SK, UK.

<sup>98</sup> AT, BE, CY, CZ, EE, ES, IS, HU, LT, LU, MT, PL, RO, SI, SK, UK,

shareholders; from one intermediary to another down the chain) were analysed [Q. D-8]. Table 7 below provides a full picture of the timeframes in place across the respondents.

*Table 7: Timeframe in which notifications must be provided from the issuer to the shareholder [Q. D-8]*

	Specific deadline (hard law)	Specific deadline (soft law)	With no delay (hard law)	With no delay (soft law)	No deadline
To shareholders from the issuer	17: BE, CY, CZ, DE, DK, EE, EL, ES, FR, IE, IS, LT, LU, MT, NL, SI, UK,	1: IE,	3: DK, LV, NL,	1: IE,	7: AT, BG, HU, IT, PL, PT, RO,
To intermediaries from the issuer	1: DE,	2: HR, LU,	0:	2: LV, EE,	10: AT, BG, DK, FR, HU, IS, LT, PL, PT, UK,
To shareholders from the intermediary	0:	1: LU,	1: DE,	2: EE, LV	11: AT, BG, DK, FR, HU, IS, IT, LT, PL, PT, UK,
From one intermediary to another down the chain	0:	1: LU,	0:	2: EE, LV	12: AT, BG, DE, DK, FR, HU, IS, IT, LT, PL, PT, UK,

101. Here, the information from the issuer to the shareholders is to be provided within specific deadlines or “with no delay” in most jurisdictions (21 countries)<sup>99</sup> ranging from 14 to 42 days<sup>100</sup>. Finally, responding to the next question [Q. D-9], only FI, FR and MT found legal or practical barriers, restrictions or technical impediments to transmit information down to non-resident shareholders.

### 3.4. Bottom-up channels of communication between issuers and shareholders

102. This section aimed at gathering more information about the means that shareholders can use in order to communicate information to issuers bottom-up.

103. Regarding procedures followed by the shareholders in order to convene a GM [Q. D-10], in most countries (23, as per Table 8 below), they may address the issuer directly and in DE and HR they also address the issuer via an application submitted through the

<sup>99</sup> BE, CY, CZ, DE, DK, EE, EL, ES, FR, IE, IS, LU, LT, LV, MT, NL, SI, UK.

<sup>100</sup> Those countries having deadlines specified the respective days as follows: 14 or 21 days (UK, CY), 15 days before the GM (FR); 21 days before the GM (DE, LT, MT); 30 calendar days before the GM (BE, CZ, SI); up to 42 days (NL).

intermediaries' chain (up to the issuer). When shareholders ask to include new items on the agenda or add proposals in relation to items already included on the agenda [Q. D-11], they have to submit the application directly to the issuer in nearly all countries (25, as per Table 9 below), and in half of them (14) the use of this channel is mandatory. These results were very similar to the procedures followed by shareholders in order to ask questions pursuant to Art. 9 of the SRD I [Q. D-12], where the hard law focus applies to the submission of the application directly to the issuer in 22 countries.

*Table 8: Procedures followed by shareholders in order to convene a GM [Q. D-10]*

	Hard law	Soft law	Mandatory for the shareholder to use this channel
Application submitted directly to the issuer	23: AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HR, HU, IS, IT, LT, LV, MT, NL, PL, PT, SI, SK, UK	1: HU,	13: AT, BE, CY, CZ, DE, DK, FI, IT, LV, MT, NL, PT, UK
Application submitted through the intermediaries' chain (up to the issuer)	2: DE, HR,	0:	0:
Other	7: BG, FR, IE, IT, LT, NL, RO,	1: LU	2: FR, IT,

*Table 9: Procedures followed by shareholders to include new items on the agenda or add proposals in relation to items already included on the agenda [Q. D-11]*

	Hard law	Soft law	Mandatory for the shareholder to use this channel
Application submitted directly to the issuer	25: AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IS, IT, LU, LV, MT, NL, PL, PT, SI, SK, UK	2: NL, HU,	14: BE, DE, MT, FR, DK, CZ, LU, UK, FI, LV, CY, AT, IT, NL,
Application submitted through the intermediaries' chain	1: HR,	0:	0:
Other	4: BG, IT, LT, RO,	0:	1: IT,

*Table 10: Procedures followed by shareholders in order to ask questions pursuant to Art. 9 of SRD I [Q. D-12]*

	Hard law	Soft law	Mandatory for the shareholder to use this channel
Application submitted directly to the issuer	22: BE, BG, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IS, IT, LV, LT, MT, NL, PL, PT, SI, SK, UK	3: HU, LU, NL,	8: BE, CZ, DE, DK, IT, LV, LT, MT

Application submitted through the intermediaries' chain	1: HR,	0:	0:
Other	6: AT, CY, IE, IT, FI, RO,	0:	3: CY, FI, IT,

104. By contrast, practices diverged with regards to the procedures followed by shareholders in order to notify their intention to attend the GM [Q. D-13] when this notification is mandatory (i.e. for those jurisdictions which answered yes to Q. C-3). Shareholders may submit this application either directly to the issuer (11 countries, as per Table 11 below) or through the intermediaries' chain (three countries). Some countries indicated other options such as that there is in general no obligation of notification (DK, IS, IT, SK) or companies are inviting the shareholders to notify (UK).

*Table 11: Procedures followed by shareholders in order to notify their intention to attend the GM [Q. D-13]*

	Hard law	Soft law
Application submitted directly to the issuer	7: AT, BE, EL, HR, LU, NL, PT	4: DE, HU, LU, PL,
Application submitted through the intermediaries' chain	2: HR, IT,	1: DE,
Not applicable (the respondent answered C3 (ii))	11: CY, CZ, EE, ES, FR, IE, LT, LV, MT, RO, SI	5: CY, ES, LT, MT, SI
Other	8: BG, DK, EL, FI, IS, IT, SK, UK	2: FI, IS

105. As for the timeframe in which notifications and instructions must be provided up the chain [Q. D-14], the majority of countries have deadlines with respect to communication from shareholders to the issuer. Unless based on a "with no delay" clause, the deadlines submitted were very diverse (from two trading days up to 42 days before the GM). As for the provision of notification and instructions from shareholders up to the intermediary, from one intermediary to another up the chain and from the intermediary to the issuer, very few countries have deadlines (the exceptions being LU, LV and IT).

*Table 12: Timeframe in which notifications and instructions must be provided up the chain [Q. D-14]*

	Specific deadline (hard law)	Specific deadline (soft law)	With no delay (hard law)	With no delay (soft law)	No deadline
From shareholders to the issuer	16: AT, BE, CY, CZ, DE, DK, EL, ES, FR, HR, LT, LU, MT, NL, PT, RO	3: CZ, IE, LU,	1: MT,	2: IE, LV,	10: BG, CZ, EE, FR, HU, IS, IT, PL, SI, UK
To intermediary from shareholders	0:	1: LU,	1: LV	1: LV	13: BE, BG, DE, DK, FR, HU, IS, IT, LT, PL, PT, SI, UK

From one intermediary to another up the chain	0:	1: LU,	1: LV	1: LV	13: BE, BG, DE, DK, FR, HU, IS, IT, LT, PL, PT, SI, UK
To the issuer from the intermediary	1: IT,	1: LU,	0	1: LV	11: BE, BG, DE, DK, FR, HU, IS, LT, PT, SI, UK

106. Furthermore, as per table 13 below [Q. D-15], issuers or intermediaries are usually not obliged to give shareholders any proof or evidence of the correct management of notifications and instructions sent by shareholders towards issuers in relation to the aforementioned rights<sup>101</sup>.

*Table 13: Obligation of issuers or intermediaries to give shareholders any proof or evidence of the correct management of notifications and instructions received [Q. D-15]*

	Hard law	Soft Law
Yes, the issuers are required.	4: BE, EL, FR, RO,	0:
Yes, the intermediaries are required.	1: IT,	0:
No	22: AT, BE, BG, CY, CZ, DK, EE, ES, FI, HR, HU, IE, IS, LT, LU, LV, MT, PL, PT, SI, SK, UK	15: AT, CZ, DE, ES, FI, HU, IE, LT, LU, LV, MT, PT, SI, SK, UK

### 3.5. Standard forms or formats

107. Questions in this section investigated which standard forms are made available by the issuers to the shareholders, the means for their communication and their content.

108. As per Table 14 below [Q. D-16], respondents were first asked to provide information in relation to the standard forms or formats - if any - available in order for shareholders to exercise their voting and other rights.

*Table 14: Standard forms or formats available for the exercise of shareholder rights [Q. D-16]*

	Hard law	Soft law
Standard form/format to convene the general shareholders' meeting	1: SK,	1: HU,
Standard form/format to add new item or new proposals at the agenda of general shareholders' meeting	1: SK,	2: EE, HU,
Standard form/format to ask questions related to items already in the agenda of the general shareholders' meeting	0:	1: EE,
Standard form/format for notification of intention to attend the general shareholders' meeting	0:	2: DE, FI,

<sup>101</sup> Exemptions are BE, EL, FR and RO, where issuers are required (hard law) and IT, where intermediaries are required (hard law).

Standard form/format for the exercise of voting and other rights by registered mail	8: BE, ES, HR, FR, DK, LU, PT, RO,	3: DE, MT, LU,
Standard form/format for the exercise of voting and other rights by e-mail	6: BE, ES, FR, DK, LU, RO,	4: DE, MT, LU, PT,
Proxy standard form/format	15: BE, CZ, DE, DK, ES, FI, FR, HR, IE, IT, LU, LV, PT, RO, SI	7: CY, EE, FI, HU, LU, MT, SI
Sole standard form/format to do all the previous actions	0:	0:
None available	7: AT, BG, EL, IS, PL, SK, UK	3: AT, BG, UK,
Other	2: LT, RO,	0:

109. Nineteen countries indicated that standard forms for proxy voting are available<sup>102</sup>, possibly in conjunction with the forms/formats for the exercise of voting and other rights, either by registered mail or by e-mail. Conversely, in seven countries no standard forms are made available while in a few countries other sorts of forms/formats are available.

110. In terms of the means of communication through which issuers make the standard forms/formats available [Q. D-17], the picture is diverse as indicated in Table 15 below.

*Table 15: Means of communication through which issuers make the standard forms/formats available [Q.D-17]*

	Hard law	Soft law
Issuer's website	19: BE, CY, CZ, DK, EE, EL, ES, FR, HR, HU, IT, LU, LV, MT, PL, PT, RO, SI, SK	4: FI, IE, LT, LV,
At the issuer's headquarters	7: BE, CZ, ES, EL, LU, IT, SK,	2: CY, MT
Public information on where the standard forms can be downloaded	9: DE, DK, EE, ES, FR, LU, LV, PT, SK,	4: CY, FI, MT, SI,
Sent directly to shareholders by post	5: BE, MT, DK, SK, PT	3: DE, IE, LU
Sent directly to shareholders by e-mail	5: BE, DK, SK, CZ, PT	4: DE, IE, LU, MT,
Sent to shareholders by intermediaries' chain	1: SK	2: DE, ES
Available on request	8: BE, CY, CZ, EL, FR, LV, PT, SK	3: IE, LT, LU
Non available	5: AT, BG, IS, SK, UK	3: AT, BG, UK,
Other	4: IE, IT, LV, RO,	1: LT

111. Here, in the majority of countries issuers make standard forms available on their website and there is public information on where standard forms can be downloaded. It is also significant the number of countries where issuers make available standard forms at their

<sup>102</sup> In the case of LU, the content of the format is based on soft law but the format is required by hard law. Some of them provide this option through both hard and soft law.

headquarters or where standard forms are available on request. Only in a minority of countries standard forms are not available.

112. With regards to the means used by intermediaries to provide access to their clients to the standard forms or formats as per Table 16 below [Q. D-18], it was interesting to observe that in the majority of countries this is not specified, either by hard or soft law. However, there is a minority of countries in which specific means are provided, spanning from the intermediaries' website (or public information on where standard forms can be downloaded to e-mail), post and others.

*Table 16: Means used by intermediaries to provide access to the standard forms or formats to their clients [Q. D-18]*

	Hard law	Soft law
The intermediary's website	1: CZ	4: DE, EE, LT, MT,
The intermediary' branches	0:	3: EE, LT, MT,
Public information on where the standard forms can be downloaded	2: EE, EL,	3: LT, DE, MT
Sent to clients by post	0	4: DE, ES, MT, EE
Sent to clients by e-mail	0	5: DE, EE, ES, LT, MT,
Available on request	0	1: LT
Non available	14: SI, BE, HR, SK, PL, IS, LU, UK, PT, LV, RO, AT, HU, BG	11: AT, BE, BG, HR, HU, LU, LV, PT, RO, SI, UK
Other	3: DK, IE, IT	2: FI, FR,

113. Regarding the specific content of the standard form/format for notification of the intention to attend the GM [Q. D-19], the majority of countries either have no standard form<sup>103</sup> or found the question not applicable because shareholders do not have to notify in advance their intention to attend the GM<sup>104</sup>. Only two countries indicated that they have a specific form for notification to attend the GM<sup>105</sup>.

114. Similarly, in relation to standard form/formats to exercise voting rights [Q. D-20], the majority of countries indicated that there is no standard form or defined content for this purpose (as per Table 17 below), although there are some countries where forms are available but the content is diverse. Again in line with the above, 22 countries indicated that there is no standard form or defined content for proxy assignments [Q. D-21] and again in those few countries where forms are available the content is diverse<sup>106</sup>.

<sup>103</sup> A total of 16 countries: AT, BE, DE, DK, EE, FI, HR, HU, IS, LT, LU, MT, PO, PT, SK, UK.

<sup>104</sup> A total of 10 countries (either by hard law or soft law): BG, CY, CZ, EL, ES, FR, IE, LV, RO, SI.

<sup>105</sup> In IT the hard law provides for the contents which include shareholder identity, number of shares and intermediaries' declaration on number of shares. In FI (soft law) shareholders may use an electronic system set up by the issuer and provided by the CSD.

<sup>106</sup> For the purpose of this question different aspects are taken into consideration depending on the country. Shareholder identity is relevant in six countries (hard law: BG, IT, LU, RO, SK; soft law: FR). Number of shares is relevant in five countries (hard law: BG, IT, LU, RO, SK). Intermediary's declaration on number of shares is relevant in two countries (hard law: LU; soft law: FR). Proxy identity is relevant in five countries (hard law: BG, IT, LU, RO; soft law: FR). Indication whether proxy is also a shareholder is relevant in no country. Other content is relevant in seven countries (hard law: BE, BG, DK, IE, IT, RO; soft law: FR).



Table 17: Content of the standard form to exercise voting rights [Q. D-20]

	Hard law	Soft law
There is no standard form/format	21: AT, BG, CY, DE, EE, ES, EL, FI, HU, HR, IE, LT, LV, MT, SI, SK, PL, PT, IS, CZ, UK,	11: AT, BG, CY, CZ, ES, LV, LT, MT, SI, PT, UK
Shareholder identity (name, tax identification number, etc.)	2: BE, LU	1: FR
Indication of the number of shares	2: BE, LU	0:
Intermediary's declaration on the number of shares	1: LU	1: FR
Indication of the vote	3: BE, LU, RO	1: FR
Indication of the voting intention if the proposal is altered	1: LU	0:
Other	4: BE, DE, RO, IT	2: FI, FR

115. Finally, ESMA tried to gather some examples of the formats used in the different jurisdictions [Q. D-22]. On the basis of this input, it emerges that in a few countries communication is based on a law-based standard form (namely FR and IT, although in the latter it only applies to the proxy), while in others forms/formats have been developed by the market and are used on a voluntary basis. In both cases, contents typically include identification details of the shareholder and a list of the resolutions in the GM, together with the relevant instructions for the proxy. Interestingly, in some countries (such as DE, FR and IT) the form allows to designate as proxy a representative of the company. It is also worth mentioning that some forms used by market participants include different ways in which issuers may allow shareholders to vote, providing a number of options including: internet, telephone and email. Overall, evidence gathered by ESMA seemed to indicate a diverse spectrum of practices both across countries and issuers, with some notable outliers showing some well-developed practices.

### 3.6. Sanctions

116. Questions in this section finally reviewed the enforcement framework in case of non-compliance by issuers or intermediaries with the rules on transmission of information. Most countries indicated the existence of administrative<sup>107</sup> and civil sanctions<sup>108</sup> [Q. D-23]. Contrary to that, only four countries have an additional framework of criminal sanctions (DK, FR, HR, LU). Other types of sanctions are applied in five countries (BG, FI, HU, MT, UK).

117. In seven countries sanctions can also be applied to third country intermediaries<sup>109</sup>, while in five countries this is definitely not possible (EL, LT, LV, MT, PT) [Q. D-24]. As for other

<sup>107</sup> 17 countries have administrative sanctions for non-compliance with information rules (CY, CZ, DK, EE, EL, ES, IE, IS, IT, LT, LU, LV, MT, PT, RO, SI, SK).

<sup>108</sup> 15 countries have civil sanctions (AT, BE, CZ, DE, ES, FI, FR, HR, IT, LT, LU, LV, NL, PO, SK).

<sup>109</sup> EE, ES, IS, LU, SI, NL, UK. In the case of LU, this only regards civil and criminal sanctions.

countries, respondents made the reference to variety of situations and in particular, to the private international law framework<sup>110</sup>.

### 3.7. Market standards for general meetings

118. Finally, respondents were asked [Q. D-25] to indicate the status of the implementation of the market standards for GMs (as part of the private sector response to the Giovannini report prepared by the Joint Working Group on General Meetings - Barrier 3<sup>111</sup>). Only a few countries responded to this question, IT and DE indicated a satisfactory level of implementation and conversely RO mentioned that these standards have not yet been implemented in that jurisdiction.

---

<sup>110</sup> Nine countries answered that such sanctions would depend on private international law principles or on the content of the contract and could be costly (BE, DE, DK, FI, FR, IE, IT, HU, LU). Six countries did not provide details (AT, BG, CZ, HR, PO, SK). CY indicated that this is not specified in the national law.

<sup>111</sup> Market Standards on General Meetings - Final Version subject to implementation (MSGM, No 2, 2010) 18.

## Annex II: Tables

**Table 1 - Overview of the feedback received on Q. D-2: Which information does an issuer make publicly available and through which venues?**

	Website (hard law)	Website (soft law)	Press release (hard law)	Press release (soft law)	Official National Journal (hard law)	Official National Journal (soft law)	Newspaper (hard law)	Newspaper (soft law)	Other (hard law)	Other (soft law)
Date/hour/place/agenda of the GM	25: AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HR, HU, IS, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK, UK	1: DE	11: AT, BE, CY, EE, EL, FI, HR, IT, LU, MT, RO	1: DE	9: AT, BE, DE, EL, ES, FR, LU, PT, RO	0:	11: BE, CY, EL, ES, HR, IT, LU, LV, RO, SI, SK	3: DE, EL, FI	12: BG, DK, ES, IE, IT, LT, LV, NL, PL, PT, RO, SI	4: CY, IE, MT, UK
Timeframe and requirements for the inclusion of additional items in the Agenda of the GM	22: AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HU, IS, IT, LT, LU, LV, MT, PL, PT, RO, SI, SK	1: DE	8: AT, BE, CY, EE, EL, FI, LU, RO	1: DE	9: AT, BE, DE, EL, ES, FR, LU, PT, RO	1: DE	7: BE, CY, EL, ES, LU, RO, SI	3: DE, EL, FI	11: BG, DK, ES, IE, IT, LT, LV, PL, PT, RO, SI	0:
Timeframe to communicate the intention to attend the GM or the information requested in order to be allowed to attend the GM	16: AT, BE, DK, EE, EL, FI, HR, HU, IS, IT, LU, LV, NL, PL, PT, RO	2: DE, LT	8: AT, BE, EE, EL, FI, HR, LU, RO	1: DE	8: AT, BE, DE, EL, FR, LU, PT, RO	1: DE	5: BE, EL, HR, LU, RO	3: DE, EL, FI	7: DK, IT, LT, LV, PL, PT, RO	0:

Requirements for the exercise of voting rights	21: AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HR, HU, IS, IT, LU, LV, MT, NL, PT, RO, SK	2: DE, LT	10: AT, BE, CY, EE, EL, FI, HR, LU, NL, RO	1: DE	10: AT, BE, DE, EL, ES, FR, LU, NL, PT, RO	1: DE	10: BE, CY, EL, ES, HR, LU, NL, RO, SI, SK	3: DE, EL, FI	11: BG, DK, ES, IE, IT, LT, LV, NL, PT, RO, SI	2: IE	CY,
Proxy form and/or information regarding the use of proxies	23: AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, HR, HU, IS, IT, LT, LU, LV, MT, NL, PT, RO, SI, SK	2: PL DE,	9: AT, CY, EE, EL, FI, HR, LU, NL, RO	0:	7: AT, EL, ES, FR, LU, PT, RO	0:	6: EL, ES, HR, LU, RO, SI	2: EL, FI	10: BG, DK, ES, IE, IT, LT, LV, PT, RO, SI	3: CY, IE, MT	
Requirement for the exercise of other rights e.g. right of withdrawal	13: BE, EE, EL, ES, FI, HR, IS, IT, LU, LV, MT, SI, SK	2: PL DE,	6: EE, EL, FI, HR, IT, LU	1: DE	3: EL, ES, LU	1: DE	6: EL, ES, HR, IT, LU, SI	2: EL, DE	5: ES, IT, LT, LV, SI	1: IE	
Notices or circulars concerning the allocation and payment of dividends	19: BE, BG, CY, CZ, EE, EL, ES, FI, HU, IS, IT, LT, LV, MT, NL, PL, RO, SI, SK	2: LU DE,	9: CY, EE, EL, FI, IT, LU, MT, NL, RO	1: DE	3: EL, FR, NL	1: DE	4: EL, IT, NL, RO	3: EL, DE, LU	9: AT, BG, ES, HR, LT, LV, NL, PT, RO	3: CY, IE, UK	

Notices or circulars concerning the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion	19: BE, BG, CY, CZ, EE, EL, ES, FI, HU, IS, IT, LT, LV, MT, NL, PL, RO, SI, SK	2: LU	DE,	11: AT, BG, CY, EE, EL, FI, IT, LU, MT, NL, RO	1: DE	5: AT, ES, FR, NL, RO	1: DE	4: BG, IT, NL, RO	3: EL, DE, LU	8: BG, ES, IE, LT, LV, NL, PT, RO	3: IE, PL, UK
None	0:	0:		0:	0:	0:	0:	0:	0:	0:	1: UK

**Table 2 - Overview of the feedback received on Q. D-3: Which information does an issuer communicate directly to the shareholders, and through which venues?**

	Post (hard law)	Post (soft law)	Email (hard law)	Email (soft law)	IT Systems enabling straight-through processing (hard law)	IT systems enabling straight-through processing (soft law)	Other IT systems (hard law)	Other IT systems (soft law)	Other (hard law)	Other (soft law)
Date/hour/place/agenda of the GM	8: BE, CZ, FR, LU, MT, SI, SK, UK	2: DE, IE	3: HU, NL, UK	4: IE, LU, MT, SK	5: DK, EL, NL, PL, SI	3: EL, IE, LU	6: DE, FI, HR, LT, PT, SK	1: LU	6: BE, BG, CY, IE, LV, RO	4: DK, HR, LU, LV
Timeframe and requirements for the inclusion of additional items in the Agenda of the GM	6: BE, CZ, FR, LU, MT, SI	1: DE	1: HU	3: LU, MT, SK	3: DK, EL, PL	2: EL, LU	6: DE, FI, HR, LT, PT, SK	1: LU	5: BE, BG, IE, LV, RO	3: HR, LU, LV
Timeframe to communicate the intention to attend the GM or the information requested in order to be allowed to attend the GM	5: BE, FR, LU, MT, UK	2: DE, IE	3: HU, NL, UK	4: IE, LU, MT, SK	4: DK, EL, NL, PL	3: EL, IE, LU	5: DE, FI, HR, PT, SK	1: LU	4: BE, IE, LV, RO	3: HR, LU, LV
Requirements for the exercise of voting rights	6: BE, CZ, FR, LU, MT, SI	1: DE	2: HU, NL	3: LU, MT, SK	5: DK, EL, NL, PL, SI	2: EL, LU	6: DE, FI, HR, LT, PT, SK	1: LU	5: BE, BG, IE, LV, RO	3: HR, LU, LV
Proxy form and/or information regarding the use of proxies	6: CZ, FR, LU, MT, SI, UK	2: DE, IE	2: NL, UK	4: IE, LU, MT, SK	5: DK, EL, NL, PL, SI	3: EL, IE, LU	5: FI, HR, LT, PT, SK	1: LU	4: BG, IE, LV, RO	3: HR, LU, LV

Requirement for the exercise of other rights e.g. right of withdrawal	3: LU, MT, SI	2: DE, IE	0:	4: IE, LU, MT, SK	2: EL, PL	2: IE, LU	4: FI, HR, LT, SK	1: LU	1: LV	3: HR, LU, LV
Notices or circulars concerning the allocation and payment of dividends	2: CZ, FR	2: DE, LU	1: NL	2: LU, SK	4: EL, NL, PL, SI	2: EL, LU	4: FI, LT, PT, SK	1: LU	4: BG, LV, MT, RO	2: LU, LV
Notices or circulars concerning the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion	4: CZ, FR, IS, MT	3: DE, IE, LU	1: NL	3: IE, LU, SK	4: EL, NL, PL, SI	3: EL, IE, LU	4: FI, LT, PT, SK	1: LU	4: BG, LV, MT, RO	2: LU, LV
None	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	3: AT, EE, IT	4: AT, EE, ES, IT	2: AT, EE

**Table 3 - Overview of the feedback received on Q. D-5: Which information does an issuer provide to the shareholders through the chain of intermediaries and which tool is used?**

	Post (hard law)	Post (soft law)	Email (hard law)	Email (soft law)	IT Systems enabling straight-through processing (hard law)	IT systems enabling straight-through processing (soft law)	Other IT systems (hard law)	Other IT systems (soft law)	Other (hard law)	Other (soft law)
Date/hour/place/agenda of the GM	3: DK, EL, SK,	3: DE, EL, ES,	3: DK, EL, SK,	3: DE, EL, ES,	1: DK,	1: LT,	2: CZ, SK,	3: ES, FR, IT,	2: LV, HR,	1: LV,
Timeframe and requirements for the inclusion of additional items in the Agenda of the GM	2: DK, EL,	2: DE, EL,	2: DK, EL,	2: DE, EL,	1: DK,	1: LT,	1: CZ,	1: FR,	0:	0:
Timeframe to communicate the intention to attend the GM or the information requested in order to be allowed to attend the GM	2: DK, EL,	2: DE, EL,	2: DK, EL,	2: DE, EL,	1: DK,	0:	0:	1: FR,	0:	0:
Requirements for the exercise of voting rights	2: DK, EL,	2: DE, EL,	2: DK, EL,	2: DE, EL,	1: DK,	1: LT,	2: CZ, IT,	1: FR,	0:	0:
Proxy form and/or information regarding the use of proxies	2: DK, EL,	2: DE, ES,	2: DK, EL,	2: DE, ES,	1: DK,	1: LT,	1: CZ,	2: ES, FR,	0:	0:
Requirement for the exercise of other rights e.g. right of withdrawal	0:	1: DE,	1: EL,	1: DE,	0:	2: LT, FI,	0:	0:	1: LV,	1: LV,
Notices or circulars concerning the allocation and payment of dividends	0:	2: DE, ES,	1: EL,	3: DE, EL, ES,	0:	2: LT, FI,	1: CZ,	2: ES, FR,	1: LV,	1: LV,



Notices or circulars concerning the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion	0:	2: DE, ES,	1: EL,	2: DE, ES,	0:	2: LT, FI,	1: CZ,	2: ES, FR,	1: LV,	1: LV,
None	15: AT, BE, BG, CY, EE, FI, HU, IT, LU, MT, NL, PL, PT, RO, SI,	11: AT, BE, CY, FI, HU, IT, NL, PL, PT, RO, SI,	13: AT, BE, BG, CY, FI, HU, IT, LU, NL, PL, PT, RO, SI,	11: AT, BE, CY, FI, HU, IT, NL, PL, PT, RO, SI,	13: AT, BE, BG, CY, FI, HU, IT, LU, NL, PL, PT, RO, SI,	10: AT, BE, CY, HU, IT, NL, PL, PT, RO, SI,	12: AT, BE, BG, CY, FI, HU, LU, NL, PL, PT, RO, SI,	10: AT, BE, CY, FI, HU, NL, PL, PT, RO, SI,	11: AT, CY, FI, HU, IE, IT, LU, NL, PL, RO, SI,	10: AT, CY, FI, HU, IT, NL, PL, RO, SI, UK,

## Annex III: List of questions from questionnaire

### A- Preliminary Questions

A-1. Please indicate your Member State (MS).

A-2. Please indicate the name, email and other contact details of the person to whom any follow-up questions regarding your response to this questionnaire may be directed.

A-3. Please indicate the countries' national competent authority and any other entity that has contributed to the response.

### B- Shareholder identification

B-1. Who is considered to be the “shareholder” of a company? Please provide some elements of your overall framework for holding of shares and also specify whether shareholders generally correspond to rather the first or final layer.

B-2. Who has the voting rights in the company?

B-3. Who is entitled to receive the dividends and other economic rights from the company?

B-4. Regardless of the system for major shareholding notifications, are issuers entitled to access information on the identity of their shareholders? (*See Table 1*)

B-5. If your answer to question B-4. is positive, does the information on the shareholders available to issuers cover:

B-6. What the source of the information on identification of the shareholders is as indicated in B-4.?

B-7. If the answer to B-4. is (i) (i.e. issuers are legally entitled to initiate a process of shareholders identification), are there any limitations or conditions to the right of the issuer to initiate a process of shareholder identification?

B-8. Following a shareholder identification process as described in B4 (i) (i.e. issuers are legally entitled to initiate a process of shareholders identification), which of the items of information below are provided to issuers with regards to shareholder identity? (*See Table 2*)

B-9. As well as issuers, who else is legally entitled to initiate a request of shareholder identification as described in B-4. (i) (i.e. issuers are legally entitled to initiate a process of shareholders identification)?

B-10. Which process/es is/are envisaged for the top-down request of information for the purpose of shareholder identification?

- B-11. Is the CSD involved in any steps of the top-down process referred to in B-10.?
- B-12. With reference to the top-down process referred to in B-10., within what time period should the intermediary (or any other service provider) transmit down the chain the request of the issuer (as from the request of information by the issuer)?
- B-13. Which process/es is/are envisaged for the bottom-up transmission of information regarding shareholder identity?
- B-14. With reference to the bottom-up process referred to in B-13, within what time period should the intermediary transmit up the chain the information regarding shareholder identity towards the issuers?
- B-15. In relation to both top-down requests and bottom-up transmission of information, which means are envisaged? (*See Table 3*)
- B-16. Do listed companies and intermediaries (or any other service provider) use specific standard forms or formats for the purposes of requesting top-down and/or transmitting bottom-up information regarding shareholder identity?
- B-17. Please attach an English version or translation of the standard form/s or format/s used for such purpose.
- B-18. Is the information that the issuer has obtained through the identification process under B-4 (i) accessible to anyone other than the issuer?
- B-19. Are issuers in your jurisdiction experiencing legal or practical barriers, restrictions or technical impediments to identify non-resident shareholders?
- B-20. Are issuers in your jurisdiction experiencing legal or practical barriers, restrictions or technical impediments in obtaining information on shareholders from third country or foreign intermediaries?
- B-21. Do issuers in your jurisdiction have the right to identify the beneficial owners (final layer) when they do not coincide with the shareholders?
- B-22. Please elaborate and specify if you are aware of issuers having experienced legal or practical barriers, restrictions or technical impediments regarding B-21.
- B-23. Which sanctions - if any - are envisaged in case of non-compliance by shareholders or intermediaries (or other service providers) with shareholder identification process rules, either for delay or refusal to provide information?
- B-24. Can the same sanctions indicated under B-23. be enforced in respect of non-resident shareholders or any other foreign/third country intermediaries (or any other foreign or third country service provider)?

B-25. Regardless of the shareholder identification process described above, do issuers have the right to require a specific natural person or legal entity to declare whether it owns any of their shares?

### **C- Entitlement to vote and to exercise other corporate rights**

C-1. How is the right of shareholders to vote at the forthcoming GMs established?

C-2. Who is responsible for maintaining the shareholders' register?

C-3. Do shareholders have to notify the issuer in advance of their intention to attend the GM?

C-4. If applicable under prevailing regulations in your jurisdiction, which date is established as the "record date" pursuant to article 7.2 of SRD I? Please specify how many days before the date of the meeting the record date takes place and how it is calculated as well as whether this is provided for by hard or soft law. (*See Table 4*)

C-5. Under prevailing regulations in your jurisdiction, which date is established as the ex-date, i.e. an explicit time at which trading on a regulated market will move from cum- to ex- the entitlement to attend and vote at a forthcoming general meeting? Please specify how many days before the date of the meeting the ex-date takes place and how it is calculated as well as whether this is provided for by hard or soft law.

C-6. Are issuers obliged to provide electronic means to enable shareholders to attend the GM?

C-7. How can shareholders that do not physically attend the GM cast their vote? (*See Table 5*)

C-8. Is it legally possible for a shareholder or for a proxy to vote different shares in different ways?

C-9. Is it legally possible for an intermediary with more than one underlying investor (e.g. single nominee holding) to delegate the right to attend the GM to more than one representatives?

C-10. Is there any specific procedure concerning the execution of voting rights at the GM by non-resident shareholders?

C-11. Are issuers requested to designate as agent a financial institution through which shareholders may exercise their financial rights (cf. Art. 17.2 (c) of the TD)?

C-12. Which sanctions – if any - are envisaged in case of non-compliance by issuers or intermediaries (or other service providers) with the entitlement rules, either for delay or refusal to provide information or execute instructions?

C-13. Can the same sanctions indicated under C-12. be enforced in respect of foreign/third country intermediaries (or any other foreign or third country service provider)?

## **D- Transmission of information between issuers and shareholders**

D-1. In your jurisdiction, by which channels does the issuer communicate with shareholders (as defined under B-1.) to enable them to exercise the rights relating to their shares? (See *Table 6*)

D-2. Which information does an issuer make publicly available and through which venues? (See *Table 1 in Annex II*)

D-3. Which information does an issuer communicate directly to the shareholders, and through which venues? (See *Table 2 in Annex II*)

D-4. Are issuers which communicate directly to all shareholders through electronic means as indicated in D-3. mandated to comply with any of the following conditions (as under Art. 17 of the TD)?

D-5. Which information does an issuer provide to the shareholders through the chain of intermediaries and through which venues? (See *Table 3 in Annex II*)

D-6. If your definition of shareholder under B-2. focuses on the first layer, does the information transmitted through the chain of intermediaries (as in D-5) reach nonetheless the final layer? Please, specify how and whether this is provided for by hard law or soft law.

D-7. What - if any - is the role of a CSD in the transmission of information through the chain?

D-8. What is the timeframe in which notifications must be provided down the chain? (See *Table 7*)

D-9. Are issuers in your jurisdiction experiencing legal or practical barriers, restrictions or technical impediments to transmit information down to non-resident shareholders?

D-10. What are the procedures followed by shareholders in order to convene a GM? (See *Table 8*)

D-11. What are the procedures followed by shareholders to include new items on the agenda or add proposals in relation to items already included on the agenda? (See *Table 9*)

D-12. What are the procedures followed by shareholders in order to ask questions pursuant to Art. 9 of SRD I? (See *Table 10*)

D-13. What are the procedures followed by shareholders in order to notify their intention to attend the GM? (See *Table 11*)

D-14. What is the timeframe in which notifications and instructions must be provided up the chain? (See *Table 12*)

D-15. Are issuers or intermediaries obliged to give shareholders any proof or evidence of the correct management of notifications and instructions sent by shareholders towards issuers in relation to the rights indicated in Question D-10.- D-13.? (See Table 13)

D-16. Which standard forms or formats - if any - are made available by issuers to shareholders in order for them to exercise their voting and other rights? (See Table 14)

D-17. By which means do issuers make available the standard forms or formats indicated in D-16.? (See Table 15)

D-18. By which means does the intermediary provide access to its clients to the standard forms or formats? (See Table 16)

D-19. What is the content of the standard forms or formats for notification of the intention to attend the GM, if existing?

D-20. What is the content of the standard form to exercise voting rights, if existing (if the first option is ticked, then no other option should apply)? (See Table 17)

D-21. What is the content of the standard (proxy) form for assigning powers of representation (proxy), if existing?

D-22. Please attach an English version or translation of any available standard form/s or format/s used for the purpose of the exercise of other rights not indicated under D-19. to D-21.

D-23. Which sanctions – if any - are envisaged in case of non-compliance by issuers or intermediaries (or other service providers) with the transmission of information rules, either for delay or refusal to provide/forward information?

D-24. Can the same sanctions indicated under D-23. be enforced in respect of foreign/third country intermediaries (or any other foreign or third country service provider)?

E-25. Throughout Section D, when ticking "soft law", you might have made implicit reference, when relevant, to the market standards for general meetings (i.e. the Private sector response to the Giovannini reports prepared by the Joint Working Group on General Meetings - Barrier 3 - Market standard for general meetings). If this was the case, please specify and indicate to what extent such standards are followed by the industry in your jurisdiction in day-by-day market practice.

E-26. Would you like to make any suggestions for improvements in the areas covered by the questionnaire (in particular in connection to the implementing acts envisaged by draft Art. 3 (a) (8) and 3 (b) (6) of the revised SRD)?