

SRD II (revised Shareholders Rights Directive)



The 2008 financial crises highlighted shortcuts in the relationships between investors and issuers. Issues like short term investment, lack of transparency for all stakeholders activities were considered as some of these weaknesses.

In response, SRD II aims to encourage long-term investment by the shareholders and to increase transparency between investors and corporations.

It amends Directive 2007/36/EC which deals with the rights of shareholders to improve the governance of corporations listed on the European Union stock exchanges and strengthens their competitiveness and viability in the long term. It supervises the exercise of certain shareholders' rights on shares with voting rights particularly at General Meetings (GM). Its objective is the companies admitted for trading on a regulated market established or operating in the European Union and whose registered office is in a Member State. It puts emphasis on non-resident shareholding which represents 44% of shares listed in the EU.

The Directive deals with different issues that can be summarized under two main topics :

- **INTERACTION BETWEEN ISSUER AND SHAREHOLDER: SRD II:**
 - gives the possibility for an issuer to identify its shareholders,
 - imposes to intermediaries to send shareholders information issued by an issuer to exercise its rights
 - to facilitate the exercise of shareholders' rights;

- **TRANSPARENCY: SRD II:**
 - reinforces transparency of voting,
 - increases the commitment of the institutional investors and asset managers and transparency regarding investment policy of asset managers and potential conflict of interests that could result from services' or products offering to the company;
 - the disclosure of the company's remuneration policy offering shareholders the possibility to vote ex ante and ex post for or against it;
 - increases transparency and independent opinion on the related parties' transactions, and imposes shareholders' approval of largest transactions;
 - imposes to proxy advisers to details their methods such as voting methods, exchanges with companies staffing of advisers"team and to make statement of any conflicts of interest;

Published on 2017, May the 17th and entered into force on 2017 June the 10th, the Directive has been completed by implementing acts published on 2018, September the 3rd. It leads to a dual calendar with a deadline for transposition of the Directive before 2019, June the 10th (covering mainly transparency provisions) and adaptation to the minimum requirements provided by implementing acts (covering mainly interaction provisions) by 2020, September the 3rd.

As a consequence of the COVID19 crisis a request for postponement has been sent by industry stakeholders including issuers through their respective European and national associations when European Investors Association asked to maintain the initial deadline of September the 3rd. For the time being this demand has been officially rejected by the European Commission. The level of readiness of each Market is a concern and currently no market is able to stated being fully compliant.

The fact to hold securities in scope of the Directive leads to an extraterritoriality effect for intermediaries and shareholders of third countries.

The Directive and its implementing acts lead the European securities industry to draft new non binding standards to process shareholders identification (Shareholders Identification Task Force), to issue information from the issuers (Golden Operational Task Force, on going work) and to update former General Meeting Standards of the Joint Working Group on General Meetings (General Meetings Task Force).

1. Overview

- Key aspects of the Regulation (mainly written hereby under an asset servicing perspective)

- Identification of Shareholders on demand of the issuer. (3 september 2020)

INTERACTION

“CORPORATE EVENT LIKE”

Disclosure request are assimilated to a specific corporate event. Member States make sure that the intermediaries offer companies the facility of identifying their shareholders. It takes inspiration of the concept of Record Date used for corporate actions to define the date to take the picture of the shareholdings. The demand of identification is sent

through the chain of intermediaries with obligation to each intermediary to pass it to their clients being themselves intermediaries.

In case, the “final” shareholders is in the book of the intermediary, it plays the role of last intermediary. The Last Intermediary shall transmit to the issuer the related information the day after of the “Record Date” if this Record Date is less than 7 days before the date of reception of the demand. In few countries, this transmission could be done via the chain of intermediaries.

The intermediary, described as a legal person who holds securities accounts for his clients, must inform (globally) the shareholder if the company is in a position to identify him.

“NON OPPOSITION OF BANKING SECRECY”

SRD II makes it possible to override banking secrecy. It provides that the States ensure that an intermediary is not considered to be infringing a restriction on passing on information provided contractually or by a legislative provision.

“MINIMUM OF SHAREHOLDINGS”

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

“FORMATS AND STANDARDS”

The exchanges of information shall follow provision regarding the use of standards favorising straight through processing and a new set of European industry standards have been draft (official publication foreseen by February 2020 at the latest) to define best market practice for processing identification of shareholders.

- Transmission of information to the shareholders. (3 september 2020)

INTERACTION

“BROAD OBLIGATION FOR INTERMEDIARIES”

Intermediary must inform the shareholder to enable him to exercise his rights stemming from the shares not only for corporate actions but for general meetings as well.

When the shareholder is not an intermediary, It gives access to all information and possibilities to exercise his rights via appropriate tools and facilities (electronic means like web site for instance) unless otherwise agreed by the shareholder.

- Facilitation of exercise of investors' rights. (3 september 2020)

INTERACTION

“BROAD OBLIGATION FOR INTERMEDIARIES”

Intermediary takes appropriate measures to enable the shareholder to exercise his rights not only for corporate actions but for General Meetings as well

“CONFIRMATION OF VOTE”

Intermediaries shall confirm well transmission of vote of their clients to the issuer via the chain of intermediaries. The issuer can be asked by shareholders to confirm that their votes have been properly counted and casted.

INTERACTION

- Delays and deadlines (3 september 2020)

“UNDUE DELAYS”

The Directive introduces the concept of undue delays to transmit information that is detailed by the implementing acts. Information shall be transmitted down the chain under a “same day principle” which means : same day transmission for any information received before 16H00 or the day after before 10H00 for any information received after.

“DEADLINES”

Intermediaries have to respect deadlines of the issuers and cannot set a deadline requiring any shareholder action earlier than three business days prior to the issuer deadline or record date. This could lead to deadend situation in case of a long chain of intermediaries.

The last intermediary may caution the shareholder as regards the risks attached to changes in the share position close to the record date.

- Formatted information and industry standards (3 september 2020)

Implementing Acts defines minimum set of datas and formats to comply with to send information down through chain of intermediaries or up to the issuer.

“MACHINE READABLE FORMAT”

The transmissions between intermediaries for information and exercise of rights shall be made in a machine-readable commonly shared formats, such as ISO or methodology compatible with ISO (ISO 15022 or 20022 messages).

It shall permit Straight Through Processing and electronic exchanges of informations and instructions.

Due to deadline stress, issuer or a designated agent shall provide information under this kind of machine readable format following the data requirements provided by the implementing acts (set of datas and format).

“INDUSTRY STANDARDS”

SRDII is inspired by European standards defined by the industry such as those established by the Corporate Actions Joint Working Group (CAJWG) and by the Joint Working Group of General Meetings (JWGGM).

Part of these are under the process of being updated (JWGGM standards) or be completed by a new set of European standards to recommend the usage of common templates to inform of corporate events. These new market practices (Golden Operational Records standards) should be published in first quarter or 2020.

- Transparency of the costs (10 June 2019)

Intermediary has the right to fix a price for the services it provides in regards with interaction between shareholders and issuers. These prices must be "proportionate" and "non-discriminatory". In this way, discrepancies of fees between domestic and non domestic services must be explained. A Member State may impose to intermediaries not to charge related services.

TRANSPARENCY

- Foreign country intermediary (10 June 2019 and 3 September 2020)

Any intermediaries having clients holdings European listed companies shall comply with the provision of SRD II and its implementing acts.

INTERACTION

- **Other aspects (under an asset servicing perspective):**

- Commitment of institutional investors and the asset managers: (10 June 2019)

“SHAREHOLDER COMMITMENT POLICY”

Institutional investors and asset managers shall be obliged to draw up a **shareholder commitment policy** which should play a part in facilitating the management of conflicts of interest. This commitment policy shall be **publicly disclosed** as well as the way in which it was implemented and its results.

It must lay down the way in which the investor: integrates the "shareholders' commitment" in his investment strategy, monitors the companies held (including particularly non-financial performance), discusses with the companies held, exercises the voting right, uses proxy services and co-operates with other shareholders.

TRANSPARENCY

“REGULATIONS ON CONFLICTS OF INTEREST”

Regulations on conflicts of interest must be provided for cases where the investor supplies financial products to the company held, there are board members common to both entities, the investor is affiliated to a company under an on-going takeover bid.

TRANSPARENCY

“INVESTMENT STRATEGY”

An annual report on the investment strategy must be published at least on-line. It provides information on a whole series of elements stating whether the investment is made through an assets manager under a specific agreement with the institutional investor. It must show whatever influence it has on the investment policy, etc.

TRANSPARENCY

“TRANSPARENCY ON THE ASSET MANAGERS”

Every six months the asset manager gives a view of the way in which the investment strategy was complied with. It goes into detail on the contents of the portfolio, the non-financial performances of the assets held, etc.

TRANSPARENCY

- Company’s remuneration policy: (10 June 2019)

TRANSPARENCY

SRD II intends to strengthen the link between the directors' remuneration and performances. The Directive aims at increasing the transparency of the remuneration policy and the actual remuneration of the board members by granting shareholders an increased right to examine this remuneration.

The shareholders has the right to comment on the remuneration policy and on the remuneration report. All the benefits granted to board members, in any form whatsoever, should be included in the remuneration policy and the remuneration report.

The text does not regulate the remuneration level; it leaves it up to the companies and their shareholders to decide.

- Related parties transaction: (10 June 2019)

TRANSPARENCY

SRDII increases the shareholders right to examine transactions with related parties. The proposal requires listed companies to submit to shareholders for their approval transactions with related parties **representing more than 5% of the assets**, as well as those which could have a significant impact on the profits or the revenue. These transactions may not be entered into unconditionally without this approval.

Listed companies should publicly announce transactions with related parties of lesser importance but which represent **more than 1% of their assets**, at the time of carrying out transactions. A report written by an independent third party should accompany the announcement.

Member States shall be authorised to exclude transactions between listed companies and wholly-owned members of its group.

- Proxy advisers: (10 June 2019)

TRANSPARENCY

The proxy advisers must make precise and reliable voting recommendations based on an in-depth analysis, publish each year the way in which the votes are cast (on-line and to maintain the publication for three years). This must mention the methods and models applied, the sources of information, the local regulatory elements taken into account, clarify discussions with the companies, the number of people assigned to the voting recommendations and the number of recommendations made during the previous year. It must report on potential conflicts of interest (commercial agreement, etc.).

- **Progress update and way forward:**

The publication of implementing acts on 2018 September the 3rd was the last piece of regulation that was waited.

A guide for the remuneration report of company has been published during the 1 semester of 2019.

Transposition deadline of the Directive occurs in 2019, June the 10th followed by the deadline of 2020 September the 3rd for each Member States to adapt their regulations to minimum requirements set by the implementing acts.

New set of ISO 20022 messages and update of ISO15022 messages has been published in October 2019.

European Industry Standards for Golden Operational Records (announcement of corporate events), for Identification of Shareholders (SITF standards) and General Meeting process (update of existing JWGM standards) should be endorsed by the end of the 1st quarter of 2020 but only SITF ones have been currently validated (lately in December 2020).

2. Reference law(s) and effective date

[Directive 2007/36/EC](#) on the rights of shareholders (SRD)

[Directive amending Directive 2007/36/EC](#) as regards the encouragement of long term shareholder engagement (SRD II)

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