Call for Evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain

Fields marked with * are mandatory.

Responding to this Call for Evidence

ESMA invites comments on all matters in this paper and in particular on the specific questions therein presented. Comments are most helpful if they:

(1) respond to the question stated;
(2) indicate the specific question to which the comment relates;
(3) contain a clear rationale; and
(4) describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 November 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Open Consultations'.

Publication of responses

All contributions received will be published following the close of the Call for Evidence, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this Call for Evidence

All interested stakeholders are invited to respond to this Call for Evidence. In particular, ESMA considers this Call for Evidence will be primarily of relevance to investors, issuers whose shares are listed in Europe, intermediaries and proxy advisors. In addition to the general questions (Section 3), specific questions (Sections 4-5-6-7) are addressed to these types of stakeholders.

Other market participants, such as consultants and service providers in the investor communication and voting industry, are invited to express their views by responding to any general questions (Section 3) they would like to provide input on and in particular to the two catch-all questions (Q15 and Q25).

1. Executive Summary

Reasons for publication

As foreseen in Articles 3f(2) and 3k(2) of the Shareholder Rights Directive, as amended by Directive (EU) 2017/828 ('SRD2'), the European Securities and Markets Authority ('ESMA') is expected to support the European Commission ('EC') in the elaboration of a report assessing the implementation of Chapter Ia and Article 3j of the SRD2 across the Union. The purpose of this Call for Evidence is to gather information on how market participants perceive the appropriateness of the scope and the effectiveness of the SRD2 provisions on the identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as on transparency of proxy advisors. The responses obtained from this exercise will form the basis for ESMA's input for the elaboration of this report.

Contents

Section 2 sets out the background to ESMA's review exercise and explains the structure and the purpose of the Call for Evidence in more detail. Section 3 presents general questions intended for all stakeholders while sections 4-7 include questions targeted at specific stakeholders, *i.e.*, investors, issuers, intermediaries and proxy advisors.

Next Steps

Responses to this Call for Evidence are requested by **28 November 2022**. ESMA intends to provide the Commission with its input by **July 2023.**

2. Introduction

2.1. Background and legal mandate

The Shareholder Rights Directive, as amended by the SRD2, lays down a common regulatory framework with regard to the minimum standards for the exercise of shareholder rights in EU listed companies. The SRD2 was supposed to be transposed by Member States into their national law by 10 June 2019, with the exception of Articles 3a to 3c in Chapter Ia, which, together with the Implementing Regulation, entered into application on 3 September 2020. By facilitating the involvement of shareholders in the corporate governance of investee companies, the SRD2 aims to encourage their long-term engagement in EU companies and thereby to enhance sustainable long-term value creation in EU capital markets.

In the context of the review of the SRD2, the EC is required to submit a report assessing the implementation of Chapter Ia (Articles 3a to 3f) and Chapter Ib (Articles 3g to 3j) of the SRD2 to the European Parliament and to the Council, also involving ESMA. In particular:

i. As per Article 3f(2) of the SRD2, the EC, in close cooperation with ESMA and the EBA, is required to submit a report on the implementation of Chapter Ia of the SRD2 providing an assessment of its effectiveness and difficulties in practical application and enforcement of the relevant Articles included

in this Chapter, while also taking into account relevant market developments at the EU and international level. In addition, the report should specifically address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries.

ii. As per Article 3k(2) of the SRD2, the EC, in close cooperation with ESMA, is required to submit a report on the implementation of Article 3j of the SRD2, providing an assessment of the effectiveness and appropriateness of the scope of application of the same provision, and taking into account relevant Union and international market developments. It is also envisaged that the report shall be accompanied, if deemed appropriate, by legislative proposals.

In September 2020, based on the recommendations from the final report of the High Level Forum on CMU [1], the EC adopted a new CMU action plan[2] which included an action aimed at facilitating investor engagement. In particular, as part of Action 12, the EC committed to "assess: (i) the possibility of introducing an EU-wide, harmonised definition of 'shareholder', and; (ii) if and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate actions' processing can be further clarified and harmonised."[3] The CMU action plan indicated that this assessment would be carried out as part of the EC's evaluation of the implementation of the SRD2 due to be published by Q3 2023.

On 3 October 2022, ESMA received a mandate from the Commission to provide input on the implementation of the aforementioned SRD2 provisions, also in connection to certain targeted elements relating to Action 12 of the CMU action plan. With regards to proxy advisors (*i.e.,* Article 3j), ESMA is also requested to assess the need for further regulatory requirements.

[1] Final report of the high-level forum on the Capital Markets Union 'A new vision for Europe's capital markets' https://ec.europa.eu/info/files/200610-cmu-high-level-forum-final-report_en.
[2] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Capital markets union 2020 action plan: A capital markets union for people and businesses, COM/2020/590 24.9.2020.
[3] The CMU action plan further clarified that "the Commission plans to investigate in particular the following: (i) the attribution and evidence of entitlements and the record date, (ii) the confirmation of the entitlement and the reconciliation obligation, (iii) the sequence of dates and deadlines, (iv) any additional national requirements (in particular, requirements of powers of attorney to exercise voting rights), and (v) communication between issuers and central securities depositories (CSDs) as regards timing, content and format."

2.2. Scoping of the exercise

The implementation assessment covers a wide spectrum of topics in the SRD2, namely regarding areas such as identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights, as well as the transparency of proxy advisors. An indicative scope is provided in the table below.

SRD2 provision	*Topical Area*
Chapter Ia	**Identification of shareholders, transmission of information and facilitation of exercise of shareholder rights**
Art. 3a	Identification of shareholders
Art. 3b	Transmission of information
Art. 3c	Facilitation of the exercise of voting rights
Art. 3d	Non-discrimination, proportionality, and transparency of costs
Art. 3e	Third-country intermediaries
Article 3j	**Transparency of proxy advisors**
Art. 3j(1)	Transparency on code of conduct
Art. 3j(2)	Transparency of information related to the preparation of research, advice and voting recommendations
Art. 3j(3)	Transparency of conflicts of interest
Art. 3j(4)	Third-country proxy advisors

2.3. Purpose and structure of the Call for Evidence

ESMA believes that a Call for Evidence is necessary for the collection of information from market participants in order to obtain a comprehensive overview of how stakeholders perceive the appropriateness and effectiveness of the current regulatory framework, to learn about the possible difficulties encountered in the course of its application and to understand relevant market developments. The findings obtained from this exercise will allow ESMA to take action to fulfil its obligations under the SRD2, in accordance with the mandate provided by the EC. Moreover, these responses will help understand and therefore prioritise the SRD2 areas where stakeholders feel there is a need for improvement of current practices.

ESMA encourages respondents to share the practices currently put in place by market participants across different jurisdictions, as well as any difficulties they might have experienced in the practical application of SRD provisions.

In terms of structure, this Call for Evidence focuses on the six Articles that are included in the scope of this assessment, namely covering four main topical areas of the aforementioned Directive: (i) identification of shareholders; (ii) transmission of information; (iii) facilitation of exercise of shareholder rights and (iv) transparency of proxy advisors.

Section 3 (Q1-Q25) of the Call for Evidence presents a set of questions which are common to all categories of stakeholders and aimed at (i) investigating their general views on the effectiveness of the relevant SRD2 provisions, and (ii) seeking their input on certain specific issues listed under Action 12 of the CMU Action Plan.

Each type of stakeholder will be invited to answer the questions included in Section 3. Furthermore, the questionnaire includes two catch-all questions (Q15 and Q25), where all stakeholders are welcome to raise any concerns or remarks they may have.

Based on the selection of your stakeholder type under Q1, you may be invited to answer to the ensuing targeted sections designed specifically for the following groups of stakeholders:
- Section 4 (Q26-Q41): Investors (in particular, shareholders of EU listed companies);

- Section 5 (Q42-Q58): Issuers;
- Section 6 (Q59-Q71): Intermediaries;
- Section 7 (Q72-Q78): Proxy advisors.

Each section is introduced separately and provides a brief summary of the goal of such questions and the type of evidence that ESMA is seeking. The questions aim to understand the practical impact as well as supervisory implications of the relevant SRD provisions.

Additionally, to ensure that the questionnaire keeps track of market developments, certain questions also seek the views of stakeholders on the current trends in financial markets, namely on recent technological developments, environmental, social and governance ('ESG') or sustainability-related aspects and institutional investors' practices, both in the EU and at the international level.

Finally, ESMA would like to emphasize the importance of answers being factual and, to the widest possible extent, supported by clear Respondents disclosing confidential or commercially sensitive information are asked to follow the instructions regarding publication of their response as set out on in the previous sections.

2.4. Next Steps

Responses to this Call for Evidence are requested by 28 November 2022. ESMA will provide the Commission with its input by July 2023.

3. General questions

3.1. Introduction

This section sets out questions of a general nature which ESMA invites all interested stakeholders to respond to, regardless of the role they play in the financial markets. The questions aim to provide a general understanding of the practices currently put in place and the difficulties that may arise from the practical application of SRD2 provisions. This section also sets out a few targeted questions on facilitating shareholder engagement as set out by the CMU action plan (Action 12 of the CMU action plan). In addition to this section, sections 4 - 7 outline questions which are targeted at specific groups of stakeholders (*i.e.*, investors, issuers, intermediaries and proxy advisors).

In connection with this first set of questions, ESMA would like to reiterate the invitation for respondents to provide factual answers which are supported by reasoning, as well as clear evidence and examples to the widest possible extent. Furthermore, ESMA invites associations representing specific groups of stakeholders to select, in Q1, the group of stakeholders they represent or to select option *'other'*.

3.2. Questions

3.2.1. Background

* **Q0:** Please indicate if you agree to have your answer made public.

- (●) Yes
- ( ) No

* Please indicate your name and contact information.

2000 character(s) maximum

Sergio Carbonara, Owner, Frontis Governance, s.carbonara@frontisgovernance.com

* **Q1:** What is the nature of your involvement in financial markets?

[More than 1 option allowed]

- [ ] Individual (retail) investor;
- [ ] Institutional investor (such as a pension fund or an insurance undertaking);
- [ ] Asset manager (investing on behalf of individual clients or institutional investors);
- [ ] Issuer (in particular, EU companies whose shares are listed in the EU);
- [ ] Credit institution;
- [ ] Investment firm;
- [ ] Central securities depositary - CSD;
- [x] Proxy advisor (*i.e.,* a legal person providing research, advice or voting recommendations);
- [ ] Other.

* To facilitate the comprehensibility of your response to this Call for Evidence, please describe your role in the financial industry.

2000 character(s) maximum

Frontis Governance di Sergio Carbonara is a sole proprietorship firm. It is the Italian proxy advisor, member of the European alliance Proxinvest, providing research on Italian companies to Italian institutional investors and the clients of the alliance. Frontis also supports its clients in engaging with Italian companies on ESG-related issues.

* **Q2:** Please specify if you are a non-EU or EU actor, and in the latter case, in which Member State you (or, if you are an association, your members) are based/most active in.

(●) EU Actor ( ) Non-EU Actor

* Please specify:

- ( ) Pan-European Organisation
- ( ) Austria
- ( ) Belgium
- ( ) Bulgaria
- ( ) Croatia
- ( ) Cyprus
- ( ) Czechia
- ( ) Denmark
- ( ) Estonia
- ( ) Finland
- ( ) France
- ( ) Germany
- ( ) Ireland
- (●) Italy
- ( ) Latvia
- ( ) Lithuania
- ( ) Luxembourg
- ( ) Malta
- ( ) Netherlands
- ( ) Poland
- ( ) Portugal
- ( ) Romania
- ( ) Slovak Republic
- ( ) Slovenia

- Greece
- Hungary
- Spain
- Sweden

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

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

- Not at all
- (•) To a limited extent
- To a large extent
- Fully
- No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The 0.5% ownership threshold for the identification (applied by some Member States, including Italy) significantly reduces the scope of the law, as inefficient to facilitate the communication with shareholders. Only few large shareholders hold at least 0.5% of a public company, and they are likely well known by the company. Furthermore, the generic reference to shareholders holding more than 0.5% risks to impede identification of asset managers and asset owners holding shares in several portfolios: intermediaries might consider as “shareholder” each mutual fund or account managed by an asset manager, as it is a separate legal entity, without taking into account the aggregate ownership of the institutional investor.

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

- Not at all
- To a limited extent
- To a large extent
- (•) Fully
- No opinion

* Please explain and provide evidence to corroborate your response, specifying any remaining obstacles to the process of identification of shareholders.

2000 character(s) maximum

Only clarifying that the "shareholder" is the natural or legal person who has the power to exercise shareholder rights may allow an effective identification for the purpose of improving engagement. As it is not possible to know the contractual terms between asset managers and asset owners, the definition of "shareholder" should refer to the beneficial owner. This is the definition used by Italian legislator referring to the shareholder register ("Libro Soci"), which is drafted after the payment of dividends, and the general meeting minutes. Through such documents, Italian listed companies may effectively identify the shareholders who are entitled to dividend and voting rights, and more clearly identify the full ownership chain.

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

- (●) The natural or legal person on whose account or on whose behalf the shares are held, even if the shares are held in the name of another natural or legal person who acts on behalf of this person (beneficiary shareholder);
- ( ) The natural or legal person holding the shares in his own name, even if this person (nominee shareholder) acts on behalf of another natural or legal person;
- ( ) Other.

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The process should allow the identification of the beneficiary shareholder, which is the one holding dividend and voting rights. By this way, it would also be possible to increase accountability of asset managers to respect the policies and instructions of asset owners delegating the exercise of voting rights. Italian general meeting minutes might be taken as example.

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

- ( ) Not at all
- (●) To a limited extent
- ( ) To a large extent
- ( ) Fully
- ( ) No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Some Member States' legislations still require a wide use of paper-based communication (e.g., power of attorneys required for each meeting in Italy). A full digitalisation of the voting process would further facilitate the exchange of information and exercise of voting rights.

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

- ( ) Not at all
- (●) To a limited extent
- ( ) To a large extent
- ( ) Fully
- ( ) No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Shareholders are still not able to automatically verify whether their votes have been correctly registered at the shareholder meeting. Some Member States have introduced the right for investors to request voting confirmations from issuers, but it is clearly impossible for institutional investors to do that for all the General Meetings they voted at in different European markets. As service providers, we are able to provide such confirmation to our clients by analysing the voting minutes of Italian listed companies. However, it is only possible in Italy, where meeting minutes report the beneficiary shareholders on whose behalf votes are cast. The lack of direct voting confirmations from listed companies may represent an obstacle (or at least a disincentive to vote) to all those institutional investors who need a clear confirmation of their votes for reporting reasons, in particular if they delegate their voting powers to third parties such as asset managers.

Q8: Do you consider that transparency, non-discrimination and proportionality of charges for services provided by intermediaries in connection with shareholder identification, transmission of information and exercise of shareholder rights (*i.e.*, in compliance with Article 3d) have improved following the entry into application of this provision?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

Q9: Do you consider that the practices of third-country intermediaries (*i.e.*, intermediaries which have neither their registered office nor their head office in the EU but provide services with respect to shares of EU listed companies) are in line with the provisions of Chapter Ia and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

Q10: Do you consider that the processes put in place by intermediaries for the purpose of implementing Chapter Ia (*i.e.,* shareholder identification, transmission of information and facilitation of the exercise of shareholder rights) are working in line with the relevant provisions of the SRD2 and the Implementing Regulation?

- Not at all
- To a limited extent
- To a large extent
- Fully
- No opinion

Q11: Have you encountered any specific obstacles or difficulties in the practical application of the SRD2, namely Chapter Ia and the Implementing Regulation, also in light of the SRD2's transposition in Member States' national law (*e.g.,* regarding transparency of fees when a service is provided by more than one intermediary in a chain of intermediaries or when the company is allowed to request the CSD, another intermediary or third party to collect information regarding shareholder identity)? Please specify your response in relation to the following topical areas:

a) Shareholder identification;

- Yes
- No
- Don't know

b) Transmission of information;

- Yes
- No
- Don't know

c) Facilitation of the exercise of shareholder rights;

- (•) Yes
- No
- Don't know

d) Costs and charges by intermediaries;

- Yes
- No
- Don't know

e) Non-EU intermediaries.

- Yes
- No
- Don't know

* Please explain and provide evidence to corroborate your response, clarifying whether encountered obstacles or difficulties relate to cross border elements (both within and outside the EU).

2000 character(s) maximum

Lack of automatic confirmation of votes and digitalisation of the voting process, unharmonized rules on the deadline for the publication of meeting materials and power of attorney requirements may still represent obstacles to the exercise of voting rights.

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

a) The attribution and evidence of entitlements (incl. as regards the record date position);

- Yes
- No

- Don't know

b) The sequence of dates for corporate actions and deadlines;

- Yes
- No
- Don't know

* Please explain and corroborate your answer.

To be able to exercise a fully-informed vote, shareholders need sufficient time to read and analyse all relevant Meeting documents. Even when investors purchase the Agenda analysis from proxy advisors, they need some time to carefully read the analysis and verify whether the recommended voting direction is actually in line with their own voting guidelines. The time investors have for this task goes from the publication of all Meeting materials, or the receipt of the Agenda analysis from proxy advisors, to the voting deadline set by voting service providers and custodians. In general, the deadline for the publication of Meeting materials at 21 days before the Meeting, as provided by the SRD, is sufficient to exercise a fully-informed vote. However, during the period when most of AGMs are held (from March to May), shareholders have very limited time to analyse all the documents or each proxy advisors' report. Furthermore, the deadline for the publication of documents refers to calendar days. When the deadline falls on a Saturday or Sunday, some companies (at least a few of Italian ones) use to postpone the publication to the next Monday, significantly reducing the time for the analysis. Therefore, it would be highly preferrable an harmonization of Member States' legislation on this issue, by providing that the deadline for the publication of meeting materials is 30 calendar days, or 21 business days, in all Member States.

c) Any additional requirements (*e.g.*, requirements of powers of attorney to exercise voting rights);

- Yes
- No
- Don't know

* Please explain and corroborate your answer.

Some Member States (including Italy) require power of attorneys or other documentation as an integral part of each voting process. This may represent an obstacle to the efficiency of the process, which may be eliminated by allowing the documentation to be valid over a longer period of time (i.e. until it is revoked by the Board of the investor due to a change in its representatives).
Another obstacle to the exercise of voting rights may be represented by a required physical attendance of shareholders or proxy agents to cast votes (which is also the case of Italy). In particular, such requirement risks to significantly increase the cost of voting in some jurisdictions. This issue may be solved by facilitating the electronic tabulation of votes.

d) Communication between issuers and central securities depositories (CSDs);

- Yes
- No
- Don't know

e) Any other issue.

- Yes

- ○ No
- ○ Don't know

* Please explain and corroborate your answer.

Lack of automatic confirmation of votes from issuers to shareholders

Q12: If you have encountered any difficulties or obstacles to the fulfilment of obligations under Chapter Ia (also relating to cross border elements - both within and outside the EU - and in light of the SRD2's transposition in Member States' national law), how do you think improvements could be made going forward? Please explain and provide evidence to corroborate your response in relation to:

a) Shareholder identification;

2000 character(s) maximum

No thresholds to identification, and definition of "shareholder" as the beneficiary shareholder

b) Transmission of information;

2000 character(s) maximum

c) Facilitation of the exercise of shareholder rights;

2000 character(s) maximum

Digitalisation of the full process. Publication of meeting minutes including the full list of beneficiary shareholders' votes. Harmonization of Member States' regulations regarding power of attorneys and electronic tabulation of votes.

d) Costs and charges by intermediaries;

2000 character(s) maximum

e) Non-EU intermediaries.

2000 character(s) maximum

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

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response, also specifying what actions could be put in place to improve shareholder engagement.

2000 character(s) maximum

SRD2 has surely improved shareholder engagement, but still some obstacles remain to the exercise of voting rights, such as: excessive threshold for the identification of shareholders, lack of direct confirmation of votes cast, harmonization regarding power of attorneys and electronic tabulation of votes, which would in turn improve harmonization in the cost of voting within Member States

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

a) Attribution and evidence of entitlements (incl. as regards the record date position);

- ○ Yes
- ◉ No
- ○ Don't know

b) The sequence of dates for corporate actions and deadlines;

- ◉ Yes
- ○ No
- ○ Don't know

c) Possible additional national requirements (*e.g.,* requirements of powers of attorney to exercise voting rights);

- ◉ Yes
- ○ No
- ○ Don't know

d) Transmission of information (incl. rules on communications between CSDs and issuers/issuer agents).

- ○ Yes
- ○ No
- ◉ Don't know

* Please explain and, in case your answer is *yes*, please specify what actions could be put in place.

2000 character(s) maximum

Harmonizing the deadline for the publication of all meeting materials at 30 days before the first or single call, or clarifying that 21 days refer to business days.
Requiring an automatic confirmation of votes cast to shareholders, or the publication of the full list of (beneficiary) shareholders that voted at the general meeting.
Harmonizing European rules on power of attorneys.

Q15: For elements that are not explicitly covered by the above questions but that are still related to Chapter Ia or the Implementing Regulation, do you have any other issue that you want to raise?

2000 character(s) maximum

3.2.3. On proxy advisors

Q16: Is the definition of proxy advisors[4] in the SRD2 able to identify the relevant players in the shareholder voting research and advisory industry?

[4] As per Article 2g SRD, 'proxy advisor' refers to "a legal person that analyses, on a professional and commercial basis, the corporate disclosure and, where relevant, other information of listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations that relate to the exercise of voting rights".

- (●) Yes
- ( ) No
- ( ) Don't know

* Please explain and suggest any need for change.

2000 character(s) maximum

The definition of the services provided by proxy advisors is correct, but it is not clear whether SRD2 rules only apply to advisors providing those services as their main activity, or they also apply to all advisory firms offering analysis of agenda and voting recommendations, even as an ancillary service. Other entities providing ESG-related advisory services, such as rating, law or audit firms, started offering agenda analysis and voting recommendations (at least in Italy), without being formally considered as "proxy advisors". A registration of firms offering agenda analysis and voting recommendations would allow more transparency and clarity, also to the benefits of investors.

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

- ( ) Yes
- (●) No
- ( ) Don't know

* Please specify any doubt or ambiguity you might have had in assessing which Member State is competent over proxy advisors, providing evidence to corroborate your response and explaining what changes could be made, if any.

2000 character(s) maximum

The proxy advisory industry is by its nature cross-border. Even local advisors, such as Frontis Governance, provide services related to foreign companies to local investors or researches on local companies to foreign investors. Therefore, the industry needs common rules and supranational supervision. Furthermore, it is a very concentrated industry with very few global players and a slightly higher number of local players. Therefore, each National Competent Authority supervises only one or few advisors (none in some cases), with the result that each proxy advisor risks to be subject to different supervisory rules (e.g. in terms of powers of control or sanctions). In order to effectively harmonize regulations, all the entities offering proxy advisory services in the EU (including those that have no establishments in the EU) should be subject to the common supervision of ESMA.

Q18: Are you aware of proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through establishments located in the Union and that may be subject to two or more Member States' legislation or no Member States' legislation at all?

- ○ Yes, in more Member States
- ○ Yes, in none of the Member States
- ○ No
- ◉ Don't know

* Please explain and provide evidence to corroborate your response, specifying whether you are aware of any practical obstacles to the application of the relevant SRD2 provisions to such proxy advisors.

2000 character(s) maximum

I am not aware of the registered office, head office or establishments of all the entities offering proxy advisory services. However, there may be non-EU entities without head or registered offices in the Union, which are not identified as poxy advisors but offer such services in the EU.

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

- ◉ Yes, and the entity does not sufficiently explain either why it does not apply a code of conduct or why it departs from any of its recommendations
- ○ Yes, but the entity abides by its obligation to sufficiently explain why it does not apply a code of conduct or why it departs from any of its recommendations, and, where appropriate, discloses information of the alternative measures it has adopted
- ○ No
- ○ Don't know

* Please explain and provide evidence to corroborate your response, and please indicate which code(s) of conduct you think play the biggest role.

2000 character(s) maximum

In a recent tender launched by Italian pension fund Fondo Cometa, law and consulting firms, not identified as "proxy advisors", were reported to have tendered (according to il Sole 24 Ore article "Cometa, 5 nomi per l'advisor" of July 16, 2022). So far, I was not able to find any statement of compliance with proxy advisor codes or SRD2 released by some of such entities.

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

a) Fostering transparency to ensure the accuracy and reliability of the advice;

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

*

Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

EU entities identified as “proxy advisors”, and clearly subject to NCA supervision, comply with SRD2 requirements and disclose all elements required to assess accuracy and reliability of the advice.

b) Disclosing general voting policies and methodologies;

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

As per my best knowledge, all entities identified as “proxy advisors” have always disclosed, and annually updated, their voting policies and methodologies. However, SRD2 requirements should be extended also to other entities offering proxy advisory services in the EU.

c) Considering local market and regulatory conditions;

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

Local proxy advisors, only analysing local companies, by their nature have to consider local market and regulatory conditions. Also international proxy advisors fully disclose how they consider local conditions. However, harmonised supervision and extension of SRD2 requirements to all entities offering proxy advisory services would significantly improve transparency with regard to this activity.

d) Providing information on dialogue with issuers;

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

*

Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

As per my best knowledge, only few proxy advisors (including Frontis Governance, in Italian as it is subject to Consob supervision only) publicly disclose the full list of listed companies and shareholders they engaged with during the previous year.

e) Identifying, disclosing and managing conflicts of interest.

- ○ Not at all
- ◉ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please provide evidence to corroborate your response and please clarify if you have identified any ambiguity or area of possible improvement in these disclosures.

2000 character(s) maximum

It is a firm conviction of Frontis Governance, and all its European partners, that conflicts of interest must be avoided. Offering advisory services to listed companies included in the proxy advisors' universe of analysis should be forbidden. Without such prohibition, a full disclosure of listed companies that purchased advisory services, and the structure of fees charged, should be required.
Potential conflicts of interest may also be generated by the structure or activities of institutional investors that use proxy advisors' services (e.g., investors that are controlled by listed companies or submitting proposals at general meetings). As per my best knowledge, Frontis Governance is one of the few proxy advisors that annually discloses the full list of general meetings where such kind of potential conflict of interests may arise.

Q21: Based on your experience, have you noticed improvements in the way that the proxy advisory industry is taking into account relevant ESG criteria in the preparation of their research, advice and voting recommendations or in the preparation of customised policies?

- ◉ Yes
- ○ No
- ○ Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

The analysis of meeting agendas is by its nature focused on governance aspects. However, in the last years, it has more and more covered also environmental and social issues. First of all, because E and S aspects sometimes are part of voting items (e.g., Say-on-Climate votes or integration of ESG-related KPIs in variable remuneration schemes). Secondly, because institutional investors are more and more integrating E and S aspects in their voting and engagement policies, and require a specific analysis.

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

- ○ Not at all
- ◉ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response, specifying whether your answer is the same when considering proxy advisors that have neither their registered office nor their head office in the Union which carry out their activities through an establishment located in the Union.

2000 character(s) maximum

In my opinion, it is still insufficient due to the lack of common EU supervision and register of proxy advisors, the confusion on whether entities offering voting researches as ancillary services are subject to SRD2 requirements, and weak regulation related to conflicts of interest.

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

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response, *e.g.,* vis-a-vis the regulatory approach taken elsewhere.

2000 character(s) maximum

A registration through ESMA, acting as common EU supervisor, would be preferrable to avoid the offering of proxy advisory services without being subject to any transparency requirements.

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

- ☑ Further mandatory disclosures;
- ☐ More structured disclosures, incl. in terms of harmonised presentation;
- ☑ Monitoring and complaints system and/or supervisory framework on disclosures;
- ☑ Registration/authorisation and related supervision;
- ☐ Other.

* Please explain and provide reasoning on the comparative merits of different approaches in this area.

Full disclosure of potential conflicts of interest, advisory services provided to listed companies and structure of fees charged is necessary.
Harmonized ESMA supervision would improve harmonization in the monitoring of practices and disclosures. Advisory firms who want to provide proxy advisory services to institutional investors should be registered in a public register held by ESMA. By this way, investors would have the possibility to easily find relevant information on each advisor's compliance with best practices, and make an informed decision.

Q24: Having in mind the ESG and technological changes in progress in the voting services market as well as certain investors' tendency to internalise voting research and/or to provide clients with voting options, do you consider that the scope of application taken by the SRD2 is still adequate to cover the full relevant set of market players and services provided?

- ○ Not at all
- ◉ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

All entities providing voting services, including ESG data and service providers, asset managers and other entities offering proxy advisory or engagement services, should be subject to proxy advisors' transparency requirements. With particular regards to disclosure and management of potential conflicts of interest, as well as description of how they apply specific clients' guidelines in the analysis of agendas and voting execution.

Q25: For elements that are not explicitly covered by the above questions but that still concern transparency of proxy advisors, do you have any other issue that you want to raise?

2000 character(s) maximum

7. Questions for proxy advisors

7.1. Introduction

The following section sets out questions for proxy advisors, with the goal of understanding their views as regards the mandatory disclosures and other obligations imposed by the SRD.

7.2. Questions

7.2.1. On proxy advisors

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

- ○ Yes
- ◉ No
- ○ Don't know

* Please explain and provide evidence to corroborate your response. In case your answer is *yes*, which code are you following and are you following it in full? Please explain whether your approach has changed after the introduction of Article 3j.

2000 character(s) maximum

Although Frontis Governance is fully compliant with the Best Practices Principles, it decided not to be a signatory for 3 main reasons: overlapping between the Principles and SRD2 requirements (the Principles were issued in 2014, when a revision of SRD was already in discussion); there is no clear opposition to proxy advisory firms to provide consultancy services to listed companies that are under their universe of analysis; due to the structure of Frontis Governance (sole proprietorship firm) being a signatory of the Principles risks to result in an expensive and not effective exercise.

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

a) You have your registered office in such Member State;

- (●) Yes
- ( ) No
- ( ) Don't know

b) Should you not have your registered office in a Member State, your head office is in such Member State;

- ( ) Yes
- ( ) No
- ( ) Don't know

c) Should none of the above be applicable, you have an establishment within such Member State.

- ( ) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Frontis Governance is supervised by the Italian market authority Consob, and it meets all proxy advisors' regulatory requirements. As per my best knowledge, Frontis Governance is the only proxy advisor supervised by Consob, even though it is not the only one offering proxy advisory services in the Italian market.

Q74: Have you been required to notify being subject to SRD2 provisions to an NCA and/or have you liaised informally with an NCA in relation to the disclosure obligations introduced by Article 3j(1) and (2)?

- (●) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your answer. In case your answer is *yes*, please indicate whether you have been subject to additional provisions either via additional national legislation or guidance to comply with Article 3j.

2000 character(s) maximum

Frontis Governance annually publishes the report on the transparency of proxy advisors, in compliance with Art. 124-octies of Italian Consolidated Law on Finance (as amended by d.lgs. 49/2019 transposing SRD2). Frontis also annually publishes an Engagement Report, a Conflicts of Interest Report and detailed voting recommendations issued during the year. Since the introduction of SRD2 disclosure obligations, there were no formal or informal discussions with Consob.

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

a) Fostering transparency to ensure the accuracy and reliability of the advice;

- ○ Not at all
- ◉ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Frontis Governance has published its corporate governance principles and voting guidelines, as well as the annual report of voting recommendations, since its establishment. Additional details on the professional profile of analysts and the analysis process were included after the introduction of SRD2 disclosure obligations.

b) Disclosing general voting policies and methodologies;

- ◉ Not at all
- ○ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

All voting policies and methodologies were publicly available since the foundation of Frontis Governance.

c) Considering local market and regulatory conditions;

- ◉ Not at all
- ○ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

As Frontis Governance's analysis are focused on the Italian market, all voting policies are naturally based on Italian market and regulatory conditions. As partner of the Proxinvest alliance, Frontis Governance's guidelines are based on internationally recognized best practices, applied to the specificities of the Italian market.

d) Providing information on dialogue with issuers;

- ○ Not at all
- ○ To a limited extent
- ◉ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Frontis Governance has adopted and published a policy on the dialogue with issuers and media since 2016. However, since 2019 (after the approval of SRD2, but before its transposition in national legislation) it annually discloses the full list of companies it engaged with during the previous year, including main topics that were discussed.

e) Identifying, disclosing and managing conflicts of interest.

- ○ Not at all
- ◉ To a limited extent
- ○ To a large extent
- ○ Fully
- ○ No opinion

* Please explain and provide evidence to corroborate your response.

2000 character(s) maximum

Frontis Governance has a statutory commitment with its partners not to provide any advisory services to companies that are included in its universe of analysis. However, potential conflicts of interest may be generated by the activity of Frontis Governance's clients (i.e., institutional investors that are controlled by listed companies or submitting proposals at general meetings) or listed companies themselves (purchasing Frontis Governance researches directly or through third parties). Frontis Governance has always clearly disclosed any potential conflicts of interest generated by the activity of its clients in the voting recommendation report (in the first page and/or the relevant item on Agenda). Following the entry into force of SRD2, Frontis Governance also publishes a detailed annual report with all potential conflicts of interest that arose during the previous year.

Q76: Following the entry into application of Article 3j(3) of the SRD2, what new measures have you put in place for proper identification and handling of conflicts of interest and for transparency towards clients? Please explain and provide evidence to corroborate your response, indicating whether you have encountered any difficulties and if you have notified your clients more frequently of potential conflicts of interest.

2000 character(s) maximum

No additional measures to handle conflicts of interest were needed, as Frontis Governance cannot provide any advisory services to listed companies in its universe of analysis. Transparency towards clients improved thanks to the annual report on conflict of interests, which is publicly available. In any case, potential conflicts of interests have always been reported in the relevant research report (in the first page or in the relevant agenda item).

Q77: Has your practice evolved to integrate more ESG elements in the voting recommendations or in the research you provide?

- (●) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response. In case the answer is *yes*, please specify what disclosures you have made in relation to this and the potential related impacts on your recommendations.

2000 character(s) maximum

The analysis of ESG-related risks is more and more requested by our clients. It does not usually affect voting recommendations at Italian companies (except for specific resolutions, such as Say-on-Climate vote or resolutions with a direct impact on ESG-related risks), but it is mainly required to support clients in their engagement activities.

Q78: Has your practice evolved to provide new services, in particular in the ESG sphere?

- (●) Yes
- ( ) No
- ( ) Don't know

* Please explain and provide evidence to corroborate your response. In case the answer is yes, please explain if you identified such new (ESG) services as a source of possible conflicts of interest (*e.g.,* in the context of advisory services to issuers) and how you handled this situation, including by means of providing specific disclosures.

2000 character(s) maximum

The request to support clients on ESG-related engagement with issuers has significantly increased in the last few years. In any case, ESG-related analysis is exclusively used to support each client in its engagement activities, and it is based on each client's engagement policy. Frontis Governance does not provide any ESG advisory or rating services.
No conflicts of interest arise from engagement support services, as Frontis Governance does not provide any advisory services to listed companies in its universe of analysis.

Contact

Contact Form