



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

The Honorable Verena Ross, Chair
European Securities and Markets Authority (ESMA)
201-203 rue de Bercy
CS 80910
75589 Paris Cedex 12
France

Submitted online at www.esma.europa.eu

28th November 2022

Dear Chair Ross,

Re: Call for Evidence Implementation of SRD2 provisions on proxy advisors and the investment chain, 'Your input – Open Consultations'

The International Corporate Governance Network (ICGN) appreciates the Call for Evidence of SRD2 related to provisions on proxy advisors and the investment chain, which was issued to seek comments of relevance to investors, issuers whose shares are listed in Europe, intermediaries and proxy advisors.

Led by investors responsible for assets under management of around \$70 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship to support long-term value creation, contributing to sustainable economies, societies and the environment. Headquartered in London, our membership is based in over 40 countries and includes companies, advisors and other stakeholders. ICGN offers an important international investor perspective on corporate governance and investor stewardship to help inform public policy development and the encouragement of best practices by capital market participants.¹

ICGN's Global Governance Principles² (GGP) and Global Stewardship Principles³ (GSP) set out best practices in relation to corporate governance and investor stewardship obligations. These documents represent the foundation of ICGN's policy framework. Many ICGN members refer to the GGP and GSS as bellwethers for their corporate governance assessments, proxy voting policies and company engagements. The GGP also inform governments and regulatory agencies on internationally accepted standards to help inspire the evolution of national corporate governance codes.

As a future consideration and for informational purposes, the ICGN Global Governance Principles have been recognized as one of the most prominent global standards for corporate governance as acknowledged in Recital 44 of the proposed European Corporate Sustainability Reporting Directive (CSRD) where the ICGN GGP and G20/OECD Principles are both recognised as 'an authoritative global framework of governance information of most relevance to users.' Once approved by the European Parliament and Council, the Directive will influence

¹ For more information on the ICGN, please visit www.icgn.org.

² [ICGN Global Governance Principles 2021.pdf \(2021\) https://www.icgn.org/icgn-global-governance-principles](https://www.icgn.org/icgn-global-governance-principles)

³ [ICGN Global Stewardship Principles | ICGN \(2020\) https://www.icgn.org/icgn-global-stewardship-principles](https://www.icgn.org/icgn-global-stewardship-principles)

the drafting of corporate sustainability reporting standards developed by the European Financial Reporting Advisory Group which will be mandatory for over 50,000 of the largest EU companies and effective from January 2024.

In the area of investor stewardship ICGN's Global Stewardship Principles (GSP) also represent a global benchmark for stewardship that has relevance across a wide range of jurisdictions. Fifty-seven ICGN investors whose assets total over US \$28 trillion have endorsed the GSP as "a framework to implement stewardship practices in fulfilling an investor's fiduciary obligations to beneficiaries or clients,"⁴ This theme is well in line with SRD2 objective to support a regulatory framework for investors exercising their rights for voting and engagement, among other rights.

CONSULTATION QUESTIONS

ICGN will not be commenting on every question posed in the consultation. We will primarily focus on the requirements for investors who make up a significant portion of the ICGN membership. To understand the issues that our members might have with compliance with SRD2, we asked those serving on one of our five Policy Committees to provide input for this consultation. The responses in Section 4, Questions for investors, include this feedback.

Questions for investors

4.1 Introduction

18. The following section includes questions which are targeted specifically at investors investing in shares of EU listed companies. In light of the broad set of potential issues related to the practical application of the current regulatory framework, ESMA is particularly interested in understanding the views of investors as regards the remaining obstacles to the effective exercise of their rights and the extent up to which shareholder engagement is achievable under this framework.

ICGN appreciates the continuing interest by ESMA to solicit feedback from investors regarding any obstacles within the EU for the effective implementation of their shareholder rights and stewardship responsibilities. While SRD2 was targeted at EU listed companies, the regulation has applicability to non-EU intermediaries, which is important to provide the disclosures that investors need from global issuers.

19. As for the questions on transparency of proxy advisors (i.e., Article 3j), ESMA is interested in assessing the views of those investors who make use of the services of proxy advisors, whether in terms of research, advice, recommendations, or any combination thereof.

ICGN again appreciates the interest shown by ESMA to understand the use of proxy advisors by investors, who utilize proxy advisory firms for a variety of reasons. ICGN has been clear that the use of proxy advisory services should not delegate away any fiduciary duty for the effective voting of proxy voting by investors. In the GSP, Section 5, we state:

⁴ ICGN Global Stewardship Principles, [ICGN Global Stewardship Principles 2020_1.pdf](#), (2020), p. 4.

5.6 Voting services. Investors should disclose the extent to which they use proxy research and voting services, including the identity of the provider and the degree to which any recommendations are followed. *Use of a proxy voting advisor is not a substitute for the investor's own responsibility to ensure that votes are cast in an informed and responsible manner.* Investors should clearly specify how they wish votes to be cast and should ensure that such votes are cast in a manner consistent with their own voting policies. (Italics added)

ICGN has a diverse investor population, and the use of proxy advisory firms may be essential to assisting them fulfil their fiduciary duties. When institutional investors have ownership in thousands of global companies, in passive and active ownership strategies, the need to utilize a robust proxy voting platform to facilitate voting requires the use of third parties. Additionally, independent research by which the investor may formulate its work is an important element to informed voting. The proxy statement from an issuer is one piece of information that should be independently assessed against the investor's proxy voting guidelines and investment priorities. The recommendations from proxy advisors are simply that- recommendations taken from their cumulative review of investor guidelines and their independent assessment. Investors are able to customize their voting platforms to vote as they choose. The key is to have that investor's vote submitted in a timely manner, and to confirm that the vote was received and tabulated by the issuer (or its proxy solicitor) in the way the investor intended.

20. Please note that, in addition to individual (retail) investors, we also include in the category of respondents to this chapter both asset managers and institutional investors as defined by Article 2 of the SRD.

N/A

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

Q26: Do you consider that the SRD2 has improved your ability to receive and transmit the information necessary for the exercise of your shareholder rights via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response.

To a limited extent, investors seem to believe that SRD2 has improved the ability to receive the information which investors need to vote effectively. There are still a myriad of issues, however, that investors must address in dealing with intermediaries, including custodians, clearinghouses and the proxy solicitors that issuers utilize as shares are issued and/or transferred. Investors have benefitted from the provisions that require greater requirements of intermediaries to transmit corporate actions in a timely manner to their clients. We expand on this in Question 27.

Q27: Do you consider that the SRD2 has improved the exercise of your rights as a shareholder, including the right to participate and vote in general meetings via the intermediary holding your securities account and other intermediaries involved in the administration and safekeeping of your shares?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

ICGN received a mixed response to this question from our members. It appears that while SRD2 has made the ability to vote and participate in general meetings within the EU more accessible, there are still underlying issues outside of the EU to be addressed. This is the crux of the situation for global investors with investments across multiple markets. Some investors have seen no change in the exercise of their voting rights as the practical implementation of corresponding SRD2 provisions is not yet satisfactory. Significant barriers remain, including: power of attorney (POA) requirements, split voting that is not allowed, share blocking in certain markets, and some markets still requiring physical attendance by investors. Moreover, there is no systematic notification without delay of vote rejections that are mostly announced ex-post, which is too late for correction. Vote deadlines also vary among intermediaries and/or custodians and may sometimes be significantly ahead of the AGM, preventing investors from casting their votes in the most informed manner possible. Some research may not be available at the time the deadline for the vote has been set by external parties. In particular, information on the directors standing for election or re-election can be thin in certain markets and more robust information may take time to research and disseminate to investors.

In addition, the shareholder voting deadlines may be compressed when there are multiple intermediaries and cross-border considerations. If the shareholder voting deadline may not be set earlier than three business days prior to the issuer deadline for voting or the record date, and there are multiple intermediaries, investors have still noted concerns with casting ballots in time.

Please explain and provide evidence to corroborate your response and evaluate the process of attending and voting at a general meeting both in your country or abroad, if applicable (in the latter case, please distinguish between EU and non-EU jurisdictions).

ICGN heard from its members that investors had difficulty attending and voting at Annual General Meetings (AGMs) during the COVID restrictions, which have dissipated as the pandemic has subsided. The move to virtual-only meetings during the pandemic is one reason that ICGN has encouraged the use of hybrid AGMs.

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

[Submit only a confirmation of entitlement (as under Table 4 of the Implementing Regulation)]

[Provide a notice of participation through your closest intermediary (as under Table 5 of the Implementing Regulation)]

[Provide a deposit confirmation]

[Other]

Please explain and provide evidence to corroborate your response and indicate whether you are aware of any major cross-country differences, identifying the most relevant examples.

Our members indicated that they must submit a confirmation of entitlement (as under Table 4 of the Implementing regulation) for EU issues. However, in other markets, POAs may be required, which may delay the ability to vote in a timely way. Some investors are able to have POAs prepared and ready for use in key markets, however, investors with limited resources may find the requirements for POAs, consular legalization (i.e., consularised) or apostilled documents to be too expensive or time consuming to accomplish before the voting deadline, causing them to refrain from voting. As markets adopt more standard voting and accurate shareholding structures, with share ownership more clearly reflected on issuer share logs, investors should be able to vote more effectively.

ICGN would note that voting is just one of the several shareholder rights that SRD2 addresses. The need for intermediaries and custodians to adjust ledgers to reflect investors' buy and sell activity, shares on loan to reflect the true beneficial owner, and rebalancing of portfolios in passive or active accounts in a timely way, all lead to a better results for voting purposes. These changes enhance investors and issuers, and any intermediaries. Investors that wish to engage with issuers will have the requisite documentation to show share ownership across multiple investment strategies, thereby demonstrating the true investment into a company.

Q29: Do you consider that the provisions of Chapter Ia have effectively allowed shareholders to receive (electronic) confirmation that votes have been validly recorded and counted by the company after the general meeting?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response and clarify how long on average it took to receive confirmation.

We understand that some investors will receive the confirmation via their proxy voting platforms.

However, vote confirmation is still nascent in many markets. End-to-end voting confirmation requires a clear chain of voting protocols by each intermediary that supports voting; this is not an easy task. ICGN is aware of one effort that has taken ten years to work towards end-to-end voting confirmation in North America.

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

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response and indicate any practical issues you have encountered in association with the application of thresholds for shareholder identification, e.g., when the voting shares are held through two or more intermediaries.

The directive sets 0.5 percent as the threshold for identification of who is an individual shareholder for purposes of identification, which may be defined differently in EU member states or non-EU jurisdictions. The definition of individual shareholder is important because that triggers the notification. A shareholder could be the legal or natural person/entity registered on a company's register of shareholders and the register may not therefore include the beneficial owners. Member States had the ability to propose thresholds with different levels, which means that investors and issuers need to consider these different thresholds especially in cross-border situations.

While some investors have indicated no issues with the unique thresholds, other investors have encountered limited issues, particularly when two or more intermediaries are involved. Investors with sizeable assets under management will inevitably have investments across a multitude of markets, with investments in shares, bonds or other vehicles that provide for voting those interests. The issue is also one of fairness. Investors with ownership that may be below the threshold, should be able to exercise their stewardship rights. In fact, that limited ownership by an investor with a lower AUM may be proportionally more of an investment than to an investor with significantly more AUM to manage.

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

a) Problems with receiving information on the charges in advance;

[Y]

[N]

[Don't know]

b) Disproportionately high charges;

[Y] We had reports of this from our members.

[N]

[Don't know]

c) Discrimination issues, including where differences between the fees charged for domestic and cross-border exercise of shareholder rights did not seem to be duly justified or did not seem to reflect the differences in the actual costs incurred by the intermediaries involved;

[Y] One of our members has reported issues of this nature.

[N]

[Don't know]

d) Other.

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response.

It appears that the fees were different between jurisdictions, leading to concerns for investors that have cross-border holdings.

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

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, please specify what rights and what kind of issues are concerned (e.g., any

technical obstacles to the right to vote) also indicating how you think the above obstacles could be removed.

Share blocking still occurs in certain markets. POAs remain a significant inconvenience and deterrent.

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

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response. In case your answer is yes, please explain and indicate which digital technologies and how they could improve communication and transmission of information along the investment chain.

Some investors have indicated that better use of technology across EU and non-EU markets to determine eligible shareholders for voting purposes would be beneficial.

Q34: Have you made use of the services provided by online brokerage platforms ('neo-brokers')? [Neo-brokers are commonly understood as financial entities who typically offer online brokerage services directly to individual investors, focusing on trading via a browser-based web or app trader. Neo-brokers tend to offer comparably low costs and fees, but services offered are often limited compared to those offered by established online brokers.]

[Y]

[N]

[Don't know]

Please indicate if you consider that they provide the same support to their clients to facilitate engagement and participation in corporate actions in comparison to traditional intermediaries. Please provide evidence to corroborate your response.

N/A

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

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response and clarify what further improvements could be made, if any, also in light of technological changes.

ICGN members have reported that generally they have direct channels to issuers. With the rise of global stewardship codes, investors now are required to publicly report on significant proxy votes and the application of voting guidelines.

4.2.2 On proxy advisors

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

[Y]

[N]

[Don't know]

Please explain and provide evidence to corroborate your response, indicating also if such conflicts of interests were mentioned in the recommendations themselves.

While the ICGN members indicated that they had been notified of possible conflicts of interest by proxy advisors, they did not provide details, although one member mentioned that the possible conflict was not mentioned in the recommendation.

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

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]

b) Disclosing general voting policies and methodologies;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

c) Considering local market and regulatory conditions;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

d) Providing information on dialogue with issuers;

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

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. Please also specify if the provisions on transparency have increased your reliance on their advice and indicate what complementary information would be necessary.

One member indicated that the implementation of the Best Practice Principles, which describe a code of conduct for providers of shareholder voting research and analysis, has been effective at fostering transparency of proxy advisors.⁵

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

[Not at all]

[To a limited extent]

⁵ [Best Practice Principles \(BPP\) Oversight Committee | Best Practice Principles for Shareholder Voting Research \(bppgrp.info\)](https://www.icgn.org/bppgrp/info)

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response.

Investors have not reported significant errors in research provided by proxy advisory firms.

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

a) Type of services (i.e., in house voting policy, custom voting policy adapted to your criteria, access to a voting platform, etc.);

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

b) Number of proxy advisors contracted (and, if applicable, please specify the reasons for choosing several rather than one provider);

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

c) Frequency of following their recommendations (and, if applicable, please specify the typical reasons for not doing so).

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your responses, clarifying how the use of proxy advisory services has changed in your specific case.

Investors will have their own customized proxy voting guidelines, which generally provide for the deviation of certain votes on a case-by-case basis, to avoid a check-the-box system. Some of the customized policies may be similar to the recommendations from proxy advisory firms. At times, an investor may need to make an exception and override a set voting requirement with the proxy provider. Investors have reported that there is flexibility within the proxy advisors' services to provide for exceptions as necessary.

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

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response.

Investors are increasingly bombarded with offers by external parties to assist with ESG-related investment strategies, so it is not surprising that proxy advisors would consider how to offer these services. Disclosure of possible conflicts of interest and appropriate firewalls to keep proprietary information from being accessed and used by a proxy advisor (or any other third party) are essential.

Q41: Having in mind the ESG and technological changes in progress in the voting services industry as well as certain investors' tendencies to internalise voting research and/or to provide clients with voting options, have you changed or are you planning to change the extent to which you use the services of proxy advisors, the type of services you use or your reliance on their advice?

[Not at all]

[To a limited extent]

[To a large extent]

[Fully]

[No opinion]

Please explain and provide evidence to corroborate your response.

Investors may decide to adopt more specialty policies over time to reflect their own stewardship approaches, which would then provide more specific instructions to proxy advisors.

We hope you have found our comments useful. Should you wish to discuss further please contact George Dallas (george.dallas@icgn.org), ICGN's Policy Director, Carol Nolan Drake, Governance and Stewardship Policy Manager (carol.nolandrake@icgn.org), or myself (kerrie.waring@icgn.org).

Yours faithfully,



Kerrie Waring
Chief Executive Officer, ICGN

CC: Catherine McCall, Chair, ICGN Global Stewardship Committee