

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 different with five major topics:

- **INTERACTION BETWEEN ISSUER AND SHAREHOLDER:** SRD II enables listed companies to
 - identify their shareholders,
 - compel intermediaries to send information to shareholders
 - to facilitate the exercise of shareholders' rights;
- **TRANSPARENCY:** SRD II imposes
 - mandatory transparency of the voting,
 - the commitment of the institutional investors and asset managers and certain aspects of the asset management contracts;
 - the disclosure of the company's remuneration policy together with shareholders' voting rights;
 - increased transparency and an independent opinion on the related parties' transactions, and the submission of the largest transactions for the shareholders' approval;
 - the obligation, for the proxy advisers, to provide information on their working methods and to be capable of transparency where there are conflicts of interest;

Published on 2017, May the 17th and enter 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 (mainly transparency provisions) and adaptation to the minimum requirements provided by implementing acts (mainly interaction provisions) by 2020, September the 3rd.

1. Overview

- Key aspects of the Regulation (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. It take inspiration of the concept of Record Date used for corporate actions to define the date of 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.

The information to the issuer shall be transmitted the day after of the “Record Date” if this Record Date is less than 7 days before the date of reception of the demand.

The intermediary, described as a legal person who holds securities accounts for his clients, must inform 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.

- 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.

- 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 to their clients and issuer must confirm to the shareholder the vote cast.

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 to leave at least a 3 days delay for investor to answer to any elective event or vote.

- 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”

Data and format shall be presented in a machine readable format. It push the stress on using ISO standards or equivalent to develop electronic exchanges.

Due to deadline stress, issuer or a designated agent shall provide information under a 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 and by the Joint Working Group of General Meetings.

- Transparency of the costs (10 June 2019)

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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.

- Foreign country intermediary (10 June 2019)

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

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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.

"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.

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"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.

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"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.

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

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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)

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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)

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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 is under drafting to be published during the 1 semester of 2019.

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

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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