


Webinar Report

EuropeanIssuers Capital Markets Webinar Series: SRD II: Its impacts on corporate actions and solutions for an EU harmonised definition



powered by  COMPANY WEBCAST

This webinar session is partnered by  Nasdaq.

EuropeanIssuers Capital Markets Webinar Series

SRD II: Its impacts on corporate actions and solutions for an EU harmonised definition

03 November 2020

11.00 – 12.00

Webinar Report

Moderator: *Pierre Marsal, Chair of the Securities Law & Markets' Infrastructure Working Group of EuropeanIssuers*

Speakers:

- *Katalin Koós-Hutás, Policy Officer, DG JUST, European Commission*
- *Michael Collier, Director, Deutsche Bank*
- *Dr Markus Kaum, Attorney, Mariacher Rechtsanwälte*
- *Juan Manuel Vazquez Garcia Reynoso, Senior Legal Advisor, Emisores Españoles*

Significant progress has been achieved through the Shareholders' Rights Directive II (SRD II) and its implementing regulation when it comes to exercising shareholder rights and processing corporate actions cross-border. However, there are still two outstanding issues. Firstly, a thorough assessment of the impact of SRD II rules on corporate actions processes is pending. Secondly, the harmonisation of the 'shareholder' definition is deemed necessary. Moderated by **Mr Pierre Marsal**, the webinar focused on whether the 'shareholder' definition leads to significant difficulties for intermediaries and issuers in the process of identification, as well as for shareholders to exercise their rights, especially in a cross-border context, and will explore possible solutions in reaching an EU harmonised definition, considering that in most Member States the notion is already based on the end-investor concept.

The first panellist, **Dr Markus Kaum**, discussed how, despite the shortcomings from the lack of a 'shareholder' definition, the SRD II has provided good improvement to the industry by dealing with the process of shareholder identification, allowing companies to know their real end investors. Another beneficial aspect is the expansion from general meetings to all corporate events, as shareholders exercise their rights in various processes and harmonisation is needed throughout. Moreover, Dr Kaum acknowledged the great progress in relation to the voluntary implementation by the market participants groups, especially due to the good base for level II implementation, but noted that there is still room for improvement.

Mr Michael Collier mentioned the innovative concept brought into the industry by the SRD II, and that is the shareholder identification process. While the directive's aim is to foster

cooperation between the issuer and investor, the problem arises in practice when the issuer cannot identify the shareholder through the holding chain, but only one layer down, as the law doesn't allow it to go any further. Mr Collier thus explained that the definition of 'shareholder' comes into play in this situation, as it should go one step further and not limit the process of shareholder identification anymore. Moreover, in terms of the electronic systems put in place, Mr Collier reiterated that a lot has been done from a technical and market standpoint in order for messaging to be ready by the 3 September, the implementation deadline.

Discussing the Capital Markets Union High-Level Forum report, **Mr Juan Manuel Vazquez Garcia Reynoso** emphasised the focus on the measures related to the SRD II. Mr Vazquez debated whether the issue with the SRD II is the lack of a definition, or, among others, the choice of the instrument used to regulate in this area. To this end, Mr Vazquez suggested a regulation might achieve a smoother application which is sought by all market participants, and should be taken into account in light of the upcoming review of the SRD II. Furthermore, Mr Vazquez reiterated the issues which arise due to the lack of inadequate IT systems.

Mr Pierre Marsal and **Dr Markus Kaum** briefly discussed the concept of 'end investor' within the meaning of the directive, pointing out to the fact that the legislative instrument itself was drafted with the end investor concept in mind. Thus, while some Member States do not have this approach to the definition of 'shareholder', the spirit of the directive should be kept in mind.

In her intervention, **Ms Katalin Koós-Hutás**, focused on two main issues. Firstly, the transposition and implementation of the already existing rules, and the need for further improvement in the future review of SRD II. Ms Koós-Hutás explained that the current framework was put in place with the aim of improving the exercise of shareholder rights in cross-border situations, and to make issuers able to know their shareholders and communicate with them. Further, the implementing regulation was adopted in order to set up minimum requirements and enhance self-regulation. While there are issues arising from the lack of a 'shareholder' definition in the context of this framework, Ms Koós-Hutás mentioned that the process is not as complex as it looks, and it should not prevent intermediaries from complying with the existing obligations. In addition, Ms Koós-Hutás reiterated that the European Commission is closely following the transposition of the rules in each of the Member States, and should transposition not be done accordingly, the infringement procedure will be used.

In relation to what a future harmonised definition of 'shareholder' should look like, both **Mr Michael Collier** and **Dr Markus Kaum** acknowledged that the natural path to follow is the 'end-investor' concept, in line with the spirit of the directive, and a clear definition will be helpful for all actors involved. EuropeanIssuers has long advocated the harmonisation of the 'shareholder' definition in line with the 'end-investor' concept, and it can be seen [here](#). In addition, **Mr Vazquez** suggested that the 'threshold' issue should also be harmonised, and

not be left at the discretion of the Member States, in order to enable full effectiveness of the identification objective. In the end, **Ms Koós-Hutás** confirmed that there will be an assessment period, with ESMA and other stakeholders involved, in order to identify the main issues with the implementation of the SRD II, and pave the way for the review which is expected in 2022-2023.

.....

EuropeanIssuers is a pan-European organisation representing the interests of publicly quoted companies across Europe to the EU Institutions. There are approximately 13,225 such companies on both the main regulated markets and the alternative exchange-regulated markets. Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth €7.6 trillion market capitalisation with approximately 8,000 companies.

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer term. We seek capital markets that serve the interests of their end users, including issuers.

For more information, please visit www.europeanissuers.eu.

For the recording of the webinar, please visit [EuropeanIssuers YouTube Channel](#).