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EuropeanIssuers' Key Messages for *the Review of the Shareholder Rights Directives*

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EuropeanIssuers is the pan-European organisation strategically positioned to represent the interests of publicly quoted companies across Europe to the EU institutions. We aim to ensure that EU policy creates an environment in which companies of all sizes - from emerging growth companies to the large blue-chip companies - can easily raise capital through the public markets and deliver growth over the longer term.

Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth €12.4 trillion market capitalisation with approximately 6,000 companies.

There is broad agreement among issuers that the facilitation of shareholder rights has generally improved in most Member States (MS), leading to a significant increase in the transmission of voting instructions. While this improvement can be attributed in some countries to increased shareholder identification, in others, particularly those that have set a shareholder identification threshold, different factors rather than shareholder identification have driven the rise in participation. EuropeanIssuers fully supports this increased level of shareholder engagement.

EuropeanIssuers welcomes the renewed attention to a potential review of the Shareholder Rights Directives (SRDs), as highlighted in the European Commission's Savings and Investments Union Communication published in March 2025 - which foresees an assessment of the need for, and the possible revision of, the SRDs by Q4 2026 to facilitate cross-border operations for investors, intermediaries, and issuers. This is further supported by the recently published final report of the Study on the Application of the SRDs, mandated by the European Commission, which evaluates key provisions on shareholder identification, information transmission, the exercise of shareholder rights, general meetings (GMs), and proxy advisers, and provides valuable input and recommendations for strengthening shareholder rights in listed EU companies.

We therefore would like to provide some key messages for the revision of the Shareholder Rights Directives considering both what we have experienced so far and the inputs and recommendations of the above-mentioned Study.

1. **Harmonisation of the shareholder concept**: Our preferred option would be to achieve a functional harmonisation providing for an ad-hoc definition of shareholder for the sole

purpose of the directive, limited to shareholder identification. This ad hoc definition should enforce the end-investor concept, on which SRD 2 is already implicitly based and would not require replacing the 27 MS definitions with a single, EU-wide definition, as the fully-fledged harmonisation would. The expected benefit would be to ensure a consistent interpretation of the notion throughout the EU, removing any ambiguity in the way the three common-law MS have transposed it in their national legislation. In addition, to counterbalance the potential side effects of the new definition of 'shareholder', it should be mandatory to provide information on the person exercising the voting rights if these have been delegated to a third party, and this person differs from the end investor. This information is essential for issuers to identify the right people to engage with as part of their shareholder dialogue. Moreover, for issuers listed on unregulated market it should also be made possible to identify its shareholders. Finally, it could also be useful to harmonise other key concepts and notions for the effective application of the SRDs (such as the notion of "last intermediary" as "the intermediary who provides the securities accounts in the chain of intermediaries for the [end-investor]").

2. **Removal of the optional shareholder identification threshold** set by MSs from 0% to 0.5% of issuers outstanding shares (and above which investors holding such amount may be identified by issuers): The best way forward would be to remove this option outright, not only because it has given rise to inconsistent implementation across MS but also because it calls into question the very principle of shareholder identification. Large holders – holding in aggregate more than 0.5% - cannot be identified by issuers in case they are holding shares via multiple accounts or custodians. In fact, a 0.5% threshold in companies with dispersed shareholdings would result in the identification of only a negligible number of shareholders. As a result, especially for larger issuers, such a number is too small to be useful. Furthermore, the threshold hampers effective dialogue and engagement with shareholders, which runs counter to the purpose of the SRD II. The decision to set a threshold value should be left to the issuer.

3. **Stricter adherence to the transparency, proportionality and non-discrimination principles**: The revised directive should reinforce the obligation that intermediaries' fees be subject to strict transparency, proportionality, and non-discrimination requirements. Moreover, such fees should only reflect cost compensation for automatic processing, which is the main purpose of SRD II. Furthermore, investments made to implement SRD II were completed before September 2020 and are should have been written off by now. Measures ensuring stricter compliance should be drawn, among others, from the Account Payments Directive, which requires MS to develop national databases collecting costs and charges connected to GM-related processes. Such databases, which would enable users to compare charges, could serve as a precursor to an EU single database that could realistically be established at a later stage. The Payment Accounts Directive also offers ways to establish a fair and clear allocation of costs and charges between payers and payees. In reality, the problem of costs is linked to complex and costly procedures imposed in certain countries. For example, in Germany, a lawyer must be physically present to carry out voting instructions. It would therefore be useful to have a comprehensive country-by-country description of the requirements in terms of documentation and proof of position, mentioning the costs involved in these procedures. This would highlight any obstacles that may exist in certain countries, regardless of their nature.

4. **Stricter compliance with the obligation to transmit information and facilitate the exercise of shareholders rights**: The revised directive should more effectively enforce the obligation to transmit information and facilitate the exercise of shareholders' rights in a timely manner, either by applying administrative or civil sanctions in cases of non-compliance, subjecting intermediaries to closer scrutiny by supervisory authorities, or promoting self-enforcement

mechanisms (e.g. peer reviews). In this respect, market standards adopted according to the Implementing Regulation (IR) should be consistent and aligned with Level 1 and Level 2 legislation. EuropeanIssuers agrees with the study's proposal to establish a formal complaint mechanism to the European Commission to address situations where market standards conflict with the SRDs

5. **Clarifying scope of already harmonized level 2 measures relating to communication between shareholders and issuers**: Since confirmation of entitlement still hinders communication with issuers, amended common level 2 standards are needed to facilitate the flow of information through the holding chain to the issuer. We would suggest removing a separate confirmation of entitlement. The notice of participation already includes in part C data elements specifying voting positions and number of votes. In case of vote instruction, there is no need for confirmation of entitlement. This is only necessary in the case of physical attendance, and it should be clear that it is up to the shareholder to request an additional confirmation of entitlement to exercise their rights at the AGM from the relevant intermediary, if needed. In any case, the account keeper will inform both the issuer and the shareholder of the position recorded in its accounts.

6. **Agenda of the general meeting**: EuropeanIssuers believes that the current Article 6 of SRD, which allows MS to set limitations on adding items to the agenda of GMs and tabling draft resolutions, and does not recognize the right to table resolutions to individual shareholders without any threshold, should be maintained as it stands. We do not support the recommendation in the Study to reduce or remove these limitations.

   Our position reflects the need to preserve the proper functioning and relevance of GMs. The GM must not become a forum for promoting the specific interests of a very small minority. National company laws require shareholders to hold a certain percentage of the capital in order to table items or draft resolutions, to ensure that the items and draft resolutions are of general interest. This representativeness threshold therefore guarantees the seriousness of shareholders' commitment to the life of the company and the smooth running of GMs which are important events.

   Lowering or removing these thresholds, as suggested in the Study, would significantly increase the risk of GM agendas being cluttered with proposals that are not serious or representative of specific interests and would therefore "force discussions of points that other shareholders or management may consider irrelevant" (see pp-204-205 of the Study), and moreover have no chance of being adopted.

   In addition, the management of an external resolution is a cumbersome process for issuers. In practice, issuers have very little time to convene the board, prepare arguments, amend the notice of meeting or add an addendum to the notice, have it printed and sent to all registered shareholders, etc. There is also the cost of printing (or reprinting/adding) the documents prepared for registered shareholders. As a result of this complexity, burden, and cost, the tabling of resolutions must be reserved for groups of shareholders that are sufficiently representative and significant in terms of their share capital percentage and economic exposure. Moreover, shareholders have other tools to defend their interests, such as the right to submit written questions before the GM and the opportunity to engage in dialogue with the issuer in accordance with the engagement policy.

Considering the SRD review, it would be helpful to clarify that the right to propose draft resolutions, as set out in Article 6, does not include the ability to propose draft resolutions directly at the GM by individual shareholders. This is because such a provision would undermine the completeness of information provided prior to the GM, preventing other shareholders (typically institutional investors) from voting by proxy or, where applicable, by correspondence. This is in contrast with Article 6.4 of the Directive, and in general with the purpose of the Directive.

7. **Participation in General meetings:** EuropeanIssuers believes that companies should have the flexibility to determine the most appropriate format for their general meetings, in line with their specific needs and the national legal framework within which they operate. EuropeanIssuers does not support the Study's suggestion of making hybrid meetings mandatory.

   Experience in recent years shows that the model of GMs has evolved due to changes in ownership structures in listed companies and the predominance of institutional investors in their capital. These investors can engage with the company prior to the GM and vote well in advance through a chain of intermediaries. Consequently, in some Member States, legislation has allowed companies to opt for virtual meetings or to anticipate the exercise of shareholders' rights.

   For instance, the Italian model allows issuers to convene GMs through an exclusive designated representative. Originally introduced during the COVID-19 pandemic to facilitate shareholder participation, this method has proven effective and continues to be used successfully. This is because it considers shareholder participation as a scheduled process that develops during the weeks between the notice calling the meeting and the collection of voting proxies of the shareholders by the exclusive designated representative.

   Rather than mandating a single format, the European Commission could also consider establishing a general framework enabling issuers to choose between different alternative and equivalent meeting formats, such as physical, hybrid or virtual meetings (including the format involving an exclusively designated representative). All these formats should be permitted under the national laws implementing the SRD. The latter should explicitly entitle the board of directors (or board of administration/management board) to decide on the meeting format for each shareholders' meeting, in line with the national framework and without requiring amendments to the company's by-laws.

8. **Shareholder Questions**: EuropeanIssuers believes that the current Article 9 of the SRD, stating that the right to ask questions must be related to the agenda items should be maintained as it stands. The Study recommends amending Article 9 to ensure that shareholders' questions in a listed company are not restricted to items already on the agenda of the general meeting. EuropeanIssuers does not support this recommendation. Shareholders' questions at general meetings should remain limited to items on the agenda. The rationale behind this right is to ensure that shareholders are adequately informed so that they can vote responsibly on the matters submitted for decision. Removing this restriction would place an undue burden on companies and most shareholders. In practice, some AGMs already last over 12 hours, with hundreds of questions submitted.

   Furthermore, the right to ask questions is already being abused in some MS, where certain small retail shareholders repeatedly ask identical questions across all the companies in which

they hold even a single share. This phenomenon would likely worsen if the right to ask questions were no longer tied to agenda items.

There is no legitimate reason to ask questions that are not relevant to the items under discussion and vote. The primary aim of the GM is to ensure that shareholders are well informed and make informed voting decisions. That objective is best served by keeping the meeting focused on the items formally included in the agenda. Moreover, it is worth noting that EU Directives already require listed companies to regularly provide the market with financial and non- financial information. This allows shareholders to be adequately informed about the company's position and activity.

Without prejudice to the above, the revision of the SRD should consider permitting MS to allow companies to include a minimum shareholding threshold for participation in and the right to ask questions at shareholders' meetings, as already provided for under Spanish legislation. Shareholders below the threshold would, in any case, retain the right to submit questions in writing in advance and to receive answers. Such a provision would be consistent with the principle of equal treatment, interpreted in light of proportionality (Article 4). In this respect, the SRD already allows MS to limit the exercise of certain rights (e.g. the right to put items on the agenda or table draft resolutions) by setting a minimum stake (Article 6).

9. **Proxy advisors**: EuropeanIssuers considers that, although the situation regarding the regulation and transparency of proxy advisors has generally improved, there is still room for significant improvement, notably in the following area:

   - **Conflicts of interest**: conflicts of interest are primary concern of both the issuers and the investors. We support the ESMA Report's[1] recommendation for more detailed disclosure obligations regarding the conflicts of interest involving proxy advisors and their clients, particularly when proxy advisors provide consultancy services to issuers and advise investors on the same entities. Additionally, the updated Best Practices Principles (BPP) do not cover ancillary services (e.g. corporate governance services) provided to investors and issuers, nor platform voting services offered by the two major providers. Therefore, we would welcome the incorporation of ancillary services (e.g. overlay services) into the BPP definition, and these services should be explicitly referenced.

   - **Transparency**: EuropeanIssuers stresses the need for greater transparency from proxy advisors, both in disclosing their methodology and explaining how they arrive at negative voting recommendations. Currently, there is a lack of clarity regarding the decision-making process behind these recommendations, including whether decisions are made by an individual or a collegial body. Furthermore, there is no indication whether there is any centralised mechanism overseeing this process.

   - **Dialogue with issuers**: we suggest defining a harmonized model of dialogue with issuers that ensures that they can correct factual errors or comment on proposed reports, and that such interaction is transparent, either in the Best Practice Principles or in the Directive. Providing such a harmonised model could also help smaller proxy advisors in developing good practices.

     We also suggest that the Directive or the Best Practice Principles should state that proxy advisors should offer issuers the option of submitting a request to receive the draft report

[1] Implementation of SRD2 Provisions on Proxy Advisors and the Investment Chain, ESMA, 2023.

before publication, in accordance with the terms and conditions set forth and disclosed by the proxy themselves.

- **Definition of Proxy advisors**: EuropeanIssuers is calling on the European Commission to clarify the definition of proxy advisors in the SRD, to ensure that all market participants performing a similar economic function are effectively included. This should include professionals that are not established as legal persons or non-profit organisations but provide advice. This would particularly encompass the provision of ESG data services, governance services and/or ESG analysis and rating services, when these relate to advice on the exercise of voting rights.

- **Enforcement and supervision**: EuropeanIssuers suggest, as a first step to amend the SRD along the following lines:

    - ESMA should be empowered to manage a complaint mechanism, complementary to the one provided for in the 2019 Best Practice Principles, to whom all European issuers could appeal on critical issues or violations concerning the conduct of voting advisors, in parallel or in alternative to the BPPOC (Best Practice Principle Oversight Committee) system;

    - NCAs should be expressly entrusted with the task of monitoring the developments in the market for voting advisory services and the impact on the shareholders' meetings of issuers in each country and report to ESMA.

In the long run, and considering the supranational dimension of proxy advisory industry, we believe that a solution could be to entrust ESMA with direct supervisory functions and powers.

To conclude, EuropeanIssuers would like to express its support for the proposed recommendations on proxy advisors in the ESMA and EBA Report on the implementation of the SRD II provisions on proxy advisors and the investment chain, and would in particular like to highlight the valuable input provided by the SMSG on page 102 of the report.

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Published in 2024, EuropeanIssuers' Key Messages for the next Legislative Cycle present key priorities and policy recommendations in a number of areas to support the EU policy makers during their mandate.

More information on our positions can be found at www.europeanissuers.eu or on EuropeanIssuers LinkedIn and X.

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