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Responsible Stewardship

How the EU Can Improve the Shareholder Rights Directive

ShareAction»

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Introduction

> In this briefing we explain why the EU needs to show more ambition and put greater emphasis on stewardship in its forthcoming Renewed Sustainable Finance Strategy if it wants to meet its international commitments on sustainability and the objectives set out in the EU Green Deal.

Public and private companies hold considerable power to shape the world we live in. Their decisions can improve the sustainability and resilience of our societies. But they can also erode them, when not governed appropriately. Today, the world faces huge challenges in managing the climate crisis, protecting biodiversity, and preventing human rights abuses. While public and private companies have an opportunity to act in ways that help society, many still focus excessively on short-term financial performance, instead of prioritising long-term growth and acting responsibly.

The European Union has recognised the need to step up its sustainability efforts. In December 2019, the European Commission published the EU Green Deal, announcing its aim for Europe to become the first climate neutral continent by 2050.[1] In this document, the EU concluded that we need further measures for the financial system to support businesses better on their path towards sustainability. In response to this realisation, the European Commission will present a Renewed Sustainable Finance Strategy in the summer of 2021 with the aim of mobilising sufficient private investment to meet the EU's sustainability targets.[2]

One efficient tool to promote corporate long-termism and greater adoption of sustainability measures is investment stewardship. The EU recognises that involving shareholders in corporate governance is one lever that can help improve the performance of companies, both financially and with respect to their impact on the environment and society.[3] However, research shows that European investors do not make sufficient use of the tools at their disposal to execute stewardship over companies in which they own shares.[4]

This briefing seeks to:

- Show that current EU policies are insufficient for promoting good stewardship.
- Highlight the importance of moving away from "box ticking" exercises and towards stronger standards to hold institutional investors[i] and asset managers accountable for stewardship.
- Outline how stewardship can function as a lever to encourage the growth of sustainable business in line with credible environmental, social and corporate governance (ESG) commitments.
- Provide concrete recommendations to improve stewardship responsibilities in EU legislation.

i In this briefing we use the terms "institutional investors" to mean insurers and pension funds, in line with their use in the Shareholder Rights Directive.

What is investment stewardship?

Investment stewardship (hereafter stewardship) is the responsible allocation, management and oversight of capital. Stewardship is a tool that investors can use to promote good corporate governance practices in a way that is consistent with long-term value creation. It is a critical component of an efficient investment system that helps reduce risks and maximise returns at the individual investment level, while enhancing overall market stability and making a positive impact on society and the environment.

The exercise of stewardship responsibilities is also a key expression of investors' duties to integrate material ESG risks into their investment process and portfolios. It emphasises dialogue and discussion between shareholders and their agents, and the management of their investee companies around issues such as performance, corporate strategy, risk (including ESG) and capital structure, as well as aspects of governance such as board composition, executive compensation and culture.

Stewardship in the EU

Stewardship is not a new concept. The US wave of corporate takeovers in the 1980s stirred up a "shareholder rights agenda", which sought to prevent acquiring companies negotiating share prices directly with shareholders, and which formed the basis of modern corporate governance. The emergence of shareholder rights gave institutional investors a voice and allowed them to play a more active role in governance.[5] But decades later, after the financial crisis of 2008, institutional investors came under criticism for not being diligent enough in exercising their governance duties as shareholders.[6] Many considered that a lack of corporate governance and institutional monitoring actually contributed to the crisis. In response, stewardship codes were developed in a number of jurisdictions such as in Japan, the United Kingdom and South Africa that require institutional investors to be transparent with their investment processes and play a more active role in corporate governance.[7]

In 2007, the EU's Shareholder Right Directive (SRD)[8] was published to establish requirements for shareholder engagement. The European Commission concluded that the Directive needed revising following the financial crisis, which had shown that shortcomings in shareholder engagement hindered good decision-making by companies.[9] The EU stated that legislative requirements on shareholder engagement should be reinforced to reduce management's excessive focus on achieving short-term results. The revised Shareholder Rights Directive (SRD II), published in May 2017, provides several new tools to facilitate long-term shareholder engagement and to make it more effective.[ii] It introduces new shareholder responsibilities (de facto obligations) in addition to further shareholder rights.

ii The regulatory framework has been applicable since the 10 June 2019 transposition deadline for Member States, although some final decisions provided in the implementing acts apply as of September 2020.

What does the Shareholder Rights Directive require?

The overall purpose of SRD II is to enhance the flow of information across the institutional investment sector. It strengthens opportunities for shareholder oversight of companies and promotes common stewardship objectives between institutional investors (i.e. insurers and pension funds) and asset managers. At the same time, it improves the transparency of share issuers, investors and intermediaries.

While SRD II makes only a single passing reference to "stewardship" (recital 19), it makes numerous references to "engagement" in the legal text. The responsibilities outlined in the directive are the legal basis for stewardship behaviours in respect of equity holdings.

SRD II requires:

- Intermediaries to provide a flow of information along the investment chain to facilitate the identification of shareholders and exercise of shareholder rights, including the right to participate and vote in general meetings.
- Institutional investors and asset managers to disclose, on a "comply or explain" basis, their engagement policy and how it has been implemented.
- Institutional investors to disclose how their investment strategy is consistent with the profile and duration of their liabilities, and in case an asset manager invests on their behalf, how this arrangement is aligned with the overall investment strategy.
- Asset managers to disclose to institutional investors how their investment strategy complies with arrangements with- and medium to long-term performance of, the assets of the institutional investor.
- Companies to establish and allow a shareholder vote on a remuneration policy.[10]

How the EU can improve the Shareholder Rights Directive

The current stewardship rules in SRD II fall short of setting a strong stewardship standard. This was recognised as early as 2018 by the EU High Level Expert Group (HLEG). They highlighted the need to strengthen stewardship principles to align the financial sector more closely with long-term perspectives. To achieve more of a long-term perspective, they recommended "extend[ing] the Stewardship Principles for institutional investors, for example, by amending the Shareholder Rights Directive or a similar instrument".[11] Since 2018, no revisions or changes have been made to SRD II, despite the urgency of the climate crisis and the more recent need to re-build a sustainable post-pandemic economy.

EU stewardship discussions in 2021

- Since the launch of the EU Action Plan for Financing Sustainable Growth in 2018, sustainable corporate governance has been a central theme throughout European initiatives. Embedding sustainability into the corporate governance framework is considered a key driver to ensure companies focus on long-term sustainable value creation rather than short-term benefits. The focus on sustainable corporate governance has been included in a number of subsequent initiatives.[iii] In addition, corporate governance and accountability are central to other initiatives, such as the review of the Non-Financial Reporting Directive (now Corporate Sustainability Reporting Directive), the EU Sustainable Finance Taxonomy, the Sustainable Finance Disclosure Regulation and related changes to the Solvency II, IFR, UCITS and AIFMD regimes.

- At the level of the Capital Markets Union, a Communication on the Action Plan was published in 2020.[12] The revised Action Plan links the development of a fully integrated single capital market with other key priorities of the European Commission, including the post-pandemic economic recovery, the European Green Deal and the transition to a digital economy. It proposes 16 legislative and non-legislative measures. The plan proposed actions on facilitating cross-border investor engagement and further clarifying and harmonising rules governing the interaction between investors, intermediaries and issuers. This, and the idea of creating a single access point to company data for investors, forms a key element of the Renewed Sustainable Finance Strategy.

- Meaningful stewardship will be further facilitated with the newly proposed Corporate Sustainability Reporting Directive and the forthcoming Sustainable Corporate Governance initiative (SCG). Potential policy proposals as part of this initiative, for example, cover the need for improved stakeholder engagement and requirements around how Annual General Meetings (AGMs) are organised. These will further increase the need for SRD II to be revised.[13]

- Lastly, the EU retail investment strategy that will be published later in 2021 aims to create a coherent regulatory framework that empowers consumers to take financial decisions, including in relation to sustainability. This strategy could further clarify stewardship opportunities for retail investors.

Examples of successful stewardship on ESG topics can be found in financial markets worldwide (see case study below). Some investors already include representative samples of effective engagement case studies on a wide range of ESG topics.[14] Yet, these type of engagements are far from common practice. That is why we are calling on the European Commission to revisit its stewardship rules. The EU should not wait until the planned review of SRD II in 2023 to make changes. If the EU is serious about meeting its sustainability commitments, an urgent review of SRD II needs to be announced as part of the Renewed Sustainable Finance Strategy. Revising the SRD II before 2023 will also allow its rules to be streamlined with other sustainable finance measures, such as the Sustainable Finance Disclosure Regulation, ensuring a harmonised set of requirements for investors.

iii Initially included as one of the ten key actions in the Action Plan: "fostering sustainable corporate governance and attenuating short-termism in capital markets".

Case Study: How shareholder resolutions deliver meaningful change

Shareholder resolutions are an essential part of stewardship and an important lever to push for more ambitious plans on ESG.

In the first months of 2021, three resolutions calling for carbon emission reductions received majority support at the AGMs of three fossil fuel giants.[15] This is a clear signal from investors who demand urgent emissions reductions in these companies.

ShareAction worked together with institutional investors and individual shareholders to call out some of the world's biggest companies for their role in fuelling environmental and social crises.

ESG-related shareholder resolutions were filed at Barclays (2020), HSBC (2021) and Tesco (2021). Each of them were supported by over 100 institutional and private investors.

The Barclays resolution was supported by 24 percent of investors. As a consequence, the bank had to formally respond to its shareholders about its support for fossil fuels.[16]

In response to the resolution, HSBC's board tabled their own resolution that commits the company to phase out financing of coal-fired power and thermal coal mining in the EU and OECD area by 2030, and to phase it out everywhere else by 2040.[17]

Following the submission of the resolution calling on Tesco to improve on their sales of healthier food and drink products, the company committed to increase its sales of healthier products across all of its group retail business.[18]

In the following sections we have offered recommendations for how to improve the SRD II and context for why those recommendations are necessary.

Recommendations for a more robust Shareholder Rights Directive

Recommendation 1: Embed sustainability in stewardship

SRD II requires shareholders – including both institutional investors and asset managers – to have engagement policies. However, the engagement policies under SRD II are not grounded in environmental and social sustainability. SRD II should do more to embed sustainability into the definition and framing of stewardship.

To do this, a revised SRD II should:

- Provide a definition of stewardship with language that clearly links stewardship and engagement activities to sustainability and makes it clear that all company activities are aimed at creating sustainable benefits, in line with the UK's revised Stewardship Code which defines stewardship as: "the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."[19]

- Require institutional investors and asset managers to ensure the purpose, culture and investment beliefs of their organisation support a form of stewardship that can create long-term value for clients and beneficiaries and broader sustainable benefits for the economy, environment and society, in line with the new UK Stewardship Code (Principle 1).[iv] This would align stewardship with commitments the EU has made to deal with long-term systemic risks through the Paris Agreement and the United Nations' Sustainable Development Goals (SDGs).

- Require investors to consider not only the risks that ESG factors pose to their portfolios but also the risks that investee companies' activities pose to the environment and society, in line with the Sustainable Finance Disclosure Regulation (SFDR).[v]

- Offer a wider framing of what stewardship involves, so that it does not only focus on monitoring and voting, but also covers capital allocation and investment decisions.

- Require investors to build their understanding of the SDGs and how they materially relate to investee companies. Greater understanding of those goals can support more long-term thinking and sustainable value creation.

iv Principle 1 of the UK Stewardship Code states "Signatories' purpose, investment beliefs, strategy, and culture enable stewardship that creates longterm value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."

v Also known as the "double materiality" approach which considers severe impacts on people and the planet as well as financial risks to the company.

Currently, SRD II falls short because it only requires that engagement policies:

> "describe how [institutional investors and asset managers] monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies and manage actual and potential conflicts of interests in relation to their engagement" (Art. 3g(1))

Although there is a direct reference to "social and environmental impact and corporate governance", this is currently presented only as part of a requirement to "monitor" investee companies. The other activities listed (dialogues with companies, voting, cooperation with other shareholders, etc.) are not explicitly linked to ESG considerations at all.

The inadequacy of SRD II with regards to ESG has been recognised by the European Securities and Markets Authority (ESMA) in its report on potential undue short-term pressures in securities markets.[20] ESMA claims that some targeted improvements to the regulatory framework are necessary, specifically taking into account that SRD II does not explicitly connect long-term engagement activities and disclosure of ESG factors. ESMA believes that integrating ESG aspects more overtly into SRD II could make the relevant provisions more effective in bringing about sustainability improvements in the market.

If stewardship is to be part of the EU's wider sustainability work, all engagement activities need to be grounded in sustainability considerations. ESG therefore needs to feature in policies concerning dialogues with companies, voting, collaboration and communications with stakeholders. This is because stewardship is, in itself, a neutral activity. The EU cannot simply focus on promoting more engagement or more voting. It needs to focus on the quality of that engagement and voting and to ensure that it is aligned with wider goals pertaining to the environment and society. As Professor John Kay observed in his review of the UK Equity markets and long-term decision making: "Shareholder engagement is neither good nor bad in itself: it is the character and quality of that engagement that matters."[21]

Recommendation 2: Stewardship disclosures should communicate the effectiveness of stewardship activities on behalf of beneficiaries or clients, and include details of any escalation actions taken

The main requirements of SRD II are focused on disclosure, not on the quality of the underlying action itself. Crucially, SRD II does not require the impact or outcome of investor engagement to be assessed or disclosed.

A revised SRD II should require that disclosures on stewardship include:

- Details of engagement efforts, including the number, topic, and context in which the engagements take place, and a list of – or extensive examples of – the companies engaged with.

- A focus on communicating the qualitative outcomes of engagement, not just processes, and inclusion of examples of engagement successes and failures supported by relevant data.[22]

- An explanation of which topics investors have chosen to focus on for stewardship purposes and a justification of why these are relevant. These disclosures should include analysis of why stewardship on those topics is in the best interest of beneficiaries or clients. This would help to avoid situations where investors pick topics based on how easy they are to discuss and avoid those that are difficult to address, rather than thinking about why particular issues are important to the long-term interests of those whose money they invest.

- Reference to escalation consistent with SFRD, since it is a key component of any constructive engagement strategy.[vi] By engaging, institutional investors can actively encourage firms to adopt measures that improve the quality of their corporate governance. However, where companies do not take action or where action is insufficient, engagement ceases to work. And if companies know that there is no consequence to inaction, they have little incentive to respond. Inspiration can be taken from the Dutch Stewardship Code which outlines different escalation actions, ranging from letter-writing and making public statements, to taking legal action and eventually selling the shares.[23] We believe that requiring investors to disclose their expectations and escalation policies will help set expectations for companies and improve accountability.

- Investor assessments of the effectiveness of their engagement efforts with clear roadmaps for escalation tactics and the circumstances under which divestment is in line with their duties towards their clients and/or beneficiaries.

Currently, SRD II falls short because in practice, investors tend to report their activity in quantitative terms, such as the number of meetings or interactions they had with companies, without much detail on the qualitative side. Where investors do give more detail, it tends to be for a small number of selected engagements that the investor considers successful. From investor reporting it is difficult to get a sense of any critical analysis of what is working or not working, or how an investor plans to improve the impact of their engagements.[24]

In addition, the legislation provides no guidance on how engagement with investee companies might be escalated in the event that dialogue is ineffective.

Furthermore, SRD II is currently not aligned with the SFDR with regards to requirements on the *effectiveness* of engagement. The SFDR technical standards go further than SRD II because they not only require investors to describe their engagement policies but also the outcomes of these interactions. This includes describing the investors' policies to monitor the adverse impacts on sustainability by investee companies and how the investors adapt their policies if there is no progress.[25]

The SFDR technical standards specifically refer to escalation of engagement tactics: "exercising voting rights as a shareholder, sending letters to or attending meetings with the management of investee companies, **setting up documented and time-bound engagement in actions or shareholder dialogue with specific sustainability objectives and planning escalation measures in case those objectives are not achieved, including reductions of investments or exclusion decisions."**[26] [emphasis added]

vi According to International Corporate Governance Network (ICGN), approximately two-thirds of Stewardship Codes published around the world include explicit reference to engagement escalation.

Investors do not make full use of engagement tools at their disposal to execute their stewardship

Despite the urgency of the climate crisis, few European asset managers file climate-related shareholder resolutions in their own jurisdictions. Filing climate-related resolutions is a direct way of expressing expectations and asking portfolio companies how they are addressing issues such as climate change.

Research from ShareAction shows that in 2020, out of the 53 climate-related shareholder resolutions at AGMs worldwide, only six were filed in Europe.[27] In filing few climate resolutions, asset managers signal to companies that they do not need to increase their efforts to mitigate climate change despite the urgency of the crisis and the business transformation required to achieve net-zero emissions.

Investors often justify the lack of resolutions put forward by indicating they are engaging "behind the scenes". Investors should not be allowed to hint at closed-door discussions in place of publicly holding companies to account on an issue with such far-reaching consequences for the European economy and society.

Recommendation 3: Tighten the rules on disclosure of votes

Voting is an essential component of effective stewardship. It is concerning that so many asset managers are delivering a sub-standard level of basic stewardship activity by not voting at selected companies, and when they do, voting for limited climate resolutions.[28]

EU rules should require:

- Disclosure of votes as soon as possible after the vote has been cast. Current best practice suggests that this can be done on the day of the vote.
- Disclosure of the rationale for votes against management and on all shareholder resolutions.
- Disclosure of voting intentions before votes are formally cast.

In addition:

- The current SRD II requirement should be strengthened to require a clear baseline for disclosure. For example, requiring disclosure of all votes or all votes that make up, for example, a set percentage of listed equity holdings.
- We also suggest that the European Commission defines what good voting disclosure looks like. On the basis of this framework, a common template for voting disclosures should be developed.

Currently, voting disclosures are often opaque and inaccessible. Disclosures list resolutions by number without setting out the actual resolution text and often do not offer any explanation or rationale for votes. Investors disclose their voting records in different ways and at different times and there can be a significant time-lag between the votes happening and disclosures being made on a quarterly or even annual basis. Asset managers leading in this area publish voting decisions on the day of the vote.[29]

As voting is often the only real evidence that institutional investors and beneficiaries have of asset managers acting in their best interests on issues such as climate change, it is essential that voting practices and explanations of voting decisions are more transparent. Furthermore, disclosing voting intentions before casting votes is a powerful way to draw attention to an issue and encourage other investors to consider their voting intentions more carefully.

The current requirement in SRD II on disclosing votes is too vague and leaves open to interpretation what counts as "insignificant" and therefore does not need to be disclosed. SRD II states that "disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company" (Art.3(g)1(b)). These requirements are too broad to drive good disclosure.

Enhancing transparency in the investment chain by making voting disclosure mandatory could be a powerful driver for better stewardship. Better voting disclosure would allow institutional investors, beneficiaries and consumer groups to conduct meaningful comparisons of voting patterns among asset managers, asking for justifications and holding asset managers accountable where necessary.

Recommendation 4: Require voting policies on ESG

More work also needs to be done on voting policies. Clear voting policies help ensure that asset managers and investors are held to account by others and hold themselves to account, thereby encouraging active participation.

To strengthen the voting process, the EU should:

- Require that all institutional investors and asset managers have comprehensive voting policies. Voting policies should be required to outline positions and commitments on ESG topics, including but not limited to climate change, human rights and biodiversity. Investors should explain how their voting policy is aligned with the best interests of beneficiaries. There should be a requirement to update the policy if these change.

- Require that institutional investors using asset managers to cast votes on their behalf explain whether they expect the asset manager to follow their voting policy or if they rely on the asset manager's own policy. In the latter case, investors should be required to disclose a link to the manager's voting policy and to explain how they monitor the asset manager's voting to ensure that it aligns with the institutional investor's commitments outlined in their own engagement policy.

- Include provisions that allow investors to require asset managers to vote in line with the investor's own voting policies. If an institutional investor uses an asset manager that does not allow them to direct voting, the investor should be required to set out the differences between their policy and the asset manager's, including how it addresses the differences.

- Consider including requirements with regard to client-directed voting in pooled funds by accepting the voting policies of institutional investors and operating split voting on pooled funds. Options already exist that allow institutional investors to express their stewardship preferences in a pooled-fund structure.[30]

Recommendation 5: Remove the "comply or explain" approach

SRD II relies on a "comply or explain" format for the disclosure of an investor's engagement policy and implementation thereof. This means it requires investors only to explain why they do not have specific policies in place. The flexibility and discretion given to undertakings in what and how they disclose does little to improve consistency and comparability in reporting across the investment sector.

Since the introduction of the first UK Stewardship Code, ShareAction has mapped compliance by investors and found that "comply or explain" has resulted in poor policies and often high level, unclear explanations for non-compliance. There are many other examples where there has been a lack of impact when "comply or explain" approaches are used.[31] In its proposal for a Corporate Sustainability Reporting Directive (replacing the Non-Financial Reporting Directive), the European Commission has acknowledged this trend and replaced the "comply or explain" approach with mandatory requirements for reporting.

To improve the robustness of SRD II the EU should:

- Move away from a "comply and explain" approach towards one that mandates compliance. This would effectively address non-compliance and ensure enforcement. At minimum we would suggest transitioning to an "apply and explain" approach as set out in South African King Code on corporate governance and the UK Stewardship Code. The intention of this approach is to move beyond a simple "tick box" approach by requiring investors to provide a statement that gives details of how compliance was achieved, or, if not, why a non-compliant solution was chosen.

- Provide stronger guidance for EU member states on how stewardship should be supervised. It is not sufficient for supervision to be limited to checking whether a stewardship policy or statement has been published. There needs to be real scrutiny of the underlying culture and practices among institutional investors and asset managers to establish whether stewardship is taken seriously, or if it is just "greenwashing".

Recommendation 6: Widen the asset class scope to include fixed income assets at a minimum

Institutional investors and asset managers operating in Europe are required to comply with the national laws implementing the SRD II. However, SRD II is limited in terms of the asset classes it covers. Currently, SRD II does not include non-equity investments.

To rectify this, the EU should:

- Include fixed income assets at a minimum in SRD II. Stewardship by bondholders is possible and engagement in primary market debt is possibly the most impactful method of stewardship.[32]

- Investigate how to include stewardship requirements as a part of investors' oversight duties in respect of other asset classes, such as private equity and infrastructure investments.

It is crucial that the focus on boosting investor engagement is not limited to only listed equity investments. Investors will have further assets in their portfolios, such as fixed income, real estate and infrastructure. It is essential to the EU's wider sustainability ambitions that investors steward these in a sustainable way, too. Many portfolios have more in fixed income than in equity, meaning this is a particularly important area to tackle. Fossil fuel companies, for instance, raise new investment capital mainly through bank loans and bonds, not shares.[33]

Recent UK policy developments, such as the new Stewardship Code, place greater emphasis on investor engagement across all asset classes. This more holistic approach better enables investors to genuinely improve the sustainability performance of their portfolios.

Recommendation 7: Set more granular requirements to ensure consistent application of SRD II across EU member states

The SRD II is a minimum harmonisation directive. This means it aims to ensure minimum standards of shareholder engagement as a 'floor' rather than a 'ceiling' upon which EU member states may set superior standards. This means various EU member states interpret and apply its provisions differently.

If SRD II is to deliver meaningful change, it is important to create a consistent EU-wide level of implementation. To help improve consistency and comparability in reporting, the EU should:

- Make the requirements of SRD II more granular, such as disclosure of the engagement policy. In particular, clearer guidelines should be set for the minimum expected content of disclosure and engagement policies. Without this, individual member states make their own interpretations and have differing levels and quality of disclosure.

- Closely monitor the implementation of more granular requirements. Ideally this would be led by the European Commission.

- Develop best practice guidance for EU member states that gives further detailed explanations of disclosures needed and the requirements in different scenarios.

SRD II was not introduced in a vacuum. In fact, a number of EU member states already had in place various codes and laws regarding stewardship and engagement. Each country has the opportunity to adapt SRD II to its own national culture and company law. However, different corporate control mechanisms – such as double-voting and golden shares – that exist in some member states, can impact on stewardship of investee companies within those jurisdictions. This increases the risk of fragmentation, which is problematic for investors operating across member states and outside the EU. It also undermines the EU's ambition for a Capital Market Union.

The lack of specificity in SRD II hampers consistent implementation of the Directive across member states. For example, the key stewardship provision requiring disclosure of an engagement policy and its implementation only sets out high level categories for topics within a policy rather than how it is realised. This leaves much room for interpretation and jeopardises uniform transposition of SRD II rules into national law and damages the prospect of consistent implementation across EU member states.

Recommendation 8: Harmonise the filing process for shareholder resolutions

In many EU member states, shareholders wishing to file resolutions are faced with a time consuming and onerous process. There are also differing processes and thresholds depending on the jurisdiction in which the company is based.[34] However, shareholder resolutions play an important role in bringing certain issues to the attention of company directors. A recent report from Norges Bank cites studies showing that adoption of environmental and social proposals that either pass or fail by a small margin can have long-term positive or negative effects on a target company's sustainability performance and operating efficiency.[35] The quality of a shareholder proposal is not influenced by the size of holding, but rather by their long-term interest in the performance of the company.

To better harmonise the filing process, the EU should:

- Explore means of allowing shareholders with long-term holdings in a company to raise important issues at annual meetings without filing resolutions.

- Simplify and harmonise the filing process for shareholder resolutions across EU member states. Facilitating shareholder engagement by making voting easier for all investors, particularly in a cross-border context, is one of the focus areas announced in the Capital Markets Union Action Plan.[vii] This should be integrated into and expanded on in SRD II.

vii Action 12: To facilitate cross-border investor engagement, the Commission will consider introducing an EU definition of 'shareholder' and further clarifying and harmonising rules governing the interaction between investors, intermediaries and issuers. It will also examine possible national barriers to the use of new digital technologies in this area.

Conclusion: Why wait until 2023?

In 2018, just one year after SRD II was published, the HLEG recognised failings in the Directive and called for a strengthening of EU stewardship principles.[36] Despite shortcomings in SRD II that have been known for three years already, it is only due to be renewed in 2023.

While the Shareholder Rights Directive and its second iteration have pushed corporate governance forward significantly, more needs to be done in holding corporations to account and shaping a world that benefits not just shareholders, but the societies we live in, economies we thrive in and the planet we inhabit.

The pandemic has seen some economies around the world grind to a halt and introduced more volatility into the markets. As we emerge from the pandemic, companies across the EU will be keen to shore up investor confidence. As such, they may find themselves under pressure to prioritise short-term decision-making that can keep investors happy, instead of making long-term decisions that benefit shareholders and have a positive impact on society and the planet.

If the EU is serious about meeting the commitments outlined in the EU Green Deal, it owes itself and its citizens a more robust Shareholder Rights Directive that is capable of strengthening the role of investor stewardship in corporate governance. The Renewed Sustainable Finance Strategy offers the opportunity to announce measures to improve EU stewardship standards.

The time to act is now, not in 2023.

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ShareAction is a non-profit working to build a global investment sector which is responsible for its impacts on people and planet. We mobilise investors to take action to improve labour standards, tackle the climate crisis, and address pressing global health issues, such as childhood obesity. Over the last 15 years, ShareAction has used its powerful toolkit of research, corporate campaigns, policy advocacy and public mobilisation to drive responsibility into the heart of mainstream investment. We want a future where all finance powers social progress.

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