

Regulatory News Alert

The Shareholder Rights Directive II (SRD II) - Towards a greater transparency of the investment mechanisms

11 January 2019

In 2007, the European Parliament and the European Council adopted the Shareholder Rights Directive (SRD) to ensure a better protection of the exercise of rights of shareholders in listed companies. In 2017, the revised Shareholder Rights Directive (SRD II), amends the SRD and aims at encouraging long-term engagement of EU listed companies' shareholders. To achieve this long-term investment objective, the SRD II describes new obligations for EU Listed companies, Intermediaries, Institutional investors, Asset managers, and Proxy advisors leading to a greater transparency regarding the investment strategy, the directors' remuneration, the voting process in general meetings, and the shareholders themselves.

The purpose of this note is to inform on the key inputs of the SRD II, its scope of application, its roll-out timeline and the next active steps to take in order to comply with the SRD II requirements.

What is the SRD II about?

The dispositions of the SRD II pursue five main objectives leading to different types of obligations:

- Ensure that all **investors are incentivized to participate in the long run to the life of companies** in which they invest in order to make a more long term sustainable EU economy.
- **Ease the identification of the shareholders** by calling on intermediaries to **communicate information regarding shareholders** upon company's request (name, contact, registration number, number of shares).
- **Improve involvement of shareholders in corporate governance** by calling on companies to provide their shareholders with **means to vote on general meetings**.
- **Encourage transparency in the investment strategy** by calling on institutional investors and asset managers to disclose relevant information.
- **Influence directors' remuneration** by involving the shareholders in the process of establishing, voting and publishing remuneration policies and reports on their implementation.

Who is impacted by SRD II?

The Directive includes three chapters which outline the responsibilities each type of stakeholder in the investment industry should abide by. Per SRD II, the impacted stakeholder organizations are the EU Listed companies, the intermediaries, including institutional investors and asset managers, and proxy advisors.

The directive sets at 0, 5 percent the threshold for identification of an individual shareholder. However, a Member State might propose a lower threshold up to individual share. At present time it is not clear which Member State will impose which such threshold, but it could be that intermediaries will be faced with 27 different levels, that promises to be a challenge especially for cross border oriented jurisdictions. The Directive mentions that the Member States shall send to the European Securities Markets Authorities (ESMA) the threshold chosen. The selected thresholds will be available on the ESMA website.

EU Listed companies (i.e. listed in a Member State or whose shares are traded on a regulated market in a Member State) have obligations regarding the retention period of shareholders' information, the transmission of information enabling the shareholders to exercise the rights flowing from their shares, and the transparency of the voting process at general meetings. EU Listed companies shall also ensure a better transparency of their directors' remuneration and of material transactions with related parties.

The **intermediaries in the custody chain** (e.g. credit institutions, central securities depository), will have new obligations regarding the identification of EU Listed companies' shareholders, and the transmission of their information back and forth.

Institutional investors (e.g. life assurance, reinsurance) and **asset managers** (e.g. investment firm, AIFM, Management Company) must be more transparent regarding their engagement policies and investment strategy by making public their voting policies.

In addition, **Proxy advisors** (i.e. a legal person that provides services to shareholders) also have to be more transparent with regards to the code of conduct they follow, to their policies in terms of voting recommendations, and to the conflicts of interests they may face.

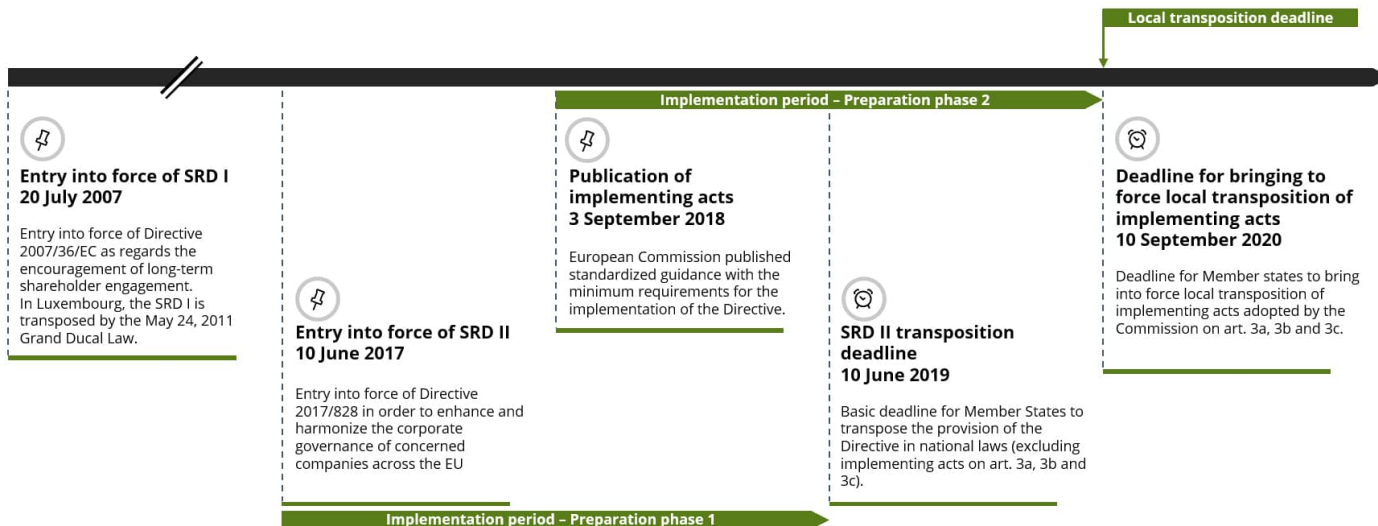
What are the main milestones of the SRD II roll-out?

The backbone of the SRD II requirements is to be transposed in local law and implemented by June 2019.

A differed implementation period is provided for the articles related to shareholders' information transfer as the corresponding implementing acts have been published in September 2018. Regarding these requirements, the Directive is applicable from September 2020.

What are the main milestones for the implementation of SRD II?

The backbone of the SRD II requirements is to be transposed in local law and implemented by June 2019. A differed implementation period is provided for the articles in link with shareholders' information transfer as the corresponding implementing acts should only be published in September 2018.



On 3 September 2018, the European Commission published the implementing acts to specify the minimum requirements for the transmission of shareholders' information (e.g. format of transmission and format of the request - including their security and interoperability - and deadlines to be complied with). The aim of this regulation is the use of a common format of exchange of information to enable an efficient and reliable processing and interoperability between intermediaries, issuers and the shareholders.

The implementing acts provide with the minimum information required for each format of exchanges.

Issuers have to use specific formats of exchange for the following subjects:

- Request to disclose information regarding shareholder identity
- Meeting notice
- Voting receipt
- Confirmation of recording and counting of votes
- Notification of corporate events – other than general meetings

Intermediaries have to use specific formats of exchange for the following subjects:

- Response to request to disclose information regarding shareholder identity
- Confirmation of entitlement
- Notice of Participation

How to prepare for SRD II?

The first step towards compliance is awareness: understanding not only if your entity falls under the scope of SRD II, but if so, which category it corresponds to and the subsequent requirements for compliance. Getting to know the requirements impacting each type of entity will help you draw a viable action plan in order to comply with the mandates of the Directive. The activities Deloitte can assist you with are:



Awareness and gap analysis

Awareness and trainings on the impacts of SRD II
Gap analysis (As-is vs. To-be)



Documentation and process review or drafting

Mandatory documentation drafting and review
Process review and implementation
Evaluation of the implementation



Supporting solutions

Support in the definition of compliant exchange processes and formats for:

- Shareholder information collection and transmission
- General meetings and corporate events
- Voting process management

Your contacts

Pascal Eber

Partner – Operations Excellence & Hur
Capital

Tel : +352 45145 2649

peber@deloitte.lu

Benoit Sauvage

Senior Manager – RegWatch, Strategy
Consulting

Tel : +352 45145 4220

bsauvage@deloitte.lu

Astrid Brandy

Manager – Operations Excellence & H
Capital

Tel : +352 45145 3947

abrandy@deloitte.lu

Deloitte Luxembourg
560, rue de Neudorf
L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

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