ARTICLE

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Shareholder Rights Directive: The need for industry action

The SRD aims to increase transparency, accountability and stakeholder engagement.

Over the last few years, the European Union (EU) has been drafting the final version of the updated Shareholder Rights Directive (SRD), with the aim of increasing transparency, accountability and stakeholder engagement.

A wave of corporate governance scandals across the globe such as the influence of major overseas conglomerates on European financial institutions and the tax avoidance schemes revealed in the Panama Papers, as well as executive pay, have led to calls for regulatory changes from both regulators and investors. Nonetheless, the implementation process is likely to prove complex and challenging for the industry.

SCOPE OF THE NEW RULES

The final text was published in May 2017, with an implementation deadline of June 2019 for half of the directive, whilst the European Commission (EC) is working with an expert group to produce the technical standards, due to be published September 2018 that will guide national regulators in the implementation of the rest of the directive by September 2020.

In June 2017 the EC added to the original 2007 SRD, including a number of new requirements around director remuneration, identifying shareholders, exercising shareholder rights and providing transparency for institutional investors, asset managers and proxy advisors.

The current transposition period provides industry stakeholders with a chance to engage with regulatory authorities and help shape the future of corporate governance. However, while there may appear to be adequate time to prepare for implementation, there are a number of complexities that need to be addressed and prompt action is required.

DEALING WITH COMPLEXITY

Translating SRD into national law by individual EU states will entail potentially costly changes and technology investment that will impact a range of intermediaries and service providers. However, there are both challenges and opportunities in the introduction of the new SRD requirements, which were explored in a new Broadridge white paper: *Shareholder Rights Directive: Advancing to a State of Readiness.*

The main challenge will be harmonising market practices across the EU. Historically when national regulators have been given a relatively wide scope to interpret and transpose a directive, there ends up being slightly different interpretation of requirements at a national level and the process becomes more complex and less standardised. This clearly ought to be avoided, both by the industry and national regulators. The good news is that custodians that have already engaged with the EC have indicated that the regulator is taking on board feedback, which should help harmonise the SRD regulation and compliance across EU member states.

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ASSESSING THE IMPACT

Due to the sheer volume of regulatory changes taking place at the moment, many firms are unlikely to have assessed the full impact of SRD on their operations. However, there are some obvious headline items that are a cause for concern. For example, the disclosure requirement in relation to shareholder entity identification calls for the submission of data "without delay". This could be interpreted as real-time reporting, which could be achievable by some voting infrastructure providers, however from a data availability perspective, will be near impossible to achieve under current market conditions. The data sets required to perform real-time reporting is where the real challenge is – particularly in relation to legal entity identifiers. Legal entity identifiers vary by market and in some cases might not be available in the way required under the new SRD - and those that are could potentially breach the data privacy laws of certain jurisdictions, but not others.

In my experience, industry participants involved in the investor value chain all hope that the updated SRD will grant a welcome level of transparency and additional rights for shareholders, particularly around director remuneration. However, compliance with the new requirements as indicated is not without their challenges. In addition to shareholder identifier requirements, it also calls for any material transaction between a listed company and a related party to be announced and approved by shareholders and the board. The current directive text however does not require a company to provide a report that assesses the impact of the transaction (a fairness report); the absence of which greatly increases the amount of data and analysis needed ahead of a vote, putting an added burden on asset managers.

For those specialised in proxy infrastructure and services, there are more obvious opportunities with the arrival of SRD. These firms are well positioned to deliver new services to help intermediary partners support requirements, eg. vote confirmations. However, there will still be an underlying need to standardise data across the industry and invest in new and emerging technologies to support the constant drive for greater transparency, engagement and reporting throughout the investor communications value chain; it is something that the industry should embrace and collaborate on in order to achieve the appropriate outcomes.

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