

# Clearstream Banking Shareholder Rights Directive II

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# Shareholder Rights Directive II

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# 1. General information

This document provides the status on Clearstream's adaptations in the context of the Shareholder Rights Directive II (SRD II).

The key objective is to provide comprehensive information about Clearstream's offering from Clearstream Banking Luxembourg (CBL) and Clearstream Banking AG (CBF).

# 2. What is the objective of SRD II?

The new Directive aims to increase the quality of shareholder engagement and to enhance transparency between the issuers and the end investors of shares of EEA-listed companies (independent of the location of the end investor).

It impacts worldwide financial intermediaries maintaining securities accounts on behalf of shareholders by involving them in the transmission of information along the chain, including cross-border information, between the issuer and the shareholder to facilitate the exercise of shareholder rights.

# 3. Timeline

The Directive shall be read together with the Commission Implementing Regulation of 3 September 2018 that lays down minimum requirements to implement the provisions of the Directive that shall be transposed into national law by all EU Member States. These provisions shall become applicable as from 3 September 2020.

## 4. Frequently asked questions

### 4.1 When and how has the Directive been transposed into German law?

On 19 December 2019, the law transposing SRD II into German law was published in the German Federal Gazette and entered into force on 1 January 2020.

The main features of the law are:

- It applies to shares admitted to trading on a regulated market issued by companies incorporated in Germany.
- A threshold quantity limiting the Shareholder Identification request does not apply.
- It recognises the right for the intermediary to charge fees for the services in scope of the SRD II Law regarding the identification of shareholders, transmission of information and facilitation of exercise of shareholders rights.
- The changes concern in particular the rules on the identification and information of the shareholders. The newly inserted Sections 67 a-f German Stock Companies Act (AktG) stipulates that intermediaries are required to transmit relevant information about corporate events (general meetings, profit distributions etc.) along the chain of intermediaries to company shareholders. The central norm is Section 67d, which entitles listed companies to identify their shareholders by requesting the relevant information about their identity from any intermediary in the chain. The information requests have to be transmitted along the whole chain of intermediaries until the last intermediary is reached.
- Remuneration System for the Management Board - Say on Pay: With regard to listed stock corporations, the Supervisory Board must establish a clear and comprehensible remuneration system for the Management Board in accordance with the newly inserted Section 87a AktG.
- Transparency in Transactions with Related Parties: According to the newly inserted Sections 111a to 111c AktG, material transactions of a listed stock corporation with related parties require the prior approval of the Supervisory Board.
- According to amended § 291 HGB consolidated financial statements can be published in English.

### 4.2 When and how has the Directive been transposed into the laws of the Grand Duchy of Luxembourg?

The Directive was implemented into the laws of the Grand Duchy of Luxembourg by the law of 10 July 2019 amending the law of 24 May 2011 on the exercise of certain rights of the shareholders to the general meetings of the listed companies ("SRD II Law"). This law entered into force on 24 August 2019.

The regime set out by the new law will be complemented by the provisions of Commission Implementing Regulation (EU) 2018/1212, that will become applicable as from 3 September 2020.

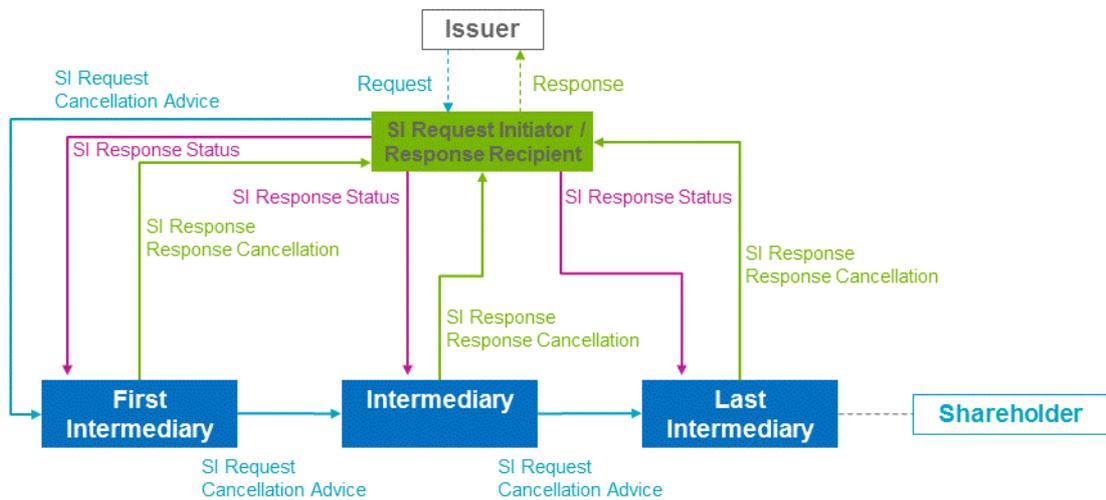
The main features of the SRD II Law are the following:

- The SRD II Law applies to voting shares, profit units and non-voting shares admitted to trading on a regulated market (the "Shares") issued by companies incorporated in the Grand Duchy of Luxembourg.
- UCITS and AIF units are excluded from the scope of the SRD II Law (except for the requirements concerning the publication of investment and engagement policies).
- The SRD II Law defines the shareholder as any natural or legal persons owning shares, from the first share owned. Hence, the person recorded as the owner of the shares in the shareholders register is the deemed owner of the shares.
- The SRD II Law recognises the right for the intermediary to charge fees for the services in scope of the Chapter II of the SRD II Law regarding the identification of shareholders; transmission of information and facilitation of exercise of shareholders rights. Accordingly, the shareholders, issuers and other intermediaries can be charged by the relevant intermediary in the chain of custody. Such fees shall proportionate and not be discriminatory based on the actual costs incurred for the provision of the services.

### 4.3 Which services will Clearstream Banking offer regarding Shareholder Identification?

Clearstream Banking will comply with the market standards for Shareholder Identification, that have been developed in the context of the Directive and the Implementing Regulation (EU) 2018/1212, in terms of information flows, timelines, language and format.

As shown in the following figure, Clearstream Banking (both in its role as Issuer CSD and Investor CSD) will ensure, upon receipt of the shareholder identification request, that this request is transmitted to the next intermediaries in the custody chain (that is, Clearstream Banking customers with holdings in the requested securities) without delay. If a threshold quantity limiting the answer applies and the total number of shareholdings is below such threshold quantity, Clearstream Banking will still transmit the Shareholder Information Disclosure Request to the next intermediary in the custody chain.



**Request** going down the chain of intermediaries

**Response** going from Intermediary directly to Response Recipient

A response to the shareholder identification disclosure request shall be sent by every intermediary in the custody chain directly to the recipient's address defined in the request and without delay.

Clearstream Banking will generate the response as required, with information regarding shareholder's identity, limited to Clearstream Banking books only.

### 4.4 What is the impact of SRD II on Clearstream Banking's general meeting and proxy voting services?

Clearstream Banking will continue delivering general meeting and proxy voting services both as first intermediary (that is, as issuer CSD) and as second intermediary (that is, as investor CSD) in the custody chain. Clearstream Banking will also continue facilitating the exercise of the rights by its customers, including the right to participate and vote in general meetings.

The Directive requires the following adaptations:

- Intermediaries like Clearstream Banking are required to transmit all information in ISO format (as defined in the Implementing Regulation) and without delay from the issuer to the shareholders to enable the exercise of the rights flowing from their shares.
- Intermediaries will be required to transmit, without delay, to the issuer, in accordance with the instructions received from the shareholders, the information received from shareholders about the exercise of rights related to the holding of these shares.
- In terms of information flows, two new messages will be available. First, intermediaries will need to communicate the entitled positions to the shareholders. Second, intermediaries will be required to transmit, without delay, to the shareholders the confirmation that the shareholders' votes have been recorded and counted.

These adaptations have led to changes in the current ISO 20022 format, that have not been transposed to the ISO 15022 format. It is also important to note that the process of transmitting to the shareholder the entitled positions and the confirmation that the votes have been recorded and counted are only possible through the ISO 20022 format.

In addition, Clearstream Banking will comply with the updated market standards for General Meetings that have been updated to cater for the Directive.

### 4.5 What is the impact of SRD II on Clearstream Banking's Corporate Action services?

Clearstream Banking will continue delivering its existing corporate action notification and processing service both as first intermediary (that is, as issuer CSD) and second intermediary (that is, as investor CSD) in the custody chain without any changes. Clearstream Banking will continue transmitting to its customers the information necessary to enable them to exercise their rights deriving from such securities.

### 4.6 Will the ISO 20022 format be the only format available for the shareholder identification, general meetings and proxy voting services? Which communication channels will be offered by Clearstream Banking?

In terms of ISO standards, SMPG decided that only MX 20022 messages would be able to fulfil SRD II compliance. A set of five brand new messages (without ISO 15022 equivalent format) has been defined for shareholder identification, whereas the eight already existing MX 20022 messages for general meetings flows have been updated to cater for the SRD II requirements (with two messages without ISO 15022 equivalent format).

To ensure its compliance with SRD II, Clearstream Banking will support the shareholder identification and general meetings MX 20022 messages.

For customers not foreseeing the transition to ISO 20022 before September 2020, Clearstream is considering and working on alternative technical solutions to ISO 20022 to ensure the continuity of the services.

Further information about these technical solutions will be available at a later stage.



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