

France Post Marché position paper on the review of the Shareholder Rights Directive

1. Introduction

France Post Marché supports the overall objective of reviewing the Shareholder Rights Directive, with a view to improving its effectiveness, reducing fragmentation across the European Union, facilitating cross-border investment and enabling a more efficient exercise of shareholder rights.

SRD II has already delivered important improvements, notably in the standardisation of shareholder identification processes and the transmission of general meeting information. However, significant operational, legal and cost-related barriers remain, especially in cross-border situations.

France Post Marché therefore calls for a pragmatic, proportionate and technology-neutral approach focused on simplifying processes, improving data quality at source and clarifying the responsibilities of the different actors in the custody chain.

2. Definition of “shareholder”: prioritise clarity over rigid harmonisation

France Post Marché does not consider the diversity of national definitions of “shareholder” within the European Union to be the main obstacle to the effective exercise of shareholder rights.

The key difficulty lies in situations where issuers are unable to identify all shareholders throughout the custody chain, particularly in cross-border contexts involving nominee structures or third-country rules such as OBO/NOBO regimes.

France Post Marché therefore does not support full harmonisation of the shareholder definition if this would impose a single concept, such as systematic assimilation to the beneficial owner. Such an approach could have significant implications for national laws, market practices and investor asset protection mechanisms.

As a pragmatic first step, France Post Marché recommends that the European Union publish and maintain a clear list of the shareholder definitions applicable in each Member State. This would help reduce legal and operational uncertainty for issuers, intermediaries and investors.

3. Third-country intermediaries: strengthen cooperation and address legal obstacles

France Post Marché observes persistent difficulties with certain intermediaries established in third countries. These difficulties include low response rates to shareholder identification requests, as well as refusals based on data protection concerns, conflict-of-law issues or lack of awareness of SRD II requirements.

These situations undermine the effectiveness of the European framework and limit issuers' ability to properly identify their shareholders.

France Post Marché therefore recommends strengthening communication requirements across the entire intermediary chain, including through greater use of harmonised standards such as ISO 20022. Specific measures should also be considered to address disclosure conflicts and legal incompatibilities between EU and third-country regimes.

4. Shareholder identification: clarify the role of providers and cost allocation

Shareholder identification is one of the main areas where further improvement is needed.

France Post Marché highlights, in particular, the lack of clarity regarding the role, status and duties of shareholder identification providers. These actors are increasingly involved in identification processes, but their regulatory framework remains insufficiently clear.

The allocation of costs associated with shareholder identification is also not sustainably established. Intermediaries have made substantial IT and operational investments to comply with SRD II. However, some shareholder identification providers may refuse to compensate intermediaries or may seek to redirect costs to issuers, creating uncertainty and tension within the chain.

France Post Marché therefore calls for shareholder identification providers to be clearly defined, supervised or regulated. Their responsibilities, transparency obligations and contribution to the financing of the framework should be clarified to ensure a fair and efficient functioning of the custody chain.

5. Information transmission and exercise of rights: move towards end-to-end electronic processes

France Post Marché supports the development of electronic, machine-readable and fully automated processes, based on straight-through processing. This evolution should remain technology-neutral to avoid locking the market into a single solution.

Data quality at source is essential. Issuers, or their agents, should provide the issuer CSD with complete, accurate and standardised corporate event data in electronic form. The issuer CSD would then act as a reliable source of information for the entire intermediary chain.

The cross-border exercise of shareholder rights, particularly for retail investors, remains hindered by local and often paper-based requirements, including powers of attorney, physical representation, notarisation, local formalities and uneven adoption of ISO 20022 standards.

France Post Marché believes that issuers should be able to accept electronic voting instructions. In a machine-readable voting process, the position included in the voting instruction should constitute sufficient evidence of entitlement to participate and vote.

6. General meetings: allow flexibility while ensuring legal and operational certainty

France Post Marché supports allowing Member States and issuers to choose between physical, hybrid or virtual general meetings, depending on their national legal framework and operational needs.

However, the priority should be the deployment of end-to-end electronic voting processes for listed companies, including retail investor flows.

Hybrid meetings may increase shareholder participation, but they also create legal and operational risks. These risks are particularly relevant where shareholders attending physically can table resolutions or make requests during the meeting.

France Post Marché therefore calls for a stronger legal framework to govern these situations, particularly in the event of IT incidents, technical failures or shareholder requests that must be handled in an orderly manner during the meeting.

7. Proxy-related actors: clarify roles and obligations

France Post Marché calls for greater clarity regarding the different actors involved in proxy and voting processes.

A clear distinction should be made between proxy advisors, proxy solicitors and proxy routing providers. These actors do not perform the same functions, do not raise the same risks and should not be subject to undifferentiated obligations.

France Post Marché recommends clarifying, for each category of actor, the applicable regulatory framework, the competent supervisory authorities and the relevant transparency obligations.

8. France Post Marché's priorities

In the context of the review of the Shareholder Rights Directive, France Post Marché invites the European institutions to focus on the following priorities:

1. removing paper-based and local formal barriers that hinder the cross-border exercise of shareholder rights;
2. clarifying cost allocation and the responsibilities of providers involved in shareholder identification;
3. promoting digital, standardised, automated and end-to-end processes;
4. improving data quality at source, particularly at the level of issuers and their agents;
5. strengthening the use of common standards, notably ISO 20022;
6. addressing difficulties linked to third-country intermediaries and disclosure conflicts;
7. clarifying the role and regulatory treatment of proxy-related actors;

8. optimising the positioning of the record date, for example around five business days before the general meeting, to facilitate the operational processing of shareholder rights.

9. Conclusion

France Post Marché supports a targeted and pragmatic review of the Shareholder Rights Directive. The objective should not be to impose excessive harmonisation of national legal concepts, but rather to remove the concrete barriers that currently prevent the effective, secure and cross-border exercise of shareholder rights.

Priority should be given to digitalisation, data standardisation, clarification of responsibilities and better coordination between actors in the custody chain. This approach would strengthen the effectiveness of SRD II while respecting the diversity of national legal frameworks and market practices.