

## ÖRAK-Antwort zur öffentlichen Konsultation der Europäischen Kommission „Richtlinie über Aktionärsrechte – Bewertung und Überprüfung“

Die folgende Konsultationsantwort ist zur besseren Lesbarkeit auf die vom ÖRAK beantworteten Fragen gekürzt worden.

### 1. Shareholders

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#### Definition of shareholder (Article 2 point (b))

The SRD leaves the definition of who qualifies as a shareholder to the Member States in which the company is registered. Consequently, there are different approaches as to who is entitled to exercise shareholder rights across the EU.

#### **1. To what extent does the lack of a common definition of 'shareholder' in the SRD lead to legal uncertainty?**

- To a very large extent To
- a large extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/no opinion

If you would like to, please explain your answer:

*500 character(s) maximum*

**The lack of a common definition of "shareholder" in the SRD creates a moderate degree of legal uncertainty. This stems from divergent national concepts, particularly regarding the distinction between registered and beneficial ownership. While largely unproblematic in purely domestic contexts, these differences may become significant in cross-border investment chains, where it may be unclear who is entitled to exercise which shareholder rights.**

**2. In case a common definition of 'shareholder' was to be introduced, which of the following definitions would you advise?**

- The person who holds the shares in their own name, even if on behalf of another person (nominee shareholder definition)**
- The person on whose securities account the shares are held with the last intermediary in the chain (even where an intermediary in the chain is the nominee shareholder and holds the shares on behalf of that end-investor, end-investor definition)
- Other

**3. To what extent would the following measures lead to an improvement?**

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know /no opinion
Companies' right to identify shareholders without any threshold limiting this right	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
EU-wide threshold for the identification of shareholders (please indicate the percentage in the free text box below this table)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Companies' right to identify the holders of all types of registered securities deposited at a central securities depository (e.g., also bond holders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Issuing or recording shares with Distributed Ledger Technology (such as blockchain)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Specific obligations regarding omnibus accounts, i.e., account enabling any participant in a securities settlement system to hold in one securities account the securities that belong to different clients of that participant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
A golden operational record, requiring the issuer to send a record of operational information and enabling all parties in the chain of custody to process the information in the same manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Possibility to tailor requests on shareholders' identity to the specific needs of companies (e.g., identification of specific groups of shareholders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Improving the possibility of companies to directly contact their shareholders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If you would like to, please explain your answer:

*500 character(s) maximum*

**There is no scientific study on this topic in Austria. To our knowledge, so far there is no public research in place which raised awareness of any problems related to the identification of shareholders.**

## 2. Interaction between Companies, Shareholders, and Intermediaries

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### Transmission of information (Article 3b)

The exercise of shareholder rights requires the transmission of information (e.g., on general meetings) from the company to shareholders and conversely (e.g., votes) from shareholders to the company. Intermediaries play an important role in passing on this information. Intermediaries include investment firms, credit institutions, and central securities depositories, which provide services of safekeeping shares, administrating shares or maintaining securities accounts on behalf of shareholders or other persons.

**4. To what extent have the following measures contributed to the smooth flow of information between shareholders and companies? Please note that the details of the measures described are contained in [Commission Implementing Regulation \(EU\) 2018/1212](#).**

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know /no opinion
Companies' obligation to provide intermediaries with the relevant information in a timely manner, no later than on the same business day on which it announces the corporate event (e.g., general meeting)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Companies' obligation to provide intermediaries with the relevant information in a standardised manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Intermediaries' obligation to transmit the information provided by the companies to the shareholders without delay	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Intermediaries' obligation to transmit information related to the exercise of shareholder rights from the shareholder to the companies without delay	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Intermediaries' obligation to transmit information in a standardised manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Intermediaries' obligation to directly transmit information to the company or the shareholder where this can be done despite the involvement of more than one intermediary (chain of intermediaries)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If you would like to, please explain your answer:

*500 character(s) maximum*

**There is no confident research in place so far which indicates which of the above measures contributed to the smooth flow of information between**

**5. To what extent would the following measures lead to an improvement?**

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know /no opinion
Facilitating direct communications between companies and shareholders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Mandating the use of a single standard format for all information exchanged, enabling straight-through processing (STP) without any manual intervention	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Facilitating communication through technical solutions which allow automatic and instantaneous access to information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Enabling or increasing the use of shares issued or recorded with Distributed Ledger Technology, allowing e.g., programmed communication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If you would like to, please explain your answer:

*500 character(s) maximum*

**It is obvious that facilitating direct communications between companies and shareholders will contribute to an improved status of information. The present regulations in that context, including but not limited to transparency rules and regulations however largely contribute already to an excellent exchange of information between the company and shareholders. In that context a facilitation of communication through technical solutions will definitely foster the information exchange.**

**6. To what extent would the following measures lead to an improvement?**

	To a very large extent	To a large extent	To a moderate extent	To some extent	Not at all	Don't know /no opinion
Introducing a standardised proof of entitlement for the exercise of shareholder rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prescribing that the power to represent the shareholder for proxy holders should be possible in electronic format under certain security conditions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring proofs of entitlement and powers of attorney are interoperable with cross- border and harmonised electronic authentication frameworks (e.g., EU Digital Identity Wallet, EU Business Wallet)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enabling or increasing the use of shares issued or recorded with Distributed Ledger Technology	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enabling automated functions in the shares and programmable shares to exercise shareholders rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Introducing (more detailed) EU-wide deadlines/timelines for:	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
a) Convocation of general meetings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
b) Publication of meeting materials	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
c) Record dates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
d) Cut-off dates	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

e) Updating shareholder registers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Shortening the 15-day maximum deadline for publishing voting results	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Requiring publication of voting results for each class of shares	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enabling instantaneous and automated receipt of vote confirmation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you would like to, please explain your answer:

*500 character(s) maximum*

**The problems mentioned are so far not known in Austria, however problems like difficulties with cross-border use of evidence for the entitlement to exercise shareholder rights (e.g., certificates of holding for shareholders and powers of attorney for proxy holders), which might include belated or no receipt of confirmation of entitlement, national form requirements for powers of attorney or similar obstacles cannot be excluded based on the present Austrian legal situation.**

### **3. Institutional Investors and Asset Managers (Articles 3g, 3h and 3i)**

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A strong level of engagement of institutional investors and asset managers is crucial for the long-term performance of companies. Therefore, the SRD subjects them to certain transparency requirements.

**7. To what extent is the objective of the Shareholder Rights framework of increasing the level of engagement of institutional investors and asset managers in order to improve the long-term performance of the company still relevant today?**

- To a very large extent
- To a large extent

- To a moderate extent**
- To a small extent
- Not at all
- Don't know/no opinion

If you would like to, please explain your answer:

*500 character(s) maximum*

**Due to the concerns the SR framework seeks to address its objective remains of relevance. This is reinforced by the increasing importance of ESG considerations also the fact that institutional investors are expected to act as responsible stewards. But, its effectiveness is questionable. In practice, compliance often takes a formalistic form, with limited evidence of substantive engagement. While the objective remains valid the current framework appears insufficient to ensure effective engagement**

## 4. General Meetings of Shareholders

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### General considerations

One of the general objectives of the SRD is to improve corporate governance by strengthening shareholder rights, among other means, by increasing meaningful participation in general meetings. Over recent years, especially during the COVID-19 pandemic, the practice of general meetings has evolved significantly. These developments lead to new potentials for shareholder engagement but also raise risks regarding the effective exercise of shareholder rights.

### 8. What is the best format for the exercise of shareholder rights?

- In-person general meeting
- Virtual only general meeting
- Hybrid general meeting**
- Exercise of rights prior to (outside) general meetings
- Other
- Don't know/no opinion

**9. To what extent is there a need for common EU rules on the format of general meetings?**

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know /no opinion
Each shareholder must be able to choose between in-person and virtual attendance (hybrid general meetings)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Each shareholder must be able to exercise their rights during the general meeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Each shareholder must have the possibility to also exercise their rights prior to the general meeting	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
There should be minimum standards to safeguard shareholder rights and legal certainty in the context of virtual participation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

If you would like to, please explain your answer:

*500 character(s) maximum*

**From the perspective of an international investor (such as pension funds, which sometimes invest across the EU), a common European standard is, of course, desirable.**

## The rights of shareholders

The SRD includes a number of basic shareholder rights, which might be in need of an update.

### 1. **To what extent were the following shareholder rights strengthened by the SRD?**

*[keine Antwort zu vorgegebener Tabelle, lediglich folgender Kommentar:]*

**The SRD significantly strengthened shareholder rights, particularly through enhanced transparency and improved information flows. It also encouraged long-term involvement by institutional investors. However, in practice, its impact is still somewhat limited, as key rights—like “say on pay”—are often only advisory and depend on how each Member State implements the rules.**

### 10. **Are you aware of any problems related to the exercise of shareholder rights, among the following?**

- Not all relevant shareholder rights are provided for in the SRD, hindering cross- border investments**
- Many aspects of existing shareholder rights are left to the Member States, hindering cross-border investment**
- Existing shareholder rights are not sufficient to ensure sound corporate governance  
Delays and inefficiencies regarding the vote casting and counting infrastructures
- Persisting practices lead to share blocking effects (operational constraints to transfer shares within a certain period before a general meeting)
- Persisting practices impede split voting
- Other
- Don't know/no opinion

One of the goals of SRD was to foster the long-term performance of the company. Thus, it aimed to improve the incentives for directors to act in the interest of the company by linking directors' pay to the long-term performance of the company.

**11. To what extent is the objective of the Shareholder Rights framework of increasing the link between directors' pay and long-term performance of the company in order to improve the long-term performance of the company still relevant today?**

*[keine Antwort zu vorgegebener Tabelle, lediglich folgender Kommentar:]*

**The goal of the SDR to better link directors' pay to the long-term performance of a company is still relevant today. In particular, by rewarding long-term performance, managers are less likely to focus on short-term gains.**

**However, pay systems are often very complex, and the performance targets don't always reflect real, sustainable success. On top of that, shareholders often only have an advisory vote on pay, so their influence is limited.**

**12. To what extent have the following measures contributed to the alignment between directors' pay and long-term performance of the company, by diminishing incentives for directors to focus on short-term returns?**

*[keine Antwort zu vorgegebener Tabelle, lediglich folgender Kommentar:]*

**In Austria, the Austrian Code of Corporate Governance had already provided for this for years (and prior to the SRD's 'say-on-pay' regulations) (see eg Rule C27, C27a & C28). Given that votes on remuneration policy and the remuneration report are merely advisory in nature and the relevant resolutions cannot be challenged, we consider the practical impact to be rather limited. In our view, shareholder interest in remuneration policy and the remuneration report is also limited**

**13. To what extent is the objective of the Shareholder Rights framework, to minimise the possible negative impact of related party transactions in order to improve the long-term performance of the company, still relevant today?**

- To a very large extent To
- a large extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/no opinion

If you would like to, please explain your answer:

*500 character(s) maximum*

**It should be noted here that Austrian law has long provided a highly effective instrument in the form of the provisions on the repayment of contributions. Whilst the disclosure requirement under Sec 95a of the Austrian Stock Corporation Act undoubtedly increases transparency in this regard, the existing Austrian legal consequences for breaching the prohibition on the repayment of contributions remain by far the more effective remedy. Regarding Sec 95a have been very few publications to date.**

**14. To what extent would the following measures lead to improvements?**

*500 character(s) maximum*

**In some cases, difficulties arise regarding whether multiple transactions with related parties should be aggregated. This may be relevant, eg to the question of an initial disclosure, but also to subsequent disclosures. Of course, additional rules could provide clarity; but there is a risk that they might complicate the application of the law and/or increase compliance costs. For example, 'more rules on related-party transactions' could go too far and weaken AT as a business location.**

## 5. Enforcement

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Member States have to provide for measures and penalties which are effective, proportionate and dissuasive. This is to ensure that the shareholder rights provided for in the SRD are effectively enforced.

### 15. To what extent would the following measures lead to improvements?

	To a very large extent	To a large extent	To a moderate extent	To a small extent	Not at all	Don't know/no opinion
Transferring certain SRD provisions into a regulation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Codes of conduct developed by the private sector	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Peer review mechanisms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
EU guidelines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Supervision by an EU authority, e.g., ESMA</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 6. Additional information

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**16. Do you have any final comments or suggestions, e.g., on any aspects not sufficiently covered by the SRD framework?**

*1500 character(s) maximum*

**The “Shareholder Rights Directive call for evidence” identifies fragmented shareholder definitions, inefficient shareholder identification, obstacles to cross-border exercise of rights, inefficiencies in the intermediary chain, and insufficient transparency. Many of these are, at root, problems of fragmented data modelling and cannot be attributed to a legally fragmented situation in the European Member States.**

**With regard to the ‘stock market law’ provisions of the Shareholder Rights Directive (such as the identification of shareholders, chains of intermediaries, the flow of information to and from the company, etc.), the ÖRAK experts have not received any feedback over the years from companies (or other stakeholders in the intermediary chain up to the shareholder) indicating that there are problems in these areas. Furthermore, when the ÖRAK experts made explicit enquiries with the legal departments of listed companies, they were informed that such issues had not arisen for them to date.**

**With regard to issues relating to company law (e.g. point 5), Austrian company law is to date ‘well-positioned’ – many of the issues raised are well regulated in Austria (such as the available AGM formats/forms) and we do not actually see any need to introduce additional regulations or stricter measures in these areas (such as supervision by an EU authority like ESMA).**