Shareholders' Rights Directive:
An opportunity to digitalize votes

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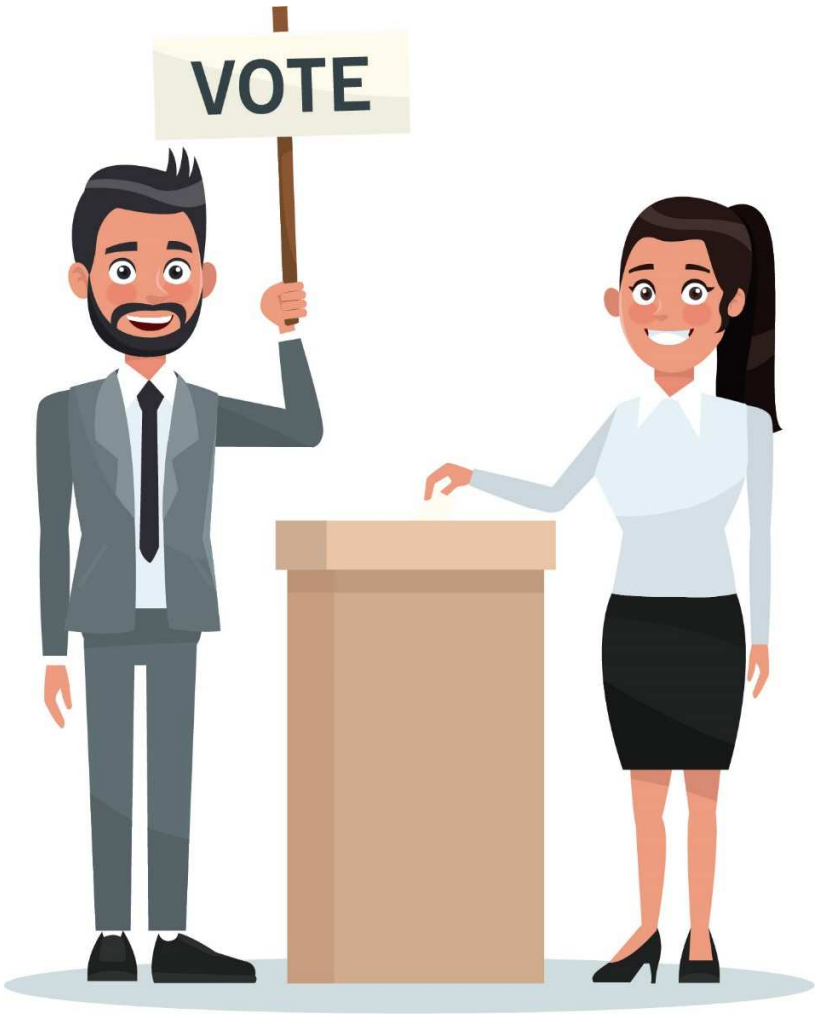
EXECUTIVE SUMMARY



The Council of Europe adopted a revised version of the Shareholders' Rights Directive on April 4th, 2017. The text focuses on strengthening shareholders' rights and their engagement in European listed companies.

With an implementation deadline set for June 2019, member States of the European Union have now **less than two years** to transpose parts of the Directive into national law.

In the meantime, the European Commission is working with experts on producing technical standards to implement the rest of the Directive.

Being a **provider of voting solutions** and a **key contributor in the chain of vote**, SLIB has particularly looked at the impacts of the Directive for the stakeholders contributing to the exercise of shareholders' rights. Conclusions are summarized below:

- Henceforth, shareholders should receive all information necessary for the exercise of their rights, and could be **more inclined to vote**. To anticipate this increase of shareholders' demands, **industrial solutions** would be developed.
- The new standards also create a great opportunity to **digitalize** and **streamline** processes, by informing shareholders of their rights electronically and by providing **reliable online voting platforms**. SLIB wishes that the solutions that might emerge will **encourage** retail investors from exercising their rights.
- The text might also create more **added-value** in the field of votes, as issuers will have to be able to confirm that shareholders' votes have been correctly taken into account. This might require **new developments** to managing new voting statuses.

In the light of this regulatory change, SLIB recommends exploring and creating **pan-European solutions** for **online votes** that will offer advanced tools to comply with the Directive. Digital platforms should enable stakeholders to enhance their process and be more competitive.

Introduction

A new set of rules

The European Shareholders' Rights Directive (2017/828) modifies and amends the 2007 directive on the exercise of certain rights of shareholders in listed companies (2007/36/CE).

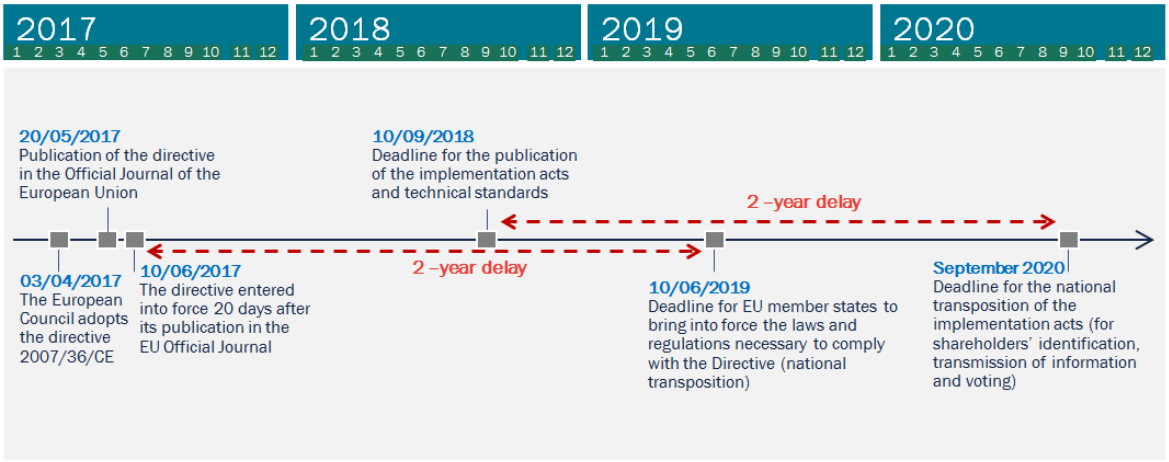
A large scope

The Directive applies to:

- **Companies** listed in an European Union member state
- **Shareholders** (both retail and institutional)
- **Intermediaries** (the chain of intermediaries may include intermediaries that have neither their registered office nor their head office in the EU)
- **Institutional investors** (e.g. activities of life insurance, institutions for occupational retirement provision)
- **Asset managers** (investment firms that provide portfolio management services to investors)
- **Proxy advisors** (legal entities that analyse, on a professional and commercial basis, information from listed companies to inform investors' voting decisions, providing research, advice or voting recommendation

Timeline

The project update began in 2014, and the new Directive was published in the Official Journal of the European Union on May 20th, 2017. The transposition by member States into national law has to be made at the latest on **June 10th, 2019**. Project milestones are shown on the table below:



Main themes

Six main themes can be identified in the Shareholders' Rights Directive:

1. Identification of shareholders and transmission of information

2. Facilitation of the exercise of shareholder rights

3. Transparency of proxy advisors

4. Oversight over the remuneration policy

5. Transparency and approval of related party transactions

6. Transparency of institutional investors and asset managers

IDENTIFICATION OF SHAREHOLDERS AND TRANSMISSION OF INFORMATION (1/6)

"The identification of shareholders is a prerequisite to direct communication between the shareholders and the company and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement."

(Directive 2007/36/EC, Legislative acts paragraph (4))

Member states will have to make sure that intermediaries disclosing information regarding shareholder identity are not in breach of any restriction imposed by any legislative, regulatory or administrative provision.

Who can ask for the identification of shareholders?

The directive makes sure that companies having a registered office in the EU are allowed to request the identification of shareholders from any intermediary in the chain that holds the information.

What are the time constraints so far?

Intermediaries must communicate "*without delay*" the information regarding shareholder identity to the company or to a third party nominated by the company. If there is more than one intermediary, the request of the company must be transmitted between intermediaries "*without delays*" (Chapter Ia, Article 3b).

How long can companies keep this information?

Companies and intermediaries shall not store personal data of shareholders for longer than 12 months after they have become aware of the fact that they ceased to be shareholders of the company (Chapter Ia, Article 3a)

The information enabling the identification of a shareholder is at least:

- Name
- Contact details (including full address, and where available, email address)
- If the shareholder is a legal entity: its registration number or Legal Entity Identifier (LEI)
- The number of shares held
- If requested by the company one or more of the following details: categories or classes of the shares, and the "*date from which the shares have been held*"

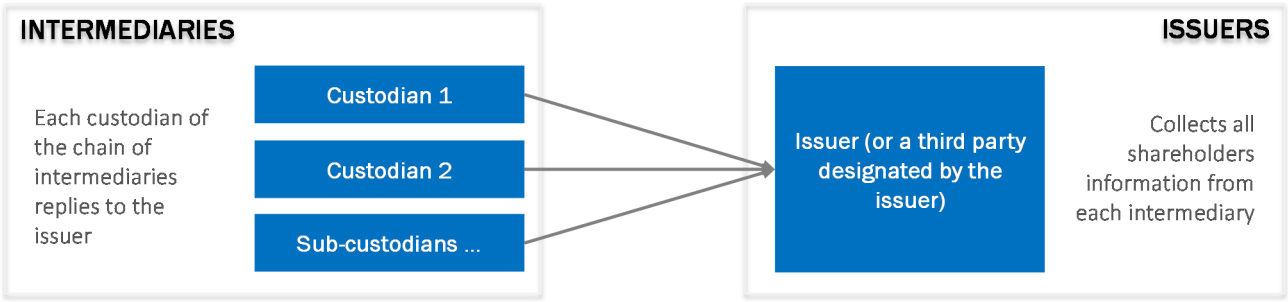
SLIB opinion about the identification of retail shareholders

SLIB recommends using national identifiers based on recent regulations such as MIF2 (CONCAT code, passport number…) for individuals depending on their nationality. This would ensure that the data received from different intermediaries for the identification of shareholders is reliable and can be reconciled.

For collecting information

Three main options are possible to reach or collect the information needed for the identification of shareholders:

- **Option 1**: Each intermediary directly sends its information to the issuer or a third party designated by the issuer. The company collects and centralizes all information coming from intermediaries. SLIB believes this option is inadequate for the French market.



Pros:

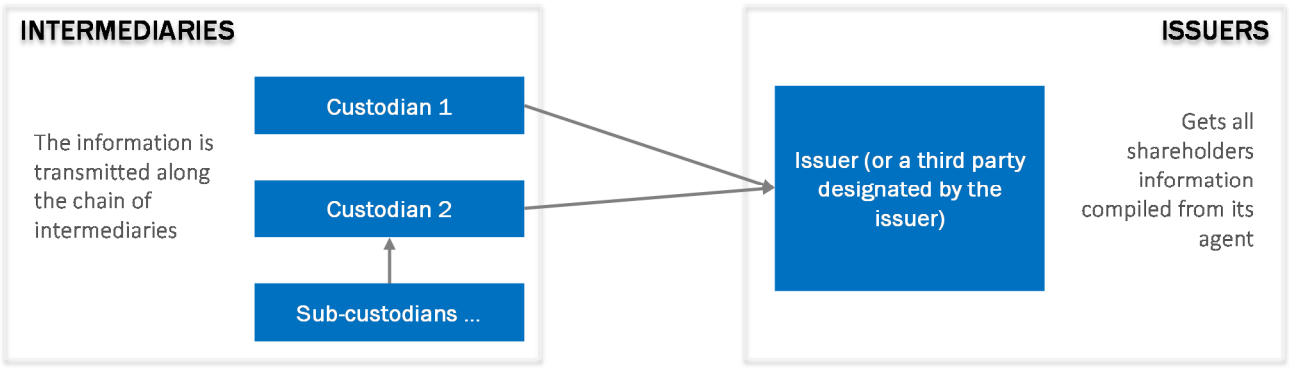
- ✓ *No intermediation between the issuers and the custodians along the chain*
- ✓ *Possible reduction of the costs and the amount of time for the identification of shareholders*

Cons:

- ✗ *The issuer has to centralize all information coming from custodians along the chain*
- ✗ *Reconciliation problems could arise at the issuer level*

By directly collecting all information regarding its shareholders (Option 1), the issuer could organize the collection of votes prior to the General Meeting.

- **Option 2:** Information is collected through the chain of intermediaries. Only custodians directly connected to the issuer CSD will send the information to the issuer.



Pros:

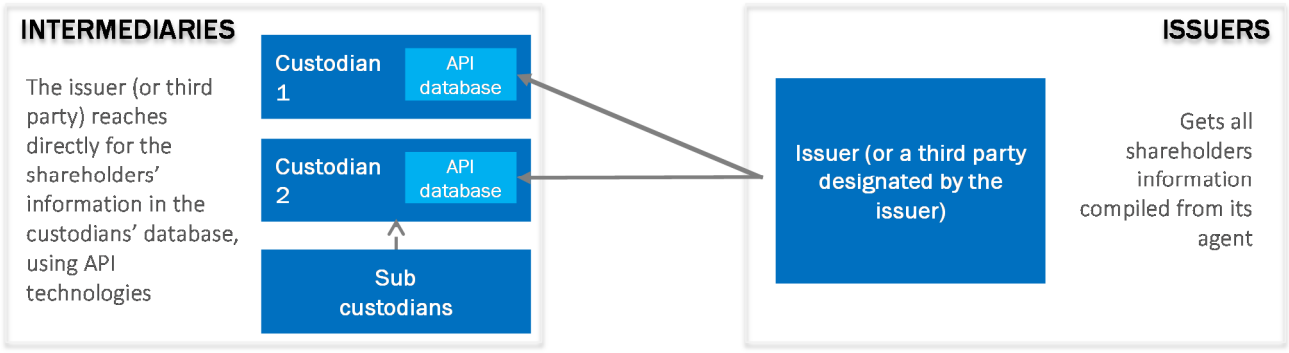
✓ *Shareholders positions are controlled all along the chain of intermediaries*

Cons:

✗ *More delays could be expected at the intermediary level in order to consolidate information*

✗ *Reconciliation problems could arise at the intermediary level*

- **Option 3:** An alternative option would be to encourage the use of API systems so that issuers (or a third party designated by the issuer) directly retrieve shareholders information in the intermediaries' systems.



Pros:

✓ *The issuer (or a third party mandated by the issuer) can reach directly the shareholders' information*

Cons:

✗ *Level of maturity at intermediary level to implement API*

✗ *Constraint to manage two kinds of processes if all intermediaries do not implement API*

FACILITATION OF THE EXERCISE OF SHAREHOLDER RIGHTS (2/6)

Role of the intermediaries

The intermediaries must facilitate the exercise of the shareholders rights, including the right to participate and vote in general meetings:

- by making "*the necessary arrangements*" for the shareholder or a third party nominated by the shareholder to exercise themselves the rights
- by exercising this right upon "*the explicit authorisation and instruction*" of the shareholder

(Chapter Ia, Article 3b)

Costs

The intermediary must make public all information concerning the fees applied for the identification and transmission of information and the facilitation of the exercise of shareholders' rights.

Confirmation of votes

Shareholders can obtain upon request, after the general meeting a confirmation that their votes have been recorded and taken into account.

If votes are sent electronically, an electronic confirmation of receipt must then be sent to the voter *(Chapter Ia, Article 3c)*

Costs must be "non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services". *(Chapter Ia, Article 3d)*

The implementing acts will specify the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries

SLIB opinion about the exercise of shareholders' rights

Thanks to the Directive, shareholders should receive all information necessary to the exercise of their rights, and could therefore be more inclined to vote, either locally or by realising cross border votes.

SLIB recommends anticipating the increase of shareholders' demands to vote and participate in general meetings, by putting in place industrial solutions to inform shareholders and allow them to exercise their rights. The standards put in place by the Directive create a great opportunity to digitalize and simplify processes, by informing shareholders of their right electronically and by providing them with reliable and advanced online voting platforms.

SLIB opinion about cross border votes

While institutional investors seem to have efficient and industrial solutions for cross-border voting, there are currently no equivalent solutions for retail investors that wish to perform cross border votes.

SLIB wishes that the solutions that could be put in place by custodians and intermediaries will encourage retail investors from exercising their rights. It is necessary to have secure and affordable electronic solutions offered to them that will be easy to access and enable shareholders to fully exercise their rights.
Perhaps as an example to follow, France's model enables shareholders living out of the country to exercise their rights and still vote at the general meetings of French listed companies.

SLIB opinion about the confirmation of votes

According to the Directive, issuers will have to be able to confirm that shareholders' votes have been recorded and taken into account at the general meetings.

SLIB believes that this confirmation of vote sent to the shareholders might require managing new voting statuses for example:

- *vote delivered to the issuer*
- *vote valid / invalid*
- *vote taken into account in the calculations*

In some cases such as partial votes or split votes, statuses might be complex to handle.
As many combinations are possible, the implementation acts should define the granularity expected.

TRANSPARENCY OF INSTITUTIONAL INVESTORS AND ASSET MANAGERS (3/6)

Engagement Policy

Institutional investors and asset managers must develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy (Chapter Ib, Article 3g).

The policy needs to describe how they monitor companies on "relevant matters" such as:

- Strategy
- Financial and non-financial performance
- Risk
- Capital Structure
- Social and environmental impacts
- Corporate governance

Institutional investors and asset managers need, on an annual basis, to disclose how their engagement policy has been implemented (Chapter Ib, Article 3i).

Investment Strategy

Institutional investors must disclose how their investment strategy is consistent with the profile and duration of the liabilities and how it contributes to the performance of their assets.

If an asset manager invests on behalf of an institutional investor, the investor must be transparent on this agreement and show how it is in line with the strategy and performance of the listed company.

Asset manager must disclose, on an annual basis, to the institutional investor with which they have an agreement how the investment strategy complies with that arrangement and contributes to the performance of the assets of the institutional investor or of the fund.

TRANSPARENCY OF PROXY ADVISORS (4/6)

Proxy advisors must "publicly disclose reference to a code of conduct which they apply and report on the application of that code of conduct". This information should be free, available on the website of the proxy advisor and update on an annual basis (Chapter Ib, article 3j).

Proxy advisors must make sure they can identify and disclose "without delay to their client" any actual or potential conflict of interest, and communicate on the actions they have taken to eliminate or mitigate it (Chapter Ib, article 3j).

Proxy advisors must make public the following information regarding their research and recommendations (Chapter Ib, article 3j):

- Methodology and models applied
- Information sources used
- Procedures to ensure research quality, advice and voting recommendations and qualifications of their staff
- Whether they take national market, legal, regulatory and company-specific conditions into account
- Characteristics of the voting policies they rely on for the different markets
- Scope and nature of dialogues with companies that are the object of their research
- Policy regarding the prevention of conflicts of interests

OVERSIGHT ON THE REMUNERATION POLICY (5/6)

Transparency over remuneration

Companies will need to publish a remuneration report, giving an overview of the remuneration (including all benefits) awarded to directors (including newly recruited and former directors) in the financial year (Chapter Ib, Article 9b).

The remuneration report will be available on the website of the listed companies, free of charge, for a period of 10 years.

"Say on pay"

The annual general meeting has a right to hold a vote on the remuneration report of the financial year. Companies will then have to make sure that their directors' remuneration is in accordance with a remuneration policy that has been approved by the general meeting.

When no remuneration policy has been approved at the general meeting, the company can continue to pay remuneration to its director in accordance with existing practises and can submit a revised policy at the following general meeting (Chapter Ib, Article 9b).

Member states can provide for the votes at the general meeting on the remuneration policy to be advisory.

They can also allow company, in exceptional circumstances to temporarily derogate from the remuneration policy.

TRANSPARENCY AND APPROVAL OF RELATED PARTY TRANSACTIONS (6/6)

The Directive provides the possibility to submit to the shareholders' approval material transactions with related parties that could have an impact on the financial position of the company.

Material transactions can be defined by Member states according to quantitative ratios, based on the impact of the transaction on the financial position, revenues, assets, capitalisation or turnover of the company. The definition can also vary in the member states according to the company size (Chapter Ib, Article 9c).

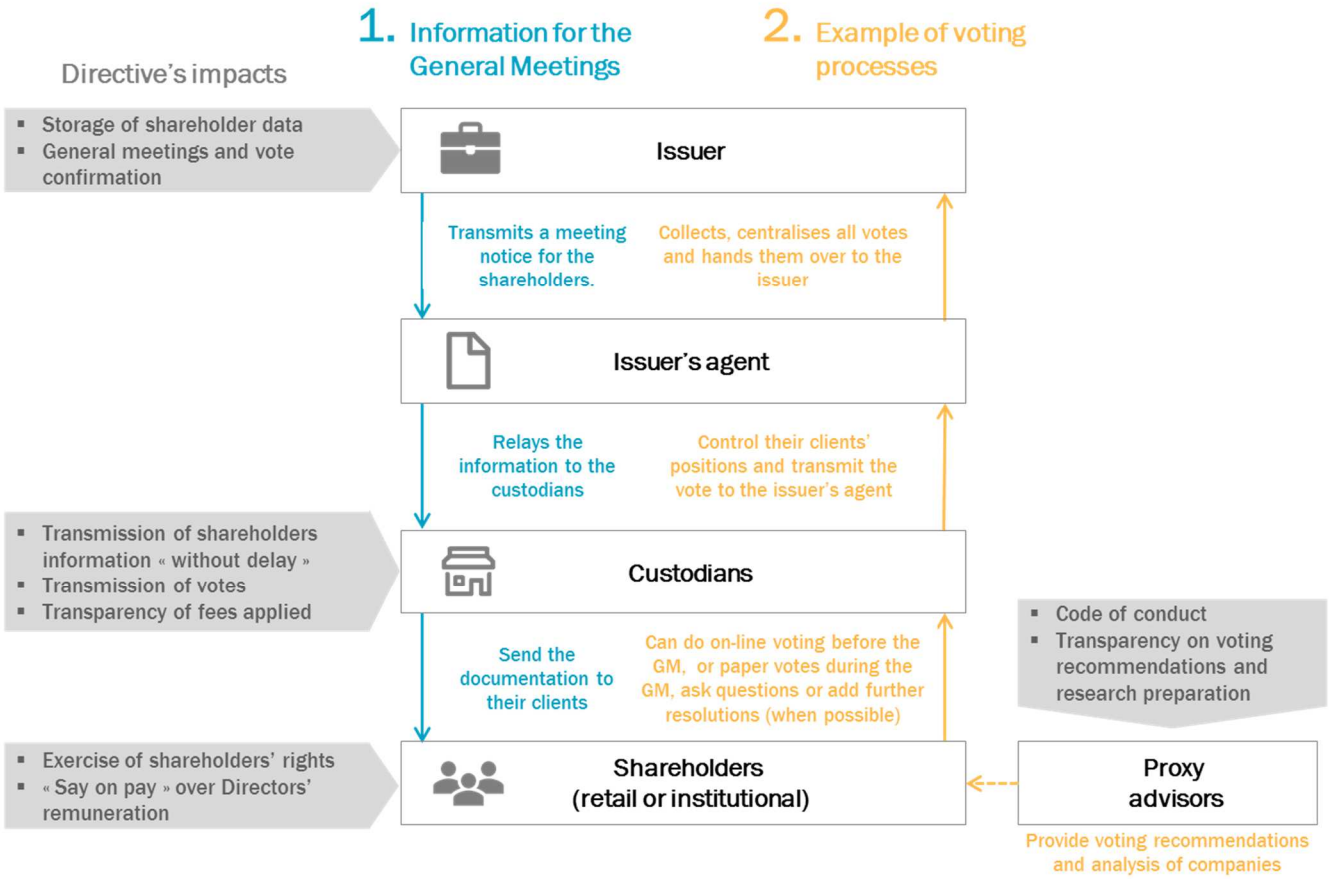
Companies will also need to announce material transactions with related parties at the latest at the time of the conclusion of the transaction. The announcement will need to give:

- the name of the related party
- the date and value of the transaction
- and "other information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party"

Directive impacts in a nutshell

SLIB has particularly looked at the impacts of the Directive for the stakeholders contributing to the exercise of shareholders' rights. The precise scope of these impacts remains however to be determined, as it will depend on the transposition of the Directive into national law.

For the last five years, France has put in place modern solutions enabling actors to start digitalizing their processes and shareholders to exercise their rights. In the illustration below, describing a model existing in France for the information of shareholders and the voting process, SLIB has illustrated the changes and constraints the Directive could bring:



SLIB is already able to provide a solution where all stakeholders are gathered in order to enable the exercise of shareholder's rights for General Meetings. SLIB's solution allows to reduce cycles between intermediaries while keeping secure, scalable and STP services. The solution manages different data flows:

- Shareholder positions and update
- Meeting Notices
- Votes
- Acknowledgement

CONCLUSION

The European Shareholders' Rights Directive should bring transparency, create an attractive environment for shareholders and enhance the EU listed companies' competitiveness. Its covers a broad range of activities, from the identification of shareholders to the business of proxy advisors, and sets standards for a European harmonization.

Time is ticking

With less than two years until the first implementation of the Directive into national law, issuers, shareholders, and all intermediaries will need to analyse its impacts. Each stakeholder will have to adapt and be ready to follow the rules adopted.

Thinking ahead

While all parties wait for the implementation acts to set the minimum technical standards of the Directive, SLIB recommends thinking ahead and anticipating change. With new processes and new demands coming from shareholders to exercise their vote, the European market should be prepared to offer advanced and reliable solutions to comply with the Directive. Modern and digital tools can help European stakeholders maintain one step ahead in the fields of online voting and the transmission of shareholders information.

A word from Philippe Cognet, CEO at SLIB

"We warmly welcome this new directive, which aims at strengthening shareholders' rights and shareholder empowerment.

We have been working since 2010 to offer value-added solutions that both digitalize General Meeting processes and offer shareholders more freedom in the exercise of their voting rights. We worked with all French intermediaries to build a global solution, VOTACCESS, to securely distribute and collect all the information needed for the organization and the management of General Meetings. We have also integrated 20022 ISO standards in our solutions in order to enrich the information transmitted to intermediaries for greater transparency. Using this experience and working today on blockchain technologies, we are engaged in a sustainable way in the deep changes of our ecosystem whether technological or any other nature."

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About SLIB

SLIB is both a software and an application services provider.

For more than 30 years, SLIB has been a close and reliable partner of the securities industry in France and Europe, monitoring changes and supplying its customers with innovative software solutions to streamline their securities processing while managing inherent risk.

SLIB provides solutions for order management, clearing, settlement, custody account keeping, risk and general meeting voting.

SLIB has been providing voting solutions since 2010 and 2/3 of French listed companies use its solutions today.

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