Finance Watch
Making finance serve society

Unlocking Transition Engagement for Shareholders

Recommendations to revisit the Shareholder Rights Directive

A Finance Watch Policy Brief

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Executive summary

This policy brief provides recommendations for the future review of the Shareholder Rights Directive (SRD) to better align shareholder engagement with sustainability goals, such as the European Green Deal and the Paris Agreement. Shareholders, particularly institutional investors, can exert significant influence on corporate behaviour by exercising their voting rights and engaging with companies to steer the economy towards more sustainable practices. However, the current SRD falls short of providing sufficient transparency for and from the shareholders and enabling meaningful engagement on environmental, social, and governance (ESG) issues, particularly regarding the transition to a low-carbon economy.

The policy brief highlights several areas for improvement within the SRD. Firstly, it advocates for codifying a shareholder vote on companies' transition plans, which would align the SRD with legislative developments in the EU to facilitate a sustainable economic transition. Transition plans are vital for companies to manage long-term risks associated with climate change, and shareholders have a vested interest in ensuring these plans are both ambitious and effective.

Additionally, the SRD must mandate greater transparency in institutional investors' and asset managers' engagement policies. Current disclosure requirements fail to provide comparable disclosures and promote active engagement. Finance Watch recommends expanding the SRD to require disclosure of the outcomes of engagement, voting policies, and alignment with transition plans.

To further strengthen shareholders' voices, the revised Directive must remove barriers to shareholder engagement, particularly for retail shareholders. Many EU Member States impose high holding thresholds for shareholders to be able to add items to the agenda of the annual general meeting or table resolutions. In addition, national law leaves much room for the Board of Directors to reject tabled resolutions before they can be heard and discussed by the assembly.

A review of the SRD should serve the objectives of promoting supervisory convergence, long-termism, transparency, and sustainability in corporate governance. By empowering shareholders to vote on transition plans, ensuring transparency in voting behaviour, and protecting shareholder rights, the SRD can aid investors to develop credible transition plans and meet their strategic and regulatory transition targets. These changes align with the European Commission's 2021 Strategy for Financing the Transition to a Sustainable Economy and its goal of accelerating the financial sector's contribution to achieving the Green Deal targets.

While Finance Watch also recognizes the possibility of engaging with investee companies in the context of lending activities, the scope of this policy brief is limited to the empowerment of shareholders and the necessary revision of the SRD. Finance Watch already coined in its report “The problem lies in the net” how investors can also take actions through their lending activities to engage with investee companies and develop credible transition plans.[1]

1 Finance Watch, *The problem lies in the net*, June 2022.

Key recommendations

1 **Give shareholders a voice in deciding the direction of the company in a transitioning economy by giving them the right to vote on the company's transition plan.**

2 **Require asset managers and institutional investors to disclose how their engagement policies align with their transition plans and how their voting record fits into their transition plan targets.**

3 **Lower the minimum holding requirements for adding items to the agenda of the annual general meeting and restricting the power of the Board of Directors to reject resolutions.**

Introduction

Shareholding is central to the functioning of capital markets. Through shareholding, investors decide on the allocation of capital and influence the share prices and value of companies. In return for providing the capital needed for the company to grow, the holding of company shares comes with several rights and responsibilities. As partial owners, shareholders have the power and the right to influence corporate governance and decide on the company's direction. Shareholders can range from small, individual retail investors, holding as little as one share, to large institutional investors such as pension funds, asset management firms and insurance companies.

By exercising their rights at shareholder meetings, most importantly during the annual general meetings (AGM), shareholders can influence major decisions, including the election or dismissal of Board members, the approval of mergers and acquisitions, and changes to corporate policies. This governance role is essential for ensuring that companies are managed in ways that align with the interests of their owners and other stakeholders.

Within the European Union, shareholder rights are regulated by the Shareholder Rights Directive (SRD), adopted in its first format in 2007 – SRD I. In an effort to harmonise legislation on shareholding throughout the European market, the European Commission highlighted the need for tailored rules to strengthen shareholder rights and ensure that problems related to cross-border voting were addressed. As a Directive, the SRD requires Member States to achieve the harmonisation of the shareholder rights through transposition in national legislation. Due to the limited scope of the SRD I, this left quite some room for Member States to interpret the goals set forth by the Commission.

The key aim of the SRD I was to guarantee that holders of shares with voting rights could exercise those rights effectively, recognizing that these rights are intrinsic to the value of the shares at the time of acquisition. The Directive sought to ensure that non-resident shareholders could utilise their rights on equal terms with the residents of the Member State where the company seat is registered. Regardless of location, a shareholder should be able to receive the necessary documentation related to the AGM in due time and cast an informed vote at general meetings, either personally or by means of a proxy vote.[2]

The global financial crisis of 2007-2009 soon exposed the shortcomings of the SRD I, highlighting the need for a revision of the legislation. The SRD I provided the legal basis for shareholder rights across the Union, but did not sufficiently address the issue of company management's excessive focus on short-term profit making, to a large extent supported by shareholders. This short-termism was detrimental to the long-

2 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies.

term sustainability and performance of companies, as it encouraged decisions that favoured immediate financial gains and excessive risk-taking over sustainable growth and the long-term interests of the company and its shareholders.

Furthermore, it appeared that institutional investors and asset managers often did not engage with the companies in which they held shares in order to promote long-term financial and non-financial performance, to the detriment of the long-term development of their investee companies.[3]

To address these gaps, a revised Directive (SRD II) was published in May 2017. The SRD II introduced several new tools and requirements aimed at facilitating long-term shareholder engagement and making it more effective. One of the new key provisions was the imposition of detailed transparency requirements for institutional investors and proxy advisors. These requirements were designed to enhance the visibility of their actions and decisions, thereby promoting greater accountability and alignment with long-term shareholder interests.[4]

The SRD II emphasised the importance of a medium to long-term approach to asset stewardship, requiring asset managers and institutional investors to annually disclose how their engagement policy has been implemented, including a general description of voting behaviour and an explanation of the most significant votes (**Article 3g**). The revised Directive also stipulated that institutional investors disclose how the main elements of their equity investment strategy is consistent with the profile and duration of their liabilities and how these elements contribute to the medium to long-term performance of the assets they hold (**Article 3h**).

Moreover, the SRD II mandated disclosing key aspects of investors' arrangements with asset managers, such as how these arrangements incentivise alignment with long-term liabilities and performance criteria, including remuneration and portfolio turnover costs (**Article 3h**). Asset managers were now required to inform institutional investors about how they comply with any arrangements to make investment decisions based on evaluations of the medium to long-term performance of investee companies, including non-financial performance, and to engage with investee companies in order to improve their performance in the medium to long-term (Article 3i). These provisions aimed to ensure that asset managers adopted a long-term, active approach to asset management, considering environmental, social and governance (ESG) matters to a certain degree.[5]

Another significant change was the introduction of a mandated right for shareholders to express their views regarding the remuneration policy of the company, through binding or advisory votes, at the discretion of Member States' transposition (**Article 9a**).

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3 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

4 Ibid.

5 Ibid.

Directors' performance assessments were expanded to include both financial and non-financial criteria—incorporating, where appropriate, environmental, social and governance factors.[6]

Although significant steps have been made in enhancing the SRD since its initial version was published, there remains much room for improvement. With the start of a new European Commission mandate following the 2024 elections, an opportunity has arisen to revisit the Directive to further strengthen shareholders' rights and institutional investors' impact through engagement within the European Union. The revision of the Directive is part of the EU's Capital Markets Union Action Plan,[7] which aims to create a single market for capital to benefit consumers, investors and companies regardless of their location within the Union. A key element is ensuring that investors have the ability to exercise their rights, yet are held accountable for exercising them in accordance with long-term financial and non-financial sustainability goals.

Article 3f of the SRD II required the European Commission to publish a report on the implementation of the Directive by 10 June 2023. As of October 2024, this report has not been published. However, in accordance with the same article, a report with technical advice was published by the European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) in July 2023. ESMA's focus was on specific SRD II provisions, including those related to proxy advisors (**Article 3j**), shareholder identification (**Article 3a**), transmission of information (Article 3b) and facilitation of the exercise of shareholder rights (**Article 3c**). Meanwhile, the EBA concentrated on the provisions concerning costs and charges applied by intermediaries (Article 3d), as well as the practices of third-country intermediaries (**Article 3e**).

The key recommendations of the ESMA and EBA report include the need to further clarify the definition of a proxy advisor and define the minimum standard for their code of conduct. The report also recommends additional disclosures to tackle conflicts of interest, especially in situations where a proxy advisor advises investors on issuers to whom it also provides consultancy services. Furthermore, regarding the investment chain, it advises introducing a harmonised definition of shareholders across the EU, as well as providing harmonised documentation templates for several key documents.[8]

While Finance Watch supports the input from both ESMA and the EBA on strengthening the legislation on the investment chain as well as on proxy advisors, the focus of this policy brief is to enhance the rights of shareholders to impact the long-term behaviour of companies in regards to sustainability matters. Given this, other measures not related to sustainability are not covered.

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6 Ibid., recital 29.

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Capital Markets Union for people and businesses-new action plan (COM/2020/590).

8 The European Securities and Markets Authority, the European Banking Authority, *Implementation of SRD2 provisions on proxy advisors and the investment chain* (ESMA32-380-267 or EBA/Rep/2023/26) (July 2023).

I. The importance of empowering shareholders to boost the transition

According to the EU Sustainable Finance Strategy,[9] the EU intends to review the SRD to be more in line with the European Green Deal, the goals of the Paris Agreement and the EU Climate Law.[10] Shareholder engagement is a vastly powerful tool to drive the economy towards a more sustainable future, particularly when considering the amount of assets held by institutional investors or managed by asset managers.

It is well-recognised that the world is facing a dire need to transition its economy away from fossil fuel dependency, reduce greenhouse gas emissions to meet international commitments on climate change and, for the EU in particular, align with the goals of the EU Green Deal. To reach these objectives and ensure that sustainability impacts are a core consideration in investment strategies and decision-making processes, a shift in corporate behaviour is necessary. Companies must use the opportunity to transition in an orderly manner while time still allows. Yet many focus excessively on short-term financial performance at the expense of long-term development.

Financial institutions, particularly institutional investors, play a central role in enabling economic activities and supporting a whole-economy transition towards a sustainable economy. These institutions possess a unique ability to influence corporate behaviour and enable the transition by increasing financing and providing other services for activities that support sustainable transformation and climate solutions. This role is crucial for aligning financial flows with the objectives of the EU Green Deal, and ensuring that investment and decision-making processes consider sustainability impacts comprehensively.

In its 2021 Strategy for Financing the Transition to a Sustainable Economy, the European Commission recognised that aligning financial flows with the Green Deal objectives required further consideration of the sustainability impacts on the strategies and investment decision-making processes of investors.[11] In addition, the Commission gave itself the objectives of "accelerating the contribution of the financial sector to transition efforts", "clarifying the fiduciary duties and stewardship rules of investors to reflect the financial sector's contribution to Green Deal targets" and "enabling supervisors to address greenwashing."[12]

Finance Watch has advocated embedding sustainable investment stewardship into climate transition planning for financial institutions. In its report on transition planning

9 Communication from the European Commission *Strategy for Financing the Transition to a Sustainable Economy* (COM/2021/390 final), 6 July 2021.

10 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality.

11 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Strategy for Financing the Transition to a Sustainable Economy (COM/2021/390).

12 Finance Watch, *The problem lies in the net*, June 2022.

for the insurance sector, published in April 2024, Finance Watch emphasised the dual responsibility of institutional investors to both serve the needs of the real economy and act as the stewards of long-term value creation. This alignment is not only a strategic risk necessity, but also falls under the fiduciary duty of institutional investors and asset managers.[13]

To influence corporate behaviour and support the transition to a low-carbon economy, institutional investors can leverage several tools. These tools include active engagement with investee companies, strategic voting at AGMs and public advocacy for sustainable business practices. For instance, as shareholders, insurers can use periodic and annual investor meetings to discuss sustainability concerns and climate-related risks with the companies they invest in. When efforts are insufficient, they can also escalate companies' actions by calling for specific meetings with management or the Board, making public statements, tabling resolutions at AGMs, or pushing for changes in Board composition.

AGM voting serves as a critical mechanism for active stewardship, enabling shareholders to push for concrete transition measures. Institutional investors should actively participate in these processes by tabling voting resolutions and informing other investors about their voting intentions. This level of engagement ensures that their sustainability claims are backed by concrete actions, maximising their influence over investee companies' transition efforts.

Through various disclosure requirements and mandates on transition planning for financial institutions, sustainability concerns in investment policies by institutional investors and asset managers are becoming more and more institutionalised. Thus, the Shareholder Rights Directive must be strengthened by linking the ESG engagement efforts to be required in institutional investors' transition plans to the Directive's existing requirements. Aligning the SRD with the new requirements established under Solvency II, the Capital Requirements Directive (CRD) and Regulation (CRR), the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD), further reinforces European efforts towards reaching the goals of the Green Deal.

13 Finance Watch, *Transition Planning for Insurers: A supervisory tool to improve climate risk resilience*, April 2024.

II. Make ESG concerns central in shareholder engagement

a. Transparency over the shareholder engagement policy

Article 3g 1(a) of the Directive requires institutional investors and asset managers to either develop and disclose an engagement policy that describes how they integrate shareholder engagement into their investment strategies, or provide a clear explanation of why they have chosen not to do so. The text requires them to describe "*how they monitor investee companies on relevant matters, including strategy, financial and non-financial performance and risk, capital structure, social and environmental impact and corporate governance, conduct dialogues with investee companies, exercise voting rights and other rights attached to shares, cooperate with other shareholders, communicate with relevant stakeholders of the investee companies and manage actual and potential conflicts of interests in relation to their engagement.*"

In its current wording, the SRD only calls on institutional investors to explain how they monitor ESG concerns, but not whether and how they intend to address these concerns through the various engagement avenues. ESMA already recognised in 2019 that this shortcoming in the SRD II inhibits the Directive from explicitly linking long-term engagement with ESG factors.[14] If shareholder engagement and stewardship is to guide the transition of the economy, ESG factors should be integrated into every aspect of the engagement policy, moving away from a mere monitoring exercise to creating real-world impact through the different engagement actions described in the Article.

To ensure the comparability and credibility of engagement policies, legislators should also better harmonise the content and the format of those policies. Moreover, this would simplify the assessment of asset managers' engagement policies for institutional investors that delegate the management of their investment, ensuring that it aligns with their policy, as described further in this policy brief. To prevent duplicative work and ensure aligned disclosures, these harmonisation efforts should seek consistency between the SRD II and other legislative texts referring to transparency on engagement policies, e.g. the Sustainable Finance Disclosure Regulation and the Investment Firm Regulation.[15]

Additionally, the scope of Article 3g should be expanded to not only mandate the publication of the engagement policy, but also its outcomes, chosen focus areas, timelines, and further actions to be undertaken. Voting policies should be clear and public and must be shared in advance. To ensure comparability of the policies, the required information should be presented under a standardised and comparable format.

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14 The European Securities and Markets Authority, *Undue short-term pressure on corporations* (ESMA30-22-762) (December 2019), as pointed out by ShareAction, *Responsible Stewardship* (June 2021).

15 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations, Article 52.

Finally, as many financial institutions are now required to create and implement their own transition plans,[16] **Article 3g** should be expanded to include, within engagement policies, a comprehensive explanation on how the policy fits within institutions' transition plans and how it is linked to reaching the targets of their own transition plans. As financial institutions have little scope 1 or scope 2 emissions, most of their targets will be set based on their scope 3 financed emissions. Requiring these targets to be linked to the engagement policies mandated under the SRD II would carry little to no additional effort, as the engagement policy in itself should already be part of the institutions' transition plans required under existing EU legislation.

b. Transparency over the actual exercise of shareholder rights

Article 3g 1(b) states that institutional investors and asset managers must, on an annual basis, publicly disclose how their engagement policy has been implemented, including a general description of voting behaviour, an explanation of the most significant votes, and the use of proxy advisors' services. They are also required to disclose how they have cast votes in general meetings of companies in which they hold shares. However, the article allows for the exclusion of "insignificant" votes from the disclosure obligation on the grounds of "subject matter of the vote or the size of the holding in the company."

To ensure full transparency, particularly in the context of ESG considerations, this clause should be clarified to no longer allow any exclusions, regardless of subject matter or holding size. The provisions of the SRD should provide a strong framework for transparency in the engagement process of institutional investors and asset managers. By ensuring they cannot withhold information on voting behaviour, especially when it is directly linked to the ESG commitments made in their transition plans, the Directive can foster accountability of any institutional investor or asset manager that labels itself sustainable.

Lastly, though it is clear that there must be action on ESG issues, under the current text of the SRD II, the entire initiative on impactful and transparent engagement policies and voting behaviours is being undermined by the principle of 'comply or explain' currently embedded into **Article 3g(1)**. Such clauses must be removed from the Directive, as engagement policies and disclosures for financial institutions are very likely to be part of transition plan requirements.[17] To level the playing field within the EU, the SRD must fall in line and become more stringent.

c. Transparency over the arrangements with asset managers

Institutional investors often delegate the management of their investment portfolios to external asset managers. In these cases, the institutional investors should publish

16 Transition plans are now mandated under Article 76 of the Capital Requirements Directive (CRD), Article 44 (2b) if the reviewed Solvency II Directive (SII), Article 22 of the Corporate Sustainability Due Diligence Directive (CSDDD) and should be reported under Article 19a of the Corporate Sustainability Reporting Directive (CSRD).

17 See the EBA *consultation paper on guidelines on management of ESG risks*.

how the voting policies of their chosen managers align with their own, and how the mandate they give to the asset manager accounts for their preferences. This transparency would ensure that the engagement strategies of asset managers are consistent with the overarching goals of the institutional investors' transition plans. Some of these elements are already implicitly included in **Article 3h** of the current Directive, mandating institutional investors to disclose certain aspects of their arrangements with asset managers, but the provisions remain too vague.

To make transparency requirements in case of arrangements with asset managers no weaker than for institutional investors investing on their own behalf, Article 3h should additionally require institutional investors to disclose how current external asset management arrangements are aligned with their own policies and the targets of their transition plans. Beyond mere transparency, institutional investors should also ensure that their engagement policies remain compatible with those of asset managers and the relevant arrangements to prevent discrepancies between the institutional investors' policies and the actual voting behaviour for their managed assets.

To ensure inclusion of climate-related considerations, **Articles 3h(2b) and 3h(2c)** should explicitly obligate institutional investors to disclose how climate impact and their transition plan targets are considered in the asset managers' investment decisions and remuneration schemes. As mentioned for other Articles in the Directive, the 'comply or explain' clause for Article 3h should be removed to ensure comprehensive disclosure of all important information.

Finance Watch recommends to:

→ amend the provisions of the SRD to require asset managers and institutional investors to:

- engage on ESG concerns, instead of just monitoring them (Article 3g(1a));
- disclose how their engagement policies align with their transition plans (Article 3g);
- disclose all their votes, the results of the votes, and how these fit into their transition plan targets (Article 3g(1b);

→ amend the provisions of the SRD to require institutional investors to:

- disclose, in case of delegation of their investment management, how their transition plan targets are considered in the asset managers' investment decisions and remuneration schemes (Article 3h)

→ remove 'comply or explain' clauses from the Directive (Article 3g(1) & 3h).

III. Codify a vote on companies' transition plans

Transition plans[18] are important for shareholders as they have a great influence on the long-term operations of a company's business model. Shareholders have a vested interest in ensuring that companies manage transition risks effectively to safeguard the value of shareholder investments. Effective management of transition risks is essential for maintaining the future sustainability of companies, as it addresses both the mitigation of environmental impacts and the adaptation of regulatory and market changes driven by the global shift towards a low-carbon economy. By having a say on these plans, shareholders can ensure that companies are not only setting targets but are also held accountable for achieving them, thereby protecting and potentially enhancing the long-term value of their investments. Nevertheless, the SRD II leaves much room for Member States to exempt companies from having to consult shareholders on this subject.

a. Overcoming the barrier of Board autonomy

To illustrate the possible implications of the proposed provisions in the current Directive, the case of TotalEnergies in France is revealing. In 2022, shareholders tabled a resolution at the TotalEnergies AGM, asking the company to align its activities with the objectives of the Paris Agreement, including setting absolute reduction targets for greenhouse gas emissions. TotalEnergies rejected the resolution on the grounds of it being of strategic importance and thus the exclusive competence of the Board.[19] Further legal action by the initiating shareholders was dismissed in court, citing a ruling in the French *Cour de Cassation* dating back to 1946.[20]

The tabled resolution was permanently removed from the agenda, sending a disturbing message about shareholder rights when it comes to sustainability concerns. According to French case law, climate-related resolutions are to be considered as interfering with the supervisory Board's exclusive competence to set the company's strategy, and can only be accepted if they are tabled as a modification of the company's bylaws.

As the right to table resolutions is not strictly embedded in the SRD and Member States have a great deal of flexibility in transposing the Directive into national law, TotalEnergies was able to dismiss these shareholders' concerns with relative ease. Similar cases have been observed in other Member States.

The EU has now started to regulate transition planning for many companies operating within the Union. To ensure national regulation does not hinder the achievement of the

18 Transition plans are step-by-step action plans detailing how a company will shift its assets and operations to meet specific time-bound sustainability targets, such as net-zero by 2050.

19 TotalEnergies, "*The Board of Directors of TotalEnergies is promoting dialogue with its shareholders by inviting those that proposed a draft resolution to express their views at the Annual Shareholders' Meeting of 25 May 2022*," 27 April 2022.

20 Cass. civ., 4 June 1946, Motte.

EU Sustainable Finance Strategy objectives, the need has arisen to expressly codify a vote on companies' transition plans. To that end, **Article 9** of the SRD should be expanded to include the right to vote on a company's transition plan (for example, by adding a dedicated Article 9d to the Directive). This will strengthen shareholder engagement on transition-related issues, ensuring companies are held accountable for their ESG impacts and transition strategy. Transition planning not only encompasses the company's efforts to reduce emissions, but also accounts for how it plans to manage sustainability-related risks to the company's long-term operations and profitability. As these concerns are central to the shareholders' interests, it is justifiable to give them the right to have their opinion heard and taken into consideration.

Solving the contradiction between voting on transition plans and not interfering with matters of strategic importance

Acknowledging the distinct roles of shareholders and the Board of Directors, the proposed provision - if adequately formulated - is an opportunity to clarify the extent to which shareholders may request more ambitious actions from companies in the implementation of their transition. Providing shareholders the rights to request companies adopt and put into effect a transition plan which aims to ensure, through best efforts, that the company business model and strategy are compatible with both the transition to a sustainable economy and the Paris Agreement would address several uncertainties.

First, it would set the level of ambition that may be requested by shareholders. Second, by leveraging Article 22 of the CSDDD, the provision would also help shareholders assess whether the transition actions are aligned with the upcoming guidelines on transition plans that will be published by the Commission, as per Article 19 of the CSDDD.

b. Overcoming the limitations of voting on the disclosure of transition plans

In fact, shareholders will soon be allowed to vote on companies' transition plans. As the CSRD requires companies to disclose their transition plans as part of their annual reports, and shareholders are indeed required to approve the annual report - which contains mandatory sustainability information - the shareholders will indirectly have a say on the transition plans.

However, the vote concerns the annual report in its entirety. Voting against the transition plans therefore implies voting against the annual report as a whole. It is therefore likely that certain shareholders would abstain from voting against the annual report solely because of an inadequate transition plan. Thus, a distinct vote on transition plans themselves would provide the rights for shareholders to have a separate say in case the transition plans deviate from the objectives of the Paris Agreement, or if companies do not take the necessary actions to meet their disclosed targets.

c. Reconciling transition plans and good governance

To ensure transition planning is consistently integrated in company governance, it needs to be integrated into the Directive's provision regarding the remuneration plan of the company. In its current version, the SRD II provides shareholders with the right to vote on a company's remuneration plan under **Article 9a**. This article should be expanded to explicitly mandate detailed disclosure of the link between a company's transition targets and variable remuneration of directors, including Board members. Such an amendment would incentivise linking executive compensation to the achievement of climate-related goals, thereby reinforcing the importance of meaningful actions over superficial, box-ticking exercises.

By requiring companies to disclose how their transition plan targets influence variable remuneration, shareholders can better assess whether executive incentives are aligned with the company's long-term sustainability objectives. The link between variable remuneration and performance criteria is already embedded in Article 9a(6) as 'criteria relating to corporate social responsibility'. Finance Watch suggests specifying explicitly that non-financial performance criteria disclosed in the remuneration policy should include targets committed to in the company's transition plan.

Linking governance to accountability for the implementation of the transition plan through the remuneration policy provides a safeguard against superficial actions. It also emphasises impact-oriented efforts that contribute to real-world emission reductions and sound (climate) risk management. Specifically, requiring a comprehensive disclosure of how the Board and management's remuneration is linked to attaining the non-financial goals of the transition plan can ensure that long-term sustainability is not subordinated to short-term financial gains. Moreover, expanding this article would enable investors and asset managers who identify as ESG-focused to hold investee companies' management accountable for the company's sustainability performance. This would also allow investors to enact the voting policies they will themselves have included into their transition and engagement plans.[21]

Not just a say, but a binding decision

The SRD II contains limited provisions on whether the shareholders' vote should be binding or not. Yet, Article 9a on the right to vote on the remuneration policy already introduces binding votes. To give shareholders the necessary tools to enable the transition, their vote on companies transition plans should be binding and contain similar provisions.

21 See Finance Watch recommendations on transition planning for institutional investors, specifically insurers, in the recent report *Transition Planning for Insurers: A supervisory tool to improve climate risk resilience*.

Finance Watch recommends to:

→ amend the provisions of the SRD to give shareholders the right to decide on the company's direction in a transitioning economy by:
  - codifying the right to vote on the transition plan (expand Article 9);
  - requiring disclosure of the link between transition targets and the variable remuneration of directors, including Board members (Article 9a(6)).

IV. Strengthen shareholders' voice and protect them from repercussions

The policy proposals made in the previous chapters aim at embedding shareholders' input on the companies' ESG measures—especially on climate-related matters—and related governance arrangements. Yet, a revised SRD should not only strive to strengthen the voice of shareholders, but also protect them from any possible retaliation from issuers based on their shareholder engagement or activism. The example of the French national rulebook limiting the options for shareholders to have a say on sustainability issues was discussed above.

Another example from the US shows how issuer intimidation can jeopardise engagement efforts. In early 2024, energy giant ExxonMobil filed a lawsuit against two of its shareholders—Amsterdam-based Follow This and US-based Arjuna Capital—to block a shareholder motion they tabled calling on the company to further accelerate its greenhouse gas emission reductions. Both shareholders were effectively bullied into dropping their proposals and the oil supermajor went ahead with its lawsuit until the activist shareholders pledged not to put forward similar proposals in the future. This case sets a dangerous precedent for limiting shareholder rights and corporate accountability.[22]

In the EU, there are still many complexities when it comes to tabling a resolution, mainly because the current SRD II leaves Member States with a lot of room for diverging interpretation of rules and implementing regulations in national jurisdictions. Various publications by civil society organisations have made it clear just how confusing the national regulations can be even after the transposition of the SRD II.[23]

The aforementioned **Article 9** protects, in principle, the right of all shareholders to ask questions on items that are already on the agenda of the AGM. However, current provisions limit smaller shareholders, in particular retail shareholders, to discussing only what has been put on the agenda by the company's Board and management when the call to convene the AGM was issued. The right to modify the agenda or table new draft resolutions for the AGM is protected by **Article 6**. Importantly, **Article 6.2** specifies that "Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed 5% of the share capital." This effectively gives Member States the right to restrict shareholders from asking questions if they do not hold a significant investment in the company.

A guide to shareholder rights, published by ShareAction on 19 September 2024, sheds light on how this Article is currently transposed into national law in several EU

22 Jamie Smythe, "*Exxon vs Calpers: Inside the clash over shareholder rights and fiduciary duty*," Financial Times, 28 May 2024; Sydney Ember, "*Exxon Suit Over Activist Investor's Climate Proposal Is Dismissed*," The New York Times, 17 June 2024.

23 For example ClienthEarth's *Know your rights* and ShareAction's *A guide to shareholder rights across seven European countries paint* a clear picture of differing realities in Member States' legislation.

Member States. The guide clearly shows that there are substantial differences in provisions between countries. Poland and Spain, for example, apply the highest allowed stake of 5%. The Netherlands apply a 3% threshold, with the option for companies to lower the requirement in the bylaws.

Finland, in sharp contrast, applies no threshold, effectively allowing a shareholder with one single share to request for items to be put on the agenda or to table a resolution at the AGM. Further research shows that this low threshold has not led to frivolous requests and hasn't negatively impacted the effectiveness of the corporate AGMs.[24]

Modifying **Article 6.2** is essential in clearing the way for shareholders to have their concerns addressed during AGMs, especially as long as **Article 9** confines their rights to ask questions to items already on the agenda. To further safeguard investors' rights, a revised SRD should no longer provide Member States with the opportunity to restrict the rights embedded in **Article 6** to shareholders with a significant stake in the company. Ideally, the restriction should be removed entirely. At minimum, the threshold should not exceed a 0.1% stake in the company.

Even with such a lower threshold in place, shareholders might still be confronted with a rejection of their proposal by the Board, as was the case with TotalEnergies in France, discussed above. In principle, one can argue that there are no legal reasons or justifications for any Board to reject a tabled resolution for the AGM before it takes place and can be discussed.

The right to table a resolution must be accompanied by an opportunity for the shareholders tabling the resolution to briefly present their argumentation to the AGM, to ensure that their intentions are clear, and a subsequent vote can be carried out in a fully informed manner.

Therefore, Finance Watch proposes that Article 6 be amended to protect any tabled resolution from being rejected by the Board. Further, the Article should provide the initiating shareholders an unconditional right to to present their proposal to the assembly, as long as they meet the conditions of adding a resolution to the AGM agenda.

24 ShareAction, *Enabling Shareholder Rights: Practical information to support the exercise of shareholder rights in seven European countries*, September 2024.

Finance Watch recommends to:

- → lower the minimum amount of shares required for shareholders to request adding items to the agenda of a meeting or tabling draft resolutions (Article 6.2);
- → restrict the power of the Board of Directors to reject shareholder resolutions to the AGM (expand Article 6);
- → mandate the right for shareholders to defend their proposal (expand Article 6).

Conclusion

Shareholders, especially institutional investors, have a central role to play in transitioning the economy by influencing corporate decisions and ensuring that companies align with long-term objectives and sustainability goals. However, the current EU rules governing the exercise of shareholder rights, as set out in the Shareholder Rights Directive (SRD), restrict the ability of shareholders to weigh on sustainability-related company matters. A review of the SRD is necessary to address current shortcomings, facilitate effective long-term engagement and accountability, and bring the Directive in line with recent EU legislative developments on sustainability matters.

More fundamentally, regulatory convergence through harmonisation of the shareholding rights provisions across the European Union is of key importance to achieve the aims of the SRD II. The European Commission should consider enhancements at EU level in order to reduce discrepancies, clarify the current framework, enhance transparency for both investee companies and shareholders, and harmonise the power of shareholders across jurisdictions.

Reviewing the SRD to promote the development of a Capital Markets Union should also be the opportunity to strengthen the shareholder rights provisions with regard to sustainability issues. This approach is in line with the Commission's Strategy for Financing the Transition to a Sustainable Economy, which emphasises the need to align financial flows with the Green Deal objectives. By mandating that institutional investors and asset managers explicitly engage on ESG matters and disclose how sustainability concerns are addressed in their engagement policies and voting behaviour, the Directive can support an orderly transition towards a sustainable economy.

Including a right to vote on a company's transition plan will empower shareholders to hold companies accountable for their environmental impacts and transition strategies. By requiring disclosure of the link between remuneration and the achievement of climate-related targets, the Directive can further incentivize meaningful corporate action towards sustainability.

Moreover, the Directive should further strengthen the rights of shareholders to table resolutions and add items to the agenda of AGMs, regardless of their shareholding size. Lowering the threshold for the exercise of these rights will ensure that smaller shareholders, including retail investors, can effectively participate in corporate governance and raise important issues.

The changes to the SRD proposed in this policy brief aim to create a more robust framework for shareholder engagement, promoting long-termism, transparency, and sustainability in corporate governance. By empowering shareholders and ensuring their concerns—particularly regarding ESG matters—are adequately addressed, the revised SRD can become a tool to facilitate the sustainable transition of the economy.

www.finance-watch.org

About Finance Watch

Finance Watch is an independently funded public interest association dedicated to making finance work for the good of society. Its mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and the public. Finance Watch's members include consumer groups, housing associations, trade unions, NGOs, financial experts, academics and other civil society groups that collectively represent a large number of European citizens. Finance Watch's founding principles state that finance is essential for society in bringing capital to productive use in a transparent and sustainable manner, but that the legitimate pursuit of private interests by the financial industry should not be conducted to the detriment of society. For further information, see www.finance-watch.org

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