Frankfurt am Main,
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Shareholder Rights Directive review ("SRD II") – BVI's comments regarding the upcoming trialogue

Asset managers act as fiduciaries in their clients' best interest and therefore have a genuine interest in the enhancement of listed companies' corporate governance and facilitation of the exercise of shareholder rights. While we[1] strongly oppose the equating accusation regarding insufficient engagement of asset managers and their alleged focus on short-termism which has not been supported by differentiated empirical justification yet, we generally support the aim to facilitate active shareholder engagement. In view of the upcoming trialogue, we would like to present our views on important areas:

Disclosure of information relating to the strategy and to remuneration (Art. 3h / Art. 3g)

Relating to the disclosure requirements, asset managers have to report to institutional investors and not to disclose sensitive information to the public according to the Council. The European Parliament (EP), on the other hand, requires asset managers to disclose information relating to investment strategies. Institutional investors may refrain from disclosing information on a comply-or-explain basis according to both Council and EP. According to the EP, Member States may allow asset managers in exceptional cases to abstain from disclosing information but only following approval of the competent authority.

Any requirement for institutional investors and asset managers to disclose information which allows competitors to draw conclusions on the investment strategies (such as contribution of investment strategy and implementation thereof to long-term performance) jeopardises one of the main goals of competition law, i.e. to ensure competition is maintained in the economic interest of society. Competitors then have the opportunity to align their behaviour. The more behaviour is aligned, the more competition decreases. In addition, the investment strategy is the main asset the asset manager provides for his client. Disclosing part of the investment strategy (or information which allows drawing conclusions on the investment strategy) to the public and hence to competitors could lead to massive disadvantages for the asset manager. This also applies to the remuneration structure for asset managers. Should institutional investors be required to disclose details, it is likely that a standard remuneration will spread and the competition between asset managers will decrease. In this regard, we appreciate that EP and Council agree on the comply-or-explain mechanism for institutional investors, thereby enabling them to protect their intellectual property and sensitive data against their or their asset managers' competitors. However, the EP's approach to require asset managers disclosing sensitive information from which they can only abstain (i) if the Member State allows it, (ii) in exceptional cases and (iii) following approval of the competent authority does not grant sufficient protection of the asset managers' rights. **Neither asset managers nor institutional investors should be forced to publish information which allows drawing conclusions on their investment strategy and which constitutes information relating to their client relationship with institutional investors.**

[1] BVI represents the interests of the German investment fund and asset management industry. Its 90 members manage assets in excess of EUR 2.6 trillion in UCITS, AIFs and assets outside investment funds. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

BVI
Bundesverband Investment und Asset Management e.V.

Contact
Phone +49 69 15 40 90 0
www.bvi.de

BVI Berlin
Unter den Linden 42
10117 Berlin

BVI Brussels
Rue du Trône 14–16
1000 Bruxelles

BVI Frankfurt
Bockenheimer Anlage 15
60322 Frankfurt am Main

Executive Board
Thomas Richter CEO
Rudolf Siebel MD

Shareholder Identification and transmission of information (Art. 3 a / Art. 3b)

The EP and the Council propose rules to facilitate information exchange between issuers and shareholders as well as the execution of voting rights. According to the Council text, member states may allow to further process information regarding shareholder identity.

According to the Data Protection Directive, processing of information comprises also dissemination. While we appreciate facilitation of information flow between the issuer and its shareholders, we oppose the Council's proposal to enable passing on of shareholder data (including e.g. personal information). In practice, it will not be preventable that shareholder data will be distributed further on and misused. **Hence, the issuer may have the right to store and adapt the information but should in no case be allowed to further distribute shareholder information.**

Overlap with AIFMD, MiFID II and UCITS Directive regarding obligations for asset managers (Art. 3h / Art. 3f)

The Council explicitly allows including information to be delivered in reports according to AIFMD, UCITS Directive and MiFID II. The EP proposes that sectorial legislation shall prevail over SRD II, provided it contradicts SRD II, and that SRD II shall prevail if it provides for more specific rules than sectorial legislation. As regards the engagement policy including conflicts of interest policy, the Council proposes a general wording and references to conflict of interest rules according to AIFMD, UCITS Directive and MiFID II, whereas the EP adds a number of details without any reference to other legislation.

Market participants increasingly have to deal with overlapping EU regulation. SRD II reporting requirements for asset managers overlap but are not identical with requirements according to AIFMD, MiFID II and UCITS Directive. In practice, this adds unnecessary complexity to the compliance requirements for a company, i.e. employees being responsible for implementation. Any overly detailed description of obligations as e.g. in the EP text on the engagement policy hinders adaption to specific approaches of the asset manager. Despite its intention, the EP's proposal does not add any legal certainty to the overlap: It will be in the interpretation and hence responsibility of the person applying the rules to decide whether the requirements in e.g. AIFMD or SRD II are more detailed, specific or contradictory.

For instance: The SRD II requires to disclose how the portfolio was composed and an explanation of significant changes in the portfolio during the previous period; the report on the activities of the financial year under the AIFM Regulation has to include an overview of investment activities during the year or period including material changes to the previous period. It is neither clear whether there is a difference between significant and material changes nor whether the report under the AIFM Regulation can be used to comply with the SRD II obligations, whether it would have to be amended or even both reports would have to be provided separately. **We hence recommend the Council's wording in order to ensure a clear consistent framework.**

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