

ECSDA RESPONSE

TO THE CONSULTATION ON THE IMPLEMENTING REGULATION ON SHAREHOLDER IDENTIFICATION, THE TRANSMISSION OF INFORMATION AND THE FACILITATION OF THE EXERCISE OF RIGHTS

ECSDA represents 38 national and international Central Securities Depositories (CSDs) across 35 European countries. The association aims at promoting a constructive dialogue between the CSD community, European public authorities and other stakeholders looking to contribute to an efficient and risk-averse infrastructure for European financial markets.

ECSDA welcomes the European Commission [consultation](#) on the draft implementing regulation. CSDs also thank the European Commission for the opportunity to provide views during the meetings of the Corporate governance expert group and the quality of the resulting draft Implementing Regulation (the Regulation).

Main points:

- 1. ECSDA appreciates the draft regulation to be broadly supportive of the market standards, ensuring that their provisions are based on the harmonised and enforceable legal grounds within the EU. We would kindly ask to make an explicit reference to the CSD Regulation (CSDR, (EU) 909/2014).** This, to clarify that this Regulation ensures continuity and does not exempt CSD participants holding shares from the CSDR and its standards.
- 2. We encourage the Commission to collaborate with other authorities globally to ensure further global harmonisation.** As the Shareholder Rights Directive (the Directive) articles 3a, 3b and 3c have extra territorial effect (resulting from Article 3e), we use the opportunity to ask the EU Commission to explain their expectations of the implementation of cross-border processes involving third country intermediaries. The national law of a third country may prohibit the disclosure of beneficial owner, particularly for bearer shares. Hence, this can delay or prevent the transmission of information in line with the Directive and the Regulation. It is also unclear (a) how the regulation applies to the dually-listed securities (within and out-side of the EU), and (b) a holding of a depository receipt (DR) shall be subject to the same processes. The latter are generally deemed an “indirect shareholding” subject to terms and condition established by the DR agent.
- 3. European CSDs are fully in support of the Straight Through Processing (STP) and machine-readability of the transmission of data for the purposes of the processes**

defined in the Regulation. Such tools will significantly reduce operational complexities and operational risks. They may also increase the efficiency of the intermediary network. As the intermediary chain will need to put some efforts (in addition to the numerous ongoing projects) to ensure a fully efficient flow through the chain, automation will require additional time. **CSDs would encourage the Commission to positively respond to the market request for a longer implementation period.**

4. **We appreciate the alignment of flows for transmission of the shareholder identification, meeting notice and exercise of rights with those used in most European markets.**
5. **CSDs would ask the Commission to consider the benefits of harmonising the record date across the EU.**

Views on specific provisions

Definitions

- (1) For the sake of clarity and coherence of the EU legislative acquis, European CSDs suggest aligning the definition of the 'issuer ' with the existent EU legislation using the concept (such as the Prospectus or the Market Abuse Regulations). CSDs also propose to refer to the MiFID definition of a regulated market. *(Please see the proposal of amendments in the annex I to this response).*
- (2) and (9) European CSDs propose to use the term 'CSD' which is defined in the Regulation 909/2014 instead of 'issuer CSD'. The latter CSD role is already specified in the term 'first intermediary'. A separate definition of an 'issuer CSD' is hence redundant. *(Please see the proposal of amendments in the annex I to this response).*
- (3) As the notion of the 'corporate event' is introduced in the implementing regulation, it is not clear to us how it fits and interacts with the concepts used in the Directive (see art 3b, 1), which uses different terms.

Articles

Article 2 (2)

If Intermediaries are required to transmit the information in the language of international finance and the issuer language (i.e. two different languages), then the information should be initially provided in the two languages, to avoid the risk of errors in translation by the intermediaries and multiplication of translation costs.

Article 5

CSDs would appreciate more clarity on the flow of information back up the chain of intermediaries.

Article 8

CSDs note that the co-ownership of shares could occur. Shares that are owned for example by the father and the two sons. The same share has three owners, but only one voting right. How should the information flow look in such a case?

CSDs support the sequence for the transmission of information described in art. 8. Under the CSDR, CSDs also have an obligation to suspend settlement and corporate actions processing in the event of a detected undue creation or deletion of securities. The commission may need to consider if there is an interference with the flow described in the article.

The article mentions market claims. It does not define deadlines. The deadline currently used for the transmission of market claims is generally set for 20 days after the conclusion of the event. Settlement of market claims transactions shall occur independently of the underlying transaction. The settlement of a claim is irrelevant for the “relevant deadlines of the start of an election period”. As we also note the term “buyer claim”, there should be no confusion between “a buyer protection” and “a market claim”.

It is unclear if the term “react” in Article 8 (2) covers the data scrubbing and the clarification of information received by the first intermediary from the issuer. Further clarification and acknowledgment of the role played by the first intermediaries for data cleansing may need to be given.

Article 9 (2)

The article states *“Where the position in the relevant share changes after the first transmission, the first intermediary and any other intermediary in the chain shall additionally transmit the information immediately following the change to the affected shareholders in its books, until the record date.”* This process would unduly and significantly increase unwanted traffic and costs. As the entitled position is only defined as of end of day on the record date, we suggest transmitting before the record date only the changes in the end of day position and not the intraday movements.

Article 9 (4)

Given the lack of clarity and the provision of intermediaries’ services across different global time zones, we kindly ask: (1) changing the notion of ‘same business day’ to read ‘next business day for the receiving intermediary’, (2) clarifying the information flow from the intermediaries to the issuer, and (3) allow the issuer to receive instructions on an aggregated basis (bulk instruction) or on a daily basis, if this is his preference.

Article 9 (6)

For the interest of all stakeholders, we would ask the Commission to clarify the exact calendar for the processes described, for all actors of the holding chain.

Article 10 (1)

We suggest specifying what means “shall **ensure** the security, integrity and authentication” by rather stating “shall implement appropriate technical and organisational measures aiming at

ensuring” a level of security appropriate to the risk. *(Please see the proposal of amendments in the annex I to this response).*

In a separate annex, we also attach our more detailed comments to the Annex to the draft Regulation in Annex II of our response.

European CSDs would be pleased to provide any further assistance. Please do not hesitate to contact the ECSDA Secretary General, Anna Kulik, at info@ecsda.eu.

ANNEX I

PROPOSALS OF DEFINITIONS AND AMENDMENTS TO THE DRAFT REGULATION

Definitions

(1)'issuer' means a company which has its registered office in a Member State which **issues or proposes to issue** and the shares of which are admitted to trading on a regulated market (**as defined in point (21) of Article 4(1) of Directive 2014/65/EU**) situated or operating within a Member State or a third party nominated by such company for the tasks referred to in this Regulation.

(2)'~~issuer~~-CSD' means the central securities depository, ~~which provides the core service referred to in point 1 (initial recording of securities in a book-entry system) or point 2 (providing and maintaining securities accounts at the top tier level) of Section A of the Annex to~~ **as defined in** Regulation (EU) No 909/2014 with respect to the shares traded on a regulated market;

(9)'first Intermediary' means the '~~issuer~~ CSD' or other intermediary nominated by the issuer, who maintains all the share records of the issuer by book-entry with respect to the shares traded on a regulated market, or holds all those shares on behalf of the shareholders of the issuer. The first intermediary can also act in the role of last intermediary;

Article 10 (1) Minimum security requirements

1. When transmitting information pursuant to Articles 3a, 3b and 3c of Directive 2007/36/EC, the issuer and the intermediaries shall **implement appropriate technical and organisational measures aiming at ensuring** ~~ensure~~ the security, integrity and authentication of information and transmissions originated by issuers to intermediaries, within the chain of intermediaries and from intermediaries to the shareholder or the third party nominated by the shareholder.

ANNEX II

COMMENTS TO THE ANNEX TO THE DRAFT IMPLEMENTING REGULATION (ARES(2018)1944240 DATED 11/04/2018)

Table 1 – Request to disclose information regarding shareholder identity

A2 – Type of request

The Format is set to 4 alpha numeric characters, whilst the Description mentions “request to disclose shareholder identity”. European CSDs kindly ask to specify the list of 4-character combinations to be used and provide guidance on their usage to harmonise it (particularly for cross-border).

A4 (and Table 2 A5) – Record date

As an identification process might not necessarily be initiated before a general meeting, record date may need to be an optional field.

A5 – Issuer deadline

Reference is made to “Article 10 of this Regulation” in the Description. Article 10 in the draft Implementing Regulation refers to the minimum security requirements. Hence the reference may need to be corrected or an interpretation may need to be given.

A7 – Date from which the shares have been held

We question if this it at all possible to state in a reality with fungible financial instruments. Fungible financial instruments of the same ISIN are by definition impossible to separate from each other. Dematerialised financial instruments kept in book-entry format are in general fungible. A holding of a given amount of a given shareholder of a given ISIN is impossible to separate in any way from the holding of a given amount of the same ISIN of the same shareholder kept on the same account.

Example:

On 1 Jan 2001, 100 shares (ISIN 123) are credited to an account X. Total holding 100.

On 30 June 2009, 50 additional shares (ISIN 123) are credited to the same account. Total holding 150. And on 15 October 2016, 100 shares (ISIN 123) are debited from the account. Total holding 50. Since all shares of the same ISIN are fungible, which 100 shares are held as of 15 October 2016?

Are 50 shares of the original 100 held as of 2001; or a mix of those and the ones credited in 2009? Or are the 50 shares credited as of 2009 the only to be currently held? This is impossible to state with certainty. The question is, therefore: what date is the valid one as the ‘date from which the shares have been held’?

Our interpretation of the ‘date from which the shares have been held’ gives in this example different equally possible answers. Hence, we fail to see why such an attribute should be included in a table with minimum requirements, even if it is stated in the column Format that it is

an optional field. We suggest at least clarifying that the issuer should not include this in a request concerning holders of fungible financial instruments.

An additional comment to this is that in the example above, the first date for credit of shares is 2001 is more than 10 years ago. Record keeping requirements in CSDR does not cover more than 10 years. Keeping the records longer may also be in contradiction with the General Data Protection Regulation. Can therefore 2001 be reported in all cases? A holding initiated more than 10 years ago, and not in any way changed since then, reported today would state 10 years ago from today (i.e. the maximum timing of keeping the record about the holding). If reported next week the date would be different, ten years from next week. The date reported would in all cases be incorrect if records of the initial credit are not kept. That fact indicates that the use of this attribute does not contribute to additional clarity for the issuer.

Table 2 – Response to a request to disclose information regarding shareholder identity

A2 – Unique identifier of response

The term Responding Intermediary is undefined. Is there any need to define that term?

If the unique identifier of the response is populated by the responding intermediary, the identifier will be unique to that entity but there could be, at least in theory, more than one combination of A1 and A2 with the exact same data in section A of Table 2. If there are many intermediaries that respond to the request this could occur since there are no further rules in how the identifier should be set. Is there any need to put further efforts in limiting the possibility to have two responses where section A of Table 2 is exactly the same? It might be theoretical since B1 would help to separate the responses.

B3 – Total number of shares held by the responding intermediary

Regarding this attribute it is said that the originator of the data should be the Responding Intermediary. We question the relevance of having that entity as the originator of the data and to have the attribute at all as a minimum requirement.

Example:

CSD 1 is the first intermediary. Intermediary ABC is a participant with CSD 1 as a nominee. In that role, Intermediary ABC has one, or more, securities account/s with CSD 1. In this example, Intermediary ABC has one securities account where 2.340 shares are posted as of the record date of the request. The reconciliation of all accounts in CSD 1, including the account of Intermediary ABC, is performed by CSD 1.

Assume the request is sent by the issuer to CSD 1, and that CSD 1 forwards the request to Intermediary ABC. The next business day, Intermediary ABC responds to CSD 1 and states in A3 that they hold 2.500 shares as of the record date. Since the value of A3 is set by the Responding Intermediary that could happen. How should CSD 1 treat such information? That would indicate a reconciliation error with Intermediary ABC.

CSDs would suggest that the data in A3 is:

1. either a result of all C11 reported by the Responding Intermediate,
2. removed from the response in favour of adding up the sums of all C11 reported.

B4 and B5 - Number of shares held by the responding intermediary on own account/on account of someone else

This information is likely easier compiled from the information under C than added separately here as a separate total. What if the quantity stated in A3, A4 or A5 does not reconcile with the data given under C? How should such a situation be handled by the recipient of the response?

C2(a) – Name of the shareholder in case of a legal person and C2(b) – Name of shareholder in case of a natural person”

Based on our experience, the length of these field should be larger than 35. Some markets use 140 characters.

C3 – C8 fields related with the address

CSDs would appreciate a description of the information to be reported in the fields related with the address. With regard to the country (field C6) in particular, it is not clear if the attribute ‘country’ aims to state the address country or possibly the country of incorporation (legal person), the country of citizenship (natural person), its fiscal domicile or else.

C10 – Type of shareholding

First of all, we are not clear on the use of the information. In order to introduce this as a minimum requirement, the classification on all holdings needs to be imposed on all intermediaries across the European Union. Otherwise, it seems challenging to accomplish an STP in the response. Furthermore, a cost-benefit analysis may be necessary for this point.

We would also like to understand the difference between "O" and "B"? Would it be possible to further elaborate when to use which response? Is O only used from the perspective of the Responding Intermediate? And further in what situation is "U" a valid response? We can see situations where “U” could be applicable; however, to avoid have more “U” than necessary, we would appreciate additional examples for such situations and would appreciate to receive clarification on the benefits to the issuer from having this information.

C13 – Name of third party nominated by the shareholder

In the description, it is stated that this attribute should include data on the (moral or physical) person “authorised to take the investment decisions on behalf of the shareholder”. We question the relevance of that type of data in a response to a request to disclose information regarding shareholder identity. This data goes far beyond the scope of identifying the shareholder and does not provide the issuer with clarity regarding the voting, nor other rights stemming from the holding. Further clarifications on the relevance of C13 and C14 would be appreciated.

Table 4 – Confirmation of Entitlement

A2 – Unique identifier of the event

This identifier is limited to 4 alpha numeric characters. The unique identifier of the meeting event, stated in Table 3 A1 is at the same time not limited in length, it's only specified that it should be alpha numeric characters. We ask for an alignment of the unique identifiers of the event, since the event is one and the same in the notice of the event and in the notice of participation in that same event. We expect such an alignment would benefit an STP process.

Table 5 - Notice of Participation

A3 – Unique identifier of the event

Please see comment to Table 4 – A2 above.

B2 – Name of shareholder

In line with our comments to Table 2, C2, 35 characters would be insufficient.

C2 – Voting position

We understand the term 'voting position' as how the investor has voted on the given agenda item. If this is the case, we do not understand why 500 characters are necessary to specify voting position.

Table 6 – Voting Receipt

Reproduction of the votes received

It might be unnecessary complex and not generate significant value for the investor to replicate specific voting in the response. We believe a receipt without voting replication should be sufficient confirmation. This might also be the case for the last item in Table 7.

Table 8 – Notification of corporate events other than general meetings

A2 – Type of corporate event

We question the format only stating it should be 42 alpha numeric characters, without stating the type of event shall follow the codes regarding types of events/corporate actions set by SMPG. CSDs would appreciate additional explanation about the reasons to deviate from those harmonised codes in e.g. ISO15022?

It could be helpful to include a field where the issuer company could include a mark to inform if the ownership is required or not in this communication.

Ends