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**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of 3.9.2018**

**laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights**

(Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) .../...

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**laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup> and in particular Articles 3a(8), 3b(6) and 3c(3) thereof,

Whereas:

- (1) Directive 2007/36/EC of the European Parliament and of the Council gives the right to listed companies to identify their shareholders and requires intermediaries to cooperate in that identification process. That Directive also aims to improve the communication by listed companies to their shareholders, in particular the transmission of information along the chain of intermediaries and requires intermediaries to facilitate the exercise of shareholders rights. Those rights include the right to participate and vote in general meetings, and financial rights such as the right to receive the distributions of profits or participate in other corporate events initiated by the issuer or third party.
- (2) This Regulation aims to prevent the diverging implementation of the provisions of Directive 2007/36/EC, which could result in the adoption of incompatible national standards, thereby increasing the risks and costs of cross-border operations and thus jeopardising their effectiveness and efficiency, and resulting in additional burdens for intermediaries. The use of common formats of data and message structures in transmissions should enable efficient and reliable processing and interoperability between intermediaries, the issuer and its shareholders, thus ensuring the efficient functioning of Union capital markets for shares.
- (3) Consistent with the scope of the empowerments and the principles of proportionality this Regulation only includes minimum requirements. Intermediaries and other market participants are encouraged to further self-regulate these formats according to the needs of different markets. They could also endeavour to further standardise the messages referred to in this Regulation and any other message types necessary to facilitate the exercise of shareholders rights and to adopt new technologies that could enhance transparency and trust.

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<sup>1</sup> OJ L 184 14.7.2007, p. 17.

- (4) In order to facilitate the exercise of shareholders rights and make it more efficient, particularly across borders, the use of modern technologies in communication between issuers and their shareholders and by intermediaries, including other service providers which are deployed for these processes, should be encouraged. Any communication between intermediaries should, to the extent possible be transmitted using machine-readable and standardised formats which are interoperable between operators and which allow straight-through processing. However, intermediaries should make accessible to shareholders, who are not intermediaries, information and the means to react using widely available modalities, which enable straight-through processing by intermediaries.
- (5) The minimum requirements as regards the request to disclose shareholder information and the response to be transmitted should be established to ensure a uniform, automated and smooth application of the issuer's right to know its shareholders.
- (6) Without prejudice to the convocation of the general meeting, in order to ensure straight-through processing it is necessary to lay down the minimum requirements as regards the types and format of information in the standardised Meeting Notice to be transmitted, where necessary, along the chain of intermediaries to the shareholders. The aim is also to facilitate the handling of electronic voting instructions from shareholders to the issuer.
- (7) This Regulation covers the different holding models for shares that exist across the Member States without favouring any particular one.
- (8) The national law of the registered office of the issuer will determine which obligations concretely intermediaries need to comply with in order to facilitate the exercise of rights by the shareholders. These will include, where necessary, the obligation to confirm the entitlement of the shareholder to participate in a general meeting, and the obligation to transmit the notice of participation to the issuer. For that purpose, it is necessary to lay down minimum types of information to be included in such notice of participation.
- (9) There is still a need to standardise the confirmation of entitlement to participate in a general meeting, as accurate information regarding the entitled positions may not be known to the issuer, or efficiently communicated to it, in particular because of cross-border communication. The confirmations of entitlement are communicated in divergent ways such as electronically through the chain of intermediaries, or directly by the last intermediary to the issuer, or by the last intermediary in paper or electronic format to the shareholder or client, depending on the securities holding model in the relevant market. This Regulation lays down minimum types of information to be included in confirmations or receipt of votes and the recording and counting of votes.
- (10) A swift processing of transmissions within the chain of intermediaries, particularly when it consists of custodians or other operators in multiple layers and, when omnibus client accounts are used, is crucial in order to ensure that information reaches the shareholders cross-border, and that they can react within a reasonable time-frame and within the deadlines set by for corporate events by issuers and the intermediaries. To protect and balance out the reasonable interests of shareholders with those of the issuers and intermediaries, it is important to define the deadlines to be complied with in the transmission of information on corporate events and shareholder actions.
- (11) As voluntary market standards for corporate actions processing comprising corporate events of a financial nature, such as distributions and corporate reorganisations

affecting the underlying share, are for the most part applied, this Regulation only lays down the key elements and principles to be complied with in those processes.

- (12) It is essential that trustworthy data is produced and that confidential data is transmitted securely. Intermediaries, issuers and issuers' service providers should have the appropriate processes in place to ensure in particular the integrity and security of those processes, which comprise personal data for the purposes defined in Directive 2007/36/EC.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee.

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'issuer' means a company which has its registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State or a third party nominated by such a company for the tasks set out in this Regulation;
- (2) 'issuer CSD' means the central securities depository which provides the core service as defined in points 1 or 2 of Section A of the Annex to Regulation (EU) No 909/2014 of the European Parliament and of the Council<sup>2</sup> with respect to the shares traded on a regulated market;
- (3) 'corporate event' means an action initiated by the issuer or a third party which involves the exercise of the rights flowing from the shares and which may or may not affect the underlying share, such as the distribution of profits or a general meeting;
- (4) 'intermediary' means a person as defined in point (d) of Article 2 of Directive 2007/36/EC and third country intermediary within the meaning of Article 3e of Directive 2007/36/EC;
- (5) 'shareholder action' means any response, instruction or other reaction by the shareholder or third party nominated by the shareholder, as the case may be under applicable law, for the purposes of exercising shareholders rights flowing from the shares, in a corporate event;
- (6) 'last intermediary' means any intermediary who provides the securities accounts in the chain of intermediaries for the shareholder;
- (7) 'record date' means the date set by the issuer, on which the rights flowing from the shares, including the right to participate and vote in a general meeting, as well as the shareholder identity, shall be determined, based on the settled positions struck in the books of the issuer CSD or other first intermediary by book-entry at the close of its business;
- (8) 'entitled position' means the position of shareholding as of the 'record date', to which the rights flowing from the shares, including the right to participate and vote in a general meeting, are attached;

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<sup>2</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257 28.8.2014, p. 1).

- (9) 'first intermediary' means the 'issuer CSD' or other intermediary nominated by the issuer, who maintains the share records of the issuer by book-entry at top tier level with respect to the shares traded on a regulated market, or holds those shares at top tier level on behalf of the shareholders of the issuer. The first intermediary can also act in the role of last intermediary;
- (10) 'payment date' means the date on which the payment regarding the proceeds of a corporate event, if applicable, is due to the shareholder;
- (11) 'election period' means the period during which the shareholder can choose between the available options in a corporate event;
- (12) 'last participation date' means the last date on which to buy or transfer the shares with the right attached to participate in the corporate event excluding the right to participate in a general meeting;
- (13) 'buyer protection deadline' means the last day and time by which a buyer who has yet to receive the underlying share of a corporate event, which includes options for the shareholder, must instruct the seller regarding the choice between the options;
- (14) 'issuer deadline' means the last day and time, as determined by the issuer, to notify the issuer, third party nominated by the issuer or issuer CSD, of the shareholder actions regarding the corporate event and in the context of a corporate event initiated by a third party, it shall apply to any deadline to notify the third party or third party nominated by such third party of the shareholder actions regarding the corporate event it initiated;
- (15) 'ex date' means the date as from which the shares are traded without the rights flowing from the shares including the right to participate and vote in a general meeting;
- (16) 'ISIN' means the international securities identification number assigned to securities defined by ISO 6166 or compatible methodology;
- (17) 'LEI' means the legal entity identifier ISO 17442 referred to in Commission Implementing Regulation (EU) No 1247/2012<sup>3</sup>

## *Article 2*

### *Standardised formats, interoperability and language*

1. The information referred to in Articles 3 to 8 of this Regulation shall be transmitted by the intermediaries in accordance with the standardised formats set out in the Annex, and shall include the minimum types of information and be in compliance with the requirements set out in the Annex.
2. The information to be provided by the issuers to the intermediaries and to be transmitted along the chain of intermediaries to the shareholders shall be in a format which allows for processing in compliance with paragraph 3.

The information shall be provided by the issuer in the language in which it publishes its financial information pursuant to Directive 2004/109/EC of the European Parliament and of the Council<sup>4</sup> and, unless not justified taking into account the

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<sup>3</sup> Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ L 352 21.12.2012, p. 20).

<sup>4</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are

issuer's shareholder base, also in a language customary in the sphere of international finance.

3. The transmissions between intermediaries shall be made in electronic and machine-readable formats, which allows for interoperability and straight-through processing and which deploy internationally applied industry standards such as ISO or methodology compatible with ISO.
4. The intermediaries shall allow access to the shareholders, who are not intermediaries, to all information, as well as any modalities for shareholder actions through generally available tools and facilities, unless otherwise agreed by the shareholder. The intermediaries shall ensure that such tools and facilities allow for the processing of shareholder actions by the intermediary in accordance with paragraph 3.

### *Article 3*

#### *Request to disclose information regarding shareholder identity and response*

1. The minimum requirements as regards the format of a request to disclose information regarding shareholder identity in accordance with Article 3a(1) of Directive 2007/36/EC shall be as set out in Table 1 of the Annex.
2. The minimum requirements as regards the format of the response by intermediaries to a request under paragraph 1 of this article shall be as set out in Table 2 of the Annex.
3. The minimum requirements referred to in paragraphs 1 and 2 shall also be applicable, to the extent necessary, to any updates and cancellations of such requests or responses.

### *Article 4*

#### *Transmission of meeting notice*

1. The minimum requirements as regards the types and format of information to be transmitted in accordance with Article 3b(1),(2), (3) and (5) of Directive 2007/36/EC with respect to the convening of general meetings shall be as set out in Table 3 of the Annex.
2. The requirements referred to in the first paragraph shall also be applicable, to the extent necessary, to any updates and cancellations of such meeting notices.

### *Article 5*

#### *Confirmation of entitlement to exercise shareholders rights in a general meeting*

1. For the purposes of facilitating the exercise of rights by the shareholder in a general meeting, including the right to participate and vote, as referred to in Article 3c(1) of Directive 2007/36/EC, the last intermediary shall confirm, upon request, to the shareholder or third party nominated by the shareholder, the entitled position appearing in its records. Where there is more than one intermediary in the chain of intermediaries, the last intermediary shall ensure that the entitled positions in its records are reconciled with those of the first intermediary.

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admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38)

Such confirmation by the last intermediary to the shareholder shall not be required, if the entitled position is known by or will be transmitted to the issuer or the first intermediary, as applicable.

2. The minimum types of information and data elements that the confirmation of entitlement shall comprise, as relevant for the type of the transmission shall be as set out in Table 4 of the Annex.
3. The minimum types of information and data elements referred to in the second subparagraph shall also be applicable, to the extent necessary, to any updates and cancellations of confirmations of entitlements.

#### *Article 6*

##### *Notice of participation by shareholder in a general meeting*

1. For the purposes of facilitating the exercise of rights by the shareholder in a general meeting, including the right to participate and vote, as referred to in Article 3c(1) of Directive 2007/36/EC, intermediaries shall, if required by the issuer and upon request by the shareholder, transmit the notice of participation to the issuer, either to enable the shareholder to exercise the rights themselves or to enable the shareholder to nominate a third party to exercise those rights upon explicit authorisation and instruction by the shareholder for the shareholder's benefit.
2. Where the notice of participation includes a reference to the votes, the last intermediary shall ensure that the information regarding the number of shares voted is consistent with the entitled position. In the event that the notice is transmitted between the intermediaries ahead of the record date, the last intermediary shall update the notice, if necessary, to make the information aligned.
3. The minimum types of information and data elements, which the notice of participation by shareholder in a general meeting shall comprise, shall be as set out in Table 5 of the Annex.

The minimum types of information and data elements referred to in the first subparagraph, shall also be applicable, to the extent necessary, to messages regarding any updates and cancellations of notices of participations.

#### *Article 7*

##### *Format of confirmation of the receipt and recording and counting of votes*

1. The minimum types of information and data elements that a confirmation of the receipt of votes cast electronically as provided for in the first sub-paragraph of Article 3c(2) of Directive 2007/36/EC comprises shall be as set out in Table 6 of the Annex.
2. The minimum types of information and data elements that a confirmation of recording and counting of votes by the issuer to the shareholder or third party nominated by the shareholder as provided for in the second sub-paragraph of Article 3c(2) of Directive 2007/36/EC comprises shall be as set out in Table 7 of the Annex.

#### *Article 8*

##### *Transmission of information specific to corporate events other than general meetings*

1. The information to be provided by the issuer to the first or other intermediaries, as well as the notifications to be transmitted within the chain of intermediaries, shall

comprise all key information regarding the corporate event other than a general meeting, which is necessary for the intermediary to complete its obligations under Directive 2007/36/EC toward the shareholder or for the shareholder to exercise shareholders rights.

2. The following minimum requirements regarding the sequence of transmissions, dates and deadlines in a corporate event shall apply:
  - (a) the issuer shall notify the first intermediary and to the extent necessary, other intermediaries the information of the corporate event sufficiently early as to allow the market participants to react to and transmit the information, and to allow pending trades or market claims to be processed appropriately before any relevant deadlines or the start of an election period, as applicable;
  - (b) the payment date shall be set as close as possible to the record date, issuer deadline or the deadline set by the third party initiating a corporate event, as applicable, so as to allow for the processing of payments to the shareholders as swiftly as possible;
  - (c) in a corporate event which includes options for the shareholder, the election period should be sufficiently lengthy as to allow the shareholders and intermediaries reasonable time to react;
  - (d) in a corporate event which includes options for the shareholder, the last participation date and the buyer protection deadline should precede, in this order, the issuer deadline so as to allow for the buyer claims to be processed appropriately before the close of the election period;
  - (e) in a corporate event which is conditional, the issuer shall notify the first intermediary the information regarding the outcome of the corporate event as soon as possible following the issuer deadline and before any payment is made in the corporate event.
3. After the payment date of the corporate event, the first intermediary or, where there is more than one intermediary in the chain, all intermediaries, shall transmit in turn the information about the actions taken or transactions completed by the intermediary for the account of the shareholder. The information to be transmitted by the intermediary shall include at least the outcomes based on the shareholder action in a corporate event with options, the entitled or settled positions, any proceeds received, as well as the outcomes regarding any market claims, to the extent relevant to the shareholder.
4. The minimum types of information and data elements to be provided and transmitted, to the extent relevant for the corporate action, pursuant to Article 3b(1), (2), (3) and (5) of Directive 2007/36/EC with respect to corporate events other than general meetings shall be as set out in Table 8 of the Annex.

The requirements set out in the first subparagraph shall also be applicable, to the extent necessary, to any cancellations or updates of such notifications.

## Article 9

### *Deadlines to be complied with by issuers and intermediaries in corporate events and in shareholder identification processes*

1. The issuer who initiates the corporate event shall provide intermediaries the information about the corporate event in a timely manner, no later than on the same business day on which it announces the corporate event under applicable law.
2. When the intermediary processes and transmits information on corporate events, the intermediary shall ensure, where necessary, that the shareholders have sufficient time to react to the information received in order to comply with the issuer deadline or record date.

The first intermediary and any other intermediary receiving the information regarding a corporate event shall transmit such information to the next intermediary in the chain without delay and no later than by the close of the same business day as it received the information. Where the intermediary receives the information after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day.

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 to the new shareholders in its books, according to end of day positions on each business day, until the record date.

3. The last intermediary shall transmit to the shareholder the information about the corporate event without delay and no later than by the close of the same business day as it received the information. Where the intermediary receives the information after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day. In addition, it shall confirm the shareholder's entitlement to participate in the corporate event without undue delay and on such time as to comply with the issuer deadline or record date, as applicable.
4. Each intermediary shall transmit to the issuer any information regarding shareholder action without delay after it received the information, following a process allowing for compliance with the issuer deadline or record date.

Any additional requirements pertaining to shareholder action, which the issuer requires the shareholder to provide under applicable law, and which cannot be processed as machine-readable or straight-through processing as provided for in Article 2(3), shall be transmitted by the intermediary without delay and in time as to comply with the issuer deadline or record date.

The last intermediary shall not set a deadline requiring any shareholder action earlier than three business days prior to the issuer deadline or record date. The last intermediary may caution the shareholder as regards the risks attached to changes in the share position close to the record date.

5. The confirmation of the receipt of votes cast electronically as provided for in Article 7(1) shall be provided to the person that cast the vote immediately after the cast of the votes.

The confirmation of recording and counting of votes as provided for in Article 7(2) shall be provided by the issuer in a timely manner and no later than 15 days after the request or general meeting, whichever occurs later, unless the information is already available.

6. The request to disclose shareholder identity made by an issuer or third party nominated by the issuer shall be transmitted by intermediaries, in accordance with the scope of the request, to the next intermediary in the chain without delay and no later than by the close of the same business day as the receipt of the request. Where the intermediary receives the request after 16.00 during its business day, it shall transmit the information without delay and no later than by 10.00 of the next business day.

The response to the request to disclose shareholder identity shall be provided and transmitted by each intermediary to the addressee defined in the request without delay and no later than during the business day immediately following the record date or the date of receipt of the request by the responding intermediary, whichever occurs later.

The deadline referred to in the second subparagraph shall not apply to responses to requests or those parts of requests, as applicable, which cannot be processed as machine-readable and straight-through processing, as provided for in Article 2(3). It shall also not apply to responses to requests that are received by the intermediary more than seven business days after the record date. In such cases, the response shall be provided and transmitted by the intermediary without delay and in any event by the issuer deadline.

7. The deadlines referred to in paragraphs 1 to 6 shall apply, to the extent necessary, to any cancellations or updates of the relevant information.
8. The intermediary shall time stamp all transmissions referred to in this Article.

#### *Article 10*

##### *Minimum security requirements*

1. When transmitting information to intermediaries, shareholders or third parties nominated by shareholders pursuant to Articles 3a, 3b and 3c of Directive 2007/36/EC, the issuer and the intermediary shall implement appropriate technical and organisational measures aiming at ensuring the security, integrity and authentication of the information originated by the issuer or third party initiating a corporate event. Intermediaries shall implement such measures also with respect to the transmission of information to the issuer or third party nominated by the issuer.
2. The intermediary who receives from the issuer or third party nominated by the issuer a request to disclose shareholder identity, or any other communication referred to in this Regulation, which is to be transmitted along the chain of intermediaries, or to shareholders, shall verify that the request or information transmitted originates from the issuer.

#### *Article 11*

##### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [24 months after the adoption of the Regulation]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3.9.2018

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*