

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

[^{F1}CHAPTER Ia

IDENTIFICATION OF SHAREHOLDERS, TRANSMISSION OF INFORMATION AND FACILITATION OF EXERCISE OF SHAREHOLDER RIGHTS

Article 3a

Identification of shareholders

1 Member States shall ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights. Such a percentage shall not exceed 0,5 %.

2 Member States shall ensure that, on the request of the company or of a third party nominated by the company, the intermediaries communicate without delay to the company the information regarding shareholder identity.

3 Where there is more than one intermediary in a chain of intermediaries, Member States shall ensure that the request of the company, or of a third party nominated by the company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the company or to a third party nominated by the company without delay by the intermediary who holds the requested information. Member States shall ensure that the company is able to obtain information regarding shareholder identity from any intermediary in the chain that holds the information.

Member States may provide for the company to be allowed to request the central securities depository or another intermediary or service provider to collect the information regarding shareholder identity, including from the intermediaries in the chain of intermediaries and to transmit the information to the company.

Member States may additionally provide that, at the request of the company, or of a third party nominated by the company, the intermediary is to communicate to the company without delay the details of the next intermediary in the chain of intermediaries.

4 The personal data of shareholders shall be processed pursuant to this Article in order to enable the company to identify its existing shareholders in order to communicate with them directly with the view to facilitating the exercise of shareholder rights and shareholder engagement with the company.

Without prejudice to any longer storage period laid down by any sector-specific Union legislative act, Member States shall ensure that companies and intermediaries do not store the personal data of shareholders transmitted to them in accordance with this Article for the purpose specified in this Article for longer than 12 months after they have become aware that the person concerned has ceased to be a shareholder.

Member States may provide by law for processing of the personal data of shareholders for other purposes.

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5 Member States shall ensure that legal persons have the right of rectification of incomplete or inaccurate information regarding their shareholder identity.

6 Member States shall ensure that an intermediary that discloses information regarding shareholder identity in accordance with the rules laid down in this Article is not considered to be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

7 By 10 June 2019, Member States shall provide the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽¹⁾ with information on whether they have limited shareholder identification to shareholders holding more than a certain percentage of the shares or voting rights in accordance with paragraph 1 and, if so, the applicable percentage. ESMA shall publish that information on its website.

8 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit the information laid down in paragraph 2 as regards the format of information to be transmitted, the format of the request, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3b

Transmission of information

1 Member States shall ensure that the intermediaries are required to transmit the following information, without delay, from the company to the shareholder or to a third party nominated by the shareholder:

- a the information which the company is required to provide to the shareholder, to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or
- b where the information referred to in point (a) is available to shareholders on the website of the company, a notice indicating where on the website that information can be found.

2 Member States shall require companies to provide intermediaries in a standardised and timely manner with the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph.

3 However, Member States shall not require that the information referred to in point (a) of paragraph 1 or the notice referred to in point (b) of that paragraph be transmitted or provided in accordance with paragraphs 1 and 2 where companies send that information or that notice directly to all their shareholders or to a third party nominated by the shareholder.

4 Member States shall oblige intermediaries to transmit, without delay, to the company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

5 Where there is more than one intermediary in a chain of intermediaries, information referred to in paragraphs 1 and 4 shall be transmitted between intermediaries without delay, unless the information can be directly transmitted by the intermediary to the company or to the shareholder or to a third party nominated by the shareholder.

6 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to transmit information laid down in paragraphs 1 to 5 of this Article

as regards the types and format of information to be transmitted, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3c

Facilitation of the exercise of shareholder rights

1 Member States shall ensure that the intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

- a the intermediary makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;
- b the intermediary exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit.

2 Member States shall ensure that when votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

Member States shall ensure that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the company, unless that information is already available to them. Member States may establish a deadline for requesting such confirmation. Such a deadline shall not be longer than three months from the date of the vote.

Where the intermediary receives confirmation as referred to in the first or second subparagraph, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder. Where there is more than one intermediary in the chain of intermediaries the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

3 The Commission shall be empowered to adopt implementing acts to specify the minimum requirements to facilitate the exercise of shareholder rights laid down in paragraphs 1 and 2 of this Article as regards the types of the facilitation, the format of the electronic confirmation of receipt of the votes, the format for the transmission of the confirmation that the votes have been validly recorded and counted through the chain of intermediaries, including their security and interoperability, and the deadlines to be complied with. Those implementing acts shall be adopted by 10 September 2018 in accordance with the examination procedure referred to in Article 14a(2).

Article 3d

Non-discrimination, proportionality and transparency of costs

1 Member States shall require intermediaries to disclose publicly any applicable charges for services provided for under this Chapter separately for each service.

2 Member States shall ensure that any charges levied by an intermediary on shareholders, companies and other intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the

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charges levied between domestic and cross-border exercise of rights shall be permitted only where duly justified and where they reflect the variation in actual costs incurred for delivering the services.

3 Member States may prohibit intermediaries from charging fees for the services provided for under this Chapter.

Article 3e

Third-country intermediaries

This Chapter also applies to intermediaries which have neither their registered office nor their head office in the Union when they provide services referred to in Article 1(5).

Article 3f

Information on implementation

1 Competent authorities shall inform the Commission of substantial practical difficulties in enforcement of the provisions of this Chapter or non-compliance with the provisions of this Chapter by Union or third-country intermediaries.

2 The Commission shall, in close cooperation with ESMA and the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽²⁾, submit a report to the European Parliament and to the Council on the implementation of this Chapter, including its effectiveness, difficulties in practical application and enforcement, while taking into account relevant market developments at the Union and international level. The report shall also address the appropriateness of the scope of application of this Chapter in relation to third-country intermediaries. The Commission shall publish the report by 10 June 2023.]

Textual Amendments

- F1** Inserted by [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](#) (Text with EEA relevance).

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- (1) [^{F1}Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).]
- (2) [^{F1}Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).]

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