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Shareholder Rights Directive II/ARUG II

– New obligations for intermediaries –

Implementation guide for the German market

– Module 1: Shareholder identification –

Version: 4.0[1]
Version dated: 27 September 2022

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[1] Version 4.0 contains revised charts in section III.1.a. and changes to the corresponding text in section II.1.a.

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III. Shareholder identification (Module 1)

1. Request to disclose information regarding shareholder identity

ARUG II gives listed companies the opportunity to obtain information about the identity of their shareholders (section 67d of the AktG[2]). In principle, companies can assert this new right to identify shareholders against any intermediary in the custody chain who holds shares of the company in safekeeping, and is available to stock corporations with both bearer and registered shares.

The "Market Standards for Shareholder Identification"[3] recommend transmitting the issuer's identification request to the chain of intermediaries via the central securities depository (CSD), since the CSD verifies the legitimacy of the applicant centrally and hence relieves the intermediaries in the chain from this task (IV.1.1. in connection with III(6)). This does not prevent issuers from using a service provider who prepares their request in line with the statutory requirements and then transmits it to the chain of intermediaries. Any notification by the issuer or a nominated third party to the postal address, an email address or any BIC code at an intermediary rules out automated processing.

Under Article 10(2) of Implementing Regulation (EU) 2018/1212 (in the following: the Implementing Regulation), the CSD or the first intermediary who receives the request must verify whether a transmitted shareholder identification request originates from the issuer. The other intermediaries do not have to perform this sort of verification if the forwarded request comes from the CSD or another intermediary in the chain. The issuer must take appropriate measures to enable the intermediary to verify the integrity of a request. For details, see Recommendations 0.2 and 0.3. in the General Part of the Guide.[4]

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[2] AktG = Aktiengesetz = German Stock Corporation Act

[3] Market Standards for Shareholder Identification can be accessed at https://www.ebf.eu/home/european-industry-standards/srd-ii-market-standards/, see also module 0.

[4] Recommendation 0.3 from the General Part: "The issuer must take appropriate measures to ensure that the first intermediary can readily meet its obligation under Article 10(2) of the Implementing Regulation to verify the entitlement of the applicant or person transmitting the information (issuer, nominated third party). The corresponding requirements of the first intermediary must always be taken into account." Available at: https://bankenverband.de/media/uploads/2022/10/25/e-2021-11-30-implementing-guide-module-0-introduction-general-part-50_enfinal.

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<div style="border:1px solid; padding:10px;">

Recommendations for the German market (1.1.):

Nominating a service provider (shareholder ID agent, in the following: SH ID agent) by the issuer is explicitly recommended in order to ensure interoperability and straight-through processing of the disclosure request by the systems used in the financial sector (e.g. ISO 20022 format).

In addition, the SH-ID agent should be legally responsible for verifying that the applicant is authorised to request disclosure, with the result that this verification does not have to be made by every intermediary in the custody chain who is approached by the issuer or a nominated third party. (See also Recommendation 0.3 in the General Part concerning the issuers' obligations to enable this verification to be made quickly and efficiently).

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a. Scope of the request for disclosure

Among other things, the company's decision whether to exercise its statutory option to approach an intermediary in the custody chain or to transmit its identification request to the chain via the CSD is likely to depend on whether the request is meant to be transmitted along the entire custody chain (full request), only to certain intermediaries (partial request) or to a specific intermediary (individual request).

The different scope of these three request types:

- full request
- partial request
- individual request

is presented in the following with diagrams and a short explanation in each case:

aa. Identification request along the entire custody chain (full request)
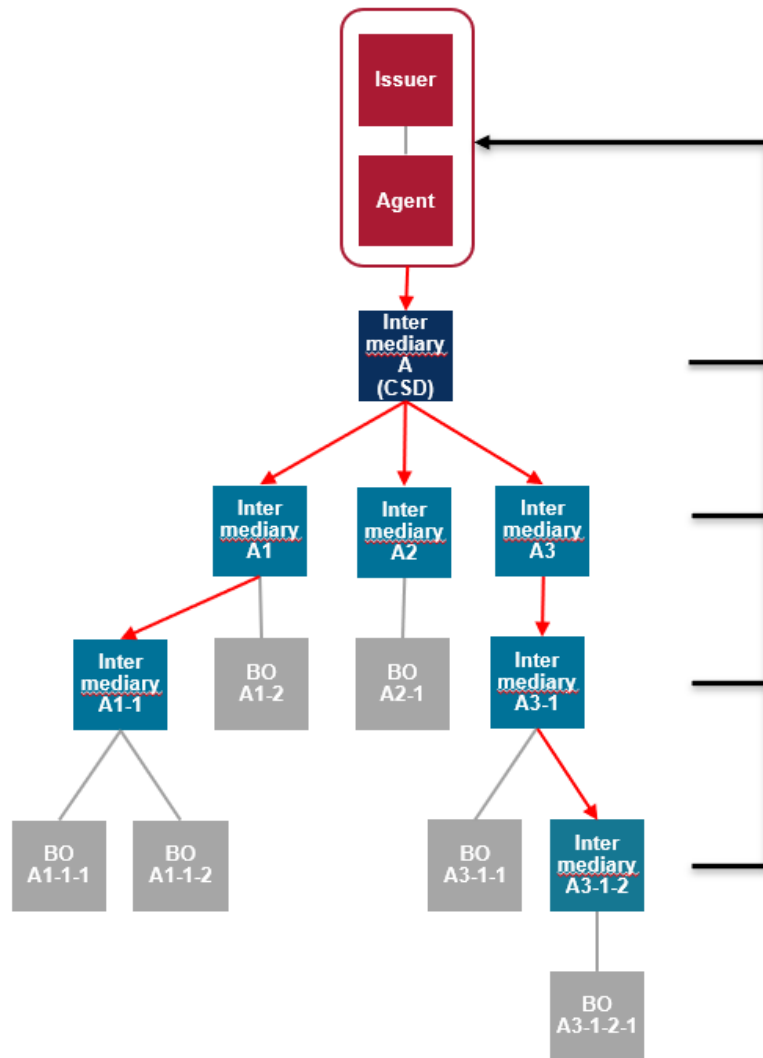
In case of a **Full Request,** the request with Scope = YES

- is sent to the CSD,
- is forwarded to all CSD participants who hold shares of the company in safekeeping,
- is forwarded by the intermediaries to the next intermediary in each case,
- is received by all intermediaries who hold shares of the company in safekeeping,
- is responded to directly by the initiator of the request (issuer/nominated third party).

Issuers can request the shareholder identification themselves or instruct an agent (nominated third party) to do so. This could be a bank or any provider that offers this kind of service. A service contract between the issuer and their agent is required. Issuers are not allowed to direct their request to an intermediary that does not offer "agent" services.

**SH-ID Request – SCOPE = YES**

The intermediaries receiving the request forward the SH-ID request to the next intermediary in the chain (red arrow).
Each intermediary in the chain sends its response directly to the agent with the direct downstream customer base (intermediary and/or BO).

- Intermediary A discloses information on Intermediary A1, A2 and A3
- Intermediary A1 discloses information on Intermediary A1-1 and BO A1-2
- Intermediary A1-1 discloses information on BO A1-1-1 and A1-1-2
- Intermediary A2 discloses information on BO A2-1
- Intermediary A3 discloses information on Intermediary A3-1
- Intermediary A3-1 discloses information on Intermediary A3-1-2 and BO A3-1-1
- Intermediary A3-1-2 discloses information on BO A3-1-2-1

Responses back through the custody chain are not possible.

bb. Identification request to only a part of the custody chain (partial request)
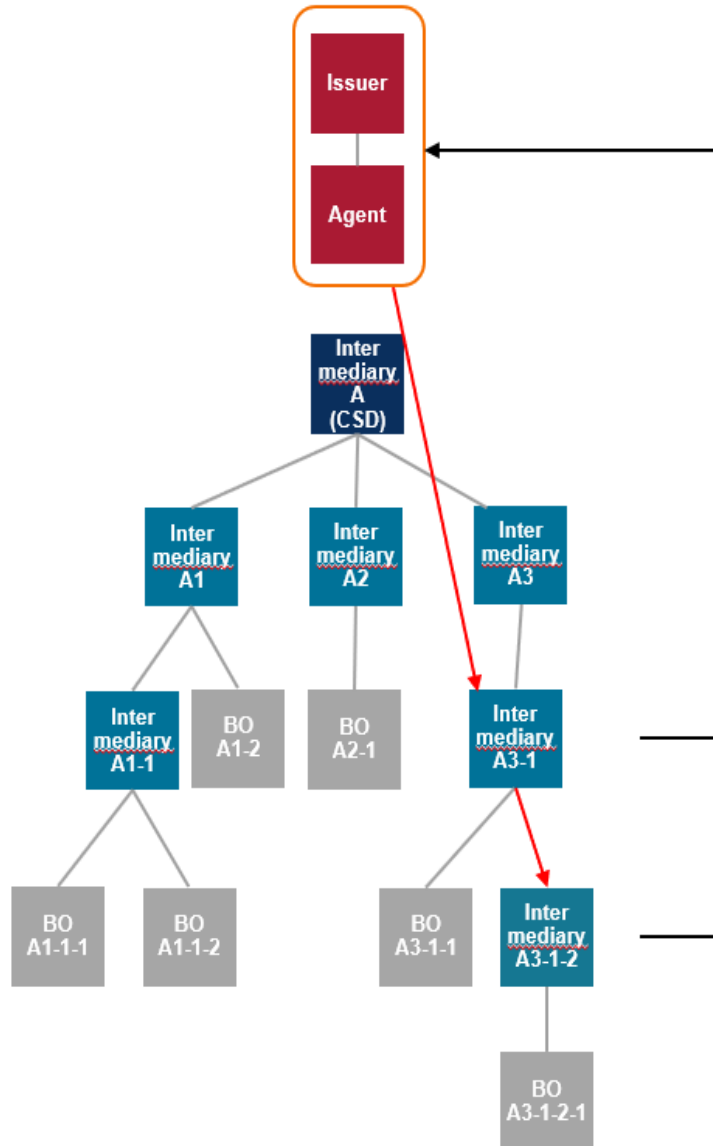
In the case of a **partial request**, the request with scope = YES

- is sent to an intermediary in the chain,
- is forwarded by the addressed intermediary to the next intermediary,
- is responded to directly by the initiator of the request (issuer/nominated third party) (see also Recommendation 1.2.).

Issuers can request the shareholder identification themselves or instruct an agent (nominated third party) to do so.

This could be a bank or any provider that offers this kind of service.

A service contract between the issuer and their agent is required.

Issuers are not allowed to direct their request to an intermediary that does not offer "agent" services.
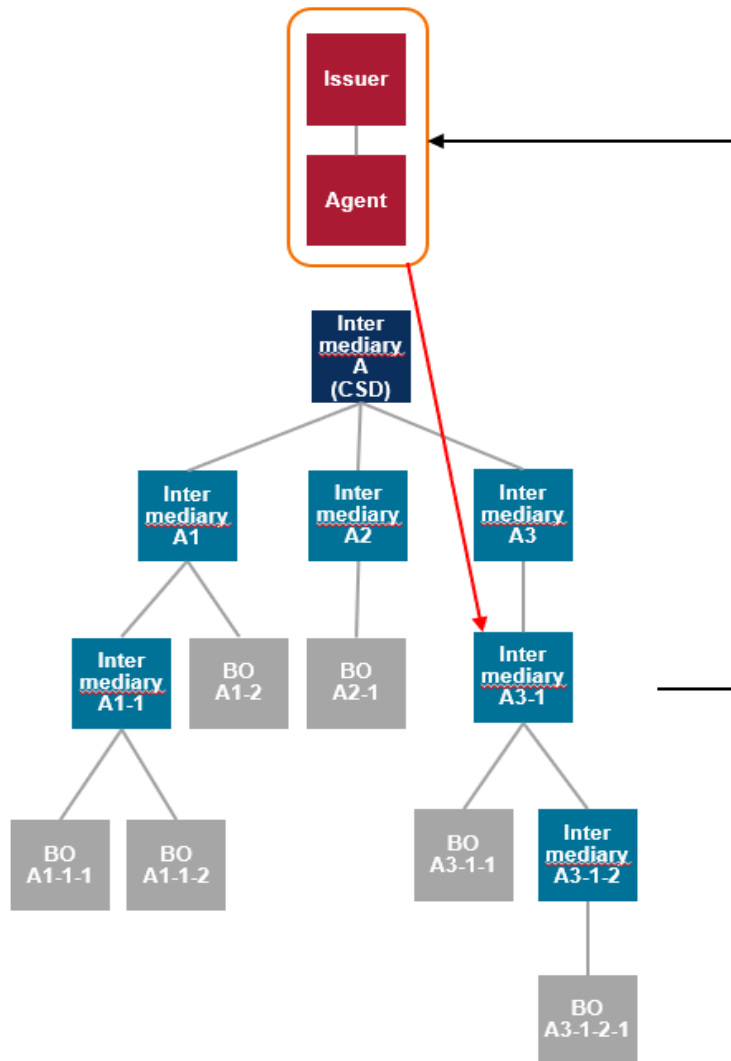
SH-ID Request – SCOPE = YES

The intermediaries receiving the request forward the SH-ID request to the next intermediary in the chain (red arrow).

Each intermediary in the chain sends its response directly to the agent with the direct downstream customer base (intermediary and/or BO)

- Intermediary A3-1 discloses information on Intermediary A3-1-2 and BO B1-1-1
- Intermediary A3-1-2 discloses information on BO A3-1-2-1

Responses back through the custody chain are not possible.

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cc. Identification query with only one intermediary as addressee (individual request)

In the case of an **individual request**, the request is transmitted to and responded to by only a single intermediary. This intermediary is not obliged to forward the request (scope = ./.).

Issuers can request the shareholder identification themselves or instruct an agent (nominated third party) to do so.

This could be a bank or any provider that offers this kind of service.

A service contract between the issuer and their agent is required.

Issuers are not allowed to direct their request to an intermediary that does not offer "agent" services.

SH–ID Request – SCOPE = ./.

The intermediaries receiving the request do not forward the SH-ID request to the next intermediary (red arrow).

The intermediary receiving the request sends its response directly to the agent with the direct downstream customer base (intermediary and/or BO)

- Intermediary A3-1 discloses information on BO A3-1-1 and Intermediary A3-1-2

Responses back through the custody chain are not possible.

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> **Recommendation for the German market (1.2.):**
>
> A full request for shareholder identification must always be transmitted to the custody chain via the CSD. Partial and individual requests can be transmitted to any intermediary in the chain. For guidance concerning the verification of legitimacy by the intermediary, see under both IV.1.7. of the Market Standards for Shareholder Identification and Recommendations 0.2 and 0.3 in the General Part (Module 0).

b. Format

It was agreed in the European "Market Standards for Shareholder Identification" that shareholder identification use the ISO 20022 message type (IV.1.3.). It is therefore expected that the identification request will be communicated in Europe in this message format, at least between intermediaries, which is why the German market should also use ISO 20022.

> **Recommendation for the German market (1.3.):**
>
> Regardless of whether they are sent to the CSD or to an intermediary in the chain, shareholder identification requests must generally be transmitted in the ISO 20022 message format to enable STP processing. Transmission between intermediaries must also be in the ISO 20022 message format. This is in line with the European Market Standards for Shareholder Identification (IV.1.3.).

The content of the ISO 20022 message format for shareholder identification is based on the requirements of the Implementing Regulation, in particular Tables 1 and 2. These specify the minimum content of a shareholder identification request and the corresponding response. Based on this, the Golden Operational Record Task Force has developed a template in the form of an Excel table that makes the information to be disclosed in accordance with the Implementing Regulation as a structured machine-readable dataset. In all cases, both formats must reproduce the legally required minimum content of Table 1 of the Implementing Regulation. The fields in Table 1 (request) and 2 (response) are therefore presented and commented in the following.

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c. Minimum requirements for a request to disclose information regarding shareholder identity in accordance with Table 1 of the Annex to the Implementing Regulation

Table 1*

Request to disclose information regarding shareholder identity

Type of Information	Description	Format	Originator of data	*BdB interpretation guidance*
A. **Specification of the request (separate request to be sent for each ISIN)**				
1. Unique identifier of the request	Unique number specifying each disclosure request	[24 alpha numeric characters]	Issuer or third party nominated by it	*Is assigned by the issuer or the SH ID agent. See also under recommendation (1.4.).*
2. Type of request	Type of request (*request to disclose shareholder identity*)	[4 alpha numeric characters]	Issuer or third party nominated by it	*The ISO 20022 message abbreviations should be used – SIDR for the request and SIDC to cancel a request. Message identifier seev.045 "ShareholderIdentification DisclosureRequest" (SIDR) or seev.046 "ShareholderIdentificationDisclosure RequestCancellationAdvice" (SIDC).*
3. Scope of request	Specification whether the request is to be forwarded to and responded by the other intermediaries down the chain of intermediaries. If not, field to be left unpopulated.	[Optional field. If applicable, then populated: YES]	Issuer or third party nominated by it	*If the optional "Scope" field is populated with YES, the request is transmitted to the intermediary chain (full request, partial request). If not, the request will not be forwarded (individual request). See also under III.1.a.*
4. ISIN	Definition	[12 alpha numeric characters]	Issuer	*The ISIN defines the security for which a request is being made. Only one request can be made per ISIN. An issuer with ordinary and preference shares must therefore make two separate requests.*

5. Record Date	Definition	[Date (YYYYMMDD)]	Issuer	*The record date is defined in the Implementing Regulation and is the date on which the shareholders are identified based on their settled positions after the settlement systems have closed (close of business [cob]). Open/unmatched transactions on the books of the upstream intermediary are not taken into account. The record date can be in the past or the future (see also III.1.e.)*
6. Issuer deadline	Definition. The Issuer deadline shall be set in accordance with Article 9 of this Regu- lation.	[Date (YYYYMMDD); UTC (Coordinated Universal Time)]	Issuer	*Determines the date by which the intermediary must respond to the disclosure request (see under III.1.d.).*
7. Threshold quantity limiting the request	If applicable. The threshold shall be ex-pressed as an absolute number of shares.	[Optional field. If applicable, then populated: 15 numeric characters]	Issuer	*The issuer can specify that only shareholders holding a certain number of shares are to be disclosed. The disclosure is mandatory if national law stipulates such a threshold and can otherwise be populated optionally. There is no legal threshold quantity in DE, but the "exclusion" of small shareholders may be desirable for cost or similar reasons. The absolute number of shares must be disclosed in all cases. See also II.1.f.*
8. Date from which the shares have been held	If applicable. If the issuer chooses to include in its request the date from which the shares have been held, it shall indicate in its request how this date is to be determined. Such request may affect the straight through processing of the request.	[Optional field. If applicable, then populated: YES]	Issuer	*Starting on the date from which the shares have been held, the issuer can require the intermediary to indicate the date from which a shareholder has held the shares.* *This optional request rules out STP processing and cannot in any case be responded to by intermediaries within the same deadline as requests without this additional request. See under III.1.g.*

B. **Specification regarding the recipient to whom the response must be sent**

1. Unique identifier of the recipient of the response	Unique national registration number preceded by the country code referring to the country of its registered office or LEI of issuer, or third party nominated by the issuer, issuer CSD, other intermediary or service provider, as the case may be, to whom the response shall be transmitted by the intermediary.	[20 alphanumeric characters. The country code is to be in the form of the 2 letter code as defined by ISO 3166—1 alpha-2, or compatible methodology]	Issuer	*The issuer uses the unique identifier of the recipient of the response, the name and the address of the recipient of the response to determine who the responses of the intermediaries should be sent to. See also comments on field B.3.*
2. Name of the recipient of the response		[140 alphanumeric characters.]	Issuer	*See previous row above.*
3. Address of the recipient of the response	BIC address, secured or certified email address, URL for a secure web portal or other address details that ensure the receipt and security of the transmission	[alphanumeric field]	Issuer	*To enable STP, the intermediary needs to know which address the selected recipient plans to use for processing.* *A postal address, an email address or an intermediary's BIC rules out straight-through processing.*

Recommendation for the German market (1.4.):

The issuer or the nominated third party can itself generate the unique identifier for field 1. Table 1, field 1 provides 24 digits for this purpose; the corresponding ISO format provides up to 35 digits.

d. Issuer deadline

Before intermediaries can respond to a request for identification, numerous verifications and data collections are required. For example, it may be necessary to verify the legitimacy in accordance with Article 10 of the Implementing Regulation and, in the case of cross-border identification requests, to take into account national specificities such as a statutory minimum threshold for shareholder identification. The intermediaries must have sufficient time to do this, which is why the issuer deadline for when intermediaries must disclose their securities account clients (shareholders) must be defined with a sufficient lead time. The European Market Standards for Shareholder Identification (IV.3.1.) define a ten-day deadline for this.

Recommendation for the German market (1.5.):

Issuers must define an issuer deadline of at least ten days after the publication and transmission of the shareholder identification request to the first intermediary. The issuer deadline must be at least one day after the record date. This will enable all intermediaries involved, both in Germany and abroad, to meet the statutory requirements when responding to the identification request.

The issuer deadline for requests that do not allow STP processing is at least six weeks after publication and transmission to the first intermediary.

e. Record date

The record date is defined in the Implementing Regulation as the date on which the issuer can identify the shareholder base. The date, which must be clearly stated, determines the reference date on which the shareholders will be identified after closure of the settlement systems (close of business [cob]). This is the date when it is clear which transactions have been settled, i.e. which securities account holders are the owners of the shares.

However, the Implementing Regulation does not stipulate whether the date defined by the issuer to identify the shareholders must be in the past or in the future. Both possibilities and their impact are therefore explained in the following.

Past record date:

In this case, all intermediaries can identify the shareholder holdings to be identified on the basis of the past date. The notification by the chain of intermediaries must therefore always be transmitted to the intermediaries who had booked holdings at the record date. Any intermediary can also check whether or not there was an optional threshold quantity limiting the request at shareholder level in accordance with Table 1 A.7.

Regardless of any threshold quantity, if "YES" is entered for the scope of request in Table 1 A.3., the information will generally be forwarded to downstream intermediaries in order to meet the existing statutory information or forwarding obligation.

The intermediaries must transmit the shareholder data to be disclosed by them by no later than the end of the issuer deadline.

In the case of shareholder requests that lie in the past, it is possible that the intermediary in the chain to be informed as at the record date is no longer a client of the intermediary addressed at the time of the request. In such cases, the custody chain is terminated at this point and the identification request cannot be forwarded.

If the record date is before 3 September 2020 and thus before sections 67d and 67e of the AktG and the Implementing Regulation became effective, the question is raised as to whether data protection requirements may preclude the disclosure of shareholder data. The permissibility of disclosing personal data within the meaning of Article 6(1)(c) of the General Data Protection Regulation (GDPR) depends here on how far the legal obligations under stock corporation law extend. Section 67d of the AktG governs the obligation of intermediaries to disclose the identity of shareholders at the company's request. This obligation is accompanied, under section 67e(1) and (3) of the AktG, by permission to process and disclose the personal data of shareholders under certain conditions. Sections 67d and 67e of the AktG have only been applicable since 3 September 2020, however (section 26j(4) of the Introductory Act to the German Stock Corporation Act). Neither the Act nor the explanatory memorandum to the Act indicate whether it is permissible under section 67d of the AktG to require the disclosure of shareholder data on a record date prior to 3 September 2020. Nor does the Implementing Regulation, which has also only been in force since 3 September 2020 and to which section 67d of the AktG makes reference, make any explicit provision for such cases. It would therefore seem reasonable to assume that 3 September 2020, the date on which section 67d of the AktG and the Implementing Regulation took effect, should be considered the point in time at which the requirement to disclose shareholder data under section 67d of the AktG starts to apply. There are therefore arguments to support the view that the disclosure of older data is not covered for data protection reasons.

Future record date:

In this case, the intermediary cannot yet determine the relevant shareholder base because the holdings could still change at securities account level until the record date is reached. Regardless of any threshold quantity for limiting the request in accordance with Table 1 A.7., if "YES" is entered for the scope of request in Table 1 A.3., the information will generally also be forwarded to downstream intermediaries in order to meet the existing statutory information or forwarding obligation. This forwarding/provision of information happens once. No new/additional notification is necessary in the case of changes in the holdings in the securities account. However, if necessary, a notification may make sense if the holdings are reduced to zero and then increased again.

If holdings in the share affected by the identification request are increased in a securities account at an intermediary <u>after</u> a request for shareholder identification has been forwarded to the chain of intermediaries and <u>before</u> the record date is reached, the securities account holder (intermediary in the chain) must transmit a notification of the request to the securities account holder (intermediary in the chain) when the holding is booked.

The intermediaries must transmit the shareholder data they are required to disclose after the end of the record date, but no later than the end of the issuer deadline. Shareholder identification is requested for settled positions. Open/unmatched transactions on the books of the upstream intermediary are not taken into account.

Examples:

Record date: 14 March, evening (closure of settlement systems [cob])

Securities account 1:
Holdings on the record date (in the morning before the settlement systems have closed) = 0 shares Buy
100 shares with trade date (TD) 14 March/settlement date (SD) 16 March
= Record date 14 March (in the evening after the settlement systems have closed) no report

Securities account 2:
Holdings on the record date (in the morning before the settlement systems have closed) = 200 shares
Sell 50 shares with TD 14 March/SD 16 March
= Record date (in the evening after the settlement systems have closed) – 200 shares reported

Securities account 3:

Holdings on the record date (in the morning before the settlement systems have closed) = 300 shares Sell

20 shares with trade date (TD) 12 March/settlement date (SD) 14 March Settlement has happened

= Record date (in the evening after the settlement systems have closed) – 280 shares reported

Securities account 4:

Holdings on the record date (in the morning before the settlement systems have closed) = 500 shares

Sell 40 shares with TD 12 March/SD 14 March Settlement did happen on SD 14 March.

Holding record date (in the evening after the settlement systems have closed) = 500 shares reported

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Recommendation for the German market (1.6.):

The _past record date_ should be a maximum of twelve months in the past.

The _future record date_ should be no more than 30 calendar days in the future.

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f. Threshold quantity limiting the request

The issuer can specify that only shareholders holding a certain number of shares are to be disclosed. The disclosure is mandatory if national law stipulates such a threshold and can otherwise be populated optionally.

There is no statutory threshold quantity in Germany. However, there may be other reasons for restricting the disclosure request. The absolute number of shares must be disclosed in all cases.

If a reporting threshold is specified, identification by the relevant intermediary subject to the reporting requirement is generally performed at the level of the securities account. If a client has more than one securities account with the intermediary subject to the reporting requirement and if the securities accounts can be clearly assigned to the client, e.g. by means of an identifier such as the CONCAT or an LEI, identification is performed at an aggregated level.

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Below any threshold specified by law, there is no obligation and no authority under data protection law for intermediaries to disclose the data of the securities account holder/shareholder to the company. In such cases, the European Market Standard sets out that positions below the threshold must be combined and reported in an anonymised form (see IV.3.5. of the Market Standards for Shareholder Identification). There is no obligation for intermediaries to verify the accuracy of the information provided by the issuers.

The request for disclosure with threshold quantities is forwarded to an intermediary irrespective of its holdings.

g. Date from which the shares have been held

The issuer can use the "Date from which the shares have been held" (field 8 of Table 1 of the Implementing Regulation) to specify that the intermediary must indicate the date from which a shareholder has held the shares. This means the date when the transaction in the shares was settled. See also the guidance under "Record Date".

This optional request rules out STP processing and will therefore not be responded to by intermediaries within the same deadline as requests without this additional request. This is also expressly recognised in the description of the field in the Implementing Regulation.

In order to have to deliver only one dataset per securities account, ISO 20022 allows the issuer to choose between LIFO (Last in, first out) and FIFO (First in, first out). In this case, the intermediary will only notify the date on which the shares in question were first booked (settled) to the securities account according to the chosen methodology. This avoids having to deal with a large number of datasets in the case of savings schemes or large institutional securities accounts. Disclosures or methodologies that differ from this will delay straight-through processing. It should be noted that data like this may not be available in the international banking environment in particular, in which case there will therefore be no notification of shareholder holdings from abroad.

Recommendation for the German market (1.7.):

In particular in the case of savings schemes or large institutional securities accounts, the intermediary should be able to choose between LIFO (Last in, first out) and FIFO (First in, first out) in response to a request with the requirement "Date from which the shares have been held" within ISO 20022, and thus only notify the date when the shares to be identified were first booked (settled) to the securities account.

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h. Deadline for forwarding the disclosure request

As a general rule, a request by an issuer or a third party nominated by the issuer to disclose the identity of the shareholder must

- be transmitted without undue delay and
- must be transmitted at the latest on the same day if it is received before 16:00.
  Information received after 16:00 must be processed/forwarded by 10:00 on the next business day.

i. Updating and cancelling disclosure requests

As a general rule, if the issuer makes changes to a disclosure request (changes to fields in Table 1), the original request must be cancelled and a new request must be generated. The unique identifier for the initial request (Table 1, field 1) should not be reused.

Exception: the unique identifier for the original request (Table 1, field 1) can only be kept for a change extending the issuer deadline (Table 1, field 6). From a technical point of view, this is actually an update (REPL – Replacement) of an existing request.

2. Minimum requirements for the response to a request to disclose information regarding shareholder identity in accordance with Table 2 of the Annex to the Implementing Regulation

The content of the response to a request to disclose information regarding shareholder identity is governed by Table 2 of the Annex to the Implementing Regulation and the request to disclose the identity of the shareholder. This may result in additional national requirements for the right to identify shareholders, such as limiting the right to identify shareholders to shareholders who hold a certain percentage of shares or voting rights (threshold).

ESMA has published an overview of the national laws providing for such a threshold on its website.[5]

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[5] The overview can be accessed at https://www.esma.europa.eu/sites/default/files/library/esma32-380-143_national_thresholds_for_shareholder_identification_under_the_revised_srd.pdf

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a. Response to a request to disclose the identity of shareholders

Table 2*

Response to a request to disclose information regarding shareholder identity

Type of information	Description	Format	Originator of data	*BdB interpretation guidance*
A. **Specification of the original request by issuer**				
1. Unique identifier of request	See Table 1, field A.1	[24 alphanumeric characters]	Issuer or third party nominated by it	*See the comments on field 1 in Table 1. Pure repetition by the responding intermediary.*
2. Unique identifier of response	Unique number identifying each response.	[24 alphanumeric characters]	Responding Intermediary	*Should normally be generated systemically by the responding intermediary.*
3. Type of request	See Table 1, field A.2	[4 alpha numeric characters]	Issuer or third party nominated by it	*See above comments on Table 1, field A.2. Pure repetition by the responding intermediary.*
4. ISIN	See Table 1, field A.4	[12 alpha numeric characters]	Issuer	*See above comments on Table 1, field 4. Pure repetition by the responding intermediary.*
5. Record date	See Table 1, field A.5	[Date (YYYYMMDD)]	Issuer	*See above comments on Table 1, field 5. Pure repetition by the responding intermediary.*
B. **Information regarding shareholding by responding intermediary**				
1. Unique identifier of the responding intermediary	Unique national registration number preceded by the country code referring to the country of its registered office or LEI	[20 alphanumeric characters. The country code is to be in the form determined in Table 1, field B.1]	Responding intermediary	*LEI or other identifier of the responding intermediary.*
2. Name of the responding intermediary		[140 alphanumeric characters]	Responding intermediary	*Name of the responding intermediary*

3. Total number of shares held by the responding inter- mediary	The total number equals the sum of the numbers given in field B.4 and B.5	[15 numeric characters with, if applicable, a decimal separator]	Responding intermediary	*Reporting of the total number of shares that the responding intermediary has booked with the upstream intermediary after the settlement systems have closed. If several securities accounts are held, the holdings must be aggregated.*
4. Number of shares held by the responding intermedi- ary on own account		[15 numeric characters with, if applicable, a decimal separator]	Responding intermediary	*Total number of own shares (own securities account) held by the responding intermediary in all securities accounts with the upstream intermediary after the settlement systems have closed.*
5. Number of shares held by the responding intermedi- ary on account of someone else		[15 numeric characters with, if applicable, a decimal separator]	Responding intermediary	*Total number of client holdings (client securities account) held by the responding intermediary in all securities accounts with the upstream intermediary after the settlement systems have closed.*
6. Unique identifier of the se- curities account operator	LEI of the securities account operator, i.e. the intermediary up the chain with whom the responding intermediary has a securities account	[20 alphanumeric characters]	Responding intermediary	*LEI or other identifier of the intermediary upstream of the responding intermediary.*
7. Number of the securities account	Number of the securities account of the re- sponding intermediary with the intermedi- ary up the chain.	[20 alphanumeric characters]	Responding intermediary	*Securities account numbers of the responding intermediary with the upstream intermediary. (A separate response must be transmitted for each securities account number with the upstream intermediary, as Part B is not a repetitive block).*

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C. **Information held by the responding intermediary regarding shareholder identity (repeating block,[6] to be filled in separately for each shareholder known to the responding intermediary, including if applicable for the position on own account held by the responding intermediary)**

1(a) Unique identifier of shareholder in case of a legal person	(1) A unique national registration number preceded by the country code for its country of registration or LEI or	[20 alphanumeric characters]	Responding intermediary	*The LEI must generally be given. This is also possible for unregistered partnerships, as they are also eligible to be assigned an LEI. See e.g. the list of international entities eligible to be assigned an LEI, according to which the GbR (civil law partnership) and the nicht eingetragener Verein (unregistered association) are also listed as being eligible to be assigned an LEI:* www.gleif.org/en/about-lei/code-lists/iso-20275-entity-legal-forms-code-list#relevant-downloads *See also under III.2.d.*
	(2) where neither a LEI nor a registration number is available, a Bank Identifier Code (BIC) preceded by the country code for its country of registration OR	[11 alphanumeric characters]		
	(3) or a client code, which uniquely identifies every legal entity or structure, in any jurisdiction, preceded by the country code regarding its country of registration	[50 alphanumeric characters. The country code is to be in the form determined in Table 1, field B.1		*In the case of joint custody accounts, each account holder must be reported separately. Although the custody account number is not a field required to be reported according to Table 2, ISO 20022 requires it to be provided by the responding intermediary. It will probably be possible for the issuer or its nominated appointed third party to rule out double counting in this respect. Because disclosure of the securities account number of natural persons could be objectionable due to data protection concerns, a unique dummy value should be reported for each securities account as a replacement for the securities account number. By contrast, reporting the proportionate shares per securities account holder is not possible. See Recommendation 1.9.*

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[6] This block repeats, so Part C can be generated per client, i.e. Parts A and B (per securities account number with the upstream intermediary) are fixed components of the ISO 20022 message, and Part C can be generated multiple times.

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1(b) Unique identifier of shareholder in case of a natural person	The national identifier within the meaning of Article 6 of Commission Delegated Regulation (EU) 2017/590 (*)	[35 alphanumeric characters]	Responding intermediary	*Natural persons must be reported using the national identifier from Delegated Regulation (EU) 2017/590 (Article 6 in conjunction with Annex II). This is the CONCAT in Germany. The CONCAT has a length of 20 characters. It consists of the leading ISO country code (2 characters) and the customer ID, consisting of the date of birth (format YYYYMMDD = 8 characters), first five characters of the first name, first five characters of surname*
2(a) Name of shareholder in case of a legal person		[140 alphanumeric characters]	Responding intermediary	
2(b) Name of shareholder in case of a natural person	(1) First name(s) of the shareholder. In case of more than one first name, all first names shall be separated by a comma	[140 alphanumeric characters]	Responding intermediary	
	(2) Surname(s) of the shareholder. In case of more than one surname, all surnames shall be separated by a comma	[140 alphanumeric characters]	Responding intermediary	
3. Street address		[140 alphanumeric characters]	Responding intermediary	
4. Post code		[10 alphanumeric characters]	Responding intermediary	
5. City		[35 alphanumeric characters]	Responding intermediary	
6. Country	Country code	[2 letter country code in the form determined in Table 1, field B.1]	Responding intermediary	

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7. Post code post box		[10 alphanumeric characters]	Responding intermediary	
8. Number of Post box		[10 alphanumeric characters]	Responding intermediary	

Type of information	Description	Format	Originator of data	*BdB interpretation guidance*
9. Email address	Email address. If not available, this field is to be left unpopulated.	[255 alphanumeric characters]	Responding intermediary	*This field needs to be populated if the intermediary has an email address. If not, the field must be left blank. There is no duty to investigate (see also explanation under III.2.a below the table before b.).*
10. Type of shareholding	Indication of type of shareholding. Select: O = shareholding on own account; N = nominee shareholding; B = beneficial shareholding; U = unknown	[1 alphanumeric character]	Responding intermediary	
11. Number of shares held by the shareholder with the responding intermediary	Number of shares held by the shareholder and reported by the responding intermedi- ary	[15 numeric characters with, if applicable, a decimal separator]	Responding intermediary	*Under ISO 20022, the intermediary can only report the date of the initial balance of a securities account in accordance with the selected methodology (LIFO or FIFO) on which the shares in question were first booked (settled) to the securities account. See also under III.1.g.*
12. Initial date of shareholding	If applicable.	[Date (YYYYMMDD)]	Responding intermediary	*See also under III.1.g.*

Repeating Block (repeat for the different types of shareholding or dates of shareholding)

13. Name of third party nominated by the shareholder	If applicable, this field shall identify the third party who is authorised to take investment decisions on behalf of the shareholder	[Optional field. If applicable, format of fields C.2(a) or C.2(b) above]	Responding intermediary	*This field can remain empty if data protection considerations argue against forwarding the personal data of the third party nominated by the shareholder (see also the comments underneath this table).* *Furthermore, this field only needs to be populated if the intermediary can read this information electronically. If not, the field must be left blank.*
14. Unique identifier of third party nominated by the shareholder	If applicable, this field shall identify the third party who is authorised to take investment decisions on behalf of the shareholder	[Optional fields. If applicable, unique identifier in the format of fields C.1(a) or C.1(b) above]	Responding intermediary	*This field can remain empty if data protection considerations argue against forwarding the personal data of the third party nominated by the shareholder (see also the comments underneath this table).* *Furthermore, this field only needs to be populated if the intermediary can read this information electronically. If not, the field must be left blank*

(*) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87, 31.3.2017, p. 449)

According to the description in the Implementing Regulation, field 9 in Block C of Table 2 is optional. The email address of the shareholder only needs to be entered if it is available to the intermediary. There is no duty to investigate (see also explanatory memorandum to the government bill, Bundestag printed matter 19/9739, page 67 and BeckOGK/Cahn, 1 February 2022, AktG (German Stock Corporation Act), section 67d, paragraph 11 with further references [German only]). If the email address of the shareholder is available, then it should be entered. An objection by the shareholder to their email address being disclosed can be disregarded. Legal commentators currently consider the explanatory memorandum to the German law, which contradicts this assessment, to be inaccurate. They invoke Article 6(1)c of the GDPR to justify the intermediaries' right under data protection law to transmit the email address without regard to any objection by the shareholder. The legal obligation to transmit data required under this provision is set out in Article 3(2) of the Implementing Regulation in conjunction with Table 2, Block C, no. 9 of the Implementing Regulation, which in turn corresponds to the requirements of SRD II (see, for example, Grigoleit/Rachlitz, AktG, second edition, 2020, section 67d, paragraph 41; MüKoAktG/Bayer/Illhardt, AktG, addendum to ARUG II [the German Act Implementing SRD II], fifth edition, 2021, 67d, section paragraph 19; BeckOGK/Cahn, 1 February 2022, AktG, section 67d, paragraph 14; Koch, AktG, sixteenth edition, 2022, section 67d, paragraph 4 [all in German only]).

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Personal data can only be disclosed under strict legal conditions, such as in the presence of a legal obligation to do so (Article 6(1)(c) of the GDPR). This includes the obligation of intermediaries under section 67d of the AktG to disclose the identity of shareholders at the company's request. This new legal obligation for intermediaries under stock corporation law is accompanied by an explicit clarification in section 67e(1) and (3) of the AktG that disclosure is not at odds with data protection law. But both provisions relate exclusively to the disclosure of shareholder data, not to the personal data of third parties nominated by the shareholder (e.g. a proxy). Nor does the Implementing Regulation, to which section 67d(1) and (2) of the AktG refers, explicitly stipulate that intermediaries should disclose the personal data of third parties nominated by the shareholder. Table 2 C.13 and 14 of the Annex to the Implementing Regulation therefore only contain optional fields to be filled in if applicable. This means that no legal obligation can be inferred from the German Stock Corporation Act to disclose third-party data in accordance with Article 6(1)(c) of the GDPR. Intermediaries should therefore check whether they may be permitted to disclose such data on another basis, such as the consent of the data subject. Otherwise, they should leave fields 13 and 14 unpopulated.

b. **Response to or forwarding the response to the identification request via the chain of intermediaries**

Although the German implementation of Shareholder Rights Directive II allows the issuer to require the identity request to be responded to via the custody chain if there is technical end-to-end encryption (section 67d(4) sentence 2 of the AktG), this does not exist at present. Additionally, this option goes beyond the requirements of the European directive and does not comply with the European Market Standard for Shareholder Identification.[7] Table 1 of the Implementing Regulation does not provide for a corresponding field under B. "Specification regarding the recipient to whom the response must be sent". Only one recipient can be specified there by the issuer. For this reason alone, responding to the request via the custody chain would only be possible using manual control processes. In addition, if the response is transmitted via the custody chain, there is a risk that intermediaries whose registered office is in a member state of the European Union other than Germany will not forward the data of their customers via the chain for data protection reasons. They do not have a national legal basis for authorising the disclosure of data to parties other than the originator of the request. Companies therefore run the risk of receiving an incomplete data set.

Recommendation for the German market (1.8.):

The response to a disclosure request must always be transmitted directly to the initiator of the request (issuer/nominated third party), and not via the chain of intermediaries.

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[7] See Article 3a(3), subparagraph 1 of SRD II and the Market Standards for General Meetings under II.2 and Standard 3.1.

c. Response if there are multiple securities account holders

In the case of joint accounts (e.g. married couples), the entire shareholdings must be reported for each natural person who is an account holder. Although Table 2 does not provide a reporting field for the securities account number, ISO 20022 does contain a corresponding field in which the securities account number can generally be entered, with the result that securities account numbers reported twice can be identified. However, disclosing the securities account number is questionable for data protection reasons. Section 67e(3) of the AktG refers only to shareholder identification under section 67d of the AktG in conjunction with the requirements of the Implementing Regulation, which specifically does not require the securities account number to be disclosed. A unique dummy value should therefore be reported for each securities account as a securities account number substitute.

Recommendation for the German market (1.9.):

In the case of joint accounts (e.g. married couples), the entire shareholdings must be reported for each natural person who is an account holder. Although Table 2 does not provide a reporting field for the securities account number, ISO 20022 does contain a corresponding field in which the securities account number can generally be entered, with the result that securities account numbers reported twice can be identified. For data protection reasons, when disclosing the data of natural persons the recommendation is to report a unique dummy value as a securities account number substitute per securities account instead of the actual securities account number, thus enabling the recipient of the shareholder data to clearly assign the holdings.

Reporting the proportionate securities account holding per securities account holder is not possible.

Recommendation for the German market (1.10.):

A request for identification is always responded to at the level of the securities account. Aggregation is not necessary and, in many cases, will often not be possible.

In the case of reporting thresholds, identification is made by the relevant intermediary subject to the reporting requirement at an aggregated level if a client has more than one securities account with the intermediary subject to the reporting requirement. A condition for this is that the securities accounts can be clearly assigned to the client, e.g. by means of an identifier such as the CONCAT or an LEI.

Below any threshold specified by law, there is no obligation and no authority under data protection law for intermediaries to disclose the data of the securities account holder/shareholder to the company.

d. Response to securities account holders who are not registered companies

Another specification feature of the national transposition of the shareholder identification rules in ARUG II is that the data of the members of unregistered companies would have to be disclosed, although the explanatory memorandum itself acknowledges that the Implementing Regulation does not provide for this in its data fields. For intermediaries this would mean additional effort as a minimum. In cross-border cases, this specific national solution will lead to additional difficulties in forwarding data because the data fields under section C of Table 2 do not provide for this. Since both unregistered companies and associations are, in principle, eligible to be assigned an LEI, the LEI should always be given rather than the shareholder data – not least to enable efficient processing of the identification request.

> **Recommendation for the German market (1.11.):**
>
> Unregistered companies and associations can also be reported using the LEI as provided for in Table 2 C.1(a)(1) of the Implementing Regulation, as unregistered companies and associations are also eligible to be assigned an LEI. See e.g. the list of international entities eligible to be assigned an LEI, according to which the *GbR* (civil law partnership) and the *nicht eingetragener Verein* (unregistered association) are also listed as being eligible to be assigned an LEI:
>
> www.gleif.org/en/about-lei/code-lists/iso-20275-entity-legal-forms-code-list#relevant-downloads

e. Deadline for responding to the request for disclosure

As a general rule, the response to the request from an issuer or a third party nominated by the issuer to disclose the identity of the shareholder must

- be transmitted without undue delay and
- at the latest on the business day immediately following the record date or the date of receipt of the request by the responding intermediary.

The time zone of the recipient of the request applies to transmission within the required deadline.

This deadline does 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) of the Implementing Regulation. It also does 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 must be provided and transmitted by the intermediary without undue delay and in any event by the issuer deadline (see third subparagraph of Article 9(6) of the Implementing Regulation).

3. Data protection

For data protection reasons, the company initiating a shareholder request is generally responsible for informing the shareholder that it has collected his or her data from the intermediary (Article 14(1) to (3) of the GDPR). The intermediary is not subject to any obligation in this respect.

When opening a securities account, intermediaries collect data on the future securities account holders and, among other things, must use this opportunity to disclose how they will process these data (Article 13(1) of the GDPR). There is no legal obligation to specifically inform account holders that their data will be disclosed if the company enquires about the identity of its shareholders. In the interests of keeping subsequent customer queries to a minimum, however, intermediaries could consider advising clients that information about their identities may be requested under ARUG II.

Recommendation for the German market (1.12.):

Intermediaries should examine whether, when opening a securities account, they should in the future include a general notice in the contract documents that, as from 3 September 2020, they are required by the provisions of stock corporation law to disclose the data of securities account holders to a listed company if that listed company requests shareholder identification.

They should also examine if this notice can also be provided to existing clients, e.g. together with the annual securities account statement or the quarterly statement of holdings under MiFID II.

Such measures are simply in the interests of communicating information, however; there is no legal obligation to implement them.

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4. Obligation to notify customers under no. 20 (1) of the Special Conditions for Dealings in Securities (*Sonderbedingungen für Wertpapiergeschäfte* – SOB)

Under no. 20 (1) of the German banks' Special Conditions for Dealings in Securities, securities account holders must be notified if the bank discloses information about the customer, e.g. their name, to foreign authorities or other entities because it is legally obligated to do so. The wording of the requirement suggests that it should also cover the disclosure of information about the customer in response to a request for information regarding shareholder identity pursuant to section 67d of the AktG if the company making the request has its registered office in another EU or EEA member state. Lawmakers expressly want to avoid shareholders being repeatedly informed about such requests under section 67d of the AktG, however.

This is made clear by the explanatory memorandum to section 67e(3) of the AktG, which states that an obligation to provide information under Article 13 or 14 of the GDPR may be waived if the shareholder has already been notified that their data may have to be disclosed under certain circumstances.[8] Since the GDPR was implemented, all banks, and thus all last intermediaries within the meaning of ARUG II, have used "General data protection information in accordance with Articles 13, 14 and 21 of the GDPR" as a standard means of informing customers that their data will be disclosed in the event of a legal or regulatory obligation to do so. Since section 67d of the AktG sets out a legal obligation to disclose customer data to a requesting company in another EU or EEA country and the bank (last intermediary) has to pass on the data to fulfil this legal obligation, it is clearly unnecessary to notify the customer about each individual request.

According to the explanatory memorandum to ARUG II, moreover, a recurring obligation for an intermediary to provide information pursuant to Article 13 of the GDPR may also be waived if the intermediary is not considered the party responsible for data collection within the meaning of Article 13, but it is the company which is the responsible party within the meaning of Article 14 of the GDPR. This will normally be the case when shareholder identification requests are made. According to the explanatory memorandum to ARUG II, additional notification by the bank would therefore not only be superfluous but would even be at odds with the purpose of Shareholder Rights Directive II.[9]

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[8] Bundestag printed matter 19/9739, page 70

[9] Bundestag printed matter 19/9739, page 70

Lawmakers have thus made it absolutely clear that it is unnecessary and consequently undesirable for shareholders to receive repeated notifications. It may therefore make good sense to apply this approach to a bank's obligation to inform customers about requests for information under the securities account agreement as well and, in consequence, to interpret no. 20 (1) of the SOB restrictively.Especially if customers have been made aware of the new obligation for intermediaries to furnish information in accordance with section 67d of the AktG (see also III.3. above), it may be assumed that it is not in the customer's interest to be notified of each individual request for information by listed foreign companies registered in the EU and EEA under section 67d of the AktG.

Recommendation for the German market (1.13.)

When companies in the EU and the EEA request information in accordance with section 67d of the AktG, it may not be in the customer's interest to be advised of these requests and separate notification of shareholders in accordance with no. 20 (1) of the SOB may be dispensed with.

* Note: The tables are taken from the Annex to the Implementing Regulation.