bankenverband

Shareholder Rights Directive II/ARUG II

- New obligations for intermediaries -

Implementation Guide for the German Market

Module 3: Corporate actions

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V. Corporate events (corporate actions)[1] of listed stock corporations (Module 3)

Under the German Act Implementing the Second Shareholder Rights Directive (*Gesetz zur Umsetzung der zweiten Aktionärsrechterichtlinie* – ARUG II), statutory obligations for issuers and intermediaries are introduced in Section 67a and b of the German Stock Corporation Act (*Aktiengesetz* – AktG) concerning the transmission and forwarding of information on corporate events other than general meetings. Up to now, corresponding requirements have only existed for information on general meetings. Section 128 of the AktG in its previous version, which remains valid, requires banks to send shareholders notifications of a general meeting.

At present, banks (intermediaries) only forward information about other corporate actions to their customers (shareholders) on the basis of contractual obligations arising from the securities account agreement. The exact scope of the obligation to provide information depends on the terms of the agreement between the bank and its client.

For retail clients, the information requirements are set out in detail in the Special Conditions for Dealings in Securities (*Sonderbedingungen für Wertpapiergeschäfte* – SOB).[2] The SOB are general terms and conditions used by all banks in Germany. They require information on a corporate action to be forwarded to clients if the action may have a significant impact on their legal position and clients need to be notified in order to protect their interests.[3] Shareholders are normally informed about voluntary corporate actions.[4] This is expressly required by no. 16 of the SOB, especially for statutory compensation and exchange offers, voluntary purchase and exchange offers and restructuring procedures, as well as by no. 15 of the SOB for subscription rights. Securities account holders are usually also informed separately in writing of other corporate actions, such as the initiation of insolvency proceedings, changes to a security description, currency unit or legal form, or about certain types of delistings. Banks use a booking advice to make information available about mandatory corporate actions, which become effective without the active involvement of the shareholder and which trigger a cash or securities booking. These actions include, above all, bonus shares, share splits and swaps, e.g. from bearer to registered shares. The same procedure is followed for dividend payments. Banks do not write separately to clients informing them about a dividend resolution passed at a general meeting but transfer the cash amount or securities to the entitled shareholder along the chain of intermediaries – also on a cross-border basis.

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[1] The term "corporate actions" is used synonymously with the expression "corporate events other than general meetings" (cf. also Article 8 of the Implementing Regulation).

[2] Retrievable at https://beck-online.beck.de/?vpath=bibdata/komm/BunteHdbAGBBanken_3/ges/SoBedWertP2007/cont/BunteHdbAGBBanken.SoBedWertP2007%2Ehtm, for example (in German).

[3] Cf. SOB no. 16

[4] Cf., for example, SOB no. 15, SOB no. 16

The Special Conditions for Dealings in Securities are not normally used for doing business with institutional clients: these usually conclude individual agreements based on their specific needs. Institutional clients, which are often intermediaries themselves, mainly use ISO formats and SWIFT to communicate with their contractual partners and thus receive all information about corporate actions shared in the intermediary chain. They therefore receive much more information than do retail clients. The different information needs of these two categories of client result from the fact that institutional clients can have different roles. They may be shareholders and therefore require the same information as retail clients to exercise their shareholder rights. But they may also be intermediaries in the custody chain and as such require considerably more information (for further details see also section V.3.).

Irrespective of the information regime agreed, the associated organisational processes already function throughout Europe, including on a cross-border basis, without the existence of explicit legal requirements. These processes are based, among other things, on the voluntary Market Standards for Corporate Actions.[5] For this reason, the explanatory memorandum to ARUG II and recital 11 of the Implementing Regulation explicitly state that established processes for handling corporate actions should be retained even after the new requirements of SRD II[6] and the Implementing Regulation take effect.

These requirements of European and national lawmakers need to be taken into account when developing the following interpretation guidance for the German market on the practical implementation of the new obligations to inform shareholders about corporate actions.

1. Transmission of information on corporate actions from the company to intermediaries (section 67a(1) of the AktG)

The starting point for the new statutory obligation to provide information on corporate actions is, as with information on the general meeting (cf. Module 2),[7] the company. From 3 September 2020, listed stock corporations will have to transmit information on corporate actions to intermediaries (Section 67a(1) of the AktG). The minimum requirements of the Implementing Regulation, especially those set out in Article 8 and Table 8 of the Annex, determine the content and format of the information.

[5] Retrievable at https://www.ecb.europa.eu/paym/target/t2s/governance/html/casg.en.html

[6] Explanatory memorandum to section 67a(2) of the AktG, Bundestag printed matter 19/9739, page 61

[7] Publication of Module 2 is planned for autumn 2020.

Intermediaries must then in principle transmit this information without delay, usually on the same day, along the chain to the next intermediary (see section V.2.) or the shareholder (see section V.3.).

The scope of the obligations of issuers and intermediaries therefore depends first of all on what corporate actions Section 67a of the AktG requires the issuer to provide information about.

a. Corporate action within the meaning of Section 67a(6) of the AktG in conjunction with Article 1(3) of the Implementing Regulation

The Implementing Regulation, to which Section 67a(6) of the AktG refers, defines corporate event as an action initiated by the issuer or a third party which involves the exercise of the rights attached to the shares and which may affect the underlying share; the distribution of profits is mentioned as an example (Article 1(3) of the Implementing Regulation). Listed companies are therefore obliged to transmit to intermediaries any information about a corporate action that may influence the underlying shares.

In addition to the distribution of profits expressly mentioned in Article 1(3) of the Implementing Regulation, this includes all voluntary corporate actions, such as capital increases with or without subscription rights, and also all mandatory corporate actions, such as share splits. The company is therefore obliged to provide information under Section 67a(1) of the AktG regardless of whether the corporate action requires the involvement of the shareholder in order for it to become effective or not. This reflects the information needs of the recipients. The extensive information provided by the company enables intermediaries, in particular, to fulfil their various legal and/or contractual obligations. This may take the form of transferring a dividend payment to the client's account, for example, or of forwarding information to the next intermediary in the chain (cf. also introduction above). Whether the information should always be passed on to retail clients is a question that needs to be considered separately and is answered under section V.3.

Recommendation for the German market (3.1):

Corporate actions to be communicated to intermediaries pursuant to Section 67a(1) of the AktG include all actions initiated by the issuer or a third party nominated by the issuer which involve the exercise of rights associated with the shares and which may influence the underlying share (Article 1(3) of the Implementing Regulation). In addition to the explicitly mentioned distribution of profits, these include all mandatory and voluntary corporate actions.

This means that a company's obligation to provide information pursuant to Section 67a(1) of the AktG does not cover statutory compensation and exchange offers in connection with company takeovers pursuant to the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz* – WpÜG). Information about these measures is not provided to the chain of intermediaries by the company itself or a third party nominated by the company pursuant to Section 67a(1) or (2) of the AktG. Rather, it is information that an offeror is legally required to publish under the provisions of the WpÜG (e.g. Section 35 where a mandatory offer is concerned). Such information from third parties not nominated by the company does not fall within the scope of ARUG II and SRD II, whose sole purpose is to strengthen communication between the company and its shareholders,[8] not the basic dissemination and transmission of capital market information. The same applies to voluntary purchase and exchange offers by non-nominated third parties outside the scope of the WpÜG, which are also not covered by the company's obligation to provide and forward information pursuant to Section 67a of the AktG.

Shareholders will nevertheless be informed about the measures described in the previous paragraph. This is ensured both by legal requirements, such as Section 35 of the WpÜG, and by contractual agreements between the intermediary (account-servicing bank) and the shareholder/customer. No. 16 of the SOB requires retail customers, for example, to be informed about compensation and exchange offers under the WpÜG, while institutional clients will be informed on the basis of the securities account agreements concluded. Further details can also be found under section V.3.a.bb.ccc.

This distinction has already been implemented by the financial industry. The Golden Operational Record Task Force has developed standardised formats for implementing the Implementing Regulation relating only to information originating from

[8] As explicitly stated in the explanatory memorandum to ARUG II, Bundestag printed matter 19/9739, page 32 f. and in recitals 4 and 5 of SRD II:

the company itself.[9] A template for actions initiated by non-nominated third parties, such as company takeovers, is not planned.

Recommendation for the German market (3.2):

Statutory and voluntary purchase and exchange offers outside the scope of the WpÜG are not corporate actions that are communicated to intermediaries in accordance with Section 67a(1) of the AktG by the company itself or a third party nominated by the company. In consequence, information about these measures do not have to be forwarded in accordance with the new provisions of ARUG II (including Sections 67a(3) and 67b of the AktG). Intermediaries should nevertheless check whether they may be required to inform shareholders/securities account holders on the basis of custodian agreements. Further details and recommendations on the scope of the obligation of the last intermediary to provide information can be found in section V.3.a.bb.

b. Scope of the company's obligations to forward information relating to bearer and registered shares

As mentioned in the introduction, Section 67a of the AktG introduces for the first time an explicit obligation under stock corporation law to provide information on corporate events other than general meetings. The convening of general meetings and the corresponding obligation for intermediaries to provide information are regulated separately by Section 125 of the AktG. This means that Section 67a of the AktG applies directly and exclusively to information about all other corporate actions. German lawmakers nevertheless make a distinction between bearer shares on the one hand and registered shares on the other. While issuers of bearer shares are required to give information on corporate actions to intermediaries for transmission (Section 67a(1), no. 1 of the AktG), issuers of registered shares may transmit the information direct to those entered in the share register (Section 67a(1), no. 2 of the AktG). The reason why German lawmakers make this distinction is that only companies issuing bearer shares need to use intermediaries to transmit information because they do not know who their shareholders are. By contrast, companies issuing registered shares, whose holders are entered in the share register with contact details, are seen as generally in a position to inform shareholders directly without any "detour" via the chain of intermediaries.[10]

[9] Not yet published; source will be added following publication.

[10] Cf. explanatory memorandum to Section 67a(1) of the AktG, Bundestag printed matter 19/9739, page 60

This is not how corporate actions in Europe are handled in practice, however. Unlike the procedure for informing shareholders about general meetings, information on corporate actions is generally transmitted along the chain of intermediaries, both from the issuer to the shareholder and from the shareholder back to the issuer. Although issuers themselves initiate the process, e.g. by putting a dividend resolution on the agenda of a general meeting, they subsequently have no active role in communicating and processing this resolution. Instead, intermediaries and other service providers take over the handling and implementation of the corporate action. They turn information about the dividend resolution into concrete action: either by crediting the dividend to the client's account or, if they are not the account-servicing bank (last intermediary), by forwarding the information until it reaches the last intermediary. This also applies to the information's "return journey" (see also section V.4.). Unlike at general meetings, a shareholder's instructions with respect to a corporate action, such as the exercise of their subscription rights, cannot be processed by the issuer. Among other things, the issuer does not have access to the client's securities account. The instruction of the shareholder/client can only be implemented by the last intermediary and other intermediaries or possibly service providers. It is therefore primarily intermediaries who need to receive the instructions and not companies, regardless of the category of shares they have issued. The attached chart (see annex) shows the way corporate actions are usually processed throughout Europe at present.

As a result, the distinction between companies issuing bearer and registered shares made in Section 67a(1) of the AktG is unlikely to play a role in practice. It may be assumed that issuers not only of bearer but also of registered shares will continue to put their information on corporate actions into the chain of intermediaries in order to ensure that their shareholders are informed efficiently and that the corporate action is implemented (e.g. by transferring the dividend or subscription rights to the shareholder/customer).

The fact that all shareholders have to be informed about corporate actions in this way should also feed into the decision on the obligation to bear costs. Pursuant to Section 67f(1), sentence 1 of the AktG, for example, the company always has to bear the cost of informing holders of registered shares, regardless of whether the shareholder is entered in the share register or not, since information about corporate actions always has to be processed along the chain of intermediaries.

Recommendation for the German market (3.3):

Information on corporate actions both of companies issuing bearer shares and of those issuing registered shares should be transmitted from the issuer to the shareholder and back along the chain of intermediaries. This is the established practice in Europe and should be retained to reflect the will of European and national lawmakers. This needs to be taken into account when making decisions on costs.

Irrespective of this, issuers also have to comply with further information requirements arising from their listing. These include a legal obligation to also inform holders of securities about corporate actions by placing an announcement in the German Federal Gazette (Sections 48 ff. of the German Securities Trading Act [*Wertpapierhandelsgesetz* – WpHG]).

c. Special features of exchangeable and rights classes

The scope of ARUG II basically covers all shares of companies listed on organised markets in the European Union and the EEA.[11] Exchangeable classes are temporary technical constructions and should be treated as a "separate line" of the original share. Subscription rights and fractional interests should be treated as a component of the corporate action (multi-stage event). Owing to this material connection, exchangeable and rights classes of these listed companies therefore also fall within the scope of ARUG II.

Recommendation for the German market (3.4):

Owing to the material connection, the scope of ARUG II also covers exchangeable and rights classes of companies listed on an organised market in the European Union/EEA.

[11] Cf. also section II.2.b of the Introduction and General Part of the BdB Guidance, retrievable at: https://bankenverband.de/service/auslegungs-und-anwendungshinweise/

d. Format of information on corporate actions and deadline for making the information available

Information on a corporate action that is placed into the chain of intermediaries by the issuer or a third party nominated by the issuer, such as a service provider, must be transmitted electronically (Section 67a(2) of the AktG). Reference is made to the requirements of the Implementing Regulation as regards format, content and time frame. This requires issuers to prepare information for intermediaries in a format that allows straight-through processing (STP) in accordance with Article 2(3) of the Implementing Regulation, which in turn stipulates that information is to be transmitted between intermediaries in an electronic and machine-readable internationally applicable industry format such as ISO. It may therefore be assumed that intermediaries will transmit and process information on corporate actions in ISO format 15022 in accordance with current practice.[12] Issuers or any third party they appoint should therefore also deliver the information into the chain in ISO 15022. This will generally enable same-day processing to be ensured.

Recommendation for the German market (3.5):

To enable STP processing, issuers and their nominated third parties, such as service providers, generally provide information on corporate actions in the ISO 15022 message format. Intermediaries also use this ISO format to forward the information. This is in line with the Market Standards for Corporate Actions.

Recommendation for the German market (3.6):

Issuers are strongly recommended to appoint a service provider to ensure interoperability and fully automated processing of the corporate action (e.g. by using ISO 15022).

Section 67a(1) of the AktG does not specify when the issuer has to provide intermediaries with information on a corporate action. This is set out in the Implementing Regulation, where Article 9(1) specifies that the issuer who initiates the corporate action must provide intermediaries with the information in a timely manner and no later than on the business day on which

[12] The ISO 20022 message format is not used by intermediaries either in Germany or at European level at present. Even at international level, there are currently only a few countries that use this format for messages between CSDs and their customers. For this reason, ISO 15022 will continue for the time being to be the standard format for corporate actions. Future developments, in particular a switch by the market to ISO 20022, will be followed.

the corporate action is announced under applicable law. The mere announcement of a corporate action is therefore outside the scope of the information requirement pursuant to Section 67a(1) of the AktG (see also under section V.1.e. below).

e. Issuer deadline

The Implementing Regulation provides no clear guidance on setting the issuer deadline. Article 1(14) of the Implementing Regulation merely defines the term. According to this definition, the issuer deadline means the day and point in time set by the issuer by which shareholder actions regarding the corporate action must be notified to the issuer. European lawmakers may have decided to refrain from being more precise because the deadlines set under national company law regimes are likely differ. In Germany, for example, Section 186(1), sentence 2 of the AktG sets a minimum period of two weeks for exercising subscription rights. It was evidently felt that it would serve no useful purpose to impose a rigid requirement for the deadline to be set by the issuer for shareholder actions (such as the exercise of subscription rights). In practice, however, the lack of any rule whatsoever can result in issuers, particularly in cases where there is no statutory deadline for carrying out a corporate action, setting a very tight deadline which is geared solely to their needs (e.g. price performance) and does not leave the intermediaries involved in processing sufficient time to inform shareholders and receive their instructions (see also section V.3.c.). Issuers should therefore bear in mind that their information must not only be transmitted along the custody chain but also to the shareholder. If the shareholder is a retail client, the ISO format will need to be converted into legible continuous text. In a cross-border context, a translation may also be required. Postal delivery times must also be taken into account since retail clients cannot normally be reached electronically. Allowance should also be made for the return of instruction forms from the shareholder to the last intermediary when calculating the issuer deadline.

Recommendation for the German market (3.7):

When setting an issuer deadline, issuers should bear in mind that it must actually be feasible within the period specified to transmit the information along the chain of intermediaries to the shareholder and to obtain and forward any necessary information about shareholder action. It is not only the length of the chain of intermediaries that needs to be considered, especially in a cross-border context, but also other factors that can make it extremely time-consuming to process a corporate action (such as converting ISO formats into continuous text, translation, postal delivery times). Also relevant is the time needed to forward forms required by the issuer or its nominated third party, which excludes STP processing. Statutory formal requirements, such as the written form requirement, can also necessitate paper-based communication by post.

f. Content of the information on a corporate action

The information that the issuer has to make available to the first intermediary or other intermediaries and the information that has to be forwarded along the chain of intermediaries contains all the important details about the corporate action that the intermediary needs to meet its obligations to the shareholder under Directive 2007/36/EG or that shareholders need to exercise their shareholder rights (Article 8(1) of the Implementing Regulation). The minimum content of the information provided is based on Article 8 of the Implementing Regulation in conjunction with Table 8 of the annex to the Implementing Regulation. See below for some explanatory comments on Table 8.

Table 8

Notification of corporate events — other than general meetings

Pursuant to point (b) of Article 3b(1) and Article 3b(2) of Directive 2007/36/EC, where the issuer has made available to the shareholders on its website the information concerning corporate events — other than general meetings – comprising the information and data elements included in the table below, to the extent relevant for the corporate action, the notification of corporate events shall only be required to contain block A, as well as the URL hyperlink to the website where the information can be found.

Type of Information	Description	Format	Originator of data	**BdB interpretation guidance**
	A. Specification of the corporate event			
1. Unique identifier of the corporate event	Unique number	[12 alphanumeric characters]	Issuer or third party nominated by it	**In principle, issuers can assign a unique identifier themselves. But see also recommendation 3.9 below.**
2. Type of corporate event	Specification of the type of corporate event such as distribution of profit, reorganisation of the issuer shares	[42 alphanumeric characters]	Issuer or third party nominated by it	**4-digit CAEV indicator in accordance with ISO 15022.**

3. ISIN	Definition. ISIN for the underlying share	[12 alpha numeric characters]	Issuer	
4. ISIN	If applicable, ISIN for the interim share or security	[12 alpha numeric characters]	Issuer	
5. URL	URL hyperlink to the website where full information regarding the corporate event, to shareholders, is available	[255 alphanumeric characters]	Issuer	**See recommendation 3.11 below.**

B. Key dates applicable to the corporate event (to be included only as applicable to the relevant corporate event)

1. Last Participation date	Definition	[Date (YYYYMMDD)]	First Intermediary	
2. Ex-Date	Definition	[Date (YYYYMMDD)]	First Intermediary	
3. Record Date	Definition	[Date (YYYYMMDD)]	Issuer	
4. Start of the election period	Definition	[Date (YYYYMMDD)]	Issuer	
5. Last day of the election period	Definition	[Date (YYYYMMDD)]	Issuer	
6. Issuer deadline	Definition	[Date (YYYYMMDD); UTC (Coordinated Universal Time)]	Issuer	
7. Payment date	Definition	[Date (YYYYMMDD)]	Issuer	
8. Buyer protection deadline	Definition	[Date (YYYYMMDD)]	Intermediary	

C. Specification of the elections available to the shareholder (repeating block; to be presented for each ISIN, if applicable)

1. Alternative options for the shareholder	Specification of the options	[100 alphanumeric characters]	Issuer	**See recommendation 3.10 below**.

Populating Table 8 on the basis of rules that are as uniform as possible will facilitate systemic evaluation and thus straight-through processing. The fields of the table should therefore be filled in as specified by the European Market Standards for Corporate Actions of the Golden Operational Record Task Force.[13] These standards represent the agreement of market participants on a consistent use of abbreviations and codes so that uniform terminology can be used for the alternative options for shareholders in block C of Table 8, for example.

Recommendation for the German market (3.8):

The fields in Table 8 should be populated as specified by the European Market Standards for Corporate Actions of the Golden Operational Record Task Force.

Recommendation for the German market (3.9):

The issuer or third party nominated by the issuer can generate the unique identifier for field A.1 themselves. Identifiers should be based on a logic that ensures that an identifier will not be used more than once. Use may also be made of a service provider. To avoid pre-empting future market developments, no further recommendations should be issued at this point in time.

Table 8 and hyperlink

In the introductory note to Table 8 of the Implementing Regulations, issuers are given the option of either providing only the information in block A of Table 8 plus a hyperlink to the company website for all other relevant data or completing all blocks (A to C) of Table 8 of the Implementing Regulation. If all blocks of Table 8 are populated, intermediaries can process the structured information automatically. The information for intermediaries and shareholders behind the hyperlink may contain indispensable details about the corporate action. Listed companies should therefore always fill in all blocks of Table 8 and also provide the chain of intermediaries with the hyperlink. This will ensure that the information can be processed and forwarded in the best possible way.

[13] Not yet published; source will be added following publication.

In any event, issuers are only permitted to deliver information pursuant to Article 8(1) of the Implementing Regulation in the form of block A of Table 8 plus a hyperlink if the web page reached through the hyperlink contains all the information needed by the intermediary to fulfil its obligations under ARUG II and by shareholders to exercise their shareholder rights. If all the information required in blocks A to C is available there, it can and should be additionally provided to the chain of intermediaries in a structured form by completing blocks B and C of Table 8 in order to enable straight-through processing in accordance with Article 2(2) and (3)of the Implementing Regulation. It is also preferable from the investor's perspective if all blocks of Table 8 are completed because retail customers, in particular, will not find it easy to evaluate the information on the issuer's website, which will only be in the national language of the issuer and possibly in English. On top of that, the information on the website is often written in legal and technical language which can be difficult to understand. Intermediaries, by contrast, normally communicate with their retail customers in their national language and provide them with a readily understandable summary of the corporate action. Intermediaries are legally obliged to do so (Article 44 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016).

Recommendation for the German market (3.10):

Issuers should fill in all blocks (A to C) of Table 8 and also provide the hyperlink. Completing the entire table will enable intermediaries to automatically process the information structured in this way. To at least facilitate automated processing, the hyperlink should also lead to all the necessary information presented in tabular form in accordance with the requirements of Table 8 of the Implementing Regulation.

Recommendation for the German market (3.11):

Issuers should ensure the technical conditions are in place to provide hyperlinks with the maximum admissible number of 255 characters (Table 8, field A.5.) and use only SWIFT's "Z" standard character set. This means the following characters may be used:

- Abcdefghijklmnopqrstuvwxyz
- ABCDEFGHIJKLMNOPQRSTUVWXYZ
- 0123456789
- . , - ( ) / + ' = : ? @ _ # Cr Lf Space { ! " % & * ; < >.

The background is that certain special characters such as Ä, Ö, [], }, etc. cannot be processed in ISO messages via the SWIFT network.

g. Notifications of changes and cancellations of corporate actions

Notification also has to be given, to the extent necessary, of any changes and cancellations of corporate actions forwarded and transmitted under Section 67a and b of the AktG. This is required by Article 8(4), subparagraph 2 of the Implementing Regulation.

2. Transmitting information on corporate actions along the chain of intermediaries (Section 67a(3) of the AktG)

The obligations of intermediaries when forwarding information about a corporate action along the chain of intermediaries are based on Section 67a(3) of the AktG. This states that the intermediary must forward the information received from the issuer to the next intermediary by the deadlines set out in Article 9(2), subparagraphs 2 and 3, and (7) of the Implementing Regulation.

a. Deadline for transmitting information on a corporate action

Information on a corporate action received from an issuer or their nominated third party has to be forwarded

- without delay and,
- provided that the information is received by 16:00, no later than by the end of the same business day.

Information received after 16:00 has to be processed/forwarded by 10:00 on the next business day.

b. Format for transmitting information on a corporate action

The principle of same-day transmission is closely linked to the principle of STP laid down in Article 2(3) of the Implementing Regulation. This states that information has to be transmitted between intermediaries in an electronic and machine-readable format using internationally applicable industry standards such as ISO. It may therefore be assumed that intermediaries will continue to transmit and process information on corporate actions in the ISO 15022 format. Communication in ISO format enables fully automated electronic processing of the information, so that same-day forwarding of the information along the chain of intermediaries should normally be ensured.

Since Article 8 of the Implementing Regulation and Table 8 of the annex to the Implementing Regulation merely set out the minimum content of the information and the actual transmission of information will be in ISO format, intermediaries have no obligation to transmit information on corporate actions in the tabular form.

Recommendation for the German market (3.12):

Issuers will also use ISO 15022 to forward the information they receive on corporate actions in accordance with Section 67a(1) of the AktG. This is in line with the European Market Standards for Corporate Actions.

In accordance with Section 67a(3), sentence 1, phrase 2 of the AktG, information does not need to be forwarded if the intermediary knows that the next intermediary will receive it from another party. This is unlikely to occur very often in practice as information is normally passed on along the chain of intermediaries. Especially where a cross-border element is

involved, information is always forwarded via the central securities depository on the issuer side (Article 2(2) of the Implementing Regulation).

Recommendation for the German market (3.13):

Information should always be forwarded along the chain of intermediaries.

3. Transmission of information on corporate actions by the last intermediary to the shareholder

The transmission of information initiated by the issuer in accordance with Section 67a(1) of the AktG along the chain of intermediaries (Section 67a(3) of the AktG) comes to an end when the last intermediary in the chain forwards the information to the shareholder (Section 67b of the AktG). The obligations of the last intermediary in this context are set out in Section 67b(1) of the AktG, which essentially makes reference to the Implementing Regulation. The duties of the last intermediary can therefore only be determined by consulting the relevant provisions of the Implementing Regulation.

a. Extent of the last intermediary's obligation to provide information

In principle, the extent of the last intermediary's obligation to provide information depends on the information it receives from the company, possibly via the chain of intermediaries (cf. Section 67b(1), sentence 1 of the AktG). As explained above in section V.1.a., the issuer basically has to provide information about all initiated corporate actions within the meaning of Article 1(3) of the Implementing Regulation in order to enable intermediaries to fulfil their legal and/or contractual obligations. These obligations consist primarily of processes to implement the corporate action in their clients' securities accounts. Transferring dividend payments and subscription rights to a client's account/securities account was mentioned as an example. Obligations to provide information also play an important role as intermediaries may owe their clients, who may be shareholders or intermediaries themselves, details about corporate actions. Current practice distinguishes between two groups of clients when it comes to the extent of these obligations – institutional clients and retail customers, which each have different information needs (see below under section V.3.a.aa. and bb.).

aa. Institutional clients

Institutional clients, often also intermediaries themselves, receive all the information that the company places into the chain of intermediaries unless otherwise contractually agreed. In consequence, the new legal position based on ARUG II should not necessitate any changes. Another reason why this is the case is that intermediaries have no way of knowing whether their institutional clients are shareholders or whether they hold the shares as intermediaries for clients of their own. This is a further argument for ensuring that institutional clients continue to receive all the information about corporate actions since they may have to supply information and/or carry out booking processes in order to fulfil their own obligations to their customers. These include, in particular, contractual arrangements obliging intermediaries to forward any SWIFT or ISO 15022 messages in compliance with the ARUG II deadline regime.

Recommendation for the German market (3.14):

(Last) intermediaries should provide their institutional clients with all the information on corporate actions that the issuer has placed into the chain of intermediaries. This is because institutional clients may in turn be required to fulfil obligations to their own customers by providing them with information and/or processing the corporate action.

bb. Retail customers

Retail customers, by contrast, currently only receive information on corporate actions if these may have a significant impact on their legal position and if the notification is necessary to safeguard their interests (see no. 16 of the SOB). This avoids providing customers with information they would consider superfluous. It avoids queries and complaints about being sent too much information because many customers only want to receive information they actually need. It also saves a significant amount of costs. Since most retail customers can only be reached by post – only a minority of branch customers make use of the electronic mailbox – postage costs alone would be quite considerable. It is unlikely that customers would be willing to assume these costs in the form of higher account maintenance charges, for example. Nor would companies, which Section 67f of the AktG requires to bear at least some of the costs, be likely to accept this without complaint. This suggests that Section 67b(1) of the AktG should be interpreted restrictively and that retail customers should only be provided with information about corporate actions which require shareholders to actively exercise their rights for the action to become effective.

In addition to the spirit and purpose of the legal obligation to provide information, the wording of Article 8(1) of the Implementing Regulation is another argument for a restrictive interpretation of the scope of Section 67a of the AktG and Article 1(3) of the Implementing Regulation. Article 8(1) of the Implementing Regulation specifies in greater detail what information has to be provided on corporate events other than general meetings. This provision requires the information provided by the issuer to comprise all key information that shareholders need to exercise their shareholder rights. It is thus logical to assume that shareholders only need to receive information if it is necessary for the purpose of exercising their rights.

Article 8(1) of the Implementing Regulation also refers to Directive 2007/36/EC, which was amended by Directive (EU) 2017/828 (SRD II). Article 3b(1)(a), which is implemented by Section 67a of the AktG, stipulates that companies must provide shareholders with information "to enable the shareholder to exercise rights flowing from its shares, [...]". This reference also suggests a restrictive interpretation.

Furthermore, this conclusion reflects the explicitly expressed will of European and national lawmakers, mentioned earlier, that established processes for handling corporate actions should be retained even after the new requirements of SRD II and the Implementing Regulation have taken effect.

aaa. Voluntary corporate actions

This means shareholders/security account holders should be informed of all voluntary corporate actions with the exception of statutory and voluntary purchase and exchange offers (see section V.3.a.bb.ccc below). Voluntary corporate actions cannot be implemented without shareholders providing an indication of their intention. It is therefore essential, in these cases, to inform shareholders since only by receiving information about the corporate action is it possible for them to exercise their rights.

Recommendation for the German market (3.15):

A restrictive interpretation of the new requirements (Section 67a(6) of the AktG in conjunction with Article 1(6) of the Implementing Regulation) suggests that retail customers (shareholders) need only be informed about those corporate actions that require shareholders to indicate what action should be taken (voluntary corporate actions). Only by being informed about the corporate action are shareholders in a position to exercise the rights attached to the shares. This does not, however, apply to statutory and voluntary purchase and exchange offers (see section V.3.a.bb.ccc. below).

bbb. Mandatory corporate actions, dividend payments and other actions which do not affect shareholders' rights

In accordance with the restrictive interpretation of Section 67b(1) of the AktG, information on mandatory corporate actions that do not require action on the part of the shareholder to become effective could be dispensed with. Mandatory corporate actions include, for example, share splits, which are automatically reflected in the shareholder's/customer's securities account without any action required, or possible, on their part. So in these cases, too, providing information to retail customers would involve considerable time and effort without any associated added value for the customer. It should therefore be sufficient to inform these customers about the corporate action with the booking advice/account statement. The same procedure should be followed for actions that take place without any change on the account and that do not affect shareholder rights, such as a change of company name without a simultaneous change of ISIN. There is no need in these cases either to inform retail customers in advance. Customers can be informed by their banks either at the time of, or after, the change.

Recommendation for the German market (3.16):

It should be sufficient to use only the booking advice/account statement to inform retail customers about mandatory corporate actions. It should also be possible to dispense with prior information about actions that take place without any movement on the client's account and where shareholder rights are not affected. Retail customers can also be informed by their bank at the time of, or after, the change.

The same could apply to dividend payments if they do not require action on the part of the shareholder to become effective. It is true that the distribution of profits is expressly mentioned in Article 1(3) of the Implementing Regulation. But dividends are credited to shareholders' accounts automatically and, as a rule, without further action on their part no later than three days after the resolution is adopted at the general meeting (cf. Section 58(4), sentence 2 of the AktG). Information on the dividend resolution would not reach retail customers after being transmitted along the custody chain any faster than the credit advice. The information would therefore have no added value for them whatsoever and would impose a considerable administrative burden on issuers and intermediaries. Informing small shareholders (retail customers), most of whom can only be reached by post, would give rise to substantial postage costs alone. If there is an optional element to a dividend payment, e.g. as regards the currency, prior information may be necessary in certain cases. The criteria set out in section V.3.a.bb.aaa. should then be applied.

Under the current legal situation, retail customers are informed of the dividend when they receive notification of the general meeting, where the dividend proposal will be on the agenda. They are informed of the dividend resolution no later than three days after the resolution is adopted at the general meeting by means of the booking advice or account statement including the dividend payment. This information could also be considered sufficient to comply with ARUG II, meaning that separate information on the dividend resolution would not necessarily have to be sent to retail customers.

The same applies to quarterly dividends, which are particularly common in other EU member states. Here, too, a resolution is passed by the general meeting. The actual amount of the dividend is then determined on the basis of the quarterly profits and paid out after the general meeting.

Recommendation for the German market (3.17):

For retail customers, information on the proposed dividend payment included in the invitation to the general meeting and the subsequent notification that the actual dividend payment has been credited should be sufficient to constitute a transmission of information by the last intermediary in accordance with Section 67a(1) of the AktG. It is not necessary to send separate information about the dividend resolution like that normally received by institutional clients in ISO format to enable them to fulfil obligations to their own clients.

ccc. Statutory and voluntary purchase and exchange offers

As explained above in section V.1.a., statutory and voluntary purchase and exchange offers which are not covered by the German Securities Acquisition and Takeover Act are not corporate actions that have to be notified to intermediaries by the company itself or a nominated third party in accordance with Section 67a(1) of the AktG. This means that information on statutory and/or voluntary purchase and exchange offers is also outside the scope of Section 67b of the AktG. An obligation to transmit such information to shareholders/security account holders may nevertheless arise from the terms of the custody agreement/securities account agreement. For retail customers, this is expressly regulated in no. 16 of the SOB, which states that information on both statutory compensation and exchange offers and voluntary purchase and exchange offers must be made available to holders of securities accounts. The transmission of this information is not subject to the requirements of ARUG II and the Implementing Regulation, however, so same-day processing, for example, is not mandatory.

In the interests of consumer protection, the Federal Financial Supervisory Authority (BaFin) has included in its Minimum Requirements for the Compliance Function (MaComp) an obligation for banks to flag certain features of voluntary purchase and exchange offers by private individuals and companies outside the scope of the German Securities Acquisition and Takeover Act when forwarding such offers in accordance with no. 16 of the SOB.[14] The bank operating the securities account must explicitly point out that it is up to customers themselves to assess the information.[15] The intention is to make it absolutely clear to small investors (retail customers) that the bank assumes no responsibility for the offer. The obligation to draw attention to this fact can continue to be fulfilled in the same way as before since banks will continue to forward the information solely to meet the terms of the securities account agreement, not to comply with the requirements of Table 8 of the annex to the Implementing Regulation, which contains no field for details of this kind.

It remains to be seen, in any event, whether voluntary purchase and exchange offers outside the scope of the German Securities Acquisition and Takeover Act will play much of a role at all for joint stock corporations listed on regulated markets of the European Union and the EEA. As a rule, these offers are for securities traded only on the open market or for securities that are not shares or are substitutes for shares (e.g. depositary receipts).[16]

[14] English version retrievable at https://www.bafin.de/SharedDocs/Downloads/EN/Rundschreiben/dl_wa_uebersetzung_rundschreiben_052018_macomp_en.html

[15] BT 3.2 no. 6 of MaComp

[16] Cf. also https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2018/fa_bj_1803_Wertpapiere.html (in German only)

Recommendation for the German market (3.18):

Information on statutory compensation and exchange offers and on voluntary purchase and exchange offers outside the scope of the German Securities Acquisition and Takeover Act do not have to be forwarded in accordance with the requirements of Section 67b of the AktG. Intermediaries should, however, check whether they are required to inform shareholders/securities account holders of such actions under the terms of the securities account agreement. An obligation to provide this information to retail clients is set out in no. 16 of the SOB. The regulatory requirements of BT 3.2. no. 6 of MaComp (BaFin Circular 4/2019 (WA)) should also be observed.

b. Deadline and format for transmitting the information on the corporate action from the last intermediary to the shareholder

The principle of same-day transmission of information applies not only to forwarding information within the chain of intermediaries (Article 9(2), subparagraph 2 of the Implementing Regulation) but in principle also to the transmission from the last intermediary to the shareholder/securities account holder (Article 9(3) of the Implementing Regulation). The Implementing Regulation appears to assume that communication between the last intermediary and the shareholder/securities account holder will also be fully automated and electronic and that STP will therefore be possible.[17]

This is not what happens in practice, however. Only institutional clients can receive information in ISO formats, which, in addition, are always completed in English. Retail customers can neither read – or rather evaluate – these formats, which essentially consist of abbreviations and codes, nor can they understand them. On top of that, they expect German companies to communicate with them in German. Intermediaries, for their part, not only have an obligation under the terms of the securities account agreement to provide their customers with information that is appropriate to the recipient. They are also legally required to present information in a readily comprehensible form (Article 44 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016). It remains to be seen whether and to what extent the information received via the chain of intermediaries in accordance with ARUG II and Table 8 of the Implementing Regulation will enable them to do so.

[17] Cf. Article 2(4) of the Implementing Regulation

At present, intermediaries generally process corporate actions with the help of information prepared by, and received directly from, service providers. This comprises both technical details of the action as well as supplementary data that intermediaries require, such as the tax valuation of a security. Table 8 will not supply this information. It is therefore likely that the statutory ARUG II information on corporate actions will not be sufficient, especially for the last intermediaries in the chain, which will have to rely on additional sources for informing their clients and processing corporate actions. Experience will show whether market practices and adjustments can compensate for these regulatory shortcomings in the medium term or whether the legal framework will need to be revised.

For the time being, intermediaries will probably obtain information on corporate actions from various sources where necessary. First, they will receive the legally required information pursuant to Section 67a of the AktG in conjunction with Article 8 of the Implementing Regulation through the chain of intermediaries. And, second, they will continue to receive information about corporate actions from service providers. German lawmakers expressly permit this in the explanatory memorandum to Section 67a(2) of the AktG so that tried and tested processes can be preserved.[18] Intermediaries will thus be free to choose which source to make use of when processing and forwarding information on corporate actions.

Irrespective of this point, it is clear that, for retail customers, both ARUG II information in ISO format and any other machine-readable information from a service provider will always have to be translated into continuous text, possibly in German, and then sent to the electronic postbox of the shareholder/securities account holder or dispatched by post. As postal delivery is still very common in Germany, German lawmakers have expressly acknowledged that the time needed to send paper-based information does not amount to culpable delay and may therefore be deemed "timely".[19]

Recommendation for the German market (3.19):

If the shareholder cannot be contacted by electronic means, the transmission of information from the last intermediary to the shareholder in written form with the typically associated delays this entails may be regarded as timely and not as culpable delay, even if it does not comply with the principle of same-day processing and forwarding.

[18] Cf. Bundestag printed matter 19/9739, page 61

[19] Explanatory memorandum to section 67b of the AktG, Bundestag printed matter 19/9739, page 63 f.

German lawmakers have not explicitly expressed a view on the question of whether transmission may be considered timely if a delay is caused by converting ISO format to continuous text which is then sent not by post but electronically to the shareholder's electronic mailbox, for example. Once again, the delay initially results from the conversion of the ISO format to continuous text (e.g. a PDF file). The time then needed to transmit the text electronically by sending the PDF file to an online banking portal, for example, must also be taken into account. This is likely to take considerably less time than sending the information by post. There may nevertheless be a short delay, though this does not mean delivery should be deemed late. When considering the question of the timeliness of transmission to the shareholder, lawmakers certainly seem to have thought primarily of postal delivery, which involves not only generating continuous text, but also printing the information, placing it in an envelope and then the actual postal delivery itself. But the generation of continuous text, as the logical preliminary step to notification in writing, will always cause a delay, even if only a short one. Both this and the technical steps needed to enable electronic transmission should be borne in mind when assessing whether information has been forwarded without delay in a particular case.

The Implementing Regulation also recognises that STP cannot always be used for measures that require action on the part of the shareholder. In these cases, the intermediary is still obliged to transmit the information without delay and in good time, but same-day processing is not mandatory (cf. Article 9(4), subparagraph 2 of the Implementing Regulation). This is another reason why STP interrupted by the generation of continuous text could justify a deviation from the principle of same-day processing.

When assessing whether information has been transmitted in a timely manner, it is obvious that only a short delay can be justified in such cases. The manual steps required for sending paper-based information can plausibly justify a significantly longer delay in transmission.

Recommendation for the German market (3.20):

Even if the shareholder is informed electronically via an electronic postbox to which a PDF file, for example, can be uploaded, the necessary generation of continuous text from ISO format and its transfer to an online banking application may result in a delay. Transmission should nevertheless still be deemed to have occurred in a timely manner.

c. Deadlines set by intermediaries

When processing and transmitting information on corporate actions, intermediaries should ensure that the shareholder has sufficient time to react to the information received in order to comply with the issuer deadline or record date (Article 9(2), subparagraph 1 of the Implementing Regulation). As a rule, the obligation to process and forward the information on the same day (Article 9(2), subparagraph 2 of the Implementing Regulation) ought to make this possible. It should nevertheless be borne in mind that the time available to intermediaries is defined by the deadline set by the issuer. If the issuer requires shareholders to reply within a very short period of time, it will not always be possible for intermediaries to allow sufficient time to respond, especially if a cross-border element is involved with a correspondingly long custody chain. Issuers should take this into account when setting their deadlines (see section V.1.d. above). This applies likewise to all intermediaries in the chain, which should also set their deadlines for a response from the next intermediary with the need in mind for the last intermediary to give its client (shareholder) sufficient time to respond to the information received.

Recommendation for the German market (3.21):

Intermediaries should organise their transmission of information on, and processing of, corporate actions in a way that gives their clients (shareholders) sufficient time to exercise their shareholder rights. This presupposes that an adequate time frame has been set by the issuer.

If the issuer has set such a tight deadline that shareholders cannot receive information in time to exercise their shareholder rights, the last intermediary should be permitted to refrain from forwarding the information. It may be appropriate in such cases to make a distinction between the treatment of clients who can be reached by electronic means and those who can only be reached by post.

Intermediaries are also required not to set their customers a deadline for shareholder action earlier than three business days before the issuer deadline (Article 9(4), subparagraph 3 of the Implementing Regulation).[20] It should be borne in mind that the time available to the last intermediary may be so limited both by the deadline set by the upstream intermediary and by

[20] The English version reads "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." This subparagraph has been incorrectly translated in the German version.

special formal requirements for issuing instructions that it cannot comply with this rule. All intermediaries in the chain should therefore review their processes and deadlines and adjust them, if necessary, to ensure that they themselves and all last intermediaries are able to meet the new requirements of the Implementing Regulation.

Recommendation for the German market (3.22):

Intermediaries are required to set the deadline for instructions from securities account holders (shareholders) no earlier than three days before the issuer deadline (so-called market deadline) (Article 9(4), subparagraph 3 of the Implementing Regulation). All intermediaries in the chain should try to ensure that the last intermediary can comply with this deadline. Should it nevertheless occasionally become necessary to deviate from this requirement to enable shareholders to exercise their rights, this should be permitted.

4. Transmission of information on corporate actions along chain of intermediaries to the company

The main rule determining the "return journey" of information from the shareholder to the issuer is set out in Section 67c of the AktG, which refers to the Implementing Regulation for details on the content of the information and the format and deadline for its transmission. The last intermediary is required to transmit information received from the shareholder in the exercise of their rights to the company without delay either directly or along the custody chain (Section 67c(1) of the AktG in conjunction with Article 9(4) of the Implementing Regulation). National and European lawmakers consequently assume that information from shareholders on how they wish to exercise their rights should be handled in a way that mirrors how information on corporate actions is provided by the company. This is probably based on the assumption that the issuer needs this information to process the corporate action in question. This does not reflect current practice, however.

As explained above in section V.1.b. on "outgoing" information from the company to the shareholder, information on corporate events other than general meetings is in principle transmitted along the custody chain because intermediaries and service providers normally handle the processing of corporate actions on behalf of issuers. The same applies to "incoming" information as the issuer cannot process shareholders' instructions about the exercise of their rights, such as subscription rights. This can only be done by the last intermediaries and other intermediaries and service providers. The usual flow of information for processing corporate actions on the "return journey" from the shareholder to the company therefore currently looks as follows:

- The last intermediary – the account-servicing bank – processes information such as shareholder instructions and returns it to the settlement/paying agent and/or central securities depository (in Germany Clearstream Banking Frankfurt [CBF]).
- CBF processes the implementation steps of the corporate action on the basis of the instructions issued by the settlement/paying agent and shareholders' eligible holdings.
- Depending on the type of transaction, the settlement/paying agent sends the company the instructions and associated transaction results either anonymously in aggregated form or, where necessary, on a client-by-client basis.

This applies to both bearer and registered shares and reflects the European Market Standards for Corporate Actions.

As mentioned in the introduction, both national and European lawmakers wish established procedures for processing corporate actions to be retained even after the new requirements of SRD II and the Implementing Regulation take effect. It is therefore logical that information should essentially continue to flow as outlined above. German lawmakers provided for this when implementing SRD II in the German Stock Corporation Act.

Section 67c(2) of the AktG allows some flexibility in the design of the "return journey". First, it is incumbent on the shareholder to issue instructions concerning the transmission of the information. According to the explanatory memorandum, this goes for instructions as to whether information should be transmitted and, if so, as to its content.[21] This enables issuers and intermediaries to exert considerable influence on the "return journey" through the design of the forms used by shareholders to exercise their rights and the specification of obligations under custodian agreements concluded with institutional clients, in particular. These allow them to determine precisely what information is passed on and to whom.

To ensure shareholders' instructions are duly processed and any necessary restriction on the disposal of securities in the custody chain is in place, these instructions are currently transmitted along the chain of intermediaries. This practice applies regardless of whether the securities are bearer or registered shares. This should continue to be taken into account when designing the "return journey".

In addition, a reference to Section 67a(2), sentence 1 of the AktG clarifies that the parties involved may make use of a nominated third party. This is so that the current practice of processing corporate actions with the help of settlement agents

[21] Explanatory memorandum to section 67c(1) of the AktG, Bundestag printed matter 19/9739, page 65

such as paying agents can also be retained on the "return journey".[22] The usual aggregation of transaction results can continue to take place too, since the collection and consolidation of instructions is permitted (Section 67c (2), sentence 4 of the AktG) and may be regarded as forwarding without delay.[23]

Recommendation for the German market (3.23):

Whether and to what extent information is transmitted from the shareholder to the company can be influenced by designing instruction forms in a way that ensures the information can be processed efficiently on its return journey. It should be borne in mind that only transmission along the chain of intermediaries can ensure that instructions are properly processed and that any necessary restrictions on the disposal of securities in the custody chain can be observed. This applies to both bearer and registered shares.

The common practice of sometimes aggregating instructions remains permissible; the collective transmission of these instruction results is regarded as forwarding without delay (section 67c(2), sentence 4 of the AktG).

In addition, certain legal requirements may conflict with the deadline set for the last intermediary. Take, for instance, the need for assignment forms for measures requiring shareholder action to be in writing. Such forms are often used for electoral dividend payments by German issuers. STP is unlikely to be possible in these cases, so transmission without delay pursuant to Article 9(4), subparagraph 2 of the Implementing Regulation will generally be sufficient. The question of how long a period may be considered "without delay" should be determined in the light of the specific circumstances involved. In the event of a requirement for written form, with the time needed for postal dispatch this entails, a period of several days may plausibly be classified as "without delay".

[22] Explanatory memorandum to section 67c(2) of the AktG, Bundestag printed matter 19/9739, page 65

[23] Explanatory memorandum to section 67c(2) of the AktG, Bundestag printed matter 19/9739, page 65 f.

5. Time stamp

Article 9(8) of the Implementing Regulation requires the intermediary to time stamp all transmissions referred to in that article. If communication along the chain of intermediaries is carried out via SWIFT, both the receipt and the dispatch of each message will automatically be time stamped.

If information is transmitted electronically to an electronic postbox, the time of transmission, e.g. the time of delivery to a front-end operator, should be appropriately documented. If information is sent by post, the time needed for transmission will essentially be determined by mail delivery times, so a record of the date on the document should be sufficient (date of generating the information).

Record-keeping periods under Section 83(8) of the German Securities Trading Act (5 to 7 years) should be observed and compliance with these periods should be checked.

Recommendation for the German market (3.24):

Processes for ensuring that the time of incoming and outgoing information is appropriately documented should be reviewed and, if necessary, adjusted.

Flow of information about CAs (Germany)

Applies to both bearer and registered shares; both information and bookings; return flow only if response needed from client