

CONSULTATION

AFG RESPONSE

Draft Implementing Regulation on the exercise of shareholders rights

8 May 2018



The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2017 €4,000 billion in assets, including €1,950 billion in French funds and €2,050 billion in discretionary portfolios and foreign funds.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,
- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,
- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.
- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of PensionsEurope and of the International Investment Funds Association (IIFA).

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Response to the consultation on the Draft Implementing Regulation on the exercise of shareholders rights

The Association Française de la Gestion financière (AFG) is grateful to have the opportunity to make the following comments on the Draft Implementing Regulation laying down minimum requirements as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights:

In our view, it is fully clear that the definition of ‘shareholder’, as understood in the level 1 text, is the entity effectively deciding how the shares are voted. This is important, given that Member States have different definitions of ‘shareholder’, which may cause confusion and complexity, particularly for cross-border participants.

In our view, it is also fully clear that the definition of ‘intermediary’, as understood in the level 1 text, is the entity which provides safekeeping of shares, administration of shares or maintenance of securities accounts on behalf of shareholders or other persons.

In relation to Article 9 of the Implementing Regulation – Deadlines to be complied with by issuers and intermediaries in corporate events and in shareholder identification processes:

In cross-border situations, shareholders often do not receive information regarding corporate events on time. It is therefore important that the deadline foreseen in Article 9 (4) takes this into account. The last intermediary setting a deadline earlier than three business days prior to the record date leaves a very short window for the shareholder to react – if any. We therefore would strongly support to only refer to the issuers’ deadline in case of corporate events other than shareholder meetings. Clearly, for shareholder meetings, the record date has to be the relevant point in time for the deadline.

Regarding the voting receipt and confirmation of recording/calculation of votes, it should be mentioned that these notifications are **automatic** in nature.

Concerning Article 9 (5) we suggest to make more clear that “the voting receipt” is the first confirmation before the general meeting while the “confirmation of the recording and calculation of votes” is a second confirmation after the general meeting.

In any case we believe that the deadline for the “confirmation of the recording and calculation of votes” should only be a maximum of 10 calendar days. Asset managers seek to discharge their duties to their clients by protecting and improving their interests, and this may include where relevant voting rights. An overly long timeframe with regards to receiving confirmation of recording and calculation of votes makes the process more uncertain and inefficient for the asset manager, who needs to know without too much delay that votes have been cast, according to their clients’ interests.

With respect to the table in the Annex, we notice that the term “responding intermediary” is at times used. There is a risk that where it is not clear which intermediary is required to respond, none in a chain of intermediaries will feel responsible for providing the information. We would therefore suggest that this be clarified.
