DACSI 26-1136

DACSI REVIEW

FASTER Activity Reports: Registered Owner Declaration (Article 12) and Indirect Investment (Article 15)

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Executive summary

DACSI welcomes the development of harmonised, efficient and secure procedures for relief at source and quick refund under FASTER. The reviewed Activity Reports nevertheless contain legal, operational and technical uncertainties that should be resolved before the process model and XSD specifications are finalised.

Priority	DACSI position
Proportionality	Apply a risk-based standard and ensure that low-value retail claims remain practically accessible.
CFI responsibility	Limit verification to reasonable measures performed in good faith using information available in the normal course of business.
Legal clarity	Resolve the meaning of final investor, declaration validity and mixed-entitlement treatment before freezing technical specifications.
Data architecture	Separate investor declarations, evidence, CFI checks, eligibility decisions and processing outcomes.
Operational design	Support automation, partial claims, collective investment structures, corrections and end-to-end testing.

1. General observations

The proposed framework shifts significant compliance responsibility to Certified Financial Intermediaries (CFIs). This requires a clear and proportionate definition of what CFIs are expected to verify.

Article 12(2) appears to require CFIs to determine whether a registered owner is entitled to a reduced withholding tax rate under national law or a double tax treaty. Many account-maintaining CFIs do not possess the source-country-specific tax expertise, documentation or complete information needed to make such substantive determinations. Information collected through ordinary KYC, AML, CRS and FATCA processes generally confirms identity and reported tax residence, but does not establish treaty entitlement, beneficial ownership or the applicable withholding tax rate.

DACSI therefore recommends clarifying that CFIs are required to take reasonable measures in good faith based on information available in the normal course of business. They should not be expected to undertake independent legal research, reconstruct a client's tax position or provide tax advice. Where a CFI has assisted a client in preparing a declaration, appropriate safeguards should address the potential conflict between assistance and subsequent verification.

A proportionate and risk-based approach is particularly important for retail investors. The cost and complexity of completing and verifying a declaration may exceed the value of the relief available for many small claims, effectively making FASTER inaccessible to the investors it is intended to assist.

2. Registered Owner Declaration

2.1 Validity and geographical scope

The proposed annual renewal of the Registered Owner Declaration (ROD) would create a considerable administrative burden for investors and CFIs. DACSI recommends a validity period of at least three years, subject to an obligation on the registered owner to notify the CFI of any material change.

A single declaration should, where possible, be capable of covering multiple source Member States. Requiring separate declarations for every Member State would increase complexity without necessarily strengthening the reliability of the information. The ROD and XSD should record explicit start and end dates and accommodate Member States that apply different validity requirements.

2.2 Financial arrangements

A general declaration concerning involvement in a financial arrangement cannot reliably reflect a position throughout the validity period of the ROD. Financial arrangements may apply to only part of a securities position and may be concluded, settled or terminated between distributions.

DACSI recommends separating relatively stable registered-owner information from a payment-specific declaration concerning financial arrangements. The latter should only be required when an arrangement remains relevant on the applicable date and should identify the portion of the securities or payment affected. This would allow relief to remain available for the unaffected portion.

2.3 Proportionality for retail investors

Non-professional investors cannot reasonably be expected to determine complex matters such as the legal basis for a reduced rate, treaty entitlement or the precise scope of a financial arrangement without professional advice. Simplified requirements should therefore be developed for standard, low-value and low-risk retail cases. The framework should also explain how incomplete declarations are handled and what factual assistance a CFI may provide without being regarded as giving tax advice.

2.4 Collective investment undertakings

The Activity Report does not sufficiently explain how a ROD should be completed for umbrella funds and sub-funds. Although an eTRC may be issued in the name of the umbrella, assets, financial arrangements and dividend entitlements may be administered at sub-fund level. The framework should specify:

- whether the declaration must be provided at umbrella or sub-fund level;
- how sub-funds are identified and related to the umbrella;
- which entity or representative may sign the declaration;
- which identifiers may be used where a collective investment undertaking has no TIN; and
- how payment-specific financial arrangements at sub-fund level are reported.

2.5 Personal and identification data

Further guidance is required on the recording of multiple given names and surnames, the identification of natural persons and legal entities, and the treatment of registered owners with more than one relevant address.

The address block should be repeatable and include an address-type indicator. The specification should also provide a complete list of permitted identifiers and explain where TINs, eTRC verification codes and alternative tax-residence documentation must be recorded.

3. Relationship between the ROD and Article 10 reporting

The relationship between the ROD process and Article 10 reporting remains unclear, particularly where no relief request is made or the ROD is incomplete or rejected.

DACSI considers that a CFI should not be required to obtain an eTRC verification code or alternative Article 12 documentation solely for Article 10 reporting when the investor has not requested relief. Requiring CFIs to collect such information from all investors would be disproportionate and could create data-protection concerns.

The framework should distinguish clearly between:

- information declared by the registered owner;
- supporting documentation received;
- checks performed by the CFI;
- the outcome of those checks;
- the eligibility determination;
- the processing status of the declaration; and
- the reason why no relief request was submitted.

A simple Boolean indicator is insufficient. The data model must accommodate incomplete, accepted, rejected, corrected and expired declarations and distinguish a declaration made by the investor from the CFI's verification outcome.

4. Indirect Investment

4.1 Definition of the final investor

The Directive requires reporting of the 'final investor' but does not define this term for Article 15 structures. It is therefore unclear whether the final investor is the CIU or designated legal person holding the securities, the underlying participants, or both in distinct capacities.

This is especially problematic for transparent, hybrid and partially opaque structures. The legal interpretation should be clarified before it is embedded in the technical model. Irrespective of the eventual interpretation, the schema should be capable of separately recording:

- the registered owner;
- the CIU or designated legal person;
- the relevant underlying participants;
- the relationships between these parties; and
- the part of the payment or position attributable to each entitlement category.

4.2 Incomplete underlying-investor populations

For open-ended collective investment schemes, it may be impossible or inappropriate to report every underlying investor. Some investors may not be eligible for relief, may not request relief or may not have authorised disclosure of their personal information. Existing national arrangements may instead grant relief to a CIU based on the proportion of investors meeting specified tax-residence conditions.

The proposed data model should therefore allow the reporting of some, but not necessarily all, underlying investors. It should also support percentage-based relief, aggregated investor categories and mixed-entitlement structures where legally permitted.

No CFI or CIU should be required to disclose information about investors who have not requested relief unless this is clearly required by the Directive and is supported by an appropriate legal basis under data-protection law.

4.3 Article 15 declarations and their validity

Because Article 15(7) disapplies parts of Article 12, it is unclear how long an Article 15 declaration remains valid. Requiring a new declaration for every individual distribution would be operationally unworkable for CIUs holding diversified portfolios across several Member States.

A defined validity period should be introduced, together with an obligation to report material changes. The framework should also clarify whether declarations can cover multiple payments, issuers and source Member States.

4.4 Legal basis and withholding tax rates

A single CIU may contain investors entitled to different rates under different treaties or domestic provisions, as well as investors who are not entitled to relief or choose not to claim it. A single legal basis and withholding tax rate cannot always be assigned to the registered owner.

The data model should therefore support multiple legal bases, rates and allocation percentages within one claim and clearly identify the portion for which relief is requested.

5. Process model and technical architecture

DACSI recommends agreeing the complete end-to-end legal and operational process before finalising individual XSD elements. The process should distinguish:

1. Collection of the Article 12 or Article 15 declaration and supporting evidence.
2. Checks performed by the CFI.
3. The resulting eligibility determination.
4. Selection of relief at source, quick refund or the standard refund procedure.
5. Submission, acceptance, partial acceptance or rejection.
6. Corrections, cancellations, duplicate detection and reconciliation.

The current proposals do not yet provide a sufficiently complete data architecture. The final specifications should define entities, unique identifiers, relationships, cardinalities, allocation rules, statuses, validation rules, error handling and the full lifecycle of a request.

For high-volume automated processing, DACSI also recommends:

- a common EU facility or API for checking eTRC status and validity;
- structured access to Member State requirements for third-country residence evidence and disregarded entities;
- publication of the complete schema architecture, data dictionary and business rules;
- coordinated version management across all FASTER XSDs;
- sufficient implementation lead time;
- an end-to-end industry testing environment; and
- protection against retrospective enrichment following schema changes.

6. Consolidated DACSI recommendations

DACSI recommends that the Activity Reports and technical specifications should not be finalised until the unresolved legal assumptions have been clearly identified and the principal process questions have been answered. In particular, DACSI requests:

- A proportionate, risk-based interpretation of CFI due diligence.
- Confirmation that CFIs are not expected to provide tax advice or independently establish substantive treaty entitlement.
- A ROD validity period of at least three years, subject to change notifications.
- The possibility of one declaration covering multiple source Member States.
- Payment-specific reporting of financial arrangements and affected positions.
- Clear treatment of umbrella funds, sub-funds and partially opaque structures.
- A precise definition of 'final investor' for Article 15 purposes.

- Support for partial, percentage-based and mixed-entitlement claims.
- Clear separation between declarations, evidence, CFI checks, eligibility decisions and processing outcomes.
- Confirmation that information on investors who do not request relief is not required unless clearly mandated and legally justified.
- Worked examples for retail investors, umbrella and sub-fund structures, transparent and hybrid CIUs, partially opaque structures and multi-tier investment chains.
- Completion of the end-to-end process and data architecture before the XSD is frozen.

7. Closing observation

DACSI would welcome further dialogue with the European Commission, Member States, the EBF, the appointed IT provider and other relevant stakeholders to ensure that the FASTER procedures are legally sound, operationally workable and capable of supporting efficient automated processing across the European market.