

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law

July 2018

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

GLEIF welcomes the European Commission's objective to achieve a legal and administrative environment that is both conducive to growth and adapted to face the new economic and social challenges of a globalized and digital world while also pursuing the protection of employees, creditors and minority shareholders and providing authorities with all necessary safeguards to combat fraud or abuse.

GLEIF however, is concerned that the envisaged use of the European Unique Identifier (EUID) as set out in the proposal would not reach the stated objective in the best possible way. Meaningful regulation in response to the digital revolution must, first and foremost, recognize that local or regional standards are no longer fit for purpose in the globalized digital marketplace. Global standards are to be preferred.

GLEIF therefore, suggests replacing the EUID in Article 19 in the proposal by the Legal Entity Identifier (LEI).

The LEI would serve the purposes of the proposed Directive in the best possible way, because:

- The LEI is a **globally** unique identifier for legal entities, established by the Group of 20 (G20) and the Financial Stability Board (FSB)
- The LEI is a standard of the International Organization for Standardization (ISO 17442)
- The LEI is available as the **internationally unique** code as mentioned in Article 19 of the proposed Directive and is available to be published and used free of charge
- The European Union could make mandatory the issuing of the LEI by the national business registers to all companies, or even to all registered entities; this would function then in the Global LEI System with specific rules
- There are already 5 European business registers and a national statistical institute active as issuers of LEIs

- The LEI also enables users to access information on the legal entity's direct and ultimate parents from within or outside the EU; this information is particularly important for public administrations
- The mandatory use of the LEI is already regulated in many European Union (EU) Directives and Regulations, especially for the purposes of investor protection within the the revised Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR)
- The choice for the LEI would mean to be part of a global system which would help European companies to easier connect to counterparts in the global digital marketplace, especially in sectors such as supply chain and capital and money markets

Deploying the LEI with EU legislation designed to further the Single Digital Market would ensure a consistent policy approach relevant to entity identification in the EU. EU agencies and institutions have consistently endorsed broad adoption of the global LEI standard. To give just one example: Verena Ross, Executive Director of the European Securities and Markets Authority (ESMA) reiterated the advantages of establishing the LEI as the standard pan-European entity identifier in a speech delivered at the Banque de France on 27 June 2018.¹

It should also be considered that alignment on the LEI as the pan-European entity identifier will significantly lower the cost and burden for EU businesses subject to regulation mandating an entity identifier. To illustrate the point: Any EU business that is a client of an investment firm trading in the EU must have an LEI according to MiFID II / MiFIR. It is costly and cumbersome for this business to obtain and maintain yet another entity identifier to comply with another EU law. Having to obtain a host of different local and regional entity identifiers is particularly burdensome for small and medium-sized enterprises.

Replacing the EUID in Article 19 in the proposal by the LEI will allow all EU stakeholders to generate the synergies arising from network effects, i.e. operational efficiencies, cost savings, reduction of time to transact and more reliable information on business partners. The resulting easier counterparty identification will open the door to further automation and digitization and make it easier and safer for all EU businesses and citizens to participate in the digital marketplace, thus providing EU businesses with an important tool to manage the new economic and social challenges of a globalised and digital world.

GLEIF looks forward to extending the usefulness and applicability of the LEI to support the implementation of BRIS in the EU and welcomes the opportunity to discuss this approach in more detail within the context of the BRIS implementation.

In the Annex to this document, you will find a broader description of the points above, including the background of the establishment of the Global LEI System and the LEI.

¹ https://www.esma.europa.eu/sites/default/files/library/esma_speech_verena_ross_lei.pdf

ANNEX

LEI in general

Recognizing the shortcomings of local, regional or proprietary entity identifiers in the wake of the 2008 financial crisis, representatives of the European Central Bank (ECB) and EU Member States have worked together with the G20 and the FSB to create the LEI as a global entity identifier. EU agencies and institutions have consistently endorsed broad adoption of the global LEI standard. To give just one example: Verena Ross, Executive Director of the European Securities and Markets Authority (ESMA) reiterated the advantages of establishing the LEI as the standard pan-European entity identifier in a speech delivered at the Banque de France on 27 June 2018:²

- The LEI rules “are of fundamental importance to financial markets – and not only to regulators but to all investors.”
- “LEIs are not only helpful in matching and aggregating market data coming from different reporting flows, they are essential.”
- “The LEI is the only data element allowing a unique and persistent identification of clients of financial institutions. This identification is crucial to supporting regulators’ activities in the area of market abuse supervision.”

Establishing the LEI as the pan-European entity identifier would also respond to the needs of businesses and their customers to lower the burden and cost associated with having to maintain a host of different identifiers requested by different regulators both at national and EU level³. Replacing the EUID by the LEI as described in Article 19 of the proposal would therefore, ensure a coherent EU policy approach in the area of entity identification.

The LEI itself is a 20-digit, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization. The LEI code connects to key reference information that enables clear and unique identification of legal entities by means of an internationally unique identifier. GLEIF makes available the [Global LEI Index](#), which is the only global online source that provides open, standardized and high quality legal entity reference data. Each LEI contains information about an entity’s ownership structure, answering the questions of [‘who is who’](#) and [‘who owns whom’](#).

The Global LEI System includes a regulatory oversight committee (the LEI ROC), which is made up of representatives of public authorities from around the globe including 23 EU national authorities and 5 EU authorities⁴. The LEI ROC coordinates and oversees the worldwide framework of legal entity

² https://www.esma.europa.eu/sites/default/files/library/esma_speech_verena_ross_lei.pdf

³ GLEIF research report ‘A New Future for Legal Entity Identification’ <https://www.gleif.org/en/lei-solutions/lei-in-kyc-a-new-future-for-legal-entity-identification>

⁴ Oesterreichische Nationalbank, Bulgarian Financial Supervision Commission, Croatia Financial Services Supervisory Agency, Czech National Bank, European Banking Authority, European Commission, European Securities

identification that is the Global LEI System. Its members sign the LEI ROC Charter and commit to support the introduction of the Global LEI System for official or international identification purposes⁵.

The LEI in EU Directives and Regulations

As mentioned above, EU agencies and institutions have consistently endorsed broad adoption of the LEI standard which ensures clear identification of any organization based on open, standardized and high quality data, supported by a comprehensive data quality program. More specifically, the LEI has already been implemented to deepen a key objective of the European Commission, i.e. the Capital and Markets Union. The EU co-legislators, i.e. the European Parliament and the Council of the EU, have recognized the benefits associated with broad implementation of the LEI for public authorities, businesses and EU citizens with adoption of the revised Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR), which took effect on 3 January 2018. According to MiFIR, investment firms should obtain LEIs from their clients before providing services which would trigger related reporting obligations (sometimes referred to as the "no LEI, no trade" requirement). Additionally, Regulation (EU) 2017/1129 of the European Parliament and of the Council requires that the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market apply the LEI for identifying issuers, offers, and guarantors.

The European Commission has clarified that MiFID II / MiFIR are aimed at making financial markets more efficient, resilient and transparent, and at strengthening the protection of investors.⁶

In total, to ensure consistency of policy and to enable public authorities, businesses and citizens across the EU to derive the most benefits, GLEIF recommends that the European Commission applies the LEI to foster the Digital Single Market. The EUID is not used in any EU regulatory reporting regime, and would be unlikely to be able to replace the LEI, as the EUID does not cover foreign entities that participate in EU financial markets, and does not cover either a large number of mutual funds that are not incorporated and do not have a business registry number (e.g. trusts). This means that companies would incur the costs and administrative burden of maintaining several identifiers. In addition, investors and consumers would also face the confusion of having to deal with several identifiers, depending on whether their counterparty is from the EU or not, and whether it is incorporated or not.

and Markets Authority, European Central Bank, European Insurance and Occupational Pensions Authority, Financial Supervisory Authority (Finland), Ministry for Economy and Finance (France), AMF (France), Banque de France, Financial Supervisory Authority (Germany), Deutsche Bundesbank, Magyar Nemzeti Bank (Hungary), Central Bank of Ireland, Banca d'Italia, CONSOB (Italy), Banque Centrale du Luxembourg, De Nederlandsche Bank, Netherlands Authority for the Financial Markets, Polish Financial Supervisory Authority, Banco de Portugal, National Bank of Slovakia, Bank of Slovenia, Banco De Espana, Bank of England, Financial Conduct Authority (UK). Also, EEA authorities Royal Norwegian Ministry of Trade, Industry and Fisheries and Finanstilsynet (Norway)

⁵ https://www.leiroc.org/publications/gls/roc_20121105.pdf

⁶ https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/securities-markets/investment-services-and-regulated-markets-markets-financial-instruments-directive-mifid_en

The LEI as an international standard

At the global level, 91 rules in 45 jurisdictions refer to the LEI. European companies with activities abroad will therefore increasingly require an LEI. For example, following recommendations from the Committee on Payments and Market Infrastructures and the FSB, SWIFT has developed and published in November 2017⁷ an option to include the LEI to identify the originator and beneficiaries of cross-border wire transfers. The FSB, together with industry experts, noted that this would facilitate screening against sanctions lists, and support the prevention of money laundering and of terrorism financing.⁸ By promoting the LEI for all EU companies, the EU would send a strong message in favor of corporate transparency worldwide. On the contrary, the promotion of a local solution would encourage other jurisdictions to do the same: when tracking funds worldwide, banks and law enforcement would have to access business registries in some 200 jurisdictions, in multiple languages, under different technical requirements. Including the EU solution into the framework of the Global LEI System would address this problem in a more comprehensive and efficient manner.

Strengths of the LEI and LEI Reference Data

The LEI fulfils the requirement of being an internationally unique identifier for companies and other legal entity types. The LEI also is clearly positioned alongside the local business register number as the LEI data record includes a reference to the applicable business register and local number. Therefore, the LEI is fit for purpose as the ‘internationally unique’ identifier for publication and making freely available through the system of interconnection of registers.

The LEI already is part of an established system of validation, registration, assignment, distribution and online access to LEIs and their associated data records. There are five EU business registries and one EU statistical office that already manage and issue LEIs within the Global LEI System⁹. Others have expressed the intention to become an LEI issuer, and submitted applications.¹⁰ The LEI and LEI reference data are already incorporated into these organizations' technical infrastructure and applies to company types beyond those falling within the company law directive scope. Since the objective of this Directive is to provide more digital solutions for companies in the Single Market, generating a EUID for only some company types would greatly limit the impact of the Directive and prevent it from realizing its goal. A stand-alone EUID would not serve this purpose and represent an additional burden to businesses as just

⁷ SWIFT Payment Markets Practice Group, “LEI in the Payments Market” <https://www.swift.com/about-us/community/swift-advisory-groups/payments-market-practice-group/document-centre/document-centre>.

⁸ See LEI ROC Progress report, April 2018, sections 5.3 and 5.4.
https://www.leiroc.org/publications/gls/roc_20180502-1.pdf

⁹ Agencija Republike Slovenije za javnopravne evidence in storitve (AJPEŠ), Colegio de Registradores de la Propiedad, Mercantiles y Bienes Muebles de España (CORPME; Spain), InfoCamere SCpA, Società Consortile di Informatica delle Camere di Commercio Italiane per Azioni (InfoCamere; Italy), Institut national de la statistique et des études économiques (Insee; France), Kamer van Koophandel (KvK; Netherlands Chamber of Commerce), and Patentti- ja Rekisterihallitus (Finnish Patent and Registration Office (PRH))

¹⁰ For instance, Instituto dos Registos e do Notariado I.P. in Portugal

a regional identifier.

The LEI reference data makes use of international standards, such as the ISO 20275 Entity Legal Form code which identifies the distinct legal forms in a jurisdiction. Leveraging the Global LEI Index as a global standardized open data source prevents unnecessary and expensive duplication of gathering such information. GLEIF provides download and other means of online access, including a comprehensive search capability, to LEI registry information free of charge to all users worldwide.

The LEI system registers the legal names of legal entities in their original language(s), with transliterations in Latin characters. Therefore, the LEI system already manages entity data in all official languages of the European Union.

GLEIF services ensure the operational integrity of the Global LEI System and are a force for good in the finance and other industries, promoting the increased adoption of shared open data principles, standards and best practice across sectors around the world. As a result, the LEI remains the industry standard best suited to providing open and reliable data for unique legal entity identification management.

In summary, the LEI helps to overcome some of the restrictions of the EUID relative to application to only company types (limited liability) as mentioned in the company law directive, lack of current use within the EU regulatory environment, and the inability to play a significant role in a global digital marketplace.

Practical Implications of Replacing the EUID with the LEI in Article 19

Since both the local business register number as well as the LEI could have roles within BRIS, there is a unique opportunity for the business registers and the GLEIF to work together to insure validation, registration, assignment, distribution and online access to both identifiers in a streamlined, efficient manner. The business registers can become partners within the Global LEI System to assign LEIs at the time of business registration of all EU companies.

Given both the local business register and the Global LEI System are already established systems, there would be some work to first map the identifiers together, assign LEIs to those companies not yet having an LEI, and then put in place a means to ensure that all companies going forward are assigned an LEI at the time of registration with the local business register. This would ensure the once-only principle and maximize the benefit to all companies by providing locally recognized and globally recognized identifiers in a single registration process. The process would be conducted on a cost recovery basis in alignment with the principles of the Global LEI System and Article 13c of the Directive.

The FSB recommendations that are part of the governance principles of the global LEI system state that the system “should support a high degree of federation and extensive reliance on local implementation

under agreed and commonly applied global standards”¹¹ The FSB intended that issuance should rely on local infrastructure where possible, noting that this would “deliver a high level of local validation of reference data for the legal entities registering for an LEI”. The LEI ROC also noted that “Jurisdictions may envisage using the LEI as a universal identifier for domestic entities, in addition to already existing identifiers” and that “For jurisdictions envisaging such adoption, entities obtaining an LEI would range from several hundred thousand to several millions”¹² Issuance in large numbers to all entities in a jurisdiction is therefore foreseen. While this initial issuance would have a cost, over the long run costs would be less than for a regional solution, because systems developments would be amortized on a larger number of entities, both within and outside the EU. The LEI ROC also recognised that “The GLEIF fee structure may also in the future recognise the contribution of jurisdictions adopting the LEI for all their entities”.

Requiring European business registries to assign LEIs according to the rules of the Global LEI System would put the EU at the forefront of a digital revolution. GLEIF would welcome the opportunity to discuss this approach in more detail within the context of the BRIS implementation.

¹¹ FSB report, 2012, https://www.leiroc.org/publications/gls/roc_20120608.pdf

¹² LEI ROC Progress report, April 2018, https://www.leiroc.org/publications/gls/roc_20180502-1.pdf