Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission's Public Consultation on a Retail Investment Strategy for Europe

August 2021

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Commission's public consultation on a Retail Investment Strategy for Europe. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

First, GLEIF would like to respond to Question 1.1 Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets?

GLEIF agrees that current EU rules regarding retail investors (e.g., Undertakings for the Collective Investment in Transferable Securities (UCITS), Packaged Retail Investment and Insurance Products (PRIIPs), Markets in Financial Instruments Directive (MiFID II), Insurance Distribution Directive (IDD), Pan-European Pension Product (PEPP), or Solvency II Directive) aim at empowering investors by creating transparency of the key features of investment and insurance products.

GLEIF thinks that the key to transparency is accurate and unique identification of providers in capital markets. However, the unique identification of capital market providers in the regulations listed above setting the rules for retail investor protection is varying and not fully harmonized yet.

For example, PRIIPs are often complicated and lacking in transparency. The information which institutions make available to investors when selling these products can be overly complex. The Key Information Documents for PRIIPs shall include the name of the manufacturers, but not its Legal Entity Identifier (LEI) according to the PRIIPs Regulation (1286/2014). However, the comparison of names across borders is not easy, efficient, and cost effective for retail investors.

Another example is the UCITS Regulation. GLEIF would like to bring into ESMA's attention the letter sent by the European Systemic Risk Board (ESRB) to the EU Commission. In this letter, the ESRB highlighted that around half of funds reporting under AIF Managers Directive (AIFMD) do not report or possess an LEI. This missing LEI requirement for AIFs and UCITS limits risk exposure analysis and causes regulatory fragmentation in the European Union. ERSB mentioned that this is particularly crucial for the analysis of interconnectedness, understanding complex group structures, or linking AIFMD data with other data sources. For example, when trying to combine data collected through AIFMD and EMIR to explore exposures of investment funds on derivatives markets, the ESRB analysis shows that approximately 25% of funds that report trading derivatives under AIFMD do not report LEIs. ESMA also highlighted the importance of LEI reporting in response to the previous consultation on the fitness check on supervisory reporting.

GLEIF would like to emphasize to the Commission that the harmonization of identification rules in the rule settings with the LEI is crucial to achieve the goal of a Capital Markets Union (CMU) in the EU. Currently, in many regulations listed above, the manufacturer, insurance provider, and fund manager are required to provide the names/local business registry numbers, which hinders data aggregation and
automation. The European Commission’s High-Level Forum report on CMU for the consolidation of European companies under the European Single Access Point (ESAP) highlights that information for UCITS will be added to the ESAP by 2025. It is stated in the report that technical standards to develop data fields and formats should use appropriate entity and document identifiers to ensure that public information about issuers and securities (LEIs, ISINs, etc.) can be easily interlinked and cross-referenced.

Therefore, GLEIF suggests that the Commission harmonizes the identification requirements in all these key rule settings as part of its Retail Investment Strategy and adds the LEI requirement for all relevant legal entities.

GLEIF would like to respond to Question 3.1 What might be the benefits or potential risks of an open finance approach (i.e. similar to that developed in the field of payment services which allowed greater access by third party providers to customer payment account information) in the field of retail investments (e.g. enabling more competition, tailored advice, data privacy, etc.)?

GLEIF agrees that similar to the open finance framework, technological innovation and digitization in retail investments have a lot of potential benefits, such as making it easier to compare price and product features and switch providers, improve competition among service providers, and help wider access to advice and support in decision making.

However, at the same time, in every phase of digital finance, from digital onboarding to post-trade settlement, from proxy voting and shareholder transparency to the identification of digital asset issuers, there is a need for a consistent and standard way of entity identification. The financial sector is engaging in many initiatives aiming to simplify these transactions, such as adopting distributed ledger or blockchain technologies or removing regulatory fragmentation. Ensuring full interoperability across these initiatives is a challenge and will be crucial for the success of these new applications.

For legal entity identification in digital transactions, the LEI is the only global standard that meets all the criteria mentioned above. The LEI is the global standard for unique and unambiguous identification. It links to open, public reference data describing the legal entity, which is verified and validated by LEI Issuers. It is a foundational building block for the client verification and identification process. Using the LEI, instead of a plethora of regional, national, or local identifiers, is particularly essential for financial firms operating across borders. The LEI data is structured and machine-readable, so any user can easily use it in the digital environment.

For example, the Bank of England considers the LEI a building block for its "Open Finance" vision, enabling businesses to move around the financial system seamlessly. Companies could pull their data together under a single identity, the LEI, into a portable credit file to shop around for their financing needs. And because of its global recognition, the LEI will help businesses access to finance for cross-border trade. Moreover, the Bank of England will introduce the LEI into ISO 20022 standard CHAPS payment messages from February 2023 on an ‘optional to send’ basis and on a mandatory basis starting from 2024. While initially the LEI will be mandatory only for financial institutions, the Bank of England strongly encourages other institutions to apply for an LEI, and to prepare and implement necessary changes.

Therefore, GLEIF suggests that for mitigating challenges that can arise from digitization in retail investments and maximize interoperability across different platforms and systems, the Commission
should consider making the LEI the foundational requirement for identifying providers by retail investors.

**GLEIF would like to respond to Question 3.2 What new tools or services might be enabled through open finance or other technological innovation (e.g. digital identity) in the financial sector?**

GLEIF believes that an essential building block embedded in any trust chain is a unique global identity. As already stated in the consultation document, the industry asks for more standardization and machine-readability of the data provided within existing retail investment information documents, such as PRIIPs KID or MiFID disclosures for aggregation and comparison or analysis. This request also includes the standardization of identification requirements.

The LEI helps with digital identification and representation of legal entities as the LEI is already integrated into machine-readable financial statements, digital certificates, and also is planned to be leveraged in decentralized identity verification applications. For example, an LEI embedded in a digital certificate enables the recipient to conduct identity proofing for persons and entities and the association between the two in the digital sphere. By embedding the LEI in the digital certificate, the recipient has the benefit of holding cryptographically binding solid information about the legal entity and then performing authentication and authorization tasks independent of being online.

Through embedding LEIs in digital certificates, legal entities can perform various corporate digital transactions, such as submitting e-invoicing, ordering goods and services, contracting with suppliers, or reporting tax statements to public authorities with an extra layer of trust. Checking the validity of the company's data can be automated consistently regardless of the country where the company is allocated, in the same way, certificate validation is done. The result is reliable and robust validation of the company's data and people's identity acting on behalf of the company.

Moreover, in December 2020, GLEIF announced its plans to create a fully digitized LEI service capable of enabling instant and automated identity verification between counterparties operating across all industry sectors, globally.

GLEIF has invited stakeholders from across the digital economy to engage in a cross-industry development program to create an ecosystem and credential governance framework, together with a technical supporting infrastructure, for a **verifiable LEI (vLEI)**, a digitally verifiable credential containing the LEI.

The vLEI will give government organizations, companies and other legal entities worldwide the capacity to use non-repudiable identification data pertaining to their legal status, ownership structure, authorized representatives, and employees in a growing number of digital business activities. This includes approving business transactions and contracts, onboarding customers, transactions within import/export and supply chain business networks and submitting regulatory filings and reports. GLEIF already is engaged in research partnerships and technical trials with stakeholders across the pharmaceutical, healthcare, telecom, automotive, and financial services sectors.

Therefore, for fulfilling any objective that requires unique and unambiguous identity verification in a digital environment, the LEI can form the basis for ensuring interoperability across different system
operators and making sure that these identities can be re-used in wide range of financial services within the EU and across borders.

GLEIF would like to respond to Question 4.2.2 c) IDD: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

GLEIF would like to comment on the "information about the insurance distributor and its services" component.

GLEIF suggests that the information about the insurance distributor and its services is insufficient, and there is room for further standardization and transparency. According to the "Insurance Product Information Document", for identification of the insurance distributor, only the name of the insurance company is requested. However, this name-based identification makes it hard, inefficient, and costly for retail investors to aggregate, compare and analyze data and hinder their decision-making capabilities.

GLEIF suggests that the Commission adds the LEI of the insurance company as a mandatory data field in the Insurance Product Information Document.

GLEIF also would like to comment on the Question 4.2.3 c) PEPP: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

GLEIF would like to comment on the Pan-European Personal Pension Product (PEPP) Key Information Document. GLEIF suggests that there is an opportunity for further standardization and transparency regarding the component "information about the PEPP provider and its services".

In the Key Information Document, the PEPP provider’s name and registry information are collected. A name-based approach, similar to "Insurance Product Information Document" hinders the capabilities of retail investors to aggregate, compare and analyze data in a machine-readable fashion. Instead (or in addition to the registry information), GLEIF suggests that the Commission and competent authorities could collect the LEI of the PEPP provider. Through a single call to the open and publicly accessible Global LEI Repository, data users, including investors, could access the provider's open public reference data and corporate structure in question.

Lastly, GLEIF would like to respond to Question 4.7 d) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to other elements?

GLEIF suggests that achieving data consistency and harmonization is vital to reduce inconsistencies, reduce the administrative burden and reinforce transparency. In the current retail investments rule-setting, there are inconsistencies regarding legal entity identification. A name-based identification approach proved that it is prone to error and misleading for investors. The US Securities and Exchange Commission (SEC) has stepped in to clear up the worst case of mistaken identity on Wall Street in April 2020, suspending the shares of Zoom Technologies, a small Chinese company that investors were confusing with Zoom, the video-calling app that has seen spectacular growth during the coronavirus pandemic. The SEC said that it was halting trading in the Beijing technology group, which uses the ticker ZOOM, until April 8 over concerns that investors were “confusing this issuer with a similarly-named
Nasdaq-listed issuer...” which has seen a rise in share price during the ongoing Covid-19 pandemic”. GLEIF suggests that this example shows clearly the importance of unique and unambiguous identification through the LEI to protect retail investors.

The role of the LEI in EU regulatory landscape has been recognized by the over 50 regulations require the use of the LEI. For closing the gap in the areas where the LEI is not mandated, the European Commission *Fitness Check Report* highlighted ‘LEIs would be essential to monitor AIFs managed by non-European AIFMs operating under the National Private Placement Regime (NPPR). Non-European AIFMs are mandated to report to NCAs of the jurisdictions in which they are marketing their products. The absence of a unique and universal identifier impedes verifying the consistency and/or duplication of reported information in the ESMA central database, impairing supervision of potentially systemically relevant entities. Accurate treatment of the information reported by entities operating under NPPR requires LEIs.’

In addition, the Digital Finance Action Plans states' *Building on the outcomes of the fitness check of supervisory reporting requirements*, the Commission, together with the ESAs will develop a strategy on supervisory data in 2021 to help ensuring that (i) supervisory reporting requirements (including definitions, formats, and processes) are unambiguous, aligned, harmonized and suitable for automated reporting, (ii) full use is made of available international standards and identifiers including the Legal Entity Identifier, and (iii) supervisory data is reported in machine-readable electronic formats and is easy to combine and process. This will facilitate the use of RegTech tools for reporting and SupTech tools for data analysis by authorities.’

Setting the LEI as a gold standard in entity identification, the European Securities and Market Authority (ESMA) promoted the use of the LEI in data reporting beyond the European borders, for relevant third country legal entities who are trading with European counterparties under MifID II and more recently under the Securities Financing Transactions Regulation (SFTR) reporting regime.

GLEIF believes that the Commission’s intervention is vital for creating a harmonized and efficient data collection in retail investment strategy, as single Member States cannot achieve this objective at the national level.

Lastly, GLEIF would like to remind the *European System Risk Board’s LEI Recommendation* (ESRB/2020/12): In particular, the clear identification of contractual parties in a network of global financial contracts processed electronically at a very high speed permits authorities to make use of existing technologies to analyse interconnectedness, identify potential chains of contagion, and track market abuse for financial stability purposes. The LEI has also become critical for connecting existing datasets of granular information on entities from multiple sources. The ESRB Recommendation suggests:

"The Commission is recommended to propose that Union legislation incorporates a common Union legal framework governing the identification of legal entities established in the Union that are involved in financial transactions by way of a legal entity identifier (LEI)…” and until then 
"...the relevant authorities require or, where applicable, continue to require, all legal entities involved in financial transactions under their supervisory remit to have an LEI; 2. the authorities, when drafting, imposing, or amending financial reporting obligations include or, where applicable, continue to include,
in such obligations an obligation to identify by way of an LEI: (a) the legal entity subject to the reporting obligation; and (b) any other legal entity about which information must be reported and which has an LEI”.

Therefore, the ESRB Recommendation sets the expectation that until a common Union legal framework governing the identification of legal entities with the LEI is established in the EU, the LEI would be required by the supervisory authorities when drafting, imposing, or amending financial reporting obligations within the Union.

In line with the ESRB Recommendation, GLEIF strongly recommends the European Commission to review the legal framework in the retail investment strategy, add the LEI requirement where it is missing (e.g., PEPP Key Information Document, Insurance Product Information Document) and simultaneously lead a Union legal framework to uniquely identify legal entities with LEIs, which is foundational to establish a harmonized and efficient Capital Markets Union within the EU.