

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission's Tax Fraud and Evasion - Strengthening Rules on Administrative Cooperation and Expanding the Exchange of Information Consultation

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The Global Legal Entity Identifier Foundation (GLEIF) is pleased to comment on the European Commission Tax Fraud and Evasion - Strengthening Rules on Administrative Cooperation and Expanding the Exchange of Information consultation. GLEIF will focus its comments on using the Legal Entity Identifier (LEI) in the tax reporting of crypto-assets/e-money service providers.

First, GLEIF would like to comment on Question 18: *Some EU countries have imposed (or are planning to impose) reporting obligations on crypto-asset service providers, e-money and financial institutions and payment services providers. Do you consider that this national approach will bring extra administrative burden to crypto-assets/e-money service providers and /or users of crypto-assets/e-money due to the differences between countries?*

Regulation (EU) 2019/1937 requires that crypto-asset service providers shall report their LEI before they apply for authorization as a crypto-asset service provider to the competent authority of the Member State where they have their registered office (Article 57). Additionally, the same Regulation requires that the European Securities and Markets Authority (ESMA) register contains the LEI of the issuer of asset referenced tokens.

As confirmed by Regulation (EU) 2019/1937, standardization of the identification of crypto-assets/e-money service providers is crucial for investor protection and market integrity. ESMA has identified the most significant risks of these new actors as fraud, cyber-attacks, money laundering and market manipulation. ESMA also confirmed that the pseudo-anonymous nature of crypto-assets can be attractive for tax evaders.

The European Securities and Markets Authority (ESMA) Advice on Initial Coin Offerings (ICOs) and Crypto-Assets highlights that there are concerns around fraudulent ICOs, whereby crypto-assets either do not exist or issuer/developers disappear after the ICO. These could represent up to 80% of ICOs according to some sources. Identifying such parties with an LEI would enable clear identification of who one is doing business with and a means to investigate the entity given an issue arises with the ICO.

The crypto-asset issuer or sponsor is the organization that typically has developed the technical specifications of a crypto-asset and set its features. In some cases, their identity is known, while in some cases, those promoters are unidentified. Furthermore, the issuance of crypto-assets is generally accompanied with documents, so-called "white papers", describing crypto-asset and the ecosystem around it. The European Commission states that those white papers are not standardized, and the quality, transparency, and disclosure of risks vary greatly across EU member states.

GLEIF suggests that member states' segregated and isolated national approaches for imposing reporting obligations on crypto-asset/e-money service providers without leveraging global standards will bring extra administrative burden to these actors and their users and the regulatory authorities.

First of all, within the EU, there are various rules and processes around tax administration systems. Naturally, these varying rules and processes have the potential to create a tremendous administrative burden for crypto-asset/e-money service providers to (i) register/license their businesses and be recognized across borders within the EU, (ii) file their tax reporting properly and (iii) tax administrators to process those files. Imposing isolated reporting obligations by national authorities increases both operational and compliance costs for tax administrations at the EU level. Therefore, instead of taking a national approach, GLEIF recommends the European Commission promote a harmonized and standardized pan-European ecosystem for regulating crypto-asset and e-money service providers.

Similar logic applies to crypto-asset/e-money users. Those users often transact across borders in more than one jurisdiction. With rising amounts of fraud in the digital environment, users want an easier, more transparent, straightforward, and accessible approach for conducting due diligence on the crypto-asset/e-money service providers to make safe and efficient investment choices. Using global standards, particularly leveraging the LEI for identifying crypto-asset/e-money service providers, will help users quickly identify those service providers and reduce jurisdictional frictions within the EU.

To achieve the blueprint of a sound supervisory system of crypto-asset and e-money service providers and to reduce administrative burden, GLEIF encourages the European Commission to establish a harmonized and standardized reporting approach instead of isolated national approaches. The Global LEI System could be the key to close the gap and reduce frictions for the identification of crypto-asset/e-money service providers across the EU. Specifically, leveraging the Global LEI System could help the tax authorities get a clear picture of the service provider's location and business registry information, which is the foundational first step in entity identification. The level 1 'business card' information associated with the LEI includes the trade register number which is firstly supplied by legal entities and then verified by the LEI issuers with the local Registration Authorities (e.g., national business registers). GLEIF publishes the [Registration Authorities List](#), which contains more than 700 local registers. LEI issuing organizations, accredited by GLEIF through a rigorous accreditation process, must ensure the cross-reference to the local authoritative source is standardized and included in the LEI record. Through this cross reference to an authoritative local source, tax authorities can easily connect to the service provider's local identity and conduct due diligence in an interoperable way.

GLEIF also would like to comment on Question 20: Do you consider that crypto-asset service providers, e-money providers and other financial institutions operating with crypto-assets should have the same reporting obligations for tax purposes throughout the EU (i.e. single set of rules)?

GLEIF strongly recommends the European Commission set up a single set of rules for reporting obligations of crypto-asset and e-money providers at the EU level. As elaborated in GLEIF's response to Question 18, different national approaches would create an extra administrative burden and hinder the efficiency of the reporting system for all involved parties.

The standardized reporting regime has become a gold standard within the EU financial landscape as demonstrated, for example, with the Markets in Financial Instruments Directive (MiFID). Therefore, GLEIF suggests the European Commission take a similar approach for establishing a supervisory regime for crypto-asset and e-money service providers. When service providers report their

transactions to the national tax authorities, these authorities first need to uniquely identify the merchant and jurisdiction information of the legal entity precisely for tax purposes. Creating a reporting template and requesting the LEI within a reporting template as a mandatory field can facilitate cross-border information exchange between different national authorities within the EU.

The LEI is a standardized and unique identifier that each entity can have only one. The LEI-Common Data File format contains the 'LegalJurisdiction' field conforming with the ISO 3166 standard. GLEIF publishes the ['Accepted Legal Jurisdictions Code List'](#) and specifies more than 300 jurisdiction codes. This reference to the legal jurisdiction of formation of the crypto-asset/e-money service providers helps further to provide the information on where they are located and to which tax authorities they are obliged to file the reporting. The LEI ensures that each legal entity can be identified uniquely by regulatory authorities and data users. Moreover, the complete database of LEIs and the associated LEI reference data is available free of any charge or barrier to anyone on the web without any limitations.

The European Commission has already required that the issuer of crypto-assets and service providers be identified with the LEI, as outlined in its Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets and amending Directive (EU) 2019/1937. Therefore, GLEIF suggests that the European Commission explicitly require crypto-asset and e-money service providers report their LEI for tax purpose reporting in a single reporting template to be created and used at the EU level, within the supervisory regime of the single set of rules.

Finally, GLEIF would like to comment on Question 21: What are the main challenges crypto-assets providers would, in your view, face if measures were introduced to harmonise reporting obligations for taxation purposes?

GLEIF thinks that one of the main challenges to establish a harmonized reporting regime is to ensure an accurate, transparent, efficient identification mechanism on the crypto-asset and e-money service providers, as well as financial institutions involved in these transactions.

The crypto-assets investment in the EU often involves cross-border transactions and data reconciliation. The situation that different national authorities use different identifiers causes opaqueness and heavily hinders the smoothness of the whole compliance process. GLEIF would like to provide a hypothetical example to demonstrate the importance of having one and only unique identifier. For example, a crypto-asset service provider based in France reports to the Autorité des Marchés Financiers (AMF) and provides crypto-asset services to investors in the Netherlands. By using the LEI, the AMF could quickly identify this legal entity and share information relative to this legal entity with the French tax administration. When the French tax administration records the LEI of this entity, it can exchange information about this entity with its Dutch counterparty in a seamless way. Thereby, the Dutch authority can identify the entity easily and decide for the eligibility of this service provider for exempting it from certain tax requirements. The use of the LEI from the beginning reduces the administrative burden for all parties substantially.

The challenge is that the current reporting regime accepts multiple identifiers and hinders the efficiency of verifying and validating the identity of the service provider in a seamless and transparent way. This inefficiency and opaqueness open the door for tax fraud and illicit activities. Therefore, GLEIF suggests that the European Commission should mandate the usage of the LEI for reporting obligations across the EU. A recent [blog](#) published by the Banque de France highlights that the LEI can be quite instrumental to monitor groups' ownership structure of large entities in offshore financial centers, which offer a high degree of financial secrecy and thereby facilitate tax evasion and the financing of illicit activities.

Lastly, GLEIF would like to remind the European System Risk Board's recent 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”.*

The consistent and standardized use of the LEI in reporting obligations for crypto-asset and service providers can reduce risks identified in the ESRB report, facilitate information exchange and cooperation among tax authorities within the EU and help to strengthen compliance measures against tax evasion and fraud.

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