

## **Additional input of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission's Consultation on the “Upgrading digital company law”**

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide feedback to the European Commission's Consultation on the “Upgrading digital company law”, based on Directive 2019/1151/EU on the use of digital tools and processes in company law (Digitalisation Directive).

GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI).

Bottom line of the comments is the proposal to add the LEI to the mandatory data under the Company Law Directive (Directive (EU) 2017/1132 relating to certain aspects of company law, as amended).

### **Background**

The LEI is the only global standard for legal entity identification. It is a 20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). It connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions. Each LEI contains information about an entity's ownership structure and thus answers the questions of 'who is who' and 'who owns whom'. Simply put, the publicly available LEI data pool can be regarded as a global directory, which greatly enhances transparency in the global marketplace.

The drivers of the LEI initiative, i.e. the Group of 20, the Financial Stability Board and many regulators around the world, have emphasized the need to make the LEI a broad public good. As such, the LEI and its associated reference data are accessible to all as open, public data. It is registered and regularly verified according to protocols and procedures established by the [Regulatory Oversight Committee](#). The Regulatory Oversight Committee includes 25 members from the EU including Member State authorities, European Supervisory Authorities, and the Commission.

In the European Union, the LEI is already used increasingly and required in regulatory reporting for entities subject to the EMIR, MIFID II, MAR, CRR, SFTR, Solvency II, AIFMD, CRAR, CSDR, Transparency Directive, Securitization Regulation, and Prospectus Regulation. At a global level, more than 100 rules refer to the LEI in Financial Stability Board jurisdictions.

### **ESRB recommendations**

In this paragraph we refer to the following relevant documents:

- Recommendation of the European Systemic Risk Board (ESRB) on identifying legal entities of 24 September 2020 (ESRB/2020/12);
- ESRB Occasional Paper 'The benefits of the Legal Entity Identifier for monitoring systemic risk' (no 18 / September 2021).

In its recommendations the ESRB proposes the following:

- Introduction of a Union framework on the use of the legal entity identifier
  - The ESRB recommends the creation of EU legislation governing the identification of legal entities established in the Union that are involved in financial transactions by way of a legal entity identifier (LEI);
  - The ESRB recommends to impose an obligation on legal entities to report financial information to include the obligation to identify by way of an LEI:
    - the legal entity subject to the reporting obligation; and
    - any other legal entity about which information must be reported and which has an LEI.
  - The ESRB recommends to oblige authorities to identify by way of its LEI any legal entity about which they publicly disclose information and which has an LEI.
- Use of the legal entity identifier until the possible introduction of Union legislation
  - Pending the actions taken by the Commission to comply with the first recommendation, it is recommended that:
    - 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;
    - 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:
      - the legal entity subject to the reporting obligation; and
      - any other legal entity about which information must be reported and which has an LEI;
    - The authorities identify or, where applicable, continue to identify, by way of its LEI, any legal entity about which they publicly disclose information and which has an LEI.

In the Occasional Paper, the ESRB goes into much more detail why and how further use of the LEI would be beneficial for monitoring systemic risk. Given the global nature of international trade and finance, there is need for a global identifier; an EU-identifier is not sufficient. Currently, the LEI coverage is not wide enough, especially for non-financial companies. Adoption is limited because of the level of fees for obtaining and renewing an LEI. Therefore, alternative business models need to be considered, such as issuing LEIs by Member State registers and/or by banks as ‘validation agents’.

The ESRB proposes to extend the LEI beyond the financial sector and globally, because the LEI is also very relevant for all entities interacting with financial entities. This would give supervisory authorities a better picture of counterparty exposures and it would give governments better view on entities related to public procurement, obtaining permits, payment of taxes, facilitating commercial transactions, monitoring the publicly guaranteed loans to mitigate the COVID consequences etc.

In the EU, the EUID exists, based on the national identifier; it is used to interconnect national business registers in the EU/EEA countries. It is, however, not used outside Europe and thus not a global identifier (nor is of course the national identifier). There is a natural complementarity between the EUID and the LEI.

### **EU Strategy on supervisory data in EU financial services**

In December 2021, the European Commission published the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Strategy on supervisory data in EU financial services’, COM(2021) 798’.

In this strategy document the Commission names the LEI as one of the key elements for ensuring data consistency as part of the full use of internationally accepted common identifiers. The document states: “The LEI, which allows unique and unambiguous identification of entities and is the most widely used global entity identifier in the financial sector, is particularly helpful in linking individual data sets, thereby facilitating supervision. The Commission will therefore further expand and promote a more consistent use of the LEI in the financial sector by closing a number of key gaps and introducing requirements for its use in relevant legislation. Following a recommendation by the European Systemic Risk Board (ESRB), the Commission will by 2023 report on whether or not to make the LEI mandatory for a wider range of legal entities across the EU. Finally, the Commission will pursue efforts in international fora to promote the uptake of the LEI and other common identifiers in the financial sector globally”. As an example, the Commission proposes greater use of the LEI in payments and as part of the legislative package on anti-money laundering.

### **Further EU support**

There are suggestions at the EU level that the LEI should be a necessary component for creating digital financial identities as demonstrated in the response submitted by ESMA to the EU Commission’s Digital Finance consultation. This is also mentioned by the ECB in its response to the same consultation also encouraging all legal entities in the EU to have an LEI and that each entity’s LEI is also mandatory for financial transaction and public reporting.

### **Importance of using the LEI as unique identifier**

A short overview of why the LEI is so relevant in relation to company law and other major EU topics, such as digitization and improving trade:

- **Global relevance and trust:** a (digital) globally unique identity could bring transparency on legal entities a huge step forward; especially in the digital age it is important to think from a global perspective, since the digital space is global by nature;
- **All-encompassing coverage:** the Global LEI System supports registration of all forms of legal entities, including trusts, funds, partnerships, SPVs, individuals acting in a business capacity, or governmental organizations; currently the EUID covers only 45% of all entities registered

in the business registries in the EEA, which means it covers even (much) less of all legal entities in Europe; through the current GLEIS 2.0 program GLEIF is striving towards a much broader coverage, ideally 100% of all entities, including also entities which are not in business registries, such as funds;

- **Open & non-proprietary:** the drivers of the LEI initiative, i.e. the G20, the FSB and many regulators around the world, have emphasized the need to make the LEI a broad public good. The Global LEI Index puts the complete LEI data at the disposal of any interested party, conveniently and free of charge. There is no other global identifier that is non-proprietary and free to use. This makes the LEI the most fit for purpose. All users can use the data without limitations;
- **Global interoperability:** by using one unique identifier worldwide, all users (governments, companies, all other parties) can rely on one standard for entity identification to incorporate in their (IT-) systems;
- **Machine-readable:** LEI data are available via a free application programming interface (API) making the LEI data accessible in real time in fully automated processes;
- **Cost savings:** faster, more accurate and less burdensome identifying of counterparties will save companies costs, both because the information is obtained easier, but also because there are less risks of doing business with ‘wrong’ parties;
- **Mapping with other identifiers:** currently, mapping via the GLEIF Certification of LEI Mapping Service has already been introduced between the LEI and the BIC (Business Identifier Code) of SWIFT and between the LEI and the ISIN (International Securities Identification Number) of ANNA (Association of National Numbering Agencies). Third parties are encouraged to engage with GLEIF for the certification program to provide their customers enhanced interoperability across parallel ID platforms. The LEI would function as the ‘umbrella’ identifier, being the globally unique number with a relation to many already existing national or local numbers, such as the business registry identifier, the VAT number, the BIC etc. The local business registry number is already included in the LEI reference data meaning it is simple to link to BRIS and the EUID;
- **Enable greater digitalization of EU companies:** broad use of the LEI in Europe would permit greater digitalization of EU companies; with the ISO (LEI) and ETSI standards available, eIDAS qualified digital identities for the organization, corporate officers, board members, employees could include the LEI. This would enable recipients of eIDAS signed documents to conduct identity verification, authentication and authorization followed by data aggregation without any human intervention; The LEI plays an important role in extending the interoperability and usefulness of the EU's eIDAS scheme. GLEIF demonstrated in 2019 how an eIDAS compliant certificate can be linked to a company's annual financial reporting in a completely machine-readable fashion via the LEI through the GLEIF's Annual Report of 2018. This allows any interested party to quickly and easily consolidate and verify information on a filing entity. Additionally EU companies equipped with an LEI can then benefit from the global vLEI (verifiable LEI) trust ecosystem;
- **Improve SME access to the global marketplace:** as the ‘international passport’ the LEI provides certainty of who one is doing business with thereby helping to reduce fraud within

supply chains and online transactions; SMEs can easily prove their identity to consumers around the world;

- **Establish common language for trade community:** improve data quality and more clearly define supply chain participants so as to allow governments to better target risk assessments and enforcement; allow industry participants in import/export businesses to more easily verify partner's membership in trusted trader programs;
- **Fulfilling broader EU goals and objectives in the Capital Markets Union:** The LEI is already recommended by the High-Level Forum (HLF) as one of the technical standards to develop the data fields and formats of the European Single Access Point (ESAP) to ensure the information can be easily interlinked and cross-referenced.

### Company Law and the LEI

Under the Company Law Directive and implemented in BRIS there are of course already the number (identifier) in the national registry and the EUID for the interconnection between business registers. But the LEI is in addition very relevant to be able to uniquely identify legal entities in cross border activities where at least one of the parties is not from the EU given the LEI covers additional legal entity types in many countries. Each LEI record includes ownership information (direct and ultimate parent), based on the financial consolidation principle. This is in particular relevant for multinational groups with parent companies and/or subsidiaries in non-EU countries.

The LEI could be incorporated in the Company Law Directive, where it could be made mandatory for the registers in the Member States to issue an LEI to all (relevant) entities. This would require a few slight changes in the Directive; there could be an additional recital explaining the usefulness of the LEI and an addition in several articles (probably articles 16, 19, 26, 29, 30, 33, 37 and 123). There it could be stipulated that Member States would have to ensure that for each file in a business register for which a unique company number is issued also an Legal Entity Identifier (LEI), according to ISO standard 17442, is issued.

By incorporating the LEI in the Company Law Directive, the issuing of an LEI to all registered entities would be made mandatory. Depending on the chosen implementation per Member State, this would lead to some 15-40 million LEIs issued (only limited liability companies or all registered entities); for countries with only limited liability companies in the registry additional legislation will be necessary to provide all entities (to include other legal forms than only companies) involved in financial transactions with an LEI.

Business registers could create a direct connection with the registry data, both for initial issuing and updating (immediately when a modification in the registry occurs). This would mean that the value of the LEI data is the same as the registry data, which would certainly be beneficial for supervisory purposes. Such an increase in the number of issued LEIs would lead to a change in the financial model behind the LEI and thus a huge decrease in costs for EU legal entities obtaining LEIs.

The existing EUID is a good instrument for the goal it was designed for: create a EU-wide unique identifier for the BRs to be able to communicate through BRIS in a digital way between themselves on cross border mergers and on branches in other Member States. It was never designed to be used outside these goals.

If the EU wants to profit from a worldwide unique identifier, based on an official global (ISO) standard, the LEI is the only choice. Since trade doesn't stop at the borders of the EU, it would only be wise to use the only available independent global identifier.