

PROPOSAL AS REGARDS THE USE OF DIGITAL TOOLS AND PROCESSES IN COMPANY LAW

ECSDA FEEDBACK RESPONSE

About ECSDA

The European Central Securities Depositories Association (ECSDA) represents 38 Central Securities Depositories (CSDs) across 35 European countries. As regulated financial market infrastructures, CSDs play a vital role in supporting safe and efficient securities transactions, both domestic and cross-border. If you have any questions on this paper, please contact Ms. Anna Kulik, Secretary General of ECSDA, at info@ecsd.eu or +32 2 230 99 01.

In brief

The recent proposal by the Commission for a Directive regarding the digital tools and processes in company law gives rise to the importance of taking into account the already existing identification for financial institutions. European CSDs call upon policymakers to consider reusing the identification for the purposes of the proposed Directive and to use it as an opportunity to streamline the process of (a) obtaining, maintaining and collecting the identifier for financial institutions and issuance as well as (b) facilitating the acceptance of securities in an EU CSD.

In further detail

On 25 April 2018, the European Commission issued a *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*¹. We welcome the opportunity to provide feedback to the Commission on this legislative proposal.

¹ The Proposed Directive can be found here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A239%3AFIN>

We believe that the proposal could leverage the already incorporated requirements in a variety of other regulations providing legal entities active in financial services to obtain a Legal Entity Identifier (LEI). Its purpose is to identify distinct legal entities engaging in financial transactions in a unique way. The usage of the LEI is encouraged by Global and European regulators and policymakers and explained further in a dedicated ESMA briefing note².

Concerns in light of the CSDR and other financial market regulation

From a CSD perspective, we particularly note that the Central Securities Depositories Regulation (CSDR, Regulation (EU) 909/2014) imposes as well the *generalised* use of LEIs for all financial market actors, including companies issuing financial instruments into a CSD, including those that are not subject to the recent Prospectus Regulation which will require issuers to obtain a LEI. The CSDR obliges EU CSDs to request the submission of LEIs, among others by issuers, when accepting their issuance into an EU CSD. At the same time, issuers are not subject to the regulation applicable to other financial market actors. It hence takes additional time to collect their unique identifier and to explain to them the specific requirement under CSDR – which creates a significant burden for both CSDs and issuers. Against this background, ECSDA strongly recommends to address this issue.

Furthermore, keeping in mind the *once-only principle* “supporting EU wide efforts to reduce the administrative burdens on citizens and businesses³”, we call upon EU policymakers to address different needs for a single identification of companies. We believe that decreasing the burden and streamlining the use of a single identifier (between the LEI and the EUID) should be further explored. In that vein, Article 16 of the current proposal – amending the companies law directive as regards the use of digital tools and processes – addresses disclosure in the register and contains the following obligation "Member States shall ensure that companies have a Unique Identifier allowing them to be unequivocally identified in communications between registers [...]".

We understand that EUID will be different from the LEI. It means that an introduction of an additional EU-wide identifier will result in (a) the duplication of identifiers for the same entities and (b) the absence of a coherent

² https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

³ As mentioned in the explanatory memorandum of the Proposed Directive.

reference between the register and other records maintained by financial authorities and market infrastructures.

Finally, we would like to draw your attention to the mandatory use of the LEI under a vast amount of other EU regulations and directives, such as:

- *European Markets Infrastructure Regulation (EMIR)* – counterparties to derivatives contracts as well as beneficiaries, brokers, CCPs and clearing members;
- *Market Abuse Regulation (MAR)* – issuers of financial instruments; entities involved or reporting in suspicious transactions;
- *Capital Requirements Regulation (CRR)* – credit and financial institutions;
- *Alternative Investment Funds Directive (AIFMD)* – funds and fund managers;
- *Credit Rating Agencies Regulation (CRAR)* – credit rating agencies and rated entities;
- *Solvency II* – pension funds and insurance companies;
- *Transparency Directive* – issuers of financial instruments listed on Regulated Markets;
- *Securities Financing Transactions Regulation (SFTR)* – parties involved in securities financing transactions and the beneficiaries of the rights and obligations arising from these;
- *Prospectus Regulation* – issuers of securities offered to the public or admitted to trading on a regulated market situated or operating within a EU member state; and
- *Markets in Financial Instruments Directive II (MiFID II)* and *Markets in Financial Instruments Regulation (MiFIR)*
 - investment firms that execute transactions in financial instruments;
 - the clients (buyer, seller) on whose behalf the investment firm executes transactions, when the client is a legal entity;
 - the client of the firm on whose behalf the trading venue is reporting under MiFIR Article 26.5, when the client is a legal entity;
 - the person who makes the decision to acquire the financial instrument, when this person is a legal entity e.g. this includes investment managers acting under a discretionary mandate on behalf of its underlying clients²⁰;
 - the firm transmitting the order;
 - the entity submitting a transaction report (i.e. trading venue, ARM, investment firm); and
 - the issuer of any financial instrument listed and/or traded on a trading venue”.

Proposed solution

In our view, it would be ideal if the definition of EUID in Article 13a could explicitly mention LEI, which would serve the purposes of EUID for all financial services institutions and companies issuing securities in a CSD.

If this is not possible, we would ask policymakers to introduce the changes to the templates in the core Directive dated 8 June 2015 for communicating between business registers⁴, which foresees the communication of the Unique Identifier, but includes as well an (optional) field named "Alternate ID" and refers to the LEI as an example. We suggest that for all companies issuing financial instruments in an EU CSD, the Alternate ID is made a compulsory field and clearly refers to LEI, as is already required under CSDR.

⁴ <https://eur-lex.europa.eu/legal-content/GA/ALL/?uri=CELEX%3A32015R0884>

We remain at your disposal to provide any further information.

ANNEX

Proposed amendments

Text proposed by the European Commission	Proposed amendments
<p style="text-align: center;"><i>"Article 13a Definitions</i></p> <p>(...) (5)"European unique identifier of companies and branches ('EUID')" means the unique identifier for the purpose of communication between registers as referred to in point (8) of the Annex to Commission Implementing Regulation (EU) No 2015/884(**).</p>	<p style="text-align: center;"><i>Article 13a Definitions</i></p> <p>(...) (5)"European unique identifier of companies and branches ('EUID')" means the unique identifier or <i>Legal Entity Identifier (LEI) for financial institutions and companies issuing financial instruments in a CSD as defined in Regulation (EU) 909/2014</i>, for the purpose of communication between registers as referred to in point (8) of the Annex to Commission Implementing Regulation (EU) No 2015/884(**).</p>
<p><i>Justification</i></p> <p><i>The introduction of a mandatory Legal Entity Identifier (LEI) for all financial institutions and securities issuers in the EU would significantly decrease a burden of obtaining, maintaining and collecting the identifier and make the process of issuance more efficient in the EU. The proposal also ensures that these institutions are not required to have two different identifiers which would not be in line with 'once-only principle'.</i></p>	