

Consultation Paper

Draft Recommendation

on the use of Legal Entity Identifier (LEI)



Consultation paper on draft recommendation on Legal Entity Identifier

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1. Responding to this Consultation

The EBA invites comments on all proposals put forward in this paper.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by **28.11.2013**. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the [Legal notice section](#) of the EBA website.

2. Executive Summary

The EBA has developed draft Implementing Technical Standards on Supervisory Reporting (ITS) ensuring uniform reporting requirements across EU Member States, as mandated by the Capital Requirements Regulation. The ITS cover reporting of own funds and capital requirements, financial information, large exposures, liquidity ratios, leverage ratios and asset encumbrance. In the context of the ITS and in accordance with EBA Decision No. xx/2013 on reporting to the EBA, the competent authorities shall submit to the EBA, starting from June 2014, the data included in the ITS collected from a sample of institutions in their jurisdictions. For submitting data to the EBA, a single supranational identifier of banks needs to be chosen to collect and store data.

With this Recommendation the EBA supports the adoption of Legal Entity Identification system proposed by the Financial Stability Board (FSB) and endorsed by the G20, aimed at achieving a unique, worldwide identification of parties to financial transactions. The global LEI system is not yet fully operational but a number of entities, sponsored by national authorities, have already started to issue LEI-like identifiers (pre-LEIs) in order to satisfy local reporting requirements.

The EBA's decision to recommend the use of pre-LEIs as unique identification codes for supervisory purposes for every credit and financial institution in the European Union has been taken for the following reasons:

- i) there is widespread agreement among the public authorities and financial industry participants to move as soon as possible to a Global LEI system, that would provide a valuable 'building block' contributing to and facilitating many financial stability objectives, including enhanced supervisory convergence and high-quality, reliable and comparable data;*
- ii) the repercussions of the implementation of the LEI system would be negligible in comparison with the benefits that would primarily arise from the harmonisation of identification codes across the different EU and international jurisdictions, different European Supervisory Authorities (currently, the EBA and ESMA) and among financial institutions;*
- iii) a number of alternative options have been considered, namely: setting up a new EBA code, expanding the current ECB MFI ID system and using the BIC system. The alternatives would, however, not represent the best solution, as they could easily generate additional costs and operating risks for national supervisors and the EBA itself.*

3. Background and rationale

The EBA has developed draft Implementing Technical Standards on Supervisory Reporting (ITS) ensuring uniform reporting requirements across EU Member States, as mandated by the Capital Requirements Regulation. In the context of the ITS and in accordance with EBA Decision No. xx/2013 on reporting to the EBA, the competent authorities shall submit to the EBA, starting from June 2014, the data included in the ITS collected from a sample of institutions in their jurisdictions¹. For the reporting requirements to the EBA to be fulfilled, a single supranational identifier of banks needs to be chosen.

There is widespread agreement at global level among the public authorities and financial industry participants on the merits of establishing a uniform global system for legal entity identification. In 2011, the G-20 provided a mandate to the Financial Stability Board (FSB) to lead the coordination of international regulatory work with a view to achieving a unique, worldwide identification of parties to financial transactions². In 2012, the FSB set out 35 'Recommendations for the Development and Implementation of the Global LEI System (GLEIS)³. The G-20 in Los Cabos endorsed the FSB's recommendations and asked the Board to take forward the work to launch the global LEI system.

The global LEI system is not yet fully operational. Nevertheless, an increasing number of aspirants to become Local Operating Units (LOUs), pre-LOUs, have been sponsored by their national authorities. Some of these pre-LOUs have already been endorsed by the Regulatory Oversight Committee (ROC)⁴ as they were found to meet the principles designed to ensure that all of the pre-LEIs issued by pre-LOUs will be eligible to become true LEIs once the GLEIS is fully operational. The endorsed Pre-LOUs have started to issue LEI-like identifiers (pre-LEIs) which may be used for reporting and other regulatory purposes in the various jurisdictions represented in the ROC.

¹ Banks in the sample shall fulfil at least one of the following criteria (which largely follow the published Single Supervisory Mechanism (SSM) quantitative criteria): (i) the institution is one of the three largest institutions in a Member State, including banking groups at the highest level of consolidation and subsidiaries of foreign banking groups, measured by total assets in which the competent authority has jurisdiction; (ii) the institution's total assets are in excess of €30 billion, both for institutions that represent the highest consolidation level of any given banking group and for non-EEA banking group subsidiaries; (iii) the institution's total assets are in excess of 20% of the Member State's GDP, both for institutions that represent the highest consolidation level of any given banking group and for non-EEA banking group subsidiaries. The Decision and the final sample of banks will be published in early 2014.

² G-20 (2012), Cannes Summit Declaration: 'We support the creation of a global legal entity identifier (LEI) which uniquely identifies parties to financial transactions. We call on the FSB to take the lead in helping coordinate work among the regulatory community to prepare recommendations for the appropriate governance framework, representing the public interest, for such a global LEI by our next Summit' (available at http://www.g20civil.com/documents/Cannes_Declaration_4_November_2011.pdf).

³ The global LEI system will, in its full development, be structured as follows: it will be overseen by a Regulatory Oversight Committee (ROC) comprised of financial regulators from jurisdictions across the globe, and will be coordinated by a Central Operating Unit (COU) operated by the Global Legal Entity Foundation (GLEIF), a non-profit organisation. The COU will coordinate and oversee the actions of the Local Operating Units (LOUs), which will serve end users in local jurisdictions to register legal entities and assign Legal Entity Identifier (LEI). See the FSB Report on A Global Legal Entity Identifier for Financial Markets of 8 June 2012 (available at http://www.financialstabilityboard.org/publications/r_120608.pdf).

⁴ In order to become an endorsed pre-LOU, a candidate must be sponsored by a ROC member. That ROC member sponsor must then seek endorsement from the ROC by demonstrating that the candidate pre-LOU meets the *Principles to be observed by Pre-LOUs that wish to integrate into the Interim Global Legal Entity Identifier System (GLEIS)* (available at http://www.lei.org/publications/gls/lou_20130727.pdf). As of October 3, 2013, there are three pre-LOUs that have been endorsed by the ROC: WM Datenservice (Germany), CICI Utility (United States) and INSEE (France) (see *Endorsed Pre-LOUs of the Interim Global Legal Entity Identifier System (GLEIS)* available at http://www.lei.org/publications/gls/lou_20131003_2.pdf).

The EBA encourages and supports the establishment of the GLEIS. The use of pre-LEIs by the competent authorities when fulfilling their reporting obligations to the EBA will enhance supervisory convergence and ensure the high quality, reliability and comparability of data. Considering that a medium term solution should be envisaged the implementation of pre-LEI codes was considered the best alternative in the short term.

It is therefore recommended that the competent authorities request that all institutions under their supervisory remit obtain a pre-LEI code, giving priority to those banks included in the sample identified in the EBA Decision No. xx/2013. The competent authorities are also advised to request that the information which they provide to the European Banking Authority concerning institutions and financial institutions contains pre-LEI codes.

4. Draft recommendation on the use of Legal Entity Identifier

Status of the recommendation

This document contains a recommendation issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*'the EBA Regulation'*)⁵. In accordance with Article 16(3) of the EBA Regulation, the competent authorities and financial institutions must make every effort to comply with the recommendation.

The recommendation sets out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to whom the recommendation is addressed to comply with them. The competent authorities to whom the recommendation applies should comply by incorporating it into their supervisory practices as appropriate (e.g., by amending their legal frameworks or their supervisory processes), including where the recommendation is directed primarily at institutions.

Reporting requirements

According to Article 16(3) of the EBA Regulation, the competent authorities must notify the EBA as to whether they comply or intend to comply with this recommendation, or otherwise with reasons for non-compliance, by xx.xx.xxxx. In the absence of any notification by these deadlines, the competent authorities which have failed to provide notification will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to compliance@eba.europa.eu with the reference 'EBA/REC/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

⁵ OJ L 331 of 15.12.2010, p. 12

Title I - Subject matter and scope

1. This recommendation seeks to establish consistent, efficient and effective supervisory practices by harmonising the identification of legal entities when information is provided to the EBA by the competent authorities under Article 35 of the EBA Regulation, in order to ensure high-quality, reliable and comparable data.
2. The recommendation is addressed to the competent authorities as defined in Article 4(40) of Regulation (EU) No 575/2013⁶.

Title II- Requirements regarding the use of pre-LEIs

3. The competent authorities should request that all institutions under their supervisory remit which are subject to reporting obligations under Regulation (EU) No 575/2013 obtain a code issued by a pre-LOU endorsed by the ROC (a pre-LEI code). The competent authorities should request that all such institutions obtain a pre-LEI code for all entities within their group on which information is required under their reporting obligations.
4. The competent authorities should verify that institutions referred to in paragraph (3) obtain pre-LEI codes as follows:
 - For institutions falling under the scope of the EBA Decision No xx/2013 on reporting to the EBA, by 31 March 2014 at the latest.
 - For all the other institutions, by 31 December 2014 at the latest.
5. The competent authorities should provide instructions on how the institutions referred to in paragraph (3) should consistently use those pre-LEI codes, when fulfilling their reporting obligations.
6. The competent authorities should ensure that the information, which they provide to the EBA concerning the institutions referred to in paragraph (3), including information concerning entities within groups of these institutions, contains the pre-LEI codes obtained in accordance with this Recommendation.

Title III- Final provisions and implementation

7. This recommendation will apply from [date].

⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

5. Accompanying documents

5.1 Cost-benefit analysis/impact assessment

The problem

In light of the upcoming implementation of the ITS on Reporting, the EBA needs a unique identification code for supervisory purposes for every credit and financial institution in the European Union.

The objective

By establishing a unique identification code, the EBA would achieve the necessary harmonisation among the EU Member States' supervisory authorities. The National Supervisory Authorities could also benefit from this identification, should this identification be extended to banking activities other than supervisory reporting, to better monitor transactions in their jurisdictions for their every-day tasks (e.g., post-trade supervision of financial transactions, etc.).

The options

Currently, there are numerous systems for identification. The most common systems used by the EU supervisory authorities and central banks are the following:

- Monetary Financial Institution (MFI) ID: this system is used by the ECB and Eurozone (EZ) national supervisory authorities (NSAs) to identify the counterparties of the Eurosystem in monetary operations (refinancing operations of the Eurosystem vis-à-vis the EU banks⁷. Currently, the MFI ID system, pursuant to Regulation ECB/2008/32, is mandatory only for all credit institutions needing to be registered for monetary policy purposes. It is not legally binding on credit institutions in non-euro zone EU countries nor, within the Euro area, is it binding on institutions other than credit-institutions which are subject to reporting obligations.
- Banking Identification Code (BIC)/SWIFT⁸: this system is mainly used by payments systems for the identification of the credit and financial institutions which participate in financial transactions.

The EBA is trying to find a unique identification system which would identify, in a reliable and automated way, EU institutions and financial institutions as defined in the Regulation (EU) No 575/2013 and that are subject to reporting obligations in accordance with the Implementing Technical Standards on Supervisory Reporting under Regulation (EC) No. xx/2013.

In its effort to come up with a new system, the EBA considered the following options:

- Expanding the current MFI ID system to cover the missing institutions;

⁷ The format of the identification code is XXYYY, where XX (letters) represents the country code and YYY (numbers of letters) is the unique per country code of a bank belonging to this jurisdiction.

⁸ For more information, see <http://www.theswiftcodes.com/>

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- Using the BIC system;
 - Coming up with a new EBA system for identifying banks in the EU;
 - Adoption of the Legal Entity Identification system, a system proposed by the Financial Stability Board (FSB) and endorsed by the G20, aimed at achieving a unique, worldwide identification of parties to financial transactions.

The first three options were excluded for the following reasons, respectively:

- The expansion of the existing MFI ID system was not considered as an effective solution as it would require a number of institutions to adopt a system that will not be used for other purposes and that will be replaced in the near future by the LEI.
- The BIC system could be a reliable alternative as it is widely used by credit and financial institutions for transaction purposes across the EU, and is also used by non-EZ countries to identify banks. Nonetheless, as it is a code used for the identification of transactions in payment services, supervisors were not always able to obtain BIC codes from their national registers. Since payment and supervisory functions, even in the same jurisdiction, are not always connected, there would be additional costs and expenditure of time arising from the communication between the two separate functions in the same jurisdiction. This option was therefore also disregarded.
- The third option was initially considered to be viable for reporting purposes as it would represent a rapid solution without significant costs since the specifications would be set internally at the EBA and communicated to the supervisory authorities. However, this solution could be more burdensome in the long run for the national supervisory authorities as they would be obliged to monitor and keep a register of more than one identification code, i.e. 'the new ID for reporting purposes', another ID for transaction purposes, etc. It would also impose an additional cost to the banks due to the dedication of resources for implementing and monitoring the new code in their existing reporting frameworks.

The preferred option

The Financial Stability Board's paper on 'a global legal identifier for financial markets' has provided recommendations on the need for the establishment of an identifier with a worldwide effect by providing an exhaustive list of supervisory and operational objectives that would be fulfilled by the implementation of a so-called LEI.

Furthermore, the LEI will become compulsory for reporting purposes at the European Securities and Markets Authority (ESMA). As a matter of fact, according to the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties (CCPs) and trade repositories (TRs) (EMIR), OTC derivative transactions shall be reported to a trade repository. Following the recommendations by the FSB, the ESMA has decided to identify entities in the reporting using the LEI.

With this in mind, the LEI system would provide the EBA and the national supervisory authorities with the prospect of having a unique identification code standardised to fit all purposes (supervisory, reporting, transactions), as it would also be used for reporting transactions to trade repositories.

At the same time, the LEI system would provide supervisors and the EBA with more granular (but also brief) information about the identity of banks. This information could be used to ease the production of automated specialised reports (peer review reports, country reports, etc.) at the EBA. Moreover, many banks worldwide (mainly in the US) have already acquired or are in the process of acquiring a LEI code.

Since, as specified above, the LEI is a global initiative – and provides more granular information to ESMA supervisors and banks – and banks will be required to adopt it, it is recommended that the EBA follow this initiative and adopt the LEI system for supervisory reporting purposes. It is worth noting that the implementation of the LEI system is compatible with the IT specification of the ITS on Supervisory Reporting and would imply no additional effort or cost to incorporate it into the XBRL templates.

Cost and benefits of the preferred option

The impact, in monetary terms, cannot be assessed as the EBA does not have aggregate or more granular information on the direct or indirect costs arising from the implementation of any of the proposed options. It is therefore only feasible to assess the costs and benefits arising from the implementation of the preferred option, i.e. implementation of the LEI system.

The baseline

The use of LEI is becoming widespread: there are approximately 95,000 pre-LEI codes that have been issued by the three endorsed providers (WM Datenservice, CICI Utility and INSEE). In the near future, the implementation of the LEI in the reporting to trade repositories, as defined by ESMA, would de facto make LEI mandatory in the EU".

Costs

As for the financial impact of acquiring an LEI code, the costs of acquiring and maintaining an LEI are listed in the following table. Since the LEI system has not been implemented yet, the costs refer to those charged by the predecessors of the LEI.

| Name of the pre-LEI⁹ | Country of establishment | Registration fee (cost of acquiring an LEI) – in € | Annual fee (annual cost of maintaining an LEI) – in € |
|--|---------------------------------|---|--|
| WM Datenservice | Germany | 150 | 100 |
| INSEE | France | 100 | 50 |
| CICI Utility | USA | 148 | 74 |
| Average | | 133 | 75 |

Taking into account that:

- the current average cost of registration is EUR 133 and the annual maintenance fee will be approximately EUR 75;
- that this cost would be due, to a large extent, to ESMA's requirement for registration; and,

⁹ Source: Pre-LEIs' web-sites: Germany: www.geiportal.org, France: <http://lei-france.insee.fr/>, USA: <https://www.ciciutility.org/>

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- the cost in relation to the overall operational costs of banks;

the additional cost due to the implementation of the LEI system, in relation to total operational costs, is considered to be **negligible to zero** for the banks and the EBA

Benefits

The benefits that would arise from the implementation of LEI would primarily arise from the harmonisation of identification codes across different EU and international jurisdictions, different European Supervisory Authorities (currently the EBA and ESMA) and among banks. This harmonisation would facilitate the interconnectivity of the information that is available at the different supervisory domains, preventing excess communication and reducing manual intervention.

Furthermore it will provide banks, especially SIFIs, with the opportunity to get their data warehouses in order by rationalising the number of identification codes which they shall use in the EU when responding to reporting requirements to different institutions / agencies. This is potentially a very significant benefit to banks which will enable them to reduce costs and make better use of their data. The benefits in monetary terms from utilising the LEI system cannot be estimated. However, the magnitude of the impact, in relation to total operational costs, can be considered **medium** for the supervisory authorities, the EBA and the banks.

Net impact of the preferred option

The net impact of the preferred option is deemed positive, as shown in the following table:

| | Cost | Benefits | Net impact |
|---------------------|--------------------|-----------------|-------------------|
| Banks | Negligible to zero | Medium | Positive |
| EBA and NSAs | Zero | Medium | Positive |

The implementation of the LEI system would have a positive net impact on both the EBA and supervisory authorities as well as on the banking sector.

Proposed way forward

Although the EBA favours the implementation of the LEI system, it is considered that it would be useful for the EBA to consult the Banking Stakeholders Group (BSG) on the technicalities and timeframe of the implementation of the LEI system.

5.2 Questions for Consultation

1. Which are your views on the use of pre-LEIs as unique identification codes for supervisory purposes for credit and financial institutions in the European Union?
2. Can you provide inputs for assessing the costs and benefits of this draft recommendation?
3. Please, provide your feedback on the proposed timeline and the proposal of having less tight deadlines for banks not included in the EBA sample.

5.3 Confirmation of compliance with the Recommendation

Date:

Member/EEA State:

Competent authority:

Recommendation:

Name:

Position:

Telephone number:

Email address:

I am authorised to confirm compliance with the Recommendation on behalf of my competent authority:

Yes

The competent authority complies or intends to comply with the Recommendation:

Yes **No** **Partial compliance**

My competent authority does not, and does not intend to, comply with the Recommendation for the following **reasons**¹⁰:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu¹¹.

10 In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.

11 Please note that other methods of communication of this confirmation of compliance, such as communication to a different email address from the above, or by email that does not contain the required form, will not be accepted as valid.
