

ESMA statement on implementation of the LEI requirements under the SFTR reporting regime

SFTR responds to the need to enhance the transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation follows the FSB Policy Framework¹. SFTR creates a Union framework under which details of SFTs can be efficiently reported to trade repositories and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings.

Article 4 SFTR² requires the counterparties to a securities financing transaction (SFT) to timely report the details of any SFT they have concluded, modified or terminated to a registered or recognised Trade Repository (TR).

The same Article³ also prescribes the use of global legal entity identifiers (LEIs) for the identification of entities. The LEI is based on the ISO standard 17442 developed by the International Organization for Standardization.

The SFTR reporting regime will go live on 13 April 2020.

ESMA, and the EU in general, have envisaged the use of LEI⁴ across numerous pieces of EU legislation (see Annex). Furthermore the use of the LEI is required or is in the process of being implemented by other regulators, including those in the US, Canada and Asia-Pacific⁵, in line with the FSB expectations. As part of the initiatives to further enhance and foster the use of LEI, ANNA-DSB and GLEIF have launched an initiative for linking ISINs and LEIs⁶.

The correct reporting of valid LEIs is a requirement for the compliance of an SFT report with the reporting obligation under SFTR. The correctness and completeness of an SFT report is verified by a registered or recognised TR.

SFTR implementation

The LEI requirement has an impact on the counterparties to an SFT that are legal entities, on all issuers of securities which are lent, borrowed or provided as collateral in an SFT as well as on other entities which, in various capacities, participate in an SFT⁷.

To ensure compliance with the SFTR reporting requirements, the LEI shall be correctly indicated in the transaction reports irrespective of the location of the counterparties, the issuers of securities or the rest of participants to an SFT and regardless of whether any of these entities are subject to LEI requirements in their own jurisdictions.

¹ Financial Stability Board, Standards and Processes for Global Securities Financing Data Collection and Aggregation. 18 November 2015:

<http://www.fsb.org/2015/11/standards-and-processes-for-global-securities-financing-data-collection-and-aggregation-3/>

² Article 4(1) of SFTR (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2365>).

³ Article 4(10) of SFTR.

⁴ https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

⁵ <https://www.gleif.org/en/lei-solutions/regulatory-use-of-the-lei>

⁶ <https://www.gleif.org/en/lei-data/lei-mapping/download-isin-to-lei-relationship-files>

⁷ Pursuant to Article 2 Commission Delegated Regulation 2019/363 the following entities shall be identified with the LEI: beneficiaries, brokers, CCPs, clearing members, agent lenders, CSD participants, tri-party agents, report submitting entities and entities responsible for reporting.

The correct, consistent and universal reporting of LEI codes is paramount to ensure the efficiency and usefulness of reported information on SFTs. This also enables the achievement of the transparency objectives pursued by SFTR which underpin the monitoring of systemic risks to financial stability and the market surveillance. The LEI code is needed for authorities to monitor the SFTs entered into by supervised entities and the consequent risk exposure. Transaction reports lacking a LEI or containing an incorrect one would likely cause inconsistencies or other data quality issues, which would in turn impede or hinder the attainment of these goals.

For this reason, ESMA does not consider it appropriate to amend this requirement.

However, ESMA is aware of the different levels of LEI coverage between EU and third country jurisdictions: 88% of instruments issued by EU issuers that have a LEI code, against a non-EU average of 30%⁸.

As a result, when the SFTR reporting regime will start, EU investors will face problems in using securities issued by non-EU issuers which have not yet obtained a LEI.

Considering the still unsatisfactory level of LEI coverage on the global scale, ESMA acknowledges the potential reporting implementation issue with respect to SFTs entered into by EU investors with regards to third-country securities. In this respect, ESMA expects competent authorities not to prioritise their supervisory actions in relation to reporting of LEIs of third-country issuers, in order to ensure the smooth introduction of the SFTR reporting regime.

LEI of issuer

In that context, and to support the smooth introduction of the LEI requirements under the SFTR reporting regime, ESMA will allow for a period of up to twelve months starting from the entry into force of SFTR reporting requirements during which the reports without the LEI of third-country issuers (that do not have an LEI) of securities which are lent, borrowed or provided as collateral in an SFT will be accepted.

During this period ESMA would expect that the counterparties, as well as the other entities that participate in SFTs, such as agent lenders and tri-party agents, that lend, borrow or use as collateral securities issued by third-country entities that do not have an LEI, to liaise with those issuers to ensure that they are aware of the requirements under SFTR and are able to further facilitate the use of their securities by the counterparties subject to SFTR reporting requirements.

The partial relaxation of the validation rules only applies to the LEI of third-country issuers. It does not affect in any way the mandatory nature of reporting the LEI in all other cases where it is prescribed by the regulation, including the identification of third-country entities that take part in the SFT.

Moreover, ESMA and the NCAs will monitor closely (i) the evolution of the issuance of LEI for third-country issuers, as well as (ii) the population of the field “LEI of the issuer” for third-country entities, in order to better assess the results of this measure as well as the appropriate way forward.

This temporary measure will be in place until 13 April 2021.

Further information:

For LEI: <https://www.gleif.org/en> and <https://www.leiroc.org/>

For SFTR: <https://www.esma.europa.eu/policy-activities/post-trading/sftr-reporting>

⁸ FSB, “Thematic Review on Implementation of the Legal Entity Identifier Peer Review Report”, 28 May 2019, Annex 4b, page 56. Link: <https://www.fsb.org/wp-content/uploads/P280519-2.pdf>

Annex:

The use of LEI is already required under the following EU legislations:

- 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;
- Central Securities Depositories Regulation (CSDR) – CSDs, CSDs' participants;
- Transparency Directive – issuers of financial instruments listed on Regulated Markets;
- Prospectus Regulation – issuers of securities offered to the public or admitted to trading on a regulated market situated or operating within an EU member state;
- Markets in Financial Instruments Directive II (MiFID II)/ Markets in Financial Instruments Regulation (MiFIR) – clients of EU investment firms and trading venues that are legal persons.
- Securitisation regulation – reporting entities