

ESMA statement to support the smooth introduction of the LEI requirements

Summary

The obligation for EU investment firms to identify their clients (that are legal persons) with the LEI is enshrined in MiFIR¹. An investment firm shall not provide any service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the LEI code, prior to obtaining the LEI code from that client².

Trading venues equally are obliged to identify each issuer of a financial instrument traded on their systems with an LEI code when making daily data submission³ to the Financial Instruments Reference data System (FIRDS).

These requirements have an impact on all clients of EU investment firms and any entity issuing financial instrument traded on European trading venues. The EU investment firms and EU trading venues are obliged to report the LEI codes of these entities regardless of where the clients or issuers are based and regardless of whether they are subject to LEI requirements in their own jurisdiction.

In the last weeks, ESMA and national competent authorities (NCAs) received a number of indications that not all investment firms will succeed in obtaining LEI codes from all their clients that are legal persons ahead of 3 January 2018. At the same time, these firms might be approached by such clients after 3 January 2018 with the request to provide a service triggering the obligation to submit a transaction report. Similarly, ESMA and NCAs are aware of the concerns raised by some trading venues that additional time might be required to reach out to non-EU issuers whose financial instruments are traded on European trading venues in order to inform them about the applicable MiFIR and MAR requirements and obtain their LEI codes.

In that context, and to support the smooth introduction of the LEI requirements, ESMA will allow for a temporary period of six months that: (1) investment firms may provide a service triggering the obligation to submit a transaction report to the client, from which it did not previously obtain an LEI code, under the condition that before providing such service the investment firm obtains the necessary documentation from this client to apply for an LEI code on his behalf; and (2) trading venues report their own LEI codes instead of LEI codes of the non-EU issuers while reaching out to the non-EU issuers.

LEI for clients that are legal persons

Accurate identification of all relevant parties in transaction reports is key for efficient and effective monitoring of the activities of investment firms and ensuring that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market. In order to allow proper market monitoring, transaction reports should identify the person who has made the investment decision, as well as those responsible for its execution.

¹ Article 26(6) of MiFIR

² Article 13(2) of MiFIR Delegated Regulation (EU) 2017/590

³ Article 3(2) of MiFIR Delegated Regulation (EU) 2017/585 and Article 1 of MAR Delegated Regulation (EU) 2016/909



With this statement, ESMA clarifies that for a temporary period investment firms may provide a service triggering the obligation to submit a transaction report to the client, from which it did not previously obtain an LEI code, under the condition that before providing such service the investment firm obtains the necessary documentation from this client to apply for an LEI code on his behalf. The investment firm will need to immediately apply for the issuance of the LEI on behalf of the client. Once the relevant LEI has been obtained, the investment firm should submit its transaction report⁴.

To streamline the issuance of LEIs, the Global legal entity identifier foundation (GLEIF) has introduced the concept of the Registration Agent. A Registration Agent helps legal entities to access the network of LEI issuing organisations responsible for performing LEI issuance and related services. More information about this facility is available [here](#).

ESMA and NCA acknowledge that obtaining an LEI on a client's behalf by an investment firm may lead to delays in submitting complete and accurate transaction reports within the prescribed timeline⁵. For this reason, such practice will be accepted only on a temporary basis and NCAs will closely monitor the timelines, accuracy and completeness of the submitted transaction reports. This will also require NCAs to temporarily amend a validation rule in their transaction reporting systems to allow for the acceptance of transaction reports where the LEI issuance date is after the transaction execution date. Investment firms are invited to contact directly their NCA for the specific details regarding these amendments.

ESMA and NCAs reiterate that investment firms are expected to ensure full compliance with the MiFIR requirement for the identification of clients that are legal persons using LEIs, given the relevance and importance of these data for regulatory supervision purposes.

LEI for issuers

Accurate identification of issuers in the reference data submitted by trading venues is essential for market abuse monitoring, market transparency (through FIRDS) and precise determination of the NCA of the most relevant market in terms of liquidity for a given financial instrument.

Given the importance of accurate identification of issuers, ESMA and NCAs expect trading venues to comply with the requirement to use the LEI code for the identification of issuers when submitting the reference data for financial instruments.

In particular, starting from 3 January 2018 trading venues are expected to use the LEI codes pertaining to a given issuer when submitting reference data on financial instruments issued by EU issuers. Failure to submit an LEI of the EU issuer will be considered a breach of reporting requirements by the trading venue under MAR⁶ and MiFIR⁷ and will be subject to appropriate supervisory action.

Equally, trading venues will be expected to ensure that all non-EU issuers are identified through their respective LEI codes. However, understanding the additional difficulties in this case and to facilitate the introduction of the new reporting requirements, trading venues will be allowed on a temporary basis to report their own LEI codes instead of LEI codes of the non-EU issuers while reaching out to the non-EU issuers.

ESMA and NCAs will closely monitor the accuracy and completeness of the submitted reference data and pay particular attention to the frequency and the number of trading venues' own LEIs used instead of non-EU issuers' LEIs.

⁴ Transaction reports shall be submitted in accordance with the requirements of Article 26 of MiFIR.

⁵ According to the requirements of Article 26(1) of MiFIR, executed transactions shall be reported as quick as possible, and no later than the close of the following working day.

⁶ Article 4 'Notifications and list of financial instruments' of MAR

⁷ Article 27 'Obligations to supply financial instrument reference data' of MiFIR