
Consultation response

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

9 July 2018

The Association for Financial Markets in Europe (AFME)¹ and the International Swaps and Derivatives Association, Inc. ("ISDA")² welcome the opportunity to comment on the 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 (the "Proposed Directive").

The Proposed Directive represents an opportunity to upgrade the EU company law administrative processes to better function in the increasing global and digital world. A critical element of operating in a global and digital environment is the ability to communicate unambiguously within borders and across the globe about entities involved in commerce. Article 16 of the Proposed Directive deals with the disclosure in the register and states that "Member States shall ensure that companies have a Unique Identifier allowing them to be unequivocally identified in communications between

¹ AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

² Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 68 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter @ISDA.

Association for Financial Markets in Europe

London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

Frankfurt Office: Skyper Villa, Taunusanlage 1, 60329 Frankfurt am Main, Germany T: +49 (0)69 5050 60590

www.afme.eu

International Swaps and Derivatives Association, Inc.

10 East 53rd Street

9th Floor

New York, NY 10022

P 212 901 6000 F 212 901 6001

www.isda.org

NEW YORK WASHINGTON

LONDON BRUSSELS

HONG KONG SINGAPORE

TOKYO

registers [...]". We note that the Proposed Directive proposes to continue to use the EUID for identifying EU companies ("European unique identifier of companies and branches ('EUID')", Art. 13(a) Definitions). We suggest, however, that the Legal Entity Identifier (LEI) would be a better choice for such identification purposes.

The LEI is an established global identifier, endorsed by the G20, with over 1.2 million records in existence. It is an ISO global standard, specifically, ISO 17442. The Global LEI System is well governed, specifically, it is overseen by a Regulatory Oversight Committee (ROC) consisting of over 70 public authorities from more than 40 countries, and an independent Board of Directors. The Global LEI Foundation (GLEIF) is a supra national not-for-profit organisation which manages a network of the LEI issuing organisations (LOU). It should be noted that the LEI registration process is fully digital in line with the European Parliament's and The Council's objectives and that LEIs exist in all EU member states³.

Critically important, and in line with the Commission's goals, the LEI is a public good. The LEIs and related reference data are made available for free to any market participant on the GLEIFs website. The quality of the LEI is excellent and there is a strong program in place by the GLEIF to ensure the data remains strong. In the near future, further changes will be made to the GLEIF system to incorporate more fully timely information about changes to entity information, e.g. corporate actions to keep the reference data as up to date and relevant as possible. Lastly, the GLEIF is now collecting information on the immediate and ultimate parent of each entity that has an LEI. This relationship information provides excellent information about who owns whom in the business environment.

We strongly urge policymakers to adopt the LEI in the definitions (article 13a) as the identifier to be used in the company law processes. European policymakers including EBA, EIOPA and ESMA have long supported the use of the Legal Entity Identifier (LEI) and it is mandatory in many EU directives and regulation relating to financial reporting

³ <https://www.gleif.org/en/lei-data/global-lei-index/lei-statistics#>

and supervision⁴. Any institution that wants to trade on the European Capital Markets is now required to possess an LEI under the MiFIR regulation. Perhaps more relevant under the same Regulation, Issuers are required to possess an LEI in order for their securities to be traded. Additionally, the CSDR Regulation (EU) 909/2014) imposes the use of LEIs for all financial market actors including companies issuing financial instruments into a CSD. Fifteen GLEIF accredited Local Operating Units (LOU), entities which issue LEI exist⁵ and a further three EU member states have candidates for GLEIF LOU accreditation.⁶

We believe that moving to a single, global, public entity identifier, especially one that is already prominently used across the EU, would be a better choice for use in this Directive. We strongly urge the Commission to adopt the LEI in this amendment of Directive 2017/1132 and require that companies identify themselves in business registers or where their digital identifier is required to be submitted for interaction with EU public authorities by obtaining an LEI. By using the LEI for all relevant processes in scope of the Proposed Directive, those legal entities that already have an LEI will not be forced to use an additional EUID identifier. The use of an available LEI to identify all entities in national business registers and in regulatory reporting will better support the goals of the Commission in this amendment to ensure companies will be “unequivocally identified in communications between registers”.

In closing, we are grateful for the opportunity to comment on the proposal, and we would be happy to engage in further dialogue or answer any questions that you may have.

AFME Contact

Stephen Burton
Stephen.Burton@afme.eu
+44 (0)20 3828 2678

ISDA Contact

Tara Kruse
Tkruse@isda.org
+1 (212) 901-6045

⁴ <https://www.gleif.org/en/lei-solutions/regulatory-use-of-the-lei>

⁵ <https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations>

⁶ <https://www.gleif.org/en/about-lei/gleif-accreditation-of-lei-issuers/current-candidates#>