

ESMA updates its statement on the implementation of LEI requirements for third-country issuers under the SFTR reporting regime

On 6 January 2020 ESMA issued a public statement (ESMA74-362-388)¹ on LEI Implementation under the SFTR reporting regime in which ESMA stated its support for the smooth introduction of the LEI requirements under the SFTR. That included, in particular, support for the acceptance of 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 for a period of up to twelve months starting from the entry into force of the SFTR reporting regime.

ESMA also pointed out in that statement that *“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.”*

The aforementioned position remains currently in place until 13 April 2021. However, it must be noted that in fact it has been valid for less than nine months given the three months delay to the start of SFTR reporting, which was delayed to 13 July 2020 due to the outbreak of the Covid-19 pandemic².

ESMA has been monitoring the evolution of the reporting of LEI issuer details and concluded that, currently, less than 16% of all open SFTs miss an issuer LEI, compared to 26% in September 2020. From an individual securities perspective, however, it appears that more than 75% lack an LEI of the third-country issuer in the SFT reports.

Considering the still unsatisfactory level of LEI coverage on a global scale, ESMA acknowledges the potential reporting implementation issue with respect to SFTs entered into by EU investors for securities of third-country issuers. In this respect, ESMA expects competent authorities to continue not prioritising their supervisory actions in relation to reporting of LEIs of third-country issuers.

ESMA issues this Public Statement to ensure coordinated supervisory actions are taken in response to the aforementioned difficulty in the SFTR application, in particular the requirements regarding third-country issuer LEI reporting.

Extended timeline for compliance with LEI requirement for third-country issuers

ESMA maintains its position regarding third-country issuer LEI reporting included in the ESMA statement published on 6 January 2020 (ESMA74-362-388) until 10 October 2022, at the latest. ESMA, therefore, expects that during this period trade repositories would not reject SFT reports of securities without a third-country issuer LEI which are lent, borrowed or provided as collateral in an SFT.

During this period ESMA would expect counterparties, as well as the other entities participating 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 with a view to ensuring that they are aware of the requirements under SFTR. This would further facilitate the use of their securities by the counterparties subject to SFTR reporting requirements.

¹ https://www.esma.europa.eu/sites/default/files/library/esma74-362-388_lei_statement_sftr.pdf

² https://www.esma.europa.eu/sites/default/files/library/esma80-191-995_public_statement.pdf



ESMA, a strong supporter of the use of LEIs, and the EU in general, have envisaged the use of LEI³ across numerous pieces of EU legislation (see Annex). The present statement aims to address the material difficulties observed in the compliance with the LEI reporting requirement by third-country issuers that go beyond ESMA's remit to address. In this respect, ESMA will continue liaising with third-country competent authorities to make them aware of the requirement and solicit a broader coverage of LEIs in third countries.

ESMA will give advance notice to market participants regarding its position on third-country issuer LEI reporting ahead of 10 October 2022.

ESMA invites the entities which take part in SFTs reportable under SFTR to make use of the relevant solutions put in place by GLEIF to facilitate LEI coverage such as the use of LEI validation agents⁴.

The aforementioned position regarding the validation rules is only relevant to the LEI of third-country issuers. It does not, in any way, affect the mandatory reporting of the LEI in all other cases where it is prescribed by the regulation, including the identification of third-country entities taking part in a SFT.

Moreover, ESMA and the NCAs will continue to closely monitor (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 assess on an on-going basis the developments regarding the use of LEI of third-country issuers.

³ https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

⁴ <https://www.gleif.org/en/lei-solutions/validation-agents#>



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>

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