

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

On 6 January 2020, the European Securities and Markets Authority (ESMA), issued a public statement¹ on LEI Implementation under the SFTR reporting regime, in which it outlined its support for the smooth introduction of the LEI requirements under SFTR. The statement, in particular, reiterated 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 SFTs for a period of up to twelve months starting from the entry into force of the SFTR reporting regime. On 13 April 2021, ESMA updated its statement and extended the timeline for acceptance of SFT 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 until 10 October 2022.

ESMA pointed out in the latter statement that *“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.”*

ESMA, a strong supporter of the use of LEIs, and the EU in general, have envisaged the use of LEI² across numerous pieces of EU legislation (see Annex).

ESMA has been monitoring the evolution of the reporting of LEI issuer details and concluded that, currently, around 14% of all open SFTs miss an issuer LEI, compared to 16 % in March 2021 and 26% in September 2020. From an individual securities perspective, however, it appears that around 20% of the non-EEA securities lack an LEI of the third-country issuer in the SFT reports.

In view of 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 particular in third-country jurisdictions LEIs are not widely mandated beyond dealers of derivatives, therefore a significant number of issuers still do not have an LEI.

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

Neither ESMA nor national competent authorities (NCAs) possess any formal power to dis-apply a directly applicable EU legal text. Therefore, any change to the application of the EU rules would need to be implemented through EU legislation.

ESMA expects that 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, 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. 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 agents³.

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

² https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

³ <https://www.gleif.org/en/lei-solutions/validation-agents#>



ESMA maintains its position regarding third-country issuer LEI reporting included in the ESMA statements published on 6 January 2020⁴ and on 13 April 2021⁵. ESMA, therefore, expects that 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.

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.

ESMA expects NCAs to continue not prioritising their supervisory actions in relation to reporting of LEIs of third-country issuers.

ESMA and the NCAs will continue to closely monitor (i) the evolution of the issuance of LEI for third-country issuers, (ii) the population of the field “LEI of the issuer” for third-country entities, as well as (iii) the structural evolution of the SFT markets in the EU, in order to assess on an on-going basis the developments regarding the use of LEI of third-country issuers.

ESMA will give advance notice of at least six months to market participants regarding its position on the reporting of LEI for third-country issuers ahead of the date of application of this requirement in the SFTR validation rules.

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.

⁴ https://www.esma.europa.eu/sites/default/files/library/esma74-362-388_lei_statement_sftr.pdf

⁵ https://www.esma.europa.eu/sites/default/files/library/esma74-362-1934_updated_lei_statement_sftr.pdf

**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