



Consultation paper
on the proposal for revised Guidelines
on the use of Legal Entity Identifier [LEI]

Table of Contents

Responding to this paper	3
Publication of responses	3
Data protection	3
Consultation paper overview and next steps	3
Background	4
Context, legal basis, objectives	4
1. Revised Guidelines on the use of LEI	7
Introduction.....	7
Guideline 1 – Scope of legal entities	9
Guideline 2 – Reporting to EIOPA	10
Compliance and Reporting Rules	10
Final Provision on Reviews	10
Annex I: Impact Assessment	11
Section 1 – Procedural issues and consultation of interested parties.....	11
Section 2 – Problem definition.....	11
Section 3 – Objectives pursued	11
Section 4 – Policy Options	12
Policy issue 1	12
Policy issue 2	12
Section 5 – Analysis of the impacts.....	12
Section 6 – Comparison of options.....	14
2. Explanatory text	17
Annex II: Overview of Questions for Consultation	19
Annex III: Existing EIOPA Guidelines on LEI from 2014	20

Responding to this paper

EIOPA welcomes comments on the proposal for revised Guidelines on the use of Legal Entity Identifier [LEI].

Comments are most helpful if they:

- a) contain a clear rationale; and
- b) describe any alternatives EIOPA should consider.

Please send your comments to EIOPA by **30 June 2021 23:59 CET** by responding to the questions in the survey provided at the following link: https://ec.europa.eu/eusurvey/runner/EIOPA_CP_revised_LEI_Guidelines.

Contributions not provided using the survey or submitted after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the survey. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents¹ and EIOPA's rules on public access to documents².

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as names of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/17253 on the protection of the individuals with regards to the processing of personal data by the Union institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

Consultation paper overview and next steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance with Article 16(2) of Regulation (EU) No 1094/2010.

This Consultation Paper presents the draft revised Guidelines and background explanatory text. For ease of reference the existing LEI Guidelines are also included in Annex III.

The analysis of the expected impact from the proposed policy is covered under Annex I (Impact Assessment).

EIOPA will consider the feedback received, publish a Final Report on the consultation and submit the revised Guidelines for adoption by its Board of Supervisors.

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

² [Public Access to Documents](#).

Background

Context, legal basis, objectives

1. Under Article 16 of Regulation (EU) No 1094/2010 EIOPA may issue guidelines and recommendations addressed to competent authorities and financial institutions with a view to establish consistent, efficient and effective supervisory practices and ensuring the common, uniform and consistent application of Union law.

In accordance with Article 16(3) of that Regulation, competent authorities and financial institutions are required to make every effort to comply with those Guidelines and recommendations.

The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets, and convergence and effectiveness of regulatory and supervisory practices.

2. When conducting its activities EIOPA promotes the usage of supervisory and regulatory data in order to support supervisory analyses and decisions based on facts. Within its framework, EIOPA supports a variety of data standardisation initiatives.

One of those initiatives is the international Legal Entity Identifier (LEI) which is a unique identification code proposed by the Financial Stability Board (FSB) and endorsed by G20 in 2012³, aimed at achieving a unique, worldwide identification of legal entities participating in financial transactions.

Following this event and after consulting its stakeholders in 2014, EIOPA issued its own Guidelines on the use of the Legal Entity Identifier (LEI)⁴.

Other European Supervisory Authorities (ESAs) as well as authorities from other jurisdictions also developed and introduced tools, laws and regulations which include references to LEI for regulatory purposes⁵.

In particular, EMIR⁶ and MIFIR⁷ EU Regulations and the “no LEI, no trade” slogan contributed towards a significant increase of LEI registrations / applications.

3. The LEI is nowadays widely⁸ used within the financial industry especially in the EU, not only for pure identification of legal entities at both single and group levels (so called ‘level 1 – Who is who’ and ‘level 2 – Who owns whom’) but also for data quality purposes, linking different types of data sets, etc. This in turn supports activities in the area of financial stability, oversight and supervision as well as consumer protection.

Nevertheless, some obstacles remain which prevented wider adoption. Those were identified by the Financial Stability Board (FSB) in its Thematic Review published in May 2019.⁹ Those obstacles included i.a.:

- low rate of adoption of the LEI by entities outside the securities and over-the-counter (OTC) derivatives markets;

³ <https://g20.org/en/g20/Documents/2012-Mexico-Leaders-Declaration0619-loscabos.pdf>

⁴ https://www.eiopa.europa.eu/content/guidelines-use-legal-entity-identifier_en

⁵ <https://www.leiroc.org/lei/uses.htm>

⁶ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁷ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

⁸ LEI-ROC: “As of 1 October 2020, over 1.7 million entities from over 200 countries and territories had obtained LEIs from 32 operational issuers accredited by the GLEIF.” See also: <https://www.gleif.org/en/lei-data/global-lei-index/lei-statistics>

⁹ <https://www.fsb.org/wp-content/uploads/P280519-2.pdf>

- insufficient level of voluntary adoption of the LEI;
- limited adoption of the LEI by non-financial entities.

Also, in the context of Global Systemically Important Institutions (G-SIIs), it seems that while most parent entities of G-SII groups have LEIs, coverage does not generally extend to all international subsidiaries and branches, or all counterparties.

In its thematic review, the Financial Stability Board (FSB) also included a list of recommendations some of which were referring to: reporting and disclosure frameworks especially in the cross-border context, exploring ways to further promote LEI adoption, etc.

4. In September 2020, the European Systemic Risk Board (ESRB) developed its recommendations on identifying legal entities¹⁰ focusing on the LEI as a common identifier. ESRB highlights that the availability and wide adoption of a worldwide unique identifier to unequivocally identify entities engaged in financial transactions is of key importance. Those recommendations are addressed to the European Commission, relevant authorities and authorities¹¹, reiterating the need for i.a. introduction of a Union framework on the use of the legal entity identifier. National and European authorities are being called upon action (within their respective competences) to encourage all entities to obtain an LEI as soon as possible and increase the reliance on the LEI system for their reporting obligations.
5. Also in September 2020 the European Commission in its 'Digital Finance Strategy' paper¹² stated that *"By 2024, the EU aims to put in place the necessary conditions to enable the use of innovative technologies, including RegTech and SupTech tools, for supervisory reporting by regulated entities and supervision by authorities. It should also promote the sharing of data between supervisory authorities."*

It is also mentioned that the Commission, together with the ESAs *"will develop a strategy on supervisory data in 2021 to help ensuring that (...) full use is made of available international standards and identifiers including the Legal Entity Identifier."*

6. Considering all of the above, EIOPA identified a need to review and subsequently revise its current Guidelines on the use of the Legal Entity Identifier (LEI Guidelines) [ref. EIOPA-BoS-14-026]. The revision of LEI Guidelines is also relevant in the context of a timely implementation of cross cutting projects within EIOPA and EIOPA's strategy on data and digitalisation.
7. The objectives of these revised Guidelines are to:
 - a) provide clarity to the national competent authorities in relation to the scope of the entities that should be required to have a LEI and how the proportionality principle could be applied;
 - b) consider ESRB recommendations addressed to relevant authorities and authorities;
 - c) while completing a) and b), simplify the text and remove the references to outdated instructions and deadlines.

¹⁰ Recommendation of the European Systemic Risk Board of 24 September 2020 on identifying legal entities (ESRB/2020/12): [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126\(01\)&qid=1606388881614&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126(01)&qid=1606388881614&from=EN).

¹¹ The definitions of 'authorities' and 'relevant authorities' are included in the ESRB recommendation on LEI (ESRB/2020/12): [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126\(01\)&qid=1606388881614&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126(01)&qid=1606388881614&from=EN)

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU, COM (2020) 591 final.



DRAFT Revised Guidelines on the use of Legal Entity Identifier (LEI)

1. Revised Guidelines on the use of LEI

Introduction

- 1.1. In accordance with Article 16 of Regulation (EU) No 1094/2010¹³ EIOPA issues these revised Guidelines addressed to the national competent authorities on the use of Legal Entity Identifier (LEI).
- 1.2. In its review of application of the Guidelines on the use of LEI (EIOPA-BoS-14-026), EIOPA concluded that those should be amended in order to clarify the scope, taking into consideration the evolving and increasing relevance of the LEI, and simplify and update where relevant the text thereof, with a view to facilitate and further promote the use of LEIs as unique identification code for legal entities under the supervisory remit of the national competent authorities.
- 1.3. As part of its involvement in data standardisation initiatives, with these revised Guidelines EIOPA continues to support the adoption of the LEI system proposed by the Financial Stability Board (FSB) and endorsed by the G20, aimed at achieving a unique, worldwide identification of parties to financial transactions.
- 1.4. The revised Guidelines continue to establish consistent, efficient and effective supervisory practices by harmonising the identification of legal entities in order to ensure high quality, reliable and comparable data. Having such data contributes to:
 - better supervision and oversight of financial institutions as well as improved regulatory policies and decision making process;
 - identifying, assessing, monitoring and reporting risks to the financial stability of the European insurance and pensions sectors;
 - supporting overall EIOPA's work on crisis prevention, financial stability, oversight, policy and consumer protection.
- 1.5. A wider use of the LEI code to identify legal entities under supervision of national competent authorities in different countries would be particularly beneficial for classifying and aggregating data from institutions which operate cross-border, through branches established in other Member States or through freedom to provide services.

The LEI rules allow for unambiguous identification of the legal entities mentioned above, avoiding inconsistency and ambiguity of identification by national codes or by their name. This categorisation improves the quality and timeliness of aggregated data at EU level and eventually reduces the reporting burden for reporting entities operating cross-border.

Using shared codes to collect and disseminate data by individual institutions will also facilitate linking to different databases and other sources of information available at the national and international level.

- 1.6. These Guidelines take into consideration the recent ESRB recommendations on identifying legal entities¹⁴ [ref. ESRB/2020/12] (in particular the Recommendation B) where relevant authorities¹⁵ are recommended to "require

¹³ Regulation (EU) No 1094/2010 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pension Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).J L 331, 15.12.2010, p. 48–83.

¹⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126\(01\)&qid=1606388881614&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020Y1126(01)&qid=1606388881614&from=EN)

¹⁵ Recommendation of the European Systemic Risk Board of 24 September 2020 on identifying legal entities (ESRB/2020/12) (2020/C 403/01) Section 2 Para 1 Definitions.

or, where applicable, continue to require, all legal entities involved in financial transactions under their supervisory remit to have an LEI”.

These Guidelines also reflect on the provisions referring to the authorities¹⁶ i.e.: *“the authorities when drafting, imposing, or amending financial reporting obligations include or, where applicable, continue to include, in such obligations an obligation to identify by way of an LEI:*

(a) the legal entity subject to the reporting obligation; and

(b) any other legal entity about which information must be reported and which has an LEI;

the authorities identify or, where applicable, continue to identify, by way of its LEI, any legal entity about which they publicly disclose information and which has an LEI.

The principle of proportionality and legal remits are also being considered.

- 1.7. These Guidelines refer to legal entities which are under supervisory remit of national competent authorities. As such the general idea for these Guidelines is not to refer to natural persons.

However, it needs to be noted that *“individuals acting in a business capacity are eligible to obtain LEIs, provided they conduct an independent business activity as evidenced by registration in a business registry, with only one LEI issued for the same individual and adequate verifications that data protection, privacy or other obstacles do not prevent the publication of the current LEI data file”¹⁷.*

Therefore, within these Guidelines in case where natural persons are intermediaries operating cross-border in the EU, they should have an LEI.

- 1.8. If not defined in these Guidelines, the terms have the meaning defined in the Directive 2009/138/EC¹⁸, Directive (EU) 2016/2341¹⁹ and Directive (EU) 2016/97²⁰. For the purpose of these Guidelines, the following definitions apply:

- LEI - The Legal Entity Identifier (LEI) is a 20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). It connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions. Each LEI contains information about an entity’s ownership structure and thus answers the questions of ‘who is who’ and ‘who owns whom’.
- GLEIF - Established by the Financial Stability Board in June 2014, the Global Legal Entity Identifier Foundation (GLEIF) is tasked to support the implementation and use of the Legal Entity Identifier (LEI). The foundation is overseen by the LEI Regulatory Oversight Committee and acts as an operational arm of the Global LEI System. GLEIF is a supra-national not-for-profit organization headquartered in Basel, Switzerland.²¹

¹⁶ Idem.

¹⁷ See LEI-ROC “Statement on individuals acting in a business capacity” available at: https://www.lei-roc.org/publications/gls/lou_20150930-1.pdf

¹⁸ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 335, 17.12.2009, p. 1).

¹⁹ Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

²⁰ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

²¹ <https://www.gleif.org/en/>

- GLEIS - Global LEI System which operates in three tiers: LEI Regulatory Oversight Committee (LEI ROC), GLEIF and Local Operating Units (LOUs).
The Financial Stability Board (FSB) and the Group of Twenty (G20) endorsed LEI, GLEIF and GLEIS.
- LEI ROC – The Regulatory Oversight Committee (ROC) is a group of 69 public authorities with full membership and 19 observers from more than 50 countries established in January 2013 to coordinate and oversee a worldwide framework of legal entity identification, the Global LEI System.²²
- LEI issuers – i.e. Local Operating Units (LOUs) that issue LEI codes. LOUs are the utilities endorsed by the ROC, or accredited by the GLEIF under ROC oversight, to provide LEI registrations to registrants and other services. LOUs supply registration, renewal and other services, and act as the primary interface for legal entities wishing to obtain an LEI.

1.9. These Guidelines shall apply from 1 January 2022 [TBD] and shall repeal and replace the Guidelines on the use of LEI (EIOPA-BoS-14-026)²³.

Guideline 1 – Scope of legal entities

1.10. The competent authorities should require that the following legal entities under their supervisory remit have an LEI code:

(a) legal entities within the scope of Directive 2009/138/EC:

(i) insurance and reinsurance undertakings; and their branches established in the EEA; in that case the LEI code of the head office legal entity should be used

(ii) the ultimate parent undertaking as defined in Article 215 of Directive 2009/138/EC²⁴, and all undertakings in the scope of a group as defined in Article 212(1)(c) of Directive 2009/138/EC; in that case the LEI code of the ultimate parent undertaking should be used for the group

(iii) branches established in the EEA and belonging to insurance or reinsurance undertaking with head office situated in a third country;

(b) institutions for occupational retirement provisions ('IORPs') registered or authorised in accordance with Directive (EU) 2016/2341, whereby IORPs which satisfy all of the following conditions may be excluded from the obligation to have an LEI:

- it operates pension schemes which together have less than 100 members in total;
- it has a balance sheet total of less than one thousand million Euros;
- it is not ranked as one of the five biggest IORPs in terms of balance sheet totals in the Member State, unless the individual balance sheet total is less than one hundred million Euros.

(c) insurance and reinsurance intermediaries which carry out cross-border business in accordance with Directive (EU) 2016/97, in so far as they fall under the supervisory remit of the competent authority.

²² <https://www.leiroc.org/>

²³ https://www.eiopa.europa.eu/content/guidelines-use-legal-entity-identifier_en

²⁴ This point covers: participating insurance or reinsurance undertakings, insurance holding companies and mixed financial holding companies. This does not include: Mixed activity insurance holding company.

- 1.11. The competent authorities are encouraged to require, to the extent permitted by law, that:
- (a) third-country legal entities which are part of a group as defined in Article 212(1)(c) of Directive 2009/138/EC have an LEI code;
 - (b) branches established in a third country and belonging to insurance or reinsurance undertaking with head office situated within the EEA use the LEI code of the head office legal entity or have an own LEI code.

Guideline 2 – Reporting to EIOPA

- 1.12. The competent authorities should ensure that the information which they provide to EIOPA concerning legal entities or groups of legal entities under their supervisory remit, contains the LEI codes required in accordance with these Guidelines.
- 1.13. The competent authorities should use the LEI code; if available; to identify in information provided to EIOPA concerning branches established in a third country and belonging to insurance or reinsurance undertaking with head office situated within the EEA as set out in point 1.11.
- 1.14. The competent authorities should use the LEI code; if available; to identify in information provided to EIOPA concerning third country legal entities which are part of a group as defined in Article 212(1)(c) of Directive 2009/138/EC as set out in point 1.11.

Compliance and Reporting Rules

- 1.15. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
- 1.16. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.17. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
- 1.18. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Reviews

- 1.19. The present Guidelines shall be subject to a review by EIOPA.

Annex I: Impact Assessment

Section 1 – Procedural issues and consultation of interested parties

1. In accordance with Article 16 of EIOPA Regulation, EIOPA conducts analyses of costs and benefits in the policy development process. The analysis of costs and benefits is undertaken according to an Impact Assessment (IA) methodology.
2. The revised LEI Guidelines proposal and its IA are envisaged to be subject to a public consultation. Stakeholders' responses to the public consultation will serve as a valuable input in order to revise the Guidelines.

Section 2 – Problem definition

3. As part of its work on data standardisation and in the context of i.a. ESRB recommendations and COM initiatives on data, EIOPA identified the need to review and subsequently revise its current Guidelines on the use of the Legal Entity Identifier (LEI).
4. In order to facilitate the review process, ideas for potential Guidelines' improvements (to improve the efficiency of LEI use and identify gaps) were discussed with national competent authorities (NCAs). Mainly qualitative type of feedback was gathered via a survey addressed to supervisors in EEA Member States.
5. While the existing LEI Guidelines and reporting under Solvency II Directive promoted, endorsed the use of LEI, it turned out during the Guidelines review that there are still some issues requiring clarification in terms of scope of the supervised entities that should have a LEI and are or should be impacted by EIOPA's Guidelines. Those issues relate to i.a.:
 - scope and addressing the proportionality within the Guidelines
 - considering reference to insurance intermediaries, branches as well as non-regulated and third country entities
 - identification of entities within the group.

As such the existing Guidelines were considered as requiring revision in particular regarding:

- their scope - insufficient clarity regarding the scope of Guidelines in terms of supervised entities and applicable proportionality aspects;
- their timeliness, freshness – references to outdated instructions and deadlines.

Consideration has been also given in relation to the ESRB recommendations and actions to be taken by EIOPA as a result.

Section 3 – Objectives pursued

6. The objectives of these revised Guidelines are to:
 - a) provide clarity to the national competent authorities in relation to the scope of the entities that should be required to have a LEI and how the proportionality principle could be applied;
 - b) consider ESRB recommendations addressed to relevant authorities and authorities;²⁵
 - c) while completing a) and b), simplify the text and remove the references to outdated instructions and deadlines.

²⁵ The definitions of 'authorities' and 'relevant authorities' are included in the ESRB recommendation on LEI.

The above mentioned specific objectives will continue to establish consistent, efficient and effective supervisory practices by harmonising the identification of legal entities in order to ensure high quality, reliable and comparable data.

Section 4 – Policy Options

7. With the aim to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the review process.

Policy issue 1

8. The section below reflects the most relevant policy options that have been considered in relation to different aspects associated with the LEI Guidelines' review process. These policy options are:

- Policy option 1: Keeping the status quo and not revising the LEI Guidelines.
- Policy option 2: Revise EIOPA's Guidelines on LEI to provide clarity on scope, simplify and update the existing text.

Policy issue 2

9. The section below should reflect the most relevant policy options that have to be considered in terms of **proportionality**:

- Policy option 1: No proportionality
- Policy option 2: Choices on proportionality (IORP, IDD) Within those policy issues one would spell out the policy options

Section 5 – Analysis of the impacts

Policy issue 1

Policy option 1. Keeping the status quo and not revising the LEI Guidelines.

10. EIOPA believes that without revising the Guidelines, there will be insufficient clarity in terms of the scope of the impacted entities where NCAs should be asking for and requiring having a LEI.

11. Whereas, there is already high coverage (around above 90%) of the insurance undertakings who have LEI codes, there is still a LEI information gap when it comes to IORPs. It also happens that while many pension funds may actually have LEIs, those are not being reported to EIOPA.

12. Also, back in 2014, there was no IDD Directive in force which i.a. instructs EIOPA to establish and keep up to date single electronic register containing records of insurance, reinsurance insurance intermediaries which carry out cross-border business. In EIOPA's view such a register should contain LEI information to ensure the unique identification of a single entity across countries.

13. In addition, keeping the status quo and not revising LEI Guidelines would mean that the ongoing questions, issues about branches, third country entities, entities included in groups remain unresolved. And this would in turn contribute to lesser efficiency and effectiveness of the LEI Guidelines implementation.

14. Lastly, the presence of outdated deadlines, terminology (e.g. pre-LOU) can make the existing Guidelines look redundant or obsolete.

Policy option 2. Revise EIOPA Guidelines on LEI to provide clarity on scope and simplify and update the existing text.

15. On the basis of the analysis performed by EIOPA it seems natural that this option is the one to be considered further. Revising EIOPA Guidelines, as suggested in part

1 of this document, facilitates meeting the indicated objectives in a more efficient and effective manner than the option 1.

16. Providing more clarity will be useful for NCAs in terms of scope (which entities should be asked to have LEI).

17. Option 2 could result in a wider adoption of the LEI code to identify reporting institutions in different countries, which would be beneficial for classifying and aggregating data from institutions with cross-border operations, with branches established in different Member States or through freedom of providing services.

The LEI rules allow for unambiguous identification of the legal entities mentioned above, avoiding inconsistency and ambiguity of identification by national codes or by their name. This categorisation improves the quality and timeliness of aggregated data at EU level and eventually reduces the reporting burden for reporting entities operating cross-border. Using shared codes to collect and disseminate data by individual institutions will also facilitate linking to different databases and other sources of information available at the national and international level.

18. One should also take into account the high-level benefits this Option (which promotes wider LEI adoption) could bring. It could contribute to:

- enhanced supervision and oversight of financial institutions as well as improved regulatory policies and decision making process
- identifying, assessing, monitoring and reporting risks to the financial stability of the European insurance and pensions sectors
- supporting overall EIOPA's work on crisis prevention, financial stability, oversight, policy and consumer protection.

Policy issue 2 (to be completed after the public consultation)

19. Regarding the policy issue 2 EIOPA is analysing how to apply the proportionality principle when revising its LEI Guidelines. It is intended to finalise the impact assessment after the public consultation. Stakeholders' feedback would be of key importance for this assessment. As stated above at this point the following options are being considered:

Policy option 1: No proportionality

Policy option 2: Choices on proportionality (IORP, IDD) Within those policy issues one would spell out the policy options

20. When analysing the benefits of the wider LEI adoption, one needs to also consider the issue of LEI related costs of registration and renewal (depending on the LOU ca. €60-€100 on average on annual basis) especially in the context of entities previously not covered by the existing Guidelines (e.g. intermediaries) and who do not have LEI. For some of them this cost might be substantial.

21. The LEI registration and renewal costs can be also significant in case of small IORPs.

22. Therefore, in the revised Guidelines proportionality measures are being proposed in the revised text to mitigate risks.

23. In case of IORPs, the cost impact also depends on the explicit proportionality measure i.e. whether IORPs which satisfy all of the following conditions may be excluded from the obligation to have an LEI:

- it operates pension schemes which together have less than 100 members in total and
- it has a balance sheet total is of less than one thousand million Euros and

- it is not ranked as one of the five biggest IORPs in terms of balance sheet totals in the Member State, unless the individual balance sheet total is less than one hundred million Euros.

24. In case of intermediaries, it is being suggested that only those operating cross-border should have LEI.

25. It is also important to consider the ESRB recommendations on identifying legal entities and as a result redraft EIOPA's Guidelines so that they reflect those developments in an appropriate and current way.

Section 6 – Comparison of options

26. The following table summarises and compares the main costs and benefits of the analysed options for stakeholders, including consumers, policyholders, members & beneficiaries, industry and supervisors:

Policy issue: Keeping the status quo vs Revising the LEI Guidelines		
Option 1: Keeping the status quo and not revising the LEI Guidelines		
Costs	Consumers, Policyholders, Members & beneficiaries	No material impact as the status quo will be kept; however the perception of lack of transparency might be triggered
	Industry (insurance, insurance distribution, occupational pensions)	No material impact as the status quo will be kept
	NCA's	Lesser quality of reported data; less feasible to connect different data sets; may impact negatively appropriate identification and supervision, oversight of some of the entities; the objective of supervisory convergence might be negatively impacted
	Other	EIOPA: receiving lesser quality of reported data incl. registers; less feasible to connect different data sets; may impact negatively appropriate identification and supervision, oversight of some of the entities; the objective of supervisory convergence might be negatively impacted
Benefits	Consumers, Policyholders, Members & beneficiaries	No material impact as the status quo will be kept
	Industry (insurance, insurance distribution, occupational pensions)	No material impact as the status quo will be kept
	NCA's	No material impact as the status quo will be kept
	Other	N/A
Option 2: Revise EIOPA's Guidelines on LEI to provide clarity on scope and simplify and update the existing text		
Costs	Consumers, Policyholders, Members & beneficiaries	potential LEI related costs may be passed on to consumers, policyholders, Members & beneficiaries by the industry via fees
	Industry (insurance, insurance distribution, occupational pensions)	New LEI related costs of registration and renewal (depending on the LOU ca. €60-€100 on average p.a.) for the entities previously not covered by the existing Guidelines who do not have LEI e.g. insurance intermediaries; for those entities there may be additional indirect costs arising from the inclusion of LEIs in its internal systems; NB: in case of IORPs – the impact also depends on explicit proportionality measure (less than 100 members, balance sheet total) Other costs might also include, depending on the entity itself, staff training and revision of internal processes.
	NCA's	Costs related to the implementation of the revised Guidelines (comply or explain mechanism) however those are envisaged to be negligible considering the current LEI Guidelines exist since 2014. Nevertheless, potential additional costs for NCA's to revise their registers for collecting and managing updated LEIs might occur if this had not been done in the past. Especially if collecting LEIs for intermediaries is a new task for an NCA.
	Other	EIOPA: costs of implementation

Benefits	Consumers, Policyholders, Members & beneficiaries	More transparency about the financial institutions and their interconnections
	Industry (insurance, insurance distribution, occupational pensions)	More transparency; having LEIs more widely spread may also contribute to better operational risk management
	NCAs	More clarity in terms of scope; harmonisation of identification codes across different EU and international jurisdictions; improved interconnectivity of the information that is available at the different supervisors, NCAs; having a wider LEI adoption could be also useful for AML/CFT initiatives
	Other	EIOPA: better quality of reporting data on legal entities incl. registers; more reliable and comparable data; more consistent, efficient and effective supervisory practices; having a wider LEI adoption could be also useful in AML/CFT initiatives ESRB: revision of EIOPA Guidelines on LEI could be considered as one of the implementation measures of ESRB's Recommendation B.

Policy issue: No proportionality vs applying proportionate measures (IORP, IDD)		
To be completed after the public consultation		
Option 1: No proportionality		
Costs	Consumers, Policyholders, Members & beneficiaries	
	Industry (insurance, insurance distribution, occupational pensions)	
	NCAs	
	Other	
Benefits	Consumers, Policyholders, Members & beneficiaries	
	Industry (insurance, insurance distribution, occupational pensions)	
	NCAs	
	Other	
Option 2: Choices on proportionality (IORP, IDD) Within those policy issues one would spell out the policy options		
Costs	Consumers, Policyholders, Members & beneficiaries	
	Industry (insurance, insurance distribution, occupational pensions)	
	NCAs	
	Other	
Benefits	Consumers, Policyholders, Members & beneficiaries	
	Industry (insurance, insurance distribution, occupational pensions)	
	NCAs	
	Other	

27. The following table summarises and compares the effectiveness and efficiency of the two options:

Policy issue: Keeping the status quo vs Revising the LEI Guidelines						
	Effectiveness (0/+/++)			Efficiency (0/+/++)		
Options	Objective 1 – a) in section 3	Objective 2 – b) in section 3	Objective 3 – c) in section 3	Objective 1 – a) in section 3	Objective 2 – b) in section 3	Objective 3 – c) in section 3
Option 1: No change	0	0	0	0	0	0

Option 2: Revision of guidelines	++	++	++	++	++	++
---	----	----	----	----	----	----

Policy issue: No proportionality vs applying proportionate measures (IORP, IDD) To be completed after the public consultation						
	Effectiveness (0/+ /++)			Efficiency (0/+ /++)		
Options	Objective 1 – a) in section 3	Objective 2 – b) in section 3	Objective 3 – c) in section 3	Objective 1 – a) in section 3	Objective 2 – b) in section 3	Objective 3 – c) in section 3
Option 1: No change						
Option 2: Revision of guidelines						

2. Explanatory text

[Note²⁶: The aim of an explanatory text is to give further details or concrete applications or examples. Please note that the explanatory text will be included in the consultation paper only and **not in the final Guidelines**. Considering that the Guideline should be clear and unambiguous, the scope for further explanation should be limited. The examples aim at showing in practical terms the concrete implementation of the Guidelines or provide reference to other tools and guidelines. These examples should not introduce further ambiguity as to the content of the Guideline. The Explanatory Text should only be added for the cases where a Guideline requires further explanations. It may happen that you don't have Explanatory Text or that you have it only for some of the Guidelines].

Guideline 1 – Scope of legal entities

1.10. The competent authorities should require that the following legal entities under their supervisory remit have an LEI code:

(a) legal entities within the scope of Directive 2009/138/EC:

(i) insurance and reinsurance undertakings;

and their branches established in the EEA; in that case the LEI code of the head office legal entity should be used

(ii) the ultimate parent undertaking as defined in Article 215 of Directive 2009/138/EC, and all undertakings in the scope of a group as defined in Article 212(1)(c) of Directive 2009/138/EC; in that case the LEI code of the ultimate parent undertaking should be used for the group

(iii) branches established in the EEA and belonging to insurance or reinsurance undertaking with head office situated in a third country;

(b) institutions for occupational retirement provisions ('IORPs') registered or authorised in accordance with Directive (EU) 2016/2341, whereby IORPs which satisfy all of the following conditions may be excluded from the obligation to have an LEI:

- it operates pension schemes which together have less than 100 members in total;

- it has a balance sheet total of less than one thousand million Euros;

- it is not ranked as one of the five biggest IORPs in terms of balance sheet totals in the Member State, unless the individual balance sheet total is less than one hundred million Euros.

(c) insurance and reinsurance intermediaries which carry out cross-border business in accordance with Directive (EU) 2016/97, in so far as they fall under the supervisory remit of the competent authority.

1.11. The competent authorities are encouraged to require, to the extent permitted by law, that:

(a) third-country legal entities which are part of a group as defined in Article 212(1)(c) of Directive 2009/138/EC have an LEI code;

(b) branches established in a third country and belonging to insurance or reinsurance undertaking with head office situated within the EEA use the LEI code of the head office legal entity or have an own LEI code.

²⁶ Please delete note after finalising CP.

- 2.1. The NCAs are expected to require that legal entities that fall under NCAs supervisory remit have an LEI code. This EIOPA's GL1 complements the ESRB recommendation which recommends the authorities to require that all legal entities involved in financial transactions have an LEI. It also provides clarity in terms of scope of the impacted entities (insurance and pensions).
- 2.2. The Guideline also provides for the application of a proportionality principle regarding:
 - a) IORPs which satisfy all of the following conditions may be excluded from the obligation to have an LEI:
 - it operates pension schemes which together have less than 100 members in total and
 - it has a balance sheet total is of less than one thousand million Euros and
 - it is not ranked as one of the five biggest IORPs in terms of balance sheet totals in the Member State, unless the individual balance sheet total is less than one hundred million Euros
 - b) (re) insurance intermediaries:
 - only those who are operating cross-border should have an LEI.
- 2.3. In addition, GL 1 encourages NCAs to also require, to the extent permitted by law, LEIs from the third country entities.

Guideline 2 – Reporting to EIOPA

1.12. The competent authorities should ensure that the information which they provide to EIOPA concerning legal entities or groups of legal entities under their supervisory remit, contains the LEI codes required in accordance with these Guidelines.

1.13. The competent authorities should use the LEI code; if available; to identify in information provided to EIOPA concerning branches established in a third country and belonging to insurance or reinsurance undertaking with head office situated within the EEA as set out in point 1.11.

1.14. The competent authorities should use the LEI code; if available; to identify in information provided to EIOPA concerning third country legal entities which are part of a group as defined in Article 212(1)(c) of Directive 2009/138/EC as set out in point 1.11.

- 2.4. Via GL 2, NCAs are expected to ensure that the any information they sent to EIOPA concerning any legal entities or groups (within NCA remit) contains LEI codes. Clarity is also provided in terms of a supervised group and the ultimate parent.
- 2.5. In addition, NCAs are encouraged to include LEI codes of the third country entities which are within the scope of a group defined in Solvency II Directive and of branches established in a third country. That is of course only in case those LEI codes are known and were provided to the NCAs.

Annex II: Overview of Questions for Consultation

[The questions outlined below are to be also included in the Template for Comments via EU survey]

On policy issue 1

Q1. Do you consider that the revised LEI Guidelines provide sufficient clarity in terms of scope of legal entities?

Y / N – if not, please specify

Q2. Do you agree with the scope of the legal entities that should have LEI as specified in the revised Guideline 1?

Y / N – if not, please specify

Q3. Do you consider text of the Guideline 2 (Reporting) as sufficiently clear?

Y / N – if not, please specify

On policy issue 2

Q4. In the context of proportionality approach to IORPs what is your view on the proposal under revised Guideline 1?

Q5. In the context of proportionality approach to intermediaries what is your view on the proposal under revised Guideline 1? Please include also views on the ancillary intermediaries.

Q6. Do you have any comments in relation to the impact assessment as presented in the Annex I?

Q7. Do you have any other comments on the revised LEI Guidelines?

Y / N – if yes, please specify

Annex III: Existing EIOPA Guidelines on LEI from 2014

Guideline 1 - Requesting of the LEI code

1.10. National competent authorities should request all institutions under their supervisory remit to obtain a code issued by a LOU (a LEI code).

1.11. For institutions reporting Solvency II information, national competent authorities should request that all such institutions obtain a LEI code for all entities in the scope of the group as defined under article 212 (1) (c) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II Directive)³, on which information is required under their reporting obligations.

³ - OJ L 335, 17.12.2009

Guideline 2 - Verification of the LEI code request

1.12. National competent authorities should verify that institutions under their supervisory remit have requested the LEI codes as follows:

- a) For institutions within the scope of the Solvency II Directive, by 30 June 2015 at the latest;
- b) For all other institutions (including IORPs), by 30 June 2016 at the latest.

Guideline 3 - Providing Instructions on the LEI code usage

1.13. National competent authorities should provide instructions on how the institutions referred in Guideline 2 should consistently use the LEI codes when fulfilling their reporting

Guideline 4 - Assurance of the LEI code in the reporting to EIOPA

1.14. National competent authorities should ensure that the information provided to EIOPA concerning all institutions under their supervisory remit, contains the LEI codes obtained in accordance with these Guidelines.