

## Consultation response

EBA Consultation Paper on Draft Implementing Technical Standards on Passport Notifications under Articles 35, 36 and 39 of the proposed Capital Requirements Directive

21 August 2013

---

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA Consultation Paper on Draft Implementing Technical Standards on Passport Notifications under Articles 35, 36 and 39 of the proposed Capital Requirements Directive.

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 listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

### Executive Summary

AFME members support the EBA's work on seeking to ensure coherence of the Technical Standards arising from these provisions and, in that light, developing a harmonised framework for passporting notifications. The proposals represent an important step in enhancing supervisory convergence, preventing regulatory arbitrage and achieving a level playing field for firms.

We agree that it is helpful to use the existing Passport Guidelines developed by the Committee of European Banking Supervisors (CEBS) as the basis, given firms' experience in utilising this framework. Overall we hope that the common templates will result in a smoother and speedier flow of information between both firms and competent authorities. Members have highlighted that, under the previous regime, some firms experienced a lack of certainty regarding the assessment criteria for their application and the exact date on which they were in a position to commence activities in the host member state so a more formalised protocol will be welcome.

We would hope that going forward and given the streamlining of information, competent authorities will be able to assess passporting applications even more quickly than the timelines mandated by the regulatory framework, with firms thus being able to provide services more quickly to the benefit of their clients.

We would be pleased, of course, to discuss with the EBA the range of issues covered in this consultation also e.g. to include to communications between firms and host regulators, or to provide further information about any of the matters which our members have raised if that would be helpful.

Yours faithfully

**Angela Teke**

Managing Director, Compliance  
Phone: +44 (0)20 7743 9369 (direct)  
Email: angela.teke@afme.eu

Detailed responses to the specific questions raised by the EBA:

**Q1: What are your views on the provisions covering the languages to which passport notifications are to be provided?**

We agree that the onus on competent authorities for expensive translations should be reduced and that there should be transparency regarding the languages accepted for passporting notifications. However, we believe that the language options should make it clear that all competent authorities will accept notifications in “a language that is customary in the sphere of international finance”, typically considered to include English.

**Q2: Do you think that passport notifications and other relevant communications shall be transmitted only via electronic means or shall the ITS allow for both options? Please explain your answer.**

Whilst we generally support a move towards electronic means of communications, given for example potential technology issues and varying protocols in firms, we believe that credit institutions should be given maximum flexibility and the ITS should allow for both options.

However, given rapidly changing business practices, we would query the need for the inclusion of fax numbers in the templates for notifications and believe that information on postal and email addresses should suffice.

**Q3: To what extent the provisions requiring check of completeness by the competent authorities of the home Member State will affect the efficiency of the process covering passport notifications?**

We agree that it makes sense for the Home Member State competent authority to check the accuracy and completeness of the submitted information as it would have already authorised and supervised the passporting institution and so would already have an existing knowledge base and relationship with the firm. Furthermore in general, firms would prefer if any potential issues with the application are flagged up earlier rather than later in the process. In particular we welcome the clarification that an additional request for information by the host Supervisor “will not impact on the validity of the notification by the credit institution nor will it alter the two months deadline provided in Article 36(1) CRD”.

However, all checks would need to be undertaken pragmatically and flexibly. Some of the required information e.g. “description of main objectives and business strategy of the branch” or details of the “branch’s IT arrangements” is still relatively high-level and generic so credit institutions should be given sufficient leeway to submit information in a range of formats and

level of detail as long as they are in line with the overall requirements, rather than authorities expecting and assessing an application's completeness according to their own expectation of specific content being covered (something firms would not be necessarily aware of). We welcome the objective of reducing the risk of inconsistent national approaches to passporting notifications (a specific concern of Members also in the context of the forthcoming Single Supervisory Mechanism). However, it is not clear what external mechanism would exist for firms to raise concerns if they felt that a certain competent authority was interpreting the information unduly prescriptively, thus delaying the three month period which only starts to run from the time that the information has been assessed to be complete and correct. EBA are encouraged to give further thought to enhancing supervisory convergence in this context.