

Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

EBF response to EBA consultations on draft ITS and RTS on passport notifications

The European Banking Federation (EBF) welcomes the possibility to give our input to the European Banking Authority (EBA) consultation on draft ITS and RTS on passport notifications under Article 35, 36 and 39 of the CRD.

The EBF is in general positive and supports the proposals by the EBA to make passport notifications more efficient. The EBF however raises concerns over the degree of details required for especially notification of changes. This is further outlined in the specific responses to the consultation questions.

Draft regulatory Technical Standards

Q1. The EBF finds that the proposed information on core activities under the RTS goes in the right direction of contributing to greater transparency and understanding of a firm in identifying the balance of risk within the passported entity.

It would be helpful, however, if the EBA would confirm that existing cross-border passports. would be exempt from such initial information requests, and that such passports will be grandfathered, although we accept further information requests from regulators may apply in the normal course. We believe any other result would create unintended legal uncertainty and undue operational burdens.

Furthermore, EBF is concerned about the volume and the degree of details required for the initial notification in connection with the exercise of the right of establishment (art. 3 draft RTS) - especially in regard to the effect hereof on the notification of changes (art.4 draft RTS). According to the proposal any subsequent change in those details prescribed in art. 3(2) (a) and (b) will trigger notifications of changes pursuant to article 4. The more details the initial notification is required to show, the more often banks will have to notify changes. For banks with many branches within the EEA this would represent considerable tracking efforts and the risk for the bank to be non-compliant would be higher. Many of the items enumerated in art. 3(2) of the draft RTS are matters for the home regulator but not necessarily helpful for a better supervision of the branch under the passport rules. EBF suggests that this be revisited with the purpose of limiting the information to be notified – at least as regards the notification of changes.

Q2. The EBF supports the proposed information in case of planned termination of the operation of a branch and finds that it is relevant and will contribute to transparency of the process and to consumer protection.

Draft Implementing Technical standards

Q1. Until it is clarified which would be the possible nominated languages it is difficult to assess the extent of the transparency or cost of this. The EBF supports that it should be considered to allow for some degree of commonality of language. For example, it could be considered that such applications could be submitted, in addition to the options already included, in one of the working languages of the EU, English or French, to any home or host competent authority, even where they are not currently allowed to do so.

Q2. The EBF finds that electronic submission is faster and more efficient. Due consideration should however be paid to establishing adequate security procedures as electronic submission carry potential security and confidentiality risks.

Q3. The EBF finds that the provisions set out in Article 5 requiring check of completeness by the competent authorities of the home Member State could be useful as it may avoid significant deficiencies and provide clarifications where necessary, speeding up the process.

The EBF would greatly appreciate clarification of a number of other provisions, in order to expedite compliance with and operation of these new forms and procedures, by applicants and relevant competent authorities:

The EBF seeks guidance as to the expected effective date for Article 6 on *Communication* of the branch notification. Although Article 5 sets out the period within which the *home* Member State competent authority must respond to any application (three months), there is no timing specified in Article 6 as to when the *host* Member State must reply to either confirm recognition of the applicant's passport or object to same. Hence, it is uncertain as to whether this provision means that the passport is to take immediate effect upon notification of the *host* Member State. If this is not the case, if a *host* Member State delivers no response, at what point may the applicant assume that the passport has taken effect?

As regards the ITS document, the EBF seeks further guidance in respect of the Annexes as follows:

- **Annex 1, Part 2(a)(3) - (page 15).** Annex I of the Directive sets out the list of activities subject to mutual recognition. However, it is not clear what is meant by the column headed "envisaged activity". What is the effect of listing an activity as an envisaged activity? The intended start date column only refers to core activities. Will the "envisaged" activity be authorised by virtue of its being listed in the original application and having that application approved, or will it be necessary to submit a further application in the future to amend the original application once such activity is to be embarked upon in any event?
- **Annex 1, Part 2(b) 2(e) - (page 18).** Does the reference to governance arrangements and control mechanisms in respect of outsourcing and other arrangements with *third parties* include intra-group companies?

- *Annex 3 – Template on the amount and composition of own funds and own funds requirements (page 22)*. It is not clear for what periods these estimated figures are to be calculated. Are these to be projections for 3 months, 6 months, a year or for a longer period?