

Response to the CESR-Questionnaire on The Passport under MiFID

The Bank and Insurance Division of the Federal Economic Chamber¹ welcomes the opportunity to give the following response to the CESR-Questionnaire on The Passport under MiFID:

Question 1: As regards article 31 (3) do you agree with the above regarding what should be the date from which a firm can start to provide cross-border investment services in to the host Member State under a passport? If not, for which reasons?

Answer 1:

Yes. We favour the earliest date possible to provide investment service. Thus we agree with the proposed solution for the relevant date from which a firm can start to provide cross-border services.

Question 2: Concerning article 32(6) do you agree with the referral of the firm by the home regulator to the host regulator's or CESR's website when applying for a branch passport, when necessary?

Answer 2:

Yes, we agree.

Question 3 Do you agree with the proposal set out in paragraph 24?

Answer 3:

Yes. We believe that the proposal set out in paragraph 24 is useful in terms of speeding up the registration procedure.

Question 4: What are your views on the exposition given in paragraphs 31-36 above? What grounds do you have to support your views?

Answer 4:

As regards Nr. 35 lit c we think, the precise division of responsibilities between home and host regulators should not depend upon the extent to which the relevant services are provided because "depend upon the extent" is as such an other imprecise term which may lead to different interpretations. In this respect it would be helpful if CESR could generate guidance in a rather formal and therefore precise way. A clear understanding especially among regulators of who is responsible for what and how a firm operates its business across the EU as well as close co-operation between regulators will be required.

¹ Legally representing all 900 Credit Institutions in Austria.

Question 5: Do you agree with the practical supervisory challenges as identified by CESR? Are there any others that you envisage may occur and could benefit from consideration by CESR?

Answer 5:

Yes, we agree with the practical supervisory challenges and do not have any others.

Question 6: Do you agree with the suggested desired outcomes? Are they capable of being shared for the benefit all stakeholders?

Answer 6:

Yes. In our view we believe that both, the investment firm and the regulator should be responsible in this regard in order to achieve the desired outcomes.

Question 7: Do you agree with the broad 'criteria' outlined above and as set out in more detail in Annex 2, against which CESR will evaluate possible solutions? Do you have any comments? Are there any others you would suggest that could be material when considering the relative merits of different practical solutions?

Answer 7:

Yes, we agree with the criteria.
No further comments.

Question 8: Do you have any comments on the possible solutions identified above? Do you have any others that you feel could help?

Answer 8:

We prefer solution b), *since regulatory cooperation would diminish the (costly) administrative burden on the investment firm. Moreover, the fact that in this case there is just one contact person would reduce the necessary coordination efforts of the investment firm and is therefore desirable.*

Question 9: Do you agree with the broad evaluation and conclusions as outlined in paragraphs 50-55 above? What does your own evaluation suggest? What evidence base can you provide to support your conclusions?

Two blank tables are provided at Annexes 3(i) and 3(ii) for respondents to use to create their own 'tick lists' to help formulate their own evaluation. CESR would welcome completed copies together with supporting analysis as part of any feedback to this consultation.

Answer 9:

The proposed solution that the question of supervision of branches should be solved on a case-by-case basis has the advantage of flexibility. On the other hand we have to face the danger of a lack of transparency for the supervised institutions. For the

supervised institutions it has to be clear, which supervisor is responsible and is point of supervisory contact. The supervisor should clearly communicate to the institution, who is competent for what on the ground of which legal basis.

So it would be appreciated if the details are set out beforehand, reflecting the cases in which a delegation should take place.

Question 10: In the absence of a single public registry of tied agents, how might Member states enhance co-operation for the benefit of clients?

Answer 10:

According to Art 23 (5) MiFID tied agents should be registered to a public register. CESR should try to establish a internet-based system of linked registers on a single template basis so that everyone can inform himself about tied agents.

Question 11: Do you agree that there is a need for co-operation between competent authorities to help ensure that the requirements for good repute and possession of knowledge for tied agents can be met in practice? Do you agree that prior to registration the home Member State should be able to exchange information with the competent authority of the Member State where a tied agent is located to help establish that he has the required good repute and knowledge? Would any specific guidelines be helpful; if so, what are your suggestions?

Answer 11:

No, we think the supervision by the home Member State is sufficient. Other Member States should rely on the supervision. It seems to be too bureaucratic and cost-intensive to establish a cooperation model for tied agents. Supervision should be concentrated on bigger entities than on tied agents.

Question 12: To help resolve the practical questions on the supervision of tied agents, good co-operation between regulators will be necessary. CESR is minded to conduct further work in this area. Do you have any practical suggestions or comments that could help CESR fine-tune its approach for tied agents?

Answer 12:

See answer 11.

Question 13: Do you agree that a common approach on deciding what constitutes passporting for an MTF, as referred to in Article 31 (5) and (6) MiFID, by all CESR members will benefit investors and industry?

Answer 13:

Yes.

Question 14: Do you agree with the suggested criterion ("connectivity test") for deciding whether an MTF is passporting its services/activities? If not, should the criterion be adjusted or replaced or elaborated on more and for which reasons?

Answer 14:
Yes, we agree.

Question 15: Do you agree with the arguments set out in this chapter?

Answer 15:
Yes.

Question 16: Do you agree with the proposal of mapping ISD to MiFID proposed in Annex 1? What changes or possible alternatives would you suggest?

Answer 16:
Yes.

Question 17: Do you consider the suggested approach appropriate and/or do you see other issues that should be handled in this protocol?

Answer 17:
Yes, we consider the suggested approach appropriate and do not see other issues, that should be handled.

Further comments:

Point 43 on page 10: A number of possible success criteria for evaluating the options for addressing the challenges of how to supervise branches in practice have been identified. Individual detailed considerations are grouped together under broad, higher level factors and these can be found set out in Annex 2.

Regarding Annex 2 we would like to stress the following points:

Ad Annex 2 b) iii: It seems important to set out a time frame because in case of a necessary coordination between the home regulator and the host regulator the activities of the investment firm are blocked. Therefore a time frame would help to limit the waiting period for the investment firm.

Ad Annex 2 c) iii: We believe that the necessary educational measures and the training “on the ground” is useful in this regard preferably in combination with the controlling influence of the parent company.