The European Passport
Legal Basis

**European Regulation**

  >> Credit Institutions

  >> Investment Firms

**German Regulation**

- Section 24a and 53b of the German Banking Act (KWG)
- Reports Regulation
Who may hold the passport?

**German Credit Institutions and Investment Firms**
- Section 24a (1) KWG implements Art. 25 BD and Art. 32 MiFID
- Section 24a (3) KWG implements Art. 28 BD and Art. 31 MiFID

**EEA Credit Institutions and Investment Firms**
- Section 53b KWG implements Art. 25 and 28 BD as well as Art. 31 and 32 MiFID
How to conduct business within the EEA

- by provision of **cross-border services** according to Article 28 of the Banking Directive or Article 31 of the MiFID, Section 24a (3) KWG or Section 53b KWG respectively

- by establishing a **branch** according to Article 20 of the Banking Directive or Article 32 of the MiFID, Section 24a (1) KWG or Section 53b KWG respectively
Responsibilities within BaFin

Passport for credit institutions according to the Banking Directive (2006/48/EC):

Section BA 15
International Affairs 3
Banking Supervision

Passport for investment firms according to the MiFID (2004/39/EEC):

Section WA 37
International Affairs 3
Securities Supervision
# Countries of the EEA

<table>
<thead>
<tr>
<th>Austria</th>
<th>Greece</th>
<th>Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Hungry</td>
<td>Norway</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Iceland</td>
<td>Poland</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Ireland</td>
<td>Portugal</td>
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<tr>
<td>Czech Republic</td>
<td>Italy</td>
<td>Romania</td>
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<tr>
<td>Denmark</td>
<td>Latvia</td>
<td>Slovakia</td>
</tr>
<tr>
<td>Estonia</td>
<td>Liechtenstein</td>
<td>Slovenia</td>
</tr>
<tr>
<td>Finland</td>
<td>Lithuania</td>
<td>Spain</td>
</tr>
<tr>
<td>France</td>
<td>Luxembourg</td>
<td>Sweden</td>
</tr>
<tr>
<td>Germany</td>
<td>Malta</td>
<td>United Kingdom</td>
</tr>
</tbody>
</table>
## Notification Procedure for banks

<table>
<thead>
<tr>
<th>How</th>
<th>Who</th>
<th>German banks &gt;&gt; „outgoing“</th>
<th>EEA banks &gt;&gt; „incoming“</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intention to provide</td>
<td>notification according to Art. 28 BD in</td>
<td>notification according to Art. 28 BD in</td>
<td></td>
</tr>
<tr>
<td>cross-border Services</td>
<td>connection with Section 24a (3) KWG</td>
<td>connection with Section 53b KWG</td>
<td></td>
</tr>
<tr>
<td>Intention to establish a</td>
<td>notification according to Art. 25 BD in</td>
<td>notification according to Art. 25 BD in</td>
<td></td>
</tr>
<tr>
<td>branch</td>
<td>connection with Section 24a (1) KWG</td>
<td>connection with Section 53b KWG</td>
<td></td>
</tr>
</tbody>
</table>
## Notification Procedure for investment firms

<table>
<thead>
<tr>
<th>Who</th>
<th>German investment firms</th>
<th>EEA investment firms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intention to provide cross-border Services</strong></td>
<td>notification according to Art. 31 MiFID in connection with Section 24a (3) KWG</td>
<td>notification according to Art. 31 MiFID in connection with Section 53b KWG</td>
</tr>
<tr>
<td><strong>Intention to establish a branch</strong></td>
<td>notification according to Art. 32 MiFID in connection with Section 24a (1) KWG</td>
<td>notification according to Art. 32 MiFID in connection with Section 53b KWG</td>
</tr>
</tbody>
</table>
Different ways of access

1. German investment firms intending to provide cross-border services into another EEA country

2. German investment firms intending to establish a branch in another EEA country

3. EEA Investment firms intending to provide cross-border services into Germany

4. EEA Investment firms intending to establish a branch in Germany
1. German investment firms and cross-border services into another EEA country (1)

- **German investment firm**
  - files notification according Section 24a (3)KWG
  - checks notification

- **BaFin (Section WA 37)**
1. German investment firms and cross-border services into another EEA country (2)

**A complete notification contains:**

- designation of the letter as notification according to Section 24a (3) of the KWG about the intention to provide cross-border services into an EEA-country
- name of the EEA-country
- business plan describing the activities which the investment firm intends to carry out on a cross-border basis with reference to Annex I of the MiFID
- certified translation of the notification into the official language of the mentioned EEA-country
1. German investment firms and cross-border services into another EEA country (3)

- formal requirements are met
- there is no reason to question the appropriateness of the institution’s organisational structure and financial situation
1. German investment firms and cross-border services into another EEA country (4)

Investment firm

receives BaFin’s confirmation that notification has been transmitted

and may commence providing cross-border services
1. German investment firms and cross-border services into another EEA country (5)

- **host country authority**
- informs about the conditions to be met in the interest of the „General Good“
- **investment firm**
2. German Investment firms intending to establish a branch in another EEA country (1)

- **German investment firm**
  - files notification according Section 24a (1)KWG
- **BaFin (Section WA 37)**
  - checks notification
2. German Investment firms intending to establish a branch in another EEA country (2)

**A complete notification contains:**

- designation of the letter as notification according Section 24a (1) of the KWG about the intention to establish a branch in another EEA-country
- name of the EEA-country
- postal address and location of the branch
- names and curricula vitae of the branch managers
- business plan containing detailed information
- certified translation of the notification into the official language of the mentioned EEA-country
2. German Investment firms intending to establish a branch in another EEA country (3)

In detail the business plan should give the following information:

- description of the activities which the bank intends to carry out through the branch with reference to Annex I of the MiFID
- explanation of the branch’s tasks and organisational structure as well as the assignment of responsibilities
- estimated development of the branch’s business volume
- description of the branch’s integration into the internal control system of the investment firm
- additional information if sub-branches are intended to be established
2. German Investment firms intending to establish a branch in another EEA country (4)

- formal requirements are met
- there is no reason to question the appropriateness of the institution’s organisational structure and financial situation

BaFin will forward notification to the responsible host country authority within two months if ...
2. German Investment firms intending to establish a branch in another EEA country (5)

- The Investment firm receives BaFin’s confirmation that notification has been transmitted.

- The Investment firm and may establish the branch and commence activities...

  ...on receipt of a communication from the competent authorities of the host country

  ...in the event of the expiry of a two months period without receipt of any communication from the host country authority
2. German Investment firms intending to establish a branch in another EEA country (6)

- **host country authority**
  
  informs about the conditions to be met in the interest of the „General Good“

- **investment firm**
3. EEA investment firms intending to provide cross-border services into Germany (1)

Supervisory Authority of the institution’s home country

forwards notification according to Art. 31 MiFID to...

BaFin
3. EEA investment firms intending to provide cross-border services into Germany (2)

The notification complies with the requirements of the MiFID.

BaFin will confirm receipt of notification and inform about the conditions to be met in the interest of the „General Good“ within two months if...

- the notification complies with the requirements of the MiFID
3. EEA investment firms intending to provide cross-border services into Germany (3)

BaFin (Section WA 37) carries out host country supervision according to Section 53b (3) Sentence 3 KWG
4. EEA investment firms intending to establish a branch in Germany (1)

Supervisory Authority of the institution’s home country

forwards notification according to Art. 32 MiFID to...

BaFin
4. EEA investment firms intending to establish a branch in Germany (2)

- the notification complies with the requirements of the MiFID

BaFin will confirm receipt of notification and inform about the conditions to be met in the interest of the „General Good“ within two months if ...
4. EEA investment firms intending to establish a branch in Germany (3)

BaFin (Section WA 37) carries out host country supervision according to Section 53b (3) Sentence 1, 2 KWG
### Summary: Responsibilities for the EU-Passport for investment firms within BaFin

<table>
<thead>
<tr>
<th><strong>outgoing</strong></th>
<th><strong>incoming</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>section WA 37</strong></td>
<td><strong>section WA 37</strong></td>
</tr>
<tr>
<td>• receives notification from the investment firm</td>
<td>• receives notification from home country authority</td>
</tr>
<tr>
<td>• checks notification</td>
<td>• checks notification</td>
</tr>
<tr>
<td>• forwards notification</td>
<td>• confirms receipt</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>section responsible for the notifying institution</strong></th>
<th><strong>section responsible for the notifying institution</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• takes notice</td>
<td>• takes notice</td>
</tr>
<tr>
<td>• makes remarks if necessary</td>
<td>• makes remarks if necessary</td>
</tr>
<tr>
<td>• carries out home country supervision</td>
<td>• carries out host country supervision</td>
</tr>
</tbody>
</table>
Number of Notifications in accordance to Art. 31 and 32 MiFID (incoming) since 2000

<table>
<thead>
<tr>
<th>Year</th>
<th>incoming cross-border</th>
<th>incoming branches</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>136</td>
<td>10</td>
</tr>
<tr>
<td>2001</td>
<td>118</td>
<td>13</td>
</tr>
<tr>
<td>2002</td>
<td>133</td>
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<td>2003</td>
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<td>9</td>
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<tr>
<td>2004</td>
<td>108</td>
<td>15</td>
</tr>
<tr>
<td>2005</td>
<td>110</td>
<td>14</td>
</tr>
<tr>
<td>2006</td>
<td>161</td>
<td>9</td>
</tr>
<tr>
<td>2007</td>
<td>64</td>
<td>6</td>
</tr>
<tr>
<td>2008</td>
<td>246</td>
<td>12</td>
</tr>
<tr>
<td>2009</td>
<td>216</td>
<td>4</td>
</tr>
<tr>
<td>2010</td>
<td>277</td>
<td>7</td>
</tr>
<tr>
<td>2011</td>
<td>257</td>
<td>4</td>
</tr>
<tr>
<td>2012</td>
<td>227</td>
<td>3</td>
</tr>
</tbody>
</table>
Top Five Countries (incoming):
on the reporting date of 31 December 2012 (since 2000)

<table>
<thead>
<tr>
<th>cross-border services</th>
<th>branches</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. United Kingdom</td>
<td>1. United Kingdom</td>
</tr>
<tr>
<td>2. Cyprus</td>
<td>2. Austria</td>
</tr>
<tr>
<td>3. Liechtenstein</td>
<td>3. Luxembourg</td>
</tr>
<tr>
<td>4. Luxemburg</td>
<td>4. France</td>
</tr>
<tr>
<td>5. Austria</td>
<td>5. Netherlands</td>
</tr>
</tbody>
</table>
The way we do it – some principles

- **use** of *official notification forms*
- **transmission** of the *notification itself*
- **standardized letters** for transmission of notification and for acknowledgement of notification’s receipt
- section WA 37 and INT 3 as *points of contact* for European Passport issues in accordance to investment firms (internally and externally)
- **statistical registration** of the notifications
- filing: *each* notice in a *single* file
- **internal guidelines** („Manual“) for staff members
A review

- 1\textsuperscript{st} November 2007 the Markets in Financial Instruments Directive (MiFID) (2004/39/EEC) replaced the ISD (Investment Service Directive) and implements a maximum harmonisation within the European countries.

- MiFID possibilities for EEA country investment firms to conduct cross-border business via free provision of services or through branches are much bigger.

- number of notifications has increased, also a huge amount of amendments to existing EU-Passports have occurred.

- effective co-operation between European Supervisory Authorities concerning passport issues is essential to ensure a high quality of supervision.
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Any questions?

Thank you!!