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From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés
Subject:	EL Non Paper: Proposal for Regulating the Operational Framework of ATM Deployers

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Proposal for Regulating the Operational Framework of ATM Deployers

In Greece, ATM deployment presents a particularly strong business case for entities providing cash services, making this issue highly significant. We acknowledge that those business cases have introduced risks that have been recognized in the context of PSD3 (e.g. prudential and financial soundness risks, AML, security posture, conduct obligations) and as such the exemption has been upgraded to a registration.

Under the relevant PSD2 exemption, we have interpreted these entities to be operating in collaboration with authorized PSPs that

- are authorized for the provision of cash withdrawal services,
- bear ultimate responsibility for the payment service,
- remain subject to ongoing supervisory obligations.

However, supervisory approaches vary significantly across member states, leading to complexities and inconsistencies. To ensure a uniform understanding among all stakeholders and eliminate ambiguity, we advocate for clear legislative approaches.

To this end, we propose three options.

Option A. Registration with a clear wording according to which collaboration between the ATM deployer and an authorized PSP is ensured

According to this option we suggest the inclusion of clear and precise language, to outline the specific business model of the ATM deployer. This should explicitly address that the ATM deployer operates on behalf of a licensed PSP for the payment service #1 of Annex I. The registration requirements for an ATM deployer, as outlined in Article 38, alone do not guarantee robust supervision without an authorized PSP that is subject to ongoing supervisory obligations and assumes full responsibility for the service.

-Drafting suggestions-

Recital

It should be a prerequisite for an ATM operator to cooperate with at least one payment service provider for the provision of the cash withdrawal services. This operator, not being authorized itself, but only registered with the competent authority of the home Member State, sets up ATMs for an authorized payment service provider, maintains them and supplies them with cash without providing any additional payment services. The authorized credit or payment institution has the whole responsibility for the transactions made at the ATMs of this ATM deployer. In this context, the credit or payment institution must be authorized within the EEA and have the relative passport, where necessary, for providing the aforementioned payment service.

Article 2 (35) (on Definitions)

~~independent~~ 'ATM deployer' means a ~~natural or~~ legal person providing cash withdrawal services as referred to in Annex I, point 1, and who is not account servicing payment service

provider, according to Article 2 (16), ~~and~~ does not provide other payment services referred to in Annex I and cooperates with at least one payment service provider based on a contractual agreement.

Article 38 - Services enabling cash withdrawals offered by ATM deployers not servicing payment accounts

1. ~~Natural or~~ legal persons providing cash withdrawal services ~~through~~ by means of ATMs as referred to Annex I, point 1, and who do not service payment accounts, ~~and~~ do not provide other payment services referred to in Annex I and cooperate based on a contractual agreement with one or more authorized payment service providers, shall not be subject to authorisation but shall register with a competent authority of the home Member State before taking up activity, on condition that the payment service provider ensures the fulfillment of its supervision obligations towards the competent authority.

2. The registration referred to in paragraph 1 shall be accompanied by the information and documentation referred to in Article 3(3), points (a), (b), (e) to (h), (j) to (l), (n), (p) and (q). For the purposes of the documentation referred to in Article 3(3), points (e) (f) and (l), the natural or legal person registering shall provide a description of its audit arrangements and of the organisational arrangements it has set up to taking all reasonable steps to protect the interests of its users and to ensure continuity and reliability in the performance of the payment service as referred to in point (1) of Annex I. The security control and mitigation measures referred to in Article 3(3), point (j), shall indicate how the natural or legal person registering will ensure a high level of digital operational resilience in accordance with Chapter II of Regulation (EU) 2022/2554, in particular in relation to technical security and data protection, including for the software and ICT systems used by the natural or legal person registering or the undertakings to which it outsources the whole or part of its operations.

3. The competent authority of the Member State where the ATM is being deployed may deny a registration according to paragraph 1 or may later withdraw the registration if it is not satisfied that the information provided according to paragraph 2 is adequate to ensure the sound and prudent management of the ATM deployer.

4. Sections 1 and 2 of Chapter 1 shall not apply to the persons providing the services referred to in paragraph 1 of this Article. Section 3 of Chapter 1 shall apply to the persons providing the services referred to in paragraph 1 of this Article, with the exception of Article 25(3).

5. ~~The persons~~ Legal entities providing the services referred to in paragraph 1 of this Article shall be ~~treated as payment institutions exclusively~~ payment service providers.

Option B. Authorisation of ATM deployers as Payment Institutions for cash withdrawal services

This option should eliminate any ambiguity and ensure their operation under passporting conditions without the need to seek for registration on each member state. As such article 38 and relevant reference should be eliminated in their entirety.

Option C. Registration with an EBA Mandate that will define the exact conditions for ATM Deployers registration.

This option would require the EBA to establish clear regulatory technical standards for the registration conditions of ATM deployers in order to ensure harmonization among member states.

-Drafting Suggestion-

Article 3 paragraph 5

The EBA shall develop draft regulatory technical standards specifying:

(b)

a common assessment methodology for granting authorisation as a payment institution, or registration as an account information service provider or ~~independent~~ ATM deployer, under this Directive;

(b1)

operational conditions for the ATM deployer registration

Regardless of each of the above options, we also recommend removing the term 'independent' throughout the text (including the recitals) to avoid ambiguities that could lead to misinterpretations of the ATM deployment use case, potentially confusing it with scenarios where an entity is solely responsible for installation and maintenance of ATM equipment.

Question 1: Which of the following options do you prefer for regulating ATM deployers?

- **Option A:** Ensuring clear wording that defines collaboration between the ATM deployer and an authorized PSP for cash withdrawal.
- **Option B:** Requiring ATM deployers to be authorized Payment Institutions for cash withdrawal services, eliminating the need for separate registrations in each Member State.
- **Option C:** Granting the EBA a mandate to define the exact conditions for ATM deployer registration.
- **Option D:** None of the above.

Please indicate your preferred option and the reasoning behind your choice.

Question 2: Do you agree with the recommendation to remove the term "independent" to prevent potential misinterpretations of the ATM deployment use case, avoiding confusion with scenarios where "a deployer" is responsible only for the installation and the operational maintenance of ATMs?