

Payment Services Package – Payment Services Directive (PSD3) and Payment Services Regulation (PSR) – Operating model and role of Independent ATM Deployers (“IADs”)

We refer to the proposed revisions to PSD3/PSRs, which in our opinion will more than likely affect Independent ATM Operators (“IADs”) and significantly impact access to cash levels across the European Economic Area.

The European Economic Area is undergoing a profound transformation in retail banking, marked by a sustained decline in physical bank branches and offsite service networks. According to the European Central Bank (“ECB”), the number of bank offices in the euro area has dropped from approximately 186,000 in 2008 to just 106,000 by the end of 2023—a 43% reduction over 15 years¹.

This contraction is accelerating as banks pursue digitalization strategies and cost-efficiency measures. The ECB’s Financial Stability Review (May 2025) warns that this trend, while improving operational resilience, risks exacerbating financial exclusion, particularly in rural and ageing populations where digital banking uptake remains low². The European Commission has acknowledged that the decline in physical access points is contributing to a “cash access gap,” prompting several Member States to introduce legislation mandating minimum cash access standards. For example, France and Belgium have implemented national frameworks requiring that 95% of the population must have access to cash withdrawal services within a 5 km radius. Meanwhile, the European Banking Authority (“EBA”) has flagged the growing reliance on Independent ATM Deployers (“IADs”) to fill the void left by traditional banks, especially in underserved regions³.

ATM deployment trends further illustrate this shift. According to the European Association for Secure Transactions (“EAST”), the number of ATMs in Europe has been steadily declining, with a 4.6% drop in total ATM installations between 2022 and 2024, continuing a multi-year trend⁴. The ECB’s own data confirms this, showing that ATM cash withdrawals in the euro area fell by 5.2% in volume and 3.8% in value in 2024 compared to the previous year⁵. While this reflects a broader shift toward digital payments, it also signals a reduction in physical cash access points. The EBA’s 2024/25 Consumer Trends Report highlights that this decline is particularly acute in rural and low-income areas, where ATMs often serve as the only remaining access point to cash and basic financial services⁵. These developments underscore the urgent need for a coordinated policy response to ensure that access to cash remains a viable and equitable component of the financial ecosystem across the EEA.

Banks and credit institutions have largely exited or are in the process of exiting the ATM business across the EEA, leaving IADs as the main entities providing access to cash to citizens. EAST reports that IADs

¹ European Central Bank. (2023). “Bank office statistics”.

https://www.ecb.europa.eu/stats/bank_offices/html/index.en.html

² European Central Bank. (2025). “Financial Stability Review”.

<https://www.ecb.europa.eu/pub/fsr/html/index.en.html>

³ European Association for Secure Transactions. (2024). “ATM numbers in Europe”. <https://www.association-secure-transactions.eu/industry-information/atm-numbers-europe>

⁴ European Central Bank. (2024). “ATM cash withdrawal statistics”.

https://www.ecb.europa.eu/stats/atm_cash_withdrawals/html/index.en.html

⁵ European Banking Authority. (2025). “Consumer Trends Report”. <https://www.eba.europa.eu/consumer-trends-report-2024-25>

now operate over 60% of ATMs in several EEA countries and the UK, including, Germany, and Spain⁶. This shift places significant operational and economic constraints on IADs, who must navigate complex regulatory environments, maintain high security standards, and manage the costs associated with ATM deployment and maintenance. The European Commission's Payment Services Directive (PSD2) and the proposed PSD3 framework aim to address some of these challenges by enhancing transparency, reducing fees, and promoting competition among payment service providers⁷. However, the sustainability of IADs' operating models remains a critical concern, requiring ongoing legislative support to ensure that access to cash is preserved for all citizens across the EEA.

We understand that one of the main drivers for the proposed revisions to the existing legislative framework is tackling potential fraud and/or anti-money laundering concerns at "private" ATMs re-filled by non-CIT companies – obviously in the Nordic countries as we learned from other sources. We still do not understand fully the concerns raised in this area and would be extremely grateful to better understand them in order that we may respectfully propose more proportionate measures to address those concerns (e.g. inclusion of certain provisions in the AML framework dealing specifically with merchant fill ATMs rather than the PSD3/PSR framework that would capture all IAD ATMs irrespective of the underlying risks associated with the operating model – please see our comments in this regard later in this letter).

We felt it prudent to set out the following areas at a high-level in order to provide a holistic recap of the IAD model allowing a careful revision of the draft legislation and achieving all necessary objectives including furthering the access to cash objective.

1. Basic IAD Operating Model – Interpretation and Understanding Across Member States differs in Extremis

The interpretation and understanding of the operational and economic model of IAD (especially as it relates to the roles of payment/card schemes ("Schemes") in the so-called 4-party model) across Member States differs in extremis.

Relevant competent authorities across Member States do not appear fully appraised of the mechanics within the IAD industry. For example, as part of the recent access to cash review in one Member State, representatives of the competent authorities believed that ATM Interchange Fees⁸ (please see below) fluctuated with interest rate changes and confirmed that the roles of the Schemes were entirely outside of the scope of their review implying a lack of informed understanding of the model and potential impacts by those proposing legislative changes. This lack of a full understanding of the IAD

⁶ European Association for Secure Transactions. (2025). "IADs in the EEA". <https://www.association-secure-transactions.eu/industry-information/IADs-in-the-EEA/>

⁷ European Commission. (2025). "Payment Services Directive (PSD2) and proposed PSD3 framework". https://finance.ec.europa.eu/consumer-finance-and-payments/payment-services/payment-services_en

⁸ **ATM Interchange Fees** are fees paid between banks or payment service providers (PSPs) when a cardholder uses an ATM that does not belong to their issuing bank. Specifically, the **issuing bank** (the bank that issued the card) pays a fee to the **acquiring bank** (the bank that owns the ATM) for processing the cash withdrawal. These fees are set by card schemes (e.g. Visa, Mastercard) and are not directly visible to consumers, although they can influence the availability and cost of ATM services.

While Regulation (EU) 2015/751 primarily focuses on **interchange fees for card-based payments at the point of sale**, it acknowledges that ATM transactions are part of the broader card-based payment ecosystem. However, **ATM Interchange Fees are not currently capped under this regulation**, unlike point-of-sale interchange fees, which are subject to strict limits (0.2% for debit cards and 0.3% for credit cards). **Regulation (EU) 2015/751**: <https://eur-lex.europa.eu/eli/reg/2015/751/oj/eng>

model and its mechanics leads to regulatory decisions that do not align with the operational realities of IADs.

Further to the above, we wish to draw your attention to the use of inconsistent definitions by Schemes which complicates the operational landscape for IADs, the technical and administrative burdens imposed by Schemes that add to the operational costs and complexity for IADs, and the indirect contractual framework that limits the IADs' ability to negotiate terms directly, affecting their operational flexibility.

Please refer to **Annex 1** for a further analysis of the IAD operating model and the need to clarify the role of the Acquiring Members, regional definition harmonisation across different payments schemes, and a simplification of the technical and administrative burdens imposed to IADs by Schemes.

2. Economic Model of IAD – Structural Issues exist regarding ATM Interchange Fees

We wish to highlight the significant structural issues regarding ATM Interchange Fees, which are critical for Independent ATM Deployers ("IADs"). These fees are arbitrarily set by payment schemes, vary by country and card type, and often fail to cover the increasing operational costs faced by IADs. This disparity poses a material threat to IADs and risks limiting public access to cash, especially in rural or smaller towns where ATMs are often the sole source of cash.

ATM Interchange Fees are determined by payment schemes without transparency or regulation. The fees are not subject to Regulation (EU) 2015/751 ("IFR") or other EU laws, leaving their adoption, adjustment, and review outside the supervisory competence of both EU and Member State authorities. The rationale for setting these fees at low levels remains unclear, and they have been referred to as a "black box" by some authorities at recent conferences.

The often disproportionately low fees set by the payment schemes are insufficient to cover the costs of ATM operation impacting their viability. Additionally, the rise of the operational costs along with the proposed legislative revisions under PSD3/PSRs could further increase overall costs, worsening the risk of rendering the business model untenable, potentially leading to widespread decommissioning of ATMs. This would disproportionately affect smaller towns and rural areas where ATM access is in a critical situation.

The lack of Regulation and absence of proportionate and transparent oversight makes the current fee-setting process unaccountable, exacerbating structural deficiencies in the IAD business model.

Contrary to EU goals of maintaining optimal cash circulation and access for consumers, the current fee model appears to discourage cash use.

Urgent and comprehensive action to address these deficiencies is required. Specific requests include a thorough review of the cash cycle and IAD business model to ensure legislative revisions under PSD3/PSRs are fit for purpose, entrusting the fee setting to competent authorities, regulation, transparency and proportionality of fees.

We wish to stress the need for regulatory intervention to safeguard the cash cycle and preserve public access to cash, especially in underserved areas.

Please refer to **Annex 2** for a further analysis of the significant structural issues regarding ATM Interchange Fees, which are crucial for the viability of IADs.

3. ATM Exemption – Necessary to safeguarding the ATM industry's stability and accessibility to cash for consumers

The ATM exemption under Article 3(o) of the Payment Services Directive 2015/2366 (“PSD2”) has remained a critical provision to ensure the independent operation of ATM providers without the stringent regulatory regime applied to payment services providers. This exemption has historically been understood to exclude independent ATMs from such regulations provided they do not offer payment services under a framework contract or directly service payment accounts.

The exemption was explicitly designed to facilitate the operation of independent ATM providers who offer cash withdrawal services without engaging in broader payment services. The European Commission's clarification in May 2008 confirmed that the derogation aimed to exempt independent ATM providers, including those located in supermarkets and nightclubs. This intent demonstrates the legislators’ understanding of the distinct role independent ATMs play in ensuring cash accessibility for users in diverse locations.

The ATM exemption aligns with precedents established by exemptions under PSD1 and PSD2, such as the commercial agent exemption and the limited network exemption. These exemptions underwent revisions based on feedback regarding their scope and interpretation, ensuring that payment service laws did not unnecessarily restrict operational freedom in specific marketplaces. Similarly, the ATM exemption was devised to provide clarity and avoid restrictive interpretations that could hinder the IAD market.

The exemption law ensures IADs can function efficiently and continue providing cash accessibility without unnecessary regulatory hurdles.

Independent ATMs are vital for ensuring the availability of cash, particularly in rural and underserved areas where traditional banking infrastructure may be limited. By exempting independent ATMs from stringent regulations, the law preserves their ability to operate and cater to the needs of diverse populations, thus supporting financial inclusion across the European Economic Area.

Any revisions to the ATM exemption must be accompanied by thorough impact analyses to understand their economic and operational implications fully so as not to unintentionally undermine the IAD market or reduce cash circulation in the region. **Maintaining the exemption's original purpose will safeguard the ATM industry's stability and accessibility for consumers as the law remains an essential provision to protect the operational integrity and accessibility of independent ATM providers.** Its thoughtful application and preservation are critical to ensuring cash's continued role in economic and financial systems across Europe.

For further description of the rationale and intent of the exemption and an analysis of its crucial role for IADs and the preservation of cash accessibility, please refer to **Annex 3**.

4. AML & Fraud Concerns - broad obligations disproportionately impact all IAD operators

We would respectfully ask for clarification regarding the concerns surrounding AML and fraud risks specifically tied to Merchant Fill ATMs, which have largely disappeared in the Nordics, and justification for extending regulatory revisions to all IAD operating models. Given the limited fraud risks associated with standard IAD ATM operations, where cash is sourced from retail banks or central banks and loaded by authorized cash-in-transit companies, we suggest targeted measures under the AML framework to address Merchant Fill ATM issues, rather than imposing broad obligations that would

disproportionately impact all IAD operators. Additionally, we request access to relevant data on fraud risks to better review and provide informed responses on the proposed regulatory changes.

For a detailed explanation, please refer to **Annex 4**.

5. Concluding Remarks

As a result of the above explanations, the draft proposals and the potential for significant harm to be imposed on the IAD business and ultimately access to cash across the European Economic Area, we would **again reiterate our request for a holistic review of the current revised legislative proposals with a view on impacts on the cash distribution cycle in its effects on the availability and accessibility of cash** before any potentially harmful changes are introduced within the PSD3/PSR legislation. Further such a holistic review must also take into account the economic and operating model of the IAD business and the wider Scheme Rules as it relates to both the setting of ATM Interchange Fees and the ability of IADs to levy access fees and/or drive other revenue sources permitted by law but restricted or prohibited in one or more combinations by the rules/regulations of the international or domestic card organizations.

It goes without saying that the Ligue stands ready and willing to assist the Legislators in any way possible to ensure that a detailed and complete impact assessment is concluded on an Informed basis enabling proportionate and adequate legislative measures to be adopted, which in turn would secure “access to cash” and satisfy one of the European Legislators’ stated objectives.

Annex 1

Basic IAD Operating Model

The 4-party model is typically comprised of the following participants (terminology is based on the Scheme vernacular rather than strict regulatory terminology):

- **Issuing Member** – the financial institution and principal member of the Schemes that holds the framework contract (and on-going contractual relationship) with the Cardholder and who is responsible and fully accountable for the associated risks (including AML requirements) of operating the payment account or holding the electronic money in the name of the Cardholder – please see the red circular section in Figure 1,
- **Cardholder** – the individual or corporate entity who is issued with a payment instrument usually a card (plastic or virtual) by the Issuing Member for the purposes of making payment transactions or making cash withdrawals from an underlying account (payment or otherwise) after having been duly identified and approved by the Issuing Member from an AML perspective,
- **Acquiring Member** – the principal member of the Schemes that holds a contractual relationship with the merchant or ATM owner in order to process either their card payment or cash withdrawal requests through the Schemes – please see the green circular section in Figure 1 (whilst it should be noted that it is not always a requirement of the Schemes that the “Acquiring Member” in a given region must hold financial institution status depending on the business model in question – please see below for more information in this regard), and
- **Merchant or ATM operator** (otherwise known as the “**Point of Interaction**” or “**POI**”) that could also be the Acquiring Member.

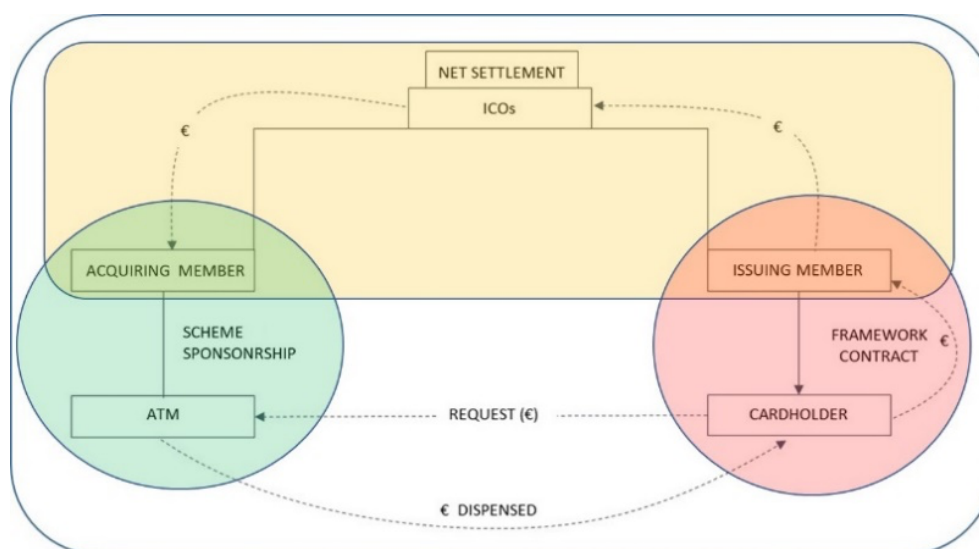


Figure 1, the basic 4-Party Model

It is the Schemes who establish the rules and regulations of operation (“**Scheme Rules**”) for the Acquiring Member and its part of the chain (green circle within Figure 1) and separately the Issuing Member and its part of the chain (red circle within Figure 1). One of the functional aims of the Scheme Rules is to bring a centralized and consistent standard of operation to both sides of the payment and cash withdrawal chains without the need for each side to directly contract with the other and/or

negotiate and define such standards in a direct bilateral agreement (i.e. they can and do rely on series of indirect contractual relations as members of the Schemes).

The Scheme Rules provide for membership in a given region e.g. “Europe” providing the Scheme is satisfied that the principal member’s activity complies with all applicable laws in the region and/or territory in question. The definition of “Europe” region, as an example, does not neatly tie to the European Economic Area or European Union and if a principal member is admitted to the “Europe” region that can include, depending on the Scheme in question, the ability to do business in, for example, the United Kingdom, Israel, Turkey and Serbia, subject to such principal member providing the requisite information to the Scheme⁹. Further, it is not always a prerequisite that the **Principal Member** needs to be a financial institution – a point that some of our members have discussed with competent authorities across the European Union in recent times. It is for this reason that the term **“Acquiring Member”** can be misleading and we are aware of several cases where the competent authorities in Member States have concluded that this must be based on a financial institution status and/or one holding the requisite permissions of acquiring a payment transaction (i.e. merchant acquiring).

Finally, it is the Scheme that provides the communication infrastructure between the **Issuing Member** and the **Acquiring Member**, sets the transaction, clearing and settlement data element requirements for transactions, and via the use of routing tables manages the switching/routing of transactions between the POI, Cardholders, Acquiring Members and Issuing Members. Participants therefore have the security and confidence of participating in a transaction under the Scheme infrastructure without the need for a direct contractual relationship between the two sides of the 4-Party Model, i.e. between the red (Issuing Member) and green (Acquiring Member) circles as depicted in Figure 1 above, or put even more simply and practically between the Acquiring Member/ATM operator and the Cardholder.

⁹ Mastercard provides a clear and specific list of countries included in its EEA subregion for interchange purposes.

<https://www.mastercard.com/europe/en/regulatory/european-interchange.html>

Visa does not publicly publish a single, consolidated definition of the “Europe” region in the same way as Mastercard. Instead, Visa Europe operates as a separate regional entity within the Visa global network, and its regional definitions are embedded in its internal scheme rules and regulatory filings. Visa’s definition of “Europe” may include non-EEA countries such as Turkey, Israel, and the UK, depending on the context (e.g. licensing, processing, or compliance).

The differing definitions of the “Europe” region by Visa and Mastercard have important implications for Independent ATM Deployers (IADs), particularly in how they operate across borders and how ATM Interchange Fees are applied.

How This Affects IADs:

Inconsistent Fee Structures Across Countries

Mastercard defines the EEA region narrowly for interchange purposes, aligning closely with EU/EEA membership. Visa, however, may include additional countries like the UK, Turkey, and Israel in its “Europe” region. This means that the same ATM transaction could be classified differently depending on the card scheme, leading to different interchange fees for IADs depending on the card used—even at the same terminal. This inconsistency complicates revenue forecasting and pricing strategies for IADs.

Operational Complexity for Cross-Border Networks

IADs operating in multiple countries must navigate different scheme rules, licensing requirements, and fee structures. For example, an IAD in Spain may receive a different fee for a UK-issued Visa card than for a Mastercard, even though both are processed at the same ATM. This adds administrative and compliance burdens, especially when trying to optimize ATM placement and profitability across regions.

Regulatory Ambiguity and Risk

Because Visa and Mastercard do not align on what constitutes “Europe,” IADs face uncertainty in how their services are classified and regulated. This affects not only fees but also obligations under PSD2/PSD3, AML rules, and consumer protection laws. Inconsistent definitions can also lead to disputes over whether a transaction qualifies for domestic, intra-regional, or international fee treatment.

Barrier to Transparency and Fair Competition

The lack of a harmonized definition undermines transparency in the ATM fee ecosystem. IADs have limited ability to challenge or negotiate fees, and the opaque nature of scheme-defined regions makes it difficult for regulators to assess whether fees are fair or cost-reflective. This reinforces the need for EU-level oversight of ATM Interchange Fees and clearer definitions across schemes.

It is this indirect set of contractual components that generally see the ATM operator “operating” on behalf of one or more Issuing Members (who are the direct holders of the framework contract with the Cardholder).

Annex 2

Economic Model of IAD

An IAD's principal source of revenue is the **Cash Disbursement Fee** otherwise referred to as "**ATM Interchange Fees**". These fees are arbitrarily set by the respective Scheme, vary depending on the product (e.g. debit card, credit card, corporate card etc.) and origin of the Issuing Member (e.g. domestic vs inter-regional vs international) and generally represent an extremely low per transaction fee.

The ATM Interchange Fee works in the opposite direction to the standard point-of-sale interchange fee and is best characterised as a "*fee paid by the Issuing Member to the ATM operator for its Cardholder's use of the latter's machine*".

The ATM Interchange Fees vary country by country and Scheme by Scheme but are as low as EUR 0.15 cents per domestic transaction in Portugal or EUR 0.16 cents per domestic transaction in Bulgaria. In the Republic of Ireland, we have become aware that the domestic ATM Interchange Fee has not changed in over two decades. In stark contrast, an IAD's operating costs have increased significantly and continue to rise year on year given the cost of living and wider macro-economic and inflationary pressures.

An IAD typically will need to contract with a location in a high footfall area meaning significant monthly rental costs especially for a large-scale fleet, need utilities (electricity) to operate the ATM, need to contract with specialised third-party service providers in order to load/unload the ATM and also provide maintenance services. These are all on-going costs separate from the cost of cash for use in the ATM and any upfront capital expenditure (hardware costs etc). **The continued disparity between the Scheme influenced revenue and cost side of the IAD business (and in particular the ATM cash withdrawal service) and the fundamental inability of an IAD to influence the ATM Interchange Fee carries a material threat that a significant portion of ATMs across the European Economic Area will be decommissioned, based on the current model alone and before any additional impacts are taken in to consideration as a result of the proposed legislative revisions.** The current situation coupled with the proposed measures in the drafts of PSD3/PSRs therefore threatens to deprive a significant part of the population in the European Economic Area with access to cash, cutting firmly across one of the stated objectives in this area. The threat is even more significant in smaller towns or rural areas where an ATM is often the only source of cash and the number of transactions required to generate a level of aggregate ATM Interchange Fee that allows the terminal to be "break even" and be economically viable is often significantly higher than the actual transaction levels, which in reality are nowhere near enough to cover the costs of operation. **Where an IAD enables acceptance of domestic cash withdrawals at its terminals, in some Member States the expected revenue per transaction (i.e. ATM Interchange Fee) represents an amount more than two times less than the actual cost incurred in providing the service.**

ATM Interchange Fees are set arbitrarily by the Schemes and such fees are not currently subject to *Regulation (EU) 2015/751 of the European Parliament and of the Council of April 29, 2015, on interchange fees for card-based payment transactions ("IFR")* nor any other laws of the European Union. The criteria for the adoption of ATM Interchange Fees and the rationale for setting them at such a low level (as was the case in Poland in 2010 and latterly in other Member States) and maintaining them at such levels are not known. Consequently, **the setting, adjustment and review of such fees are outside the supervisory competence of both European Union supervisory authorities and the relevant Member State competent authorities.** We may speculate the Schemes have set such fees in order to discourage consumers from paying with cash, which again contradicts the European Commission's goals of keeping cash circulation and access to cash at optimal levels, for the benefit of

consumers. The combination of low fees, lack of transparency, and the resulting decline in ATM availability supports the concern that **current practices may indirectly undermine the European Commission's goal of maintaining access to cash** when nearly two-thirds of euro area consumers still want to retain cash as a payment option, and this share has increased, suggesting a **disconnect between consumer preferences and the economic incentives embedded in the current fee structures**. The **ECB's 2024 SPACE study** (Study on the Payment Attitudes of Consumers in the Euro Area) **highlights that ATM withdrawal fees significantly influence consumer access to cash**. Section 4.1.6 of the report notes that "withdrawal fees, especially at ATMs, play a significant role in the availability of cash to citizens," and that these fees vary by country and provider. The ECB report clearly links fee structures to reduced cash access.¹⁰

Additionally the lack of transparency in fee setting and the fact that the European Commission's Regulation (EU) 2015/751 does not regulate ATM Interchange Fees, leaving them to be set by card schemes, has led to speculation in industry circles that Scheme may be incentivised to keep these fees low to promote card-based and digital payments, which generate higher revenues through merchant fees and data monetisation.¹¹

We are aware that at a recent payments conference a representative of one Member State competent authority made reference to the ATM Interchange Fees and their calculation as a "black box". Whilst the following case focuses on the POS side of the payments world, the Competition Appeal Tribunal ruled in London in June 2025, that the default multilateral interchange fees (MIFs) imposed by Visa and Mastercard contravene UK and Irish competition law¹², illustrating consistent and fundamental issues with the setting of any type of interchange fee by payment schemes.

We believe that urgent action is required by the European Commission and/or Member State competent authorities to address the significant structural deficiencies faced by IADs in terms of the current operating and economic models in order that appropriate and proportionate revisions to the legislative package can be implemented in a consistent manner across the European Economic Area.

Given the lack of proportionality and/or transparency in the ATM Interchange Fees model any further legislative measures that increase the operating expenses of IADs will make the already low margin business more than likely untenable. We would urgently and respectfully request a holistic review in to the operation of the cash cycle and in particular the IAD business in order to ensure that any proposed revisions to PSD3/PSRs are "fit-for-purpose" vis-a-vis the stated objectives.

We are eager to provide you with further examples of the cost-revenue models on ATMs and engage with you in a dedicated workshop to discuss.

As a result of the above, we would respectfully request that the review and setting of ATM Interchange Fees should be entrusted to the European Banking Authority in cooperation with the European Central Bank. We would also expect that any fees, the method of calculation and communication of such should be brought in to the scope of the IFR (through relevant provisions of the PSRs).

Aside from ATM Interchange Fees, IADs may in certain circumstances deploy access fees at their terminals. The interplay between European level regulation, domestic Member State legislation and the Scheme Rules creates a complex landscape that makes alternative revenue generation difficult and unscalable. **It should be noted that certain Scheme Rules prevent an IAD from deploying an access**

¹⁰ https://www.ecb.europa.eu/stats/ecb_surveys/space/html/ecb.space2024~19d46f0f17.en.html

¹¹ See War on cash by Mastercard <https://techhq.com/2020/09/how-mastercard-is-waging-its-war-on-cash/> and <https://www.cashmatters.org/blog/understanding-the-war-on-cash>

¹² <https://www.reuters.com/sustainability/boards-policy-regulation/mastercard-visas-merchant-fees-breach-competition-law-uk-tribunal-rules-2025-06-27/>

fee on its products if the domestic legislation in a given Member State does not expressly allow for such fee to be levied. It is rare in our experience that any such domestic legislation provides such level of granularity or specificity or includes statements that “expressly allow” anything. Other Schemes that may have permitted access fees to be levied on domestic transactions, will not, under their respective Scheme Rules, then allow their products to be subject to an access fee if the first Scheme is not subject to such fees (so-called “non-discrimination rule”). The interplay of such Scheme Rules effectively sets the landscape and when taken together with the aforementioned legal instruments make the imposition of access fees (as an alternative source of revenue to an IAD in lieu of ATM Interchange Fees) a complex issue. As such, **IADs must be one of the only industries in the world that have little or no say over the fees they charge and/or their revenue streams but are faced with ever increasing cost bases in the ordinary course of business, and before any new regulatory burdens are placed on them under the proposed legislative revisions.**

We are aware that certain Member State competent authorities are firmly against the imposition of access fees on domestic transactions for political and/or social reasons.

Whilst we respect such positions, without a “fit-for-purpose” ATM Interchange Fee, domestic restrictions and/or bans on the imposition of access fees by IADs will simply reinforce the likely exit of IADs from the market due to lack of economic viability.

Access to cash will simply decrease in such circumstances based on our experience and that of our members.

Annex 3

ATM Exemption

We recognize the legislators' attempts to clarify and revise the payment services laws given experience and developments since the last set of changes nearly a decade ago. **We have material concerns that the consequence of the current draft proposals to PSD3/PSRs and/or how they may be interpreted by certain Member States after publication, will significantly weaken the availability of cash across the European Economic Area by ultimately forcing IADs out of the market (either directly or indirectly).**

The so-called cash withdrawal exemption envisaged in Article 3(o) of the Payment Services Directive 2015/2366 ("**PSD2**") has existed largely unaltered since Payment Services Directive 2007/64 ("**PSD1**").

We agree that the wording of the exemption in PSD2, Member States' respective transpositions of the directive and the varying interpretations of the exemption across Member States are inconsistent. We are aware concerns were laid out clearly in the *Opinion of the European Banking Authority on its technical advice on the review of Directive (EU) 2015/2366 on payment services in the internal market ("EBA Opinion")*. The Opinion rightly assumed and inferred that the existing wording of PSD2 did not justify a restrictive interpretation of the scope of the exemption and that such a restrictive approach would only be justified after clear legislative change in that direction. We know from experience that several competent authorities across the European Economic Area have previously interpreted the exemption in a much narrower manner than referred to in the Opinion and/or as more than likely intended under PSD1/PSD2. We would like to ensure that if the PSD2 exemption is to be revised in a narrower manner (as is proposed under PSD3/PSRs), and where such revisions clearly impose additional regulatory and/or registration requirements on IADs (including the need for applicable AML frameworks), that such requirements are put in place as a result of informed understanding of the economic and operational models of IADs and **having conducted a full impact analysis** on what the proposed revisions will likely do to the IAD industry and generally cash in circulation.

In our experience where other exemptions provided under PSD1/PSD2 were in question, both European authorities and those of Member States continued to, unconditionally, respect the broader interpretation of such exemptions pending the clarification or amendment of the then payment laws. For example, under PSD1 both the scope of exemption for commercial agent (article 3(o) of the PSD1 and PSD2) and the scope of limited network exemption (article 3(k)) were unclear. Those concerns distorted the payments market far more and posed far greater risk than the IAD market and/or the cash withdrawal exemption. Until the revisions of PSD2 (which updated the wording of both exemptions), both marketplaces and card issuers were free to provide their services with no authorization or registration as payment services providers.

It is beyond doubt that the exemption for cash withdrawal providers was designed to exclude from the strict regime of payment services, providers of independent ATMs as long as they provided no payment services to users under a framework contract and/or didn't service payment accounts. The underlying rationale was in part confirmed by European Union authorities in the document *"Your questions on PSD" provided by the Commission services in the answer to question no. 14 dated May 22nd, 2008*, where the European Commission services stated:

"This derogation was decided by the co-legislators. The intention is to exempt independent ATM service providers, e.g. typically ATMs in supermarkets, nightclubs, etc."

The exemption was also clearly not designed to capture only ATM providers to which card issuers outsourced expansion of their own ATM networks. In such cases, no payment services are provided, whatsoever, by such ATM providers and therefore no exemption is/was needed. In our respective

view, the exemption has from the very outset been devised to extend to independent ATMs and/or independent ATM operators. We are aware that certain Member State competent authorities took a unique view that **for the exemption to apply, the ATM operator must directly contract with each and every card issuer** around the world in order to accept their products at the ATMs – completely disregarding the operation of the 4-party model. Whilst **such view is respected, it is clearly neither practical nor reasonable given the 4-party model and from a sheer administrative perspective would render the IAD unable to operate** let alone contract with the thousands of issuers around the world whose cardholders may or may not happen to travel into a Member State and transact at an ATM.

Despite PSD2 revising many of PSD1 exemptions, neither the scope nor the wording of the ATM exemption changed except for minor editorial rephrasing. The exemption was reasonably translated to exclude services of cash withdrawals by operators typically having no direct agreement with Issuing Members. Under Article 3(o) of PSD1 and PSD2, ATM operators are exempt if they act on behalf of such Issuing Members and acting “*on behalf of*” means, in this use case, the provision of services based on arrangements with card issuers enabling acceptance and executing future payment orders of cardholders. Those arrangements are entered into before any cardholder makes a request for a cash withdrawal. Conversely, **where an ATM operator offers the cardholder cash withdrawal and seeks subsequent reimbursement from an Issuing Member with no prior arrangement with such Issuing Member in place, such conduct would not take place “on behalf of the issuer” but instead “on behalf of cardholder”**. In the latter scenario, we would expect such to constitute a payment service (typically money remittance for payee) **and require authorization or registration** regardless of whether ATM operator is successful in recouping reimbursement from the Issuing Member.

Based on the regulatory analysis of some of our members, we believe that an arrangement between an operator of an ATM and an Issuing Member whose cards/payment instruments are accepted at such ATMs, which is formed by the mutual participation of each entity in a Scheme, clearly and without doubt equates to acting “*on behalf of the Issuing Member*” (please see the earlier parts of this letter). While there are many arguments in favor of this conclusion, we have already summarized the points regarding authorization and authentication of a transaction and the roles/responsibility of the Issuing Member/Acquiring Member.

We also believe that if/where an ATM operator has no relation with an Issuing Member outside of the Scheme environment and the Issuing Member completes the authentication of a Cardholder (or of the card itself) and transmits authorization of card transaction request to the ATM operator (i.e. where both acts are the obligation of the Issuing Member), however, it is the ATM operator that engages with the Cardholder, then there can be no doubt that the ATM operator acts on behalf of the Issuing Member.

Whilst we respect that the Scheme Rules were developed before PSD1, they remain stable as to their overarching principles. Traditionally those rules reserve the wording “*on behalf of*” to relations between a participant and their service providers, agents, program managers, i.e. parties which the participant is liable for vis a vis the Scheme. The same wording is not typically used to describe the relationship between participants (or principal members). It does, however, go without saying that for any legal assessment the actual role or substance is decisive and not the label or words used. In our view, **a consistent application of Article 3(o) of PSD2 is dependent not upon whether Scheme Rules explicitly state the ATM operator acts “on behalf of” a card issuer but upon the actual role of the operator in acting on behalf of said issuer**. If under the Scheme Rules, the ATM operator fulfilled obligations of card issuers then “*acting on behalf of*” takes place regardless of whether the Scheme Rules include certain words or phrases. In conclusion, it is the actual role of the ATM operator vis-à-vis the Scheme Rules and/or the Issuing Member that determines whether the actions are “*on behalf of*” and not the absence of particular phrases.

Whilst we are of the primary belief that the exemption for IADs, as provided by PSD2, should be maintained, we do agree that the lack of clarity and inconsistency in implementation across Member States is a problem that needs to be addressed.

In order to ensure a proportionate set of legislative measures that are commensurate to the stated objectives (especially those around access to cash), we are of the view that **a holistic review of the entire cash cycle including the specifics of the IAD business model is required** to inform such debate and drive the finalization of the PSD3/PSR legislative provisions accordingly.

Annex 4

AML & Fraud Concerns

As discussed in several meetings, we do not fully understand the concerns relating to AML and/or Fraud at IAD operated machines.

We are aware that in previous Supranational Risk Assessments conducted by the European Commission, references were made to “private ATMs” and in particular those filled by merchants with takings from their over-the-counter businesses (“**Merchant Fill ATMs**”), as posing an increased risk of money laundering/terrorist financing. To our reasonable knowledge “merchant fill” ATM business has almost disappeared in the Nordics, but we would be grateful to understand more in this regard as we have been unable to find any detailed commentary or opinions on this topic as part of the wider legislative initiative. For what is it worth certain of our members that deploy Merchant Fill ATMs do undertake a form of KYC/KYB and AML checks related to merchants engaged with these types of ATMs, albeit none operate in the Nordics.

As it relates to the standard IAD model of operation where an ATM is loaded by a registered cash-in-transit company with banknotes provided by a retail bank and/or Member State central bank, it is important to note that **under applicable AML regulations and the respective rules of the Schemes, it is the Issuing Member who is responsible for the KYC obligations of its customer** (i.e. the Cardholder), including on-going source of funds, at a varying levels depending on the characteristics of the product in question (e.g. the requirements may differ on a risk based approach between a debit card vs. a prepaid card vs. a high net worth VIP selectively targeted and personally invited credit card, where a Scheme may have stand-in-approval rights and significant individual transaction amount thresholds are in place amounting to hundreds of thousands of Euros/US Dollars/GBP etc). The Acquiring Member has no legal obligation, contractual or practical ability to engage directly with the Cardholder (either on a payment transaction or a cash withdrawal) and in attempting to do so would be in direct breach of the respective Scheme Rules.

We are aware from the experiences of our members that certain Member State competent authorities attempted to enforce certain restrictions on cash withdrawals (outside of existing limits on payments and/or money transfers in cash) but were unwilling and/or unable to enforce such against the Schemes placing the IADs at further operating disadvantage largely fuelled by a lack of consolidated understanding of the operating model or worse a lack of leverage against one or more of the Schemes.

The Acquiring Member (and certainly the mere ATM operator where different to the Acquiring Member) is fundamentally and contractually obliged through the Scheme Rules to accept and process any transaction request and present it to the Issuing Member for review and subsequent action. An Acquiring Member, is **simply unable to run AML checks** on all Issuing Members (or even Cardholders for that matter, due to lack of contractual relationship, limited data points in its possession, lack of appropriate consents, etc), at the POI and conclude such screening within a period of time that the Cardholder could still stand at the POI waiting for the cash to be dispensed. In any event, such **delay on a transaction request by the POI or the Acquiring Member would directly breach the Scheme Rules** on the basis of a “time-out” as the Schemes mandate quick turnarounds on the transaction’s requests and authorisations in order to protect their brand and reputation. For completeness, it is estimated that inactivity at a POI for ca 45 seconds or more would result in a “time-out” on any given transaction.

We are aware from the experience of our members that some Member State competent authorities have tried to establish KYC/AML programmes on IADs in terms of cardholder usage at their fleet of ATMs (and specifically where no Merchant Fill ATMs were operating). Aside from any outlier local interpretation of the AML regulations, some of our members have reached out to several of the Schemes in order to stress-test the concept of the ATM operator having some form of obligation

and/or at the POI and/or reporting obligation after the event. In each case the applicable Scheme confirmed that the Issuing Member is accountable for the performance of due diligence on its Cardholders (at the point of the relationship commencing and on an on-going basis). Some Schemes have even confirmed that an IAD is not involved in the transaction authorisation process from a decision-making perspective. On a practical basis, **Issuing Members generally decide to receive each and every authorisation request from all POIs, in order to manage risk and build knowledge on their Cardholders.** The “*see everything*” approach retains ultimate control in the hands of the Issuing Member (in accordance with the contractual terms they have in place with the Cardholder under the framework contract – please see the red circle in Figure 1 above) and allows the Issuing Member to monitor the all transactions of the Cardholder and to properly profile the latter from an AML (and presumably commercial) perspective. Notably, the Schemes acknowledge that the Acquiring Member has insufficient information (or data) to determine whether to approve a request (consequently the Acquiring Member has insufficient data in reality to undertake any meaningful KYC tests/AML checks against the Cardholder).

The Acquiring Member would not even be in a position to block or reject any transaction and file a suspicious transaction report with the competent authority due, simply, to the fact that the Acquiring Member does not possess the necessary and/or meaningful data to do so something our members have stress-tested with one Member State competent authority. The Acquiring Member and the Scheme work under the agreement that the Issuing Member performs the relevant monitoring from an AML perspective, has the possibility to check each and every single transaction of the Cardholder and file a suspicious transaction report where appropriate with the applicable competent authority.

As a result of the above, we believe that **the imposition of additional regulatory and/or “compliance” obligations on IADs would have a material effect on the legal relationship between an Acquiring Member and a Cardholder not least from a privacy perspective.** Such potential alteration to the relationship would practically require steps to be taken by the Acquiring Member (and/or ATM operator) that would ultimately **render the operation of unattended ATMs potentially unworkable.** It would also significantly **increase the operating expenses of IADs.**

The *European Commission’s Staff Working Document to accompany the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities {COM(2019) 370 final}* from 2019 **cited increased risks in the areas of tax evasion, fraud as well as money laundering and terrorist financing on Merchant Fill ATMs.** The document also proposed a selection of mitigating measures including, but not limited to, identifying merchants who contract for such ATMs and a wider portion of proportionate due diligence measures both at the point of contracting and on an on-going basis. If it is genuinely AML and/or fraud risks associated with the Merchant Fill ATM business that are driving the need for the proposed revisions to PSD3/PSRs vis-à-vis IADs and/or the exemption, then given Merchant Fill ATMs represent a microscopic portion of the IAD fleet across the European Economic Area, it would seem more proportionate and prudent from our point of view to have measures included in the AML regulatory framework to tackle these concerns rather than passing measures that capture all IAD ATM models of operating. If, for example, a standard IAD operates ATMs where banknotes are purchased from retail banks and/or sourced from the Member State central bank and such notes are loaded in to the ATMs by an authorised cash-in-transit company, AML and/or fraud issues relating to the ATM load are limited and the role of the “merchant” is that of a glorified landlord/licensor of space for the IAD to install and operate the ATM.

Aside from Merchant Fill ATMs, as already discussed, we have looked at general fraud concerns and typologies on standard IAD ATM fleets with some of our members.

We have already detailed the Issuing Member obligations as it relates to the Cardholder activities and that side of the payment/cash withdrawal chain and those are clearly outside the scope/remit of the IAD.

From our perspective, the fraud risk at typical cash-in-transit filled ATMs is low. We would typically expect the following fraud typologies to be included in this assessment: skimming, cash/card trapping and transaction reversal fraud. **Based on the data available to our members, the number of fraud attempts covering these typologies is marginal when compared to the number of IAD ATMs operating across the European Economic Area.** Even Issuing Member reported fraud on behalf of Cardholders via the Schemes is extremely low from the data that we have seen across our members, so we are struggling to understand how fraud risks (outside of Merchant Fill ATMs) can be a genuine driver for the proposed revisions to PSD3/PSRs.

We would welcome any information that can be shared so that the industry can review and respond accordingly. We have, for the avoidance of doubt, specifically excluded reference to ATM theft and/or physical attacks on ATMs as those are typically not fraud but out-and-out criminal theft, which is of course a risk in any market.