

**The ESA's Joint Committee
Sub-Committee on Anti Money
Laundering**

July 2012

Supervisory Cooperation Protocol
between
"Home Supervisor"
and
"Host Supervisor(s)"
of
Agents and Branches
of
Payment Institutions
in
Host Member State

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1. Objective

1. This Cooperation Protocol (the "Protocol") between the "Home Supervisor" and the "Host Supervisor" is intended to assist with the passport notification and registration process and facilitate the effective supervision of agents and branches of the "Payment Institution" in "Host" Member State in accordance with Articles 17, 21 and 25 of the PSD.
2. Furthermore the Protocol is intended to facilitate the effective supervision of the activities of the "Payment Institution" through its agents and branches in "Host" Member State for AML/CTF purposes in accordance with Article 37(1) of the 3rd AMLD.
3. The Protocol should be regarded as a permanent, although flexible, structure for cooperation and coordination among the Home Supervisor and the Host Supervisor with regard to registration and supervision of agents and branches of "Payment Institutions". National laws may provide powers and responsibilities to the competent supervisors that go beyond the provisions of this Protocol. The Protocol is not intended to replace or derogate such laws, and the parties to this Protocol do not waive any powers or responsibilities granted by their respective national laws.
4. The Protocol has regard to the European Supervisory Authority (ESA) Regulations. In particular:-
 - i. Article 1 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (the "EBA Regulation" and "EBA");
 - ii. Article 1 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (the "EIOPA Regulation" and "EIOPA"); and
 - iii. Article 1 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (the "ESMA Regulation" and "ESMA").

2. Definitions

5. For the purposes of this Protocol the following definitions shall apply:
- (a) "Agent" means a natural or legal person which acts on behalf of a Payment Institution in providing payment services (Article 4(22) of the PSD);
 - (b) "AML/CTF" means anti-money laundering and combating terrorist financing;
 - (c) "Branch" means a place of business other than the head office which is a part of a Payment Institution, which has no legal personality and which carries out directly some or all of the transactions inherent in the business of a Payment Institution; all the places of business set up in the same Member State by a Payment Institution with a head office in another Member State shall be regarded as a single branch for the purposes of this Protocol (Article 4(29) of the PSD);
 - (d) "Home Member State" means either of the following (Article 4(1) of the PSD):
 - (i) the Member State in which the registered office of the payment service provider is situated; or
 - (ii) if the payment service provider has, under its national law, no registered office, the Member State in which its head office is situated;
 - (e) "EC Staff Working Paper" means the European Commission's Staff Working Paper¹ on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations (SEC(2011)1178 final) of 4 October 2011;
 - (f) "Home Supervisor" means the competent supervising authority or body of a Payment Institution authorised in the Home Member State as responsible for the authorization and prudential supervision of a "payment institution", including its activities through its agents and branches, in accordance with Articles 20-21 of the PSD, as well as the competent authority designated in the "Home" Member State as responsible for the effective monitoring and supervision from a money laundering perspective of the "payment institution" in accordance with Article 37(1) of the 3rd AMLD. The term may include one or more competent authorities;

¹ <http://register.consilium.europa.eu/pdf/en/11/st15/st15288.en11.pdf>

- (g) "Host Member State" means the Member State other than the Home Member State in which a payment service provider has an agent or a branch or provides payment services (Article 4(2) of the PSD);
- (h) "Host Supervisor" means the competent supervising authority or body as mentioned in article 20 of the PSD in the host Member State where the PSI has established a branch or agent as responsible for cooperation with the "Home Supervisor" in order to assist with the passport notification and registration process and effective supervision of agents and branches of a "payment institution" in "Host" Member State in accordance with Articles 17 and 25 of the PSD. The term may include one or more competent authorities;
- (i) "3rd AMLD" means the Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
- (j) "ML/TF" risk means the risk of being misused for money laundering and/or terrorist financing purposes;
- (k) "Money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee (Article 4(13) of the PSD);
- (l) "On-site inspection" means an inspection carried out by a Host or/and Home Supervisor at the premises of the Payment Institution itself, an agent or branch of the Payment Institution through duly authorised officers and/or examiners;
- (m) "Payment service" means any business activity listed in the Annex of the PSD (Article 4(3) of the PSD);
- (n) "Payment institution" means a legal person that has been granted authorisation in accordance with Article 10 of the PSD to provide and execute payment services throughout the European Union (Article 4(4) of the PSD);

(o) "Payment service provider" means bodies referred to in Article 1(1) (Article 4(9) of the PSD); and

(p) "PSD" means the Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market referred to in this Protocol as the "PSD".

3. Principles of cooperation

6. The following principles apply to this Protocol:

- a) The Protocol is consistent with relevant provisions of the 3rd AMLD and the PSD, which are described in Annex 1 to the Protocol;
- b) The Protocol is based on the Committee of European Banking Supervisors "CEBS" and the Committee of European Insurance and Occupational Pension Supervisors "CEIOPS" 10 High Level Principles for the functioning of supervisory colleges, January 2009;
- c) The Protocol is based on the Common Understanding expressed in Section 4 below;
- d) The "Guidelines on Payment Services Directive Passport Notifications" endorsed by the Committee on the Prevention of Money Laundering and Terrorist Financing shall be utilised by the Home and Host Supervisors and supplemented as appropriate in accordance with the Protocol. The Guidelines are attached as Annex 2 to the Protocol; and
- e) All relevant information, including opinions of the Host Supervisor and decisions of the Home Supervisor referred to in this Protocol, shall be communicated to the other party, preferably in writing, in a timely manner, and shall be written in English or another language accepted by the Home and Host Supervisors.

4. Common understanding

- 7. The 3rd AMLD applies to payment services providers as defined in Article 4(9) of the PSD.
- 8. With the introduction of PSD, a new kind of entity, the "payment institution", and its branches and agents, was introduced in the EU. The PSD applies the "home Member State principle": once authorised in a Member State, a payment institution can conduct business in any other Member State through free provision of services or freedom of establishment without the need to obtain

additional authorisations in the host Member State (Article 10(9) of the PSD).

9. One type of payment institution is a money remittance company. A few of these money remittance companies are large global companies with extensive networks. These companies offer their services within EU by means of single licence and EU passporting. The use of agents is widespread and ranges from several hundred in one jurisdiction to thousands in others. The services they offer pose terrorist financing and money laundering risks, especially in the introduction and layering stages of money laundering, as large amounts of cash are handled through these services.
10. According to Article 18 of the PSD payment institutions are fully liable for any acts of, among others, "any agent, branch or entity to which activities are outsourced".
11. Concerning the transparency and information rules and the conduct of business rules in relation to payment services (Title III and IV of the PSD), payment institutions should respect, at least for consumers, the market conduct rules of the Member State in which they are providing the payment service. Therefore, although licensed by the Home Supervisor, the terms and conditions of a payment institution for operating in the market of another Member State are regulated by the domestic law implementing the PSD in the Host Member State.
12. Similarly, the rules stated in the 3rd AMLD in relation to the AML/CTF obligations of payment institutions follow a territorial approach. The 3rd AMLD requires Member States to impose AML preventive obligations on, inter alia, the payment institutions established on their territory (Article 34 of the 3rd AMLD).
13. A branch of a payment institution established on the territory of the Host Member State qualifies as a "financial institution" according to the 3rd AMLD and must therefore comply in this quality with all the AML/CTF rules of the Host Member State (see Article 3(2) (f) of the 3rd AMLD).
14. An agent or a network of agents, of a payment institution established on the territory of the Host Member State does not qualify itself as a "financial institution" according to the 3rd AMLD. However, the EC Staff Working Paper expresses the following opinion in this matter: *"Although it is not explicitly stated, the territorial nature of the AMLD implies that agents themselves, acting on behalf of the PI, have to comply with AMLD requirements of the host country. But agents' AML obligations would not find their source directly in the AMLD itself, but rather by way of the contract that they have signed with the PI, which is responsible for*

*the oversight of its agents and is, therefore, liable for all possible breaches of AML requirements by its agents. This is confirmed in recital 28 of the AMLD [...]."*²

15. The above does not exclude the possibility that agents of payment institutions could be directly subject to the AML/CTF rules of the Host Member States. Namely, this will be the case:

- a) when the agent of the payment institution simultaneously exercises other financial activities for which s/he is personally subject to the local AML/CTF law and regulation; or
- b) when the scope of the AML/CTF law of the Host Member State has been extended to these agents³.

16. Under Article 17(1) of the PSD, the Home Supervisor has a key preventative role to play, in particular in examining the information which the payment institution intending to provide payment services through agents has to communicate before commencing its activities, in particular a *"description of the internal control mechanisms that will be used by the agents in order to comply with the obligations in relation to money laundering and terrorist financing"* (Article 17(1b) of the PSD) and the *"identity of directors and persons responsible for the management of the agent (...) and evidence that they are fit and proper persons"* (Article 17(1c) of the PSD).

17. The Host Supervisor, which will receive a notification based on Article 25(1) of the PSD, also has substantial preventative responsibilities. In particular it can express an *"opinion"* which could dissuade the Home Supervisor from registering the agent or branch (Article 17(5) of the PSD). It can also inform the Home Supervisor that the engagement of the agent or branch could in its view increase the AML/CTF risk (Article 17(6) of the PSD). When forwarding such an opinion or information to the Home Supervisor the Host Supervisor should:

- share this information with the Home Supervisor in a timely manner, taking into account the Home Supervisor's need to comply with its legal obligation to consider applications within a set timeframe, and

² EC Staff Working Paper SEC (2011)1178, sec. 1 (d), (p. 9).

³ Making use of the flexibility offered by the 3rd AMLD, a minimum harmonization directive which thus allows Member States to *"adopt or retain in force stricter provisions"* (Article 5 of the 3rd AMLD).

- share with the Home Supervisor the information leading to its having “reasonable grounds”⁴ to suspect that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing is taking place, has taken place or been attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing.

The Home Supervisor may then refuse to register the agent or branch. In this respect the EC Staff Working Paper expresses the following opinion: *“it is clear from the whole economy of the system that the non-binding opinion of the host authorities, which have far better means of appreciating and verifying the actual AML fit and proper nature of the agents who are located in their own territory, should be taken with utmost consideration by the home authorities which, while they may in theory depart from the host authorities’ opinion, should at least be able to provide a convincing justification for doing so (‘comply or explain’ approach).”*⁵

18. Should a Host Supervisor consider that using retailers in general or certain types of retailers as agents may increase the risk of money laundering, then this Host Supervisor may decide to inform the Home Supervisor of its opinion as foreseen in Article 17(6) of the PSD.⁶
19. Setting up a centralised structure to organise several agents using a “central contact point” or a “compliance officer” may prove helpful to oversee compliance of a network of agents with the locally applicable AML/CFT requirements. Such a centralised structure may help the Payment Institution comply more effectively with its AML/CTF requirements. Accordingly, payment institutions may wish to establish such a centralised structure on their own initiative. In some jurisdictions, the Host (or Home) supervisor may require that a payment institution establishes a centralised structure to facilitate the supervision of networks of agents and their compliance with AML/CTF requirements.
 - Where a payment institution wishes to establish such a structure, this needs to be communicated and, where applicable, approved by the Host Supervisor.
 - Where host (or home) states’ legislation or regulation requires the establishment of a “central contact point” or “compliance officer”, the extent of responsibilities imposed on such a “central contact point” or “compliance officer” may vary due to

⁴ Art. 17 (6) of the PSD requires such “reasonable grounds” as a prerequisite for issuing an opinion.

⁵ EC Staff Working Paper SEC(2011)1178, sec. 1 (c), (p.7).

⁶ EC Staff Working Paper SEC(2011)1178, sec. 1 (c), (p.7).

the territorial nature of the 3rd AMLD; in all cases competent authorities must have regard to this being proportionate.

In both cases, the responsibilities of the “central contact point” or “compliance officer” may vary, but should as a minimum include playing an interface role between both the Home and the Host Supervisor. The EC Staff Working Paper expresses the opinion that because of the potential benefits of such a structure, *“the European Commission services would therefore, a priori, not oppose such a requirement, but subject to the respect of the proportionality condition. In other words, the costs of having such a centralised structure on top of the existing agents should not outweigh the intended benefits”*.⁷

20. Once the agent's or branch's activities have commenced, Home and Host Supervisors shall cooperate on the basis of Articles 24, 25(2), 25(3), 25(4) and 17(6) of the PSD, and significant powers are granted to both Home and Host Supervisor.
21. The Home Supervisor can take a series of measures listed at Article 21 of the PSD (on-site inspections, information requests, withdrawal of the payment institution's authorisation). Under Article 17(6) of the PSD, it may withdraw the agent's or branch's registration if money laundering or terrorist financing is taking place, has taken place or been attempted, or if the engagement of agent or such branch has increases the risk of money laundering or terrorist financing.
22. To bring about an efficient and risk based AML/CTF and PSD supervision of these services, good cooperation between competent authorities is required. The supervisors must closely cooperate for the purpose of monitoring and enforcing compliance of payment institutions acting through the agents and branches of payments institutions with both the PSD and the 3rd AMLD obligations. This could prove a challenging task for both these supervisors in cases where a payment institution carries out its activities through a comprehensive number of agents established in the Host Member State(s). On-site inspections of a comprehensive number of agents by the Home Supervisor would, in particular, prove a demanding task and, for that reason, the PSD provides (Article 25(3)) that such on-site inspections may be delegated to the Host Supervisor.
23. So, even if the Home Supervisor has registered the agent or branch, it is still possible that the Host Supervisor expresses serious concerns to the Home Supervisor about the ML/TF risk

⁷ EC Staff Working Paper SEC(2011)1178, sec. 1 (f), (p. 13).

associated with the business activities conducted by the Payment Institution through its agents or branch, in line with Art. 17 (6) of the PSD. As in the case of the initial registration, the Host Supervisor should provide the Home Supervisor with the information leading to its having “reasonable grounds”⁸ to suspect that [...] money laundering or terrorist financing [...] is taking place, has taken place or been attempted”, or that the risk of money laundering or terrorist financing could increase. The Home Supervisor may then withdraw the agent’s or branch’s registration. In this respect the EC Staff Working Paper expresses the following opinion: “Such final withdrawal decision is also, formally, the responsibility of the home Member State. But as in the case of the initial registration, it seems very desirable, for the sake of good cooperation between supervisors and maximum AML efficiency, that utmost consideration be granted by the home Member State to the opinion of the host authorities in that matter, and where the home Member State decides to disregard the host’s opinion it provides proper explanation for doing so (“comply or explain”).”⁹

24. Since a branch of a payment institution established on the territory of the Host Member State qualifies as a “financial institution” according to the 3rd AMLD, the Host Supervisor must ensure that it complies with local AML/CTF rules. In addition the Home Supervisor has an important role to play, not only from a prudential viewpoint but also, in cooperation with the Host Supervisor, in supervising the branch's compliance with the 3rd AMLD through, for example, on-site inspections (see Article 25(2) and 25(3) of the PSD). The territorial nature of the 3rd AMLD attributes a prominent supervisory role to the Host Member State. However, formally, there is no exclusive allocation of supervision responsibility, as regards compliance by a branch of a payment institution with the 3rd AMLD obligations to either Home or Host Supervisor.

5. Passport notification and registration of agents and branches in Host Member State

25. The “Payment Institution” shall inform the Home Supervisor of its intention to provide payment services in Host Member State through the establishment of a branch in Host Member State and/or by engaging one or more agents located in Host Member State (Article 25(1) of the PSD).

⁸ As foreseen by Art. 17 (6) of the PSD; see above paragraph 17 of this Protocol.

⁹ EC Staff Working Paper SEC(2011)1178, sec. 1 (c), (p. 8).

26. The Home Supervisor shall – within one month of receiving information from the Payment Institution and before the branch and/or agent be registered – inform the Host Supervisor of (Article 25(1) of the PSD, and for Agents also Article 17(5) of the PSD):
- (a) The name and address of the “Payment Institution”;
 - (b) In case of the intention to establish a branch: the names of those responsible for the management of the branch, its organizational structure, and the kind of payment services it intends to provide in the territory of the Host Member State;
 - (c) The intention of the Payment Institution to register an agent or agents established in the Host Member State, and the kind of payment services it intends to provide in the territory of the Host Member State.
27. If the Host Supervisor so requests, the Home Supervisor shall provide in a timely manner to the Host Supervisor the following additional information (Article 25(4) of the PSD):
- (a) An appropriate description of the Payment Institution’s business model;
 - (b) In case of the intention to engage with agents(s): the names of those responsible for the management of the agent(s), the name of the agents and their addresses;
 - (c) where appropriate, full details of the Payment Institution’s plans to establish on the territory of the Host Member State “central contact point” or “compliance officer” as referred to in paragraph 21 of this Protocol, the detailed description of responsibilities mandated by the Payment Institution to this “central contact point” or “compliance officer”, and the practical arrangements for its establishment;
 - (d) The Home Supervisor’s assessment of the ML/TF risk associated with that business model; and
 - (e) The Home Supervisor’s detailed description and assessment of the Payment Institution’s management of its ML/TF risks, including its procedures and internal control mechanisms to ensure that its obligations in relation to money laundering and terrorist financing under the 3rd AMLD are complied with as regards its intended activities through the agent(s) or through the establishment of the branch in the Host Member State, including appropriate training of staff affiliated to the agent(s) or the branch, and, as part of these obligations, to ensure that the AML/CTF laws of the Host Member State are complied with by the agent(s) or the branch.
28. Article 17(6) of the PSD provides that if the Host Supervisor has reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is taking place, has taken place or been attempted, or that the engagement of such agent or establishment

of such branch could increase the risk of money laundering or terrorist financing, the Host Supervisor shall so inform the Home Supervisor, which may refuse to register the agent or branch, or may withdraw the registration, if already made, of the agent or branch.

29. Article 17(5) of the PSD provides that the Home Supervisor shall take the opinion of the Host Supervisor into account. The Home Supervisor agrees that utmost consideration be granted to the opinion of the Host Supervisor in that matter. In this respect reference is made to the Common Understanding expressed in Section 4 of this Protocol. If the Home Supervisor departs from the Host Supervisor's opinion, the former notifies its decision to the Host Supervisor in a timely manner, providing the latter at the same time with an appropriate justification for its decision ('comply or explain' approach).

30. When assessing the business model of the Payment Institution and, in particular, the adequacy of the Payment Institution's internal controls, Home and Host Supervisors shall, where appropriate, assess whether the fact that AML/CTF duties are performed by retail agents themselves may imply unacceptable threats in AML/CTF policy terms. Again, the Home Supervisor should take into account the opinion of the Host Supervisor, when making its assessment of whether to withdraw the agent's registration (Article 17(6) of the PSD). For example, should a Host Supervisor consider that a specific payment institution could use a centralised structure to organise its agents, then a non-binding opinion should be communicated to the Home supervisor, (see paragraphs 19 and 20).

6. Supervision of the activities of Payment Institution through its agents and branches in Host Member State

31. Home and Host Supervisor shall, in accordance with Article 25(4) of the PSD, provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringements by the Payment Institution, its agent(s) and/or its branch. In this regard, the supervisors shall communicate, upon request, all relevant information and, on their own initiative, all essential information. This includes any information, which is likely to have a material impact on the ML/TF risk assessment of the Payment Institution as regards its activities carried out through its branch or agent(s) located in the Host Member State.

32. The Home and Host Supervisor shall, in accordance with Article 25(2) of the PSD, cooperate in order to carry out appropriate assessments of AML/CTF and PSD controls and take the necessary steps provided for in Article 21 of the PSD in respect of the agent(s) and/or branch of the Payment Institution located in the Host Member State. In this respect the Home Supervisor shall, as appropriate, take the following steps, without prejudice to the competence of the Host Supervisor:
- (a) require the Payment Institution to provide any information needed to monitor compliance;
 - (b) carry out on-site inspections at the Payment Institution, and/or at any agent or branch providing payment services under the responsibility of the Payment Institution, or at any entity to which activities are outsourced;
 - (c) issue recommendations, guidelines and, if applicable, binding administrative provisions/sanctions; and
 - (d) suspend or withdraw authorisation in cases referred to in Article 12 of the PSD.
33. In accordance with Article 25(3) of the PSD, the Home Supervisor shall notify the Host supervisor whenever it intends to carry out an on-site inspection in the Host Member State as regards agent(s) or a branch of Payment Institution established in the Host Member State. The Home Supervisor may, by common agreement with the Host Supervisor, decide that on-site inspections of such agent(s) or branch shall be carried out by the Host Supervisor, or jointly by the Home and Host Supervisor.
34. Article 17(6) of the PSD provides that if the Host Supervisor has reasonable grounds to suspect that, in connection with the engagement of the agent(s) or establishment of the branch, money laundering or terrorist financing within the meaning of the 3rd AMLD is taking place, has taken place or been attempted, or that the engagement of such agent(s) or establishment of such branch has increased or could increase the risk of money laundering or terrorist financing, the Host Supervisor shall so inform the Home Supervisor, which may withdraw the registration of the agent or branch.
35. Article 17(5) of the PSD provides that the Home Supervisor shall take the opinion of the Host Supervisor into account. The Home Supervisor agrees that utmost consideration be granted to the opinion of the Host Supervisor in that matter. In this respect reference is made to the Common Understanding expressed in Section 4 of this Protocol. If the Home Supervisor departs from the Host Supervisor's opinion, the former notifies its decision to the Host Supervisor in a timely manner, providing the latter at the same

time with an appropriate justification for its decision ('comply or explain' approach).

7. Contact information

36. The cooperation Protocol shall designate contact points, and contact details shall be included as Annex 3 to this Protocol.

8. Confidentiality

37. Further to the professional secrecy requirements resulting from EU or national laws and regulations or from any other legal obligations, the parties to this Protocol confirm that any confidential information shared between them shall be used only for lawful supervisory purposes of the payment institution and its agents and branches located in Host Member State. The transmission of information exchanges between the Supervisors will take into account national laws and regulations concerning professional secrecy.

38. The Home Supervisor and the Host Supervisor shall endeavour, to the extent permitted by law, to maintain the confidentiality of all information and shall not disclose information to third parties without first obtaining the prior consent of the Authority concerned.

39. The Supervisors shall endeavour that all persons dealing with, or having access to such information, are bound by the obligation of professional secrecy.

9. Termination

40. The Home Supervisor and the Host Supervisor signing this Protocol commit to apply the provisions of the Protocol until any of them communicates in writing, one month in advance, its wish to discontinue it.

Date:

Date:

Home Supervisor

Host Supervisor

Annex 1

The Protocol is based on relevant provisions of the 3rd AMLD and the PSD, which are described below using the following organization:

- A. Payment institutions according to the 3rd AMLD.
- B. Agents and branches of Payment Institutions according to the PSD.
- C. Supervision according to the PSD.
- D. Cooperation between Member State supervisors according to the PSD.

A. Payment institutions according to the 3rd AMLD

According to Article 3 (2) (a) of the 3rd AMLD the Directive applies to Payment Institutions, as defined in the PSD, and to their branches. Agents of Payment Institutions are not referred to in the 3rd AMLD.

B. Agents and branches of Payment Institutions according to the PSD

Article 17(1) 6 of the PSD provides:

"1. When a Payment Institution intends to provide payment services through an agent it shall communicate the following information to the competent authorities in its Home Member State:

- (a) the name and address of the agent;
- (b) a description of the internal control mechanisms that will be used by agents in order to comply with the obligations in relation to money laundering and terrorist financing under Directive 2005/60/EC; and
- (c) the identity of directors and persons responsible for the management of the agent to be used in the provision of payment services and evidence that they are fit and proper persons.

2. When the competent authorities receive the information in accordance with paragraph 1 then they may list the agent in the register provided for in Article 13.

3. Before listing the agent in the register, the competent authorities may, if they consider that the information provided to them is incorrect, take further action to verify the information.

4. If, after taking action to verify the information, the competent authorities are not satisfied that the information provided to them pursuant to paragraph 1 is correct, they shall refuse to list the agent in the register provided for in Article 13.

5. If the Payment Institution wishes to provide payment services in another Member State by engaging an agent it shall follow the procedures set out in Article 25. In that case, before the agent may

be registered under this Article, the competent authorities of the Home Member State shall inform the competent authorities of the Host Member State of their intention to register the agent and take their opinion into account.

6. If the competent authorities of the Host Member State have reasonable grounds to suspect that, in connection with the intended engagement of the agent or establishment of the branch, money laundering or terrorist financing within the meaning of Directive 2005/60/EC is taking place, has taken place or been attempted, or that the engagement of such agent or establishment of such branch could increase the risk of money laundering or terrorist financing, they shall so inform the competent authorities of the Home Member State, which may refuse to register the agent or branch, or may withdraw the registration, if already made, of the agent or branch.”

Article 25(1) of the PSD provides:

“1. Any authorised Payment Institution wishing to provide payment services for the first time in a Member State other than its Home Member State, in exercise of the right of establishment or the freedom to provide services, shall so inform the competent authorities in its Home Member State.

Within one month of receiving that information, the competent authorities of the Home Member State shall inform the competent authorities of the Host Member State of the name and address of the Payment Institution, the names of those responsible for the management of the branch, its organizational structure and of the kind of payment services it intends to provide in the territory of the Host Member State.”

Article 18(2) of the PSD provides:

“2. Member States shall require that Payment Institutions remain fully liable for any acts of their employees, or any agent, branch or entity to which activities are outsourced.”

C. Supervision according to the PSD

Article 21 of the PSD provides:

“1. Member States shall ensure that the controls exercised by the competent authorities for checking continued compliance with this Title are proportionate, adequate and responsive to the risks to which Payment Institutions are exposed. In order to check compliance with this Title, the competent authorities shall be entitled to take the following steps, in particular:

- (a) to require the Payment Institution to provide any information needed to monitor compliance;
- (b) to carry out on-site inspections at the Payment Institution, at any agent or branch providing payment services under the

responsibility of the Payment Institution, or at any entity to which activities are outsourced;

(c) to issue recommendations, guidelines and, if applicable, binding administrative provisions; and

(d) to suspend or withdraw authorisation in cases referred to in Article 12.

2. Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the Member States shall provide that their respective competent authorities, may, as against Payment Institutions or those who effectively control the business of Payment Institutions which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their payment service business, adopt or impose in respect of them penalties or measures aimed specifically at ending observed breaches or the causes of such breaches.”

D. Cooperation between Member State supervisors according to the PSD

Article 25(2) of the PSD provides:

“2. In order to carry out the controls and take the necessary steps provided for in Article 21 in respect of the agent, branch or entity to which activities are outsourced of a Payment Institution located in the territory of another Member State, the competent authorities of the Home Member State shall cooperate with the competent authorities of the Host Member State.

3. By way of cooperation in accordance with paragraphs 1 and 2, the competent authorities of the Home Member State shall notify the competent authorities of the Host Member State whenever they intend to carry out an on-site inspection in the territory of the latter. However, if they so wish, the competent authorities of the Home Member State may delegate to the competent authorities of the Host Member State the task of carrying out on-site inspections of the institution concerned.

4. The competent authorities shall provide each other with all essential and/or relevant information, in particular in the case of infringements or suspected infringements by an agent, a branch or an entity to which activities are outsourced. In this regard, the competent authorities shall communicate, upon request, all relevant information and, on their own initiative, all essential information.

5. Paragraphs 1 to 4 shall be without prejudice to the obligation of competent authorities under Directive 2005/60/EC and EU Regulation No 1781/2006, in particular under Article 37(1) of Directive 2005/60/EC and Article 15(3) of EU Regulation No 1781/2006 to supervise or monitor the compliance with the requirements laid down in those instruments.”

Annex 2

Guidelines on Payment Services Directive Passport Notifications

Implementation on 1 November 2009

[Revised: June 2011]

DISCLAIMER:

These Guidelines on Payment Services Directive Passport Notifications were drafted in 2009 by an ad hoc working group composed of representatives of competent authorities for the authorisation/supervision of payment institutions in several Member States and submitted afterwards to the Payment Services Directive Transposition Group for information. The Guidelines have been revised to reflect the content of the Guidelines on Electronic Money Directive Passport Notifications (published in June 2011), as applicable to payment services activities.

While the use of the Guidelines is voluntary, all competent authorities appointed under Directive 2007/64/EC are strongly encouraged to use them for passport notification purposes.

While the Commission services participated only as an observer in this working group, it is considered appropriate to publish these Guidelines on the Commission website for reasons of transparency and given the usefulness of this document for any stakeholder. This document, however, does not prejudice the position that the Commission might decide to take on the same matters if developments, including Court rulings, were to lead it to express its views. It does not prejudice the interpretation that the Court of Justice of the European Communities might have on these matters either.

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INTRODUCTION

These Guidelines provide a framework for the co-operation of competent authorities with regard to the implementation of the passport notification provisions of the Payment Services Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 (hereafter referred to as the 'Directive').

In recognition of the need to co-operate and exchange information to ensure an efficient passport notification process for payment institutions, competent authorities are strongly encouraged to use these Guidelines for passport notification purposes.

Competent authority for the purposes of these Guidelines means any authority designated by any EEA State as responsible for the authorisation and/or prudential supervision of payment institutions in their territory, in accordance with Article 20 of the Directive.

Competent authorities agree the annexes to these Guidelines which are comprised of the following:

- i. the standard notification form for freedom to provide services (Annex 1)
- ii. the standard notification form for branch establishment and engagement of an agent located in a host Member State (Annex 2)
- iii. the list of competent authorities for notification purposes (Annex 3)
- iv. the list of national public registers for payment institutions, their agents and branches (Annex 4)
- v. the list of out-of-court complaint bodies (Annex 5)
- vi. the list of competent authorities for handling complaints under Article 82 of the Directive (Annex 6)

PART I – General considerations

1.1. General aims

In accordance with Article 10(9) of the Directive, a payment institution may provide the activities for which it has been authorised, throughout the Community, either through the establishment of a branch or the freedom to provide services, including by engaging an agent.

Competent authorities consider that the adoption of the Directive makes necessary a deepening of their co-operation. In determining these rules of behaviour, the competent authorities intend to uphold practical, pragmatic co-operation between national administrative services for the purpose of:

- facilitating the passport notification process for payment institutions operating within the EEA; and
- examining any practical difficulties which may arise in the application of the Title II provisions of the Directive.

1.2. Co-operation between competent authorities

Co-operation between competent authorities, as a result of the provisions of the Directive, in particular Articles 17, 24 and 25, should lead to genuine dialogue between themselves with a view to promoting a system of notification within the EEA which is as efficient and harmonised as possible.

In this regard, each competent authority should designate a contact point – individual person or relevant department – responsible for the co-ordination of passport notifications, and whose contact details shall be made available to the other authorities (set out in Annex 3 to these Guidelines).

1.3. Mutual assistance and confidentiality

Competent authorities shall provide each other with the fullest mutual assistance in any matters falling within the scope of these Guidelines in accordance with Articles 17, 24 and 25 of the Directive. When receiving confidential information under these Guidelines, they shall treat it in accordance with the professional secrecy provisions under Article 22 of the Directive.

1.4. Scope

These Guidelines deal exclusively with notifications in respect of payment institutions under Articles 17 and 25 of the Directive, and do not extend to the method and means of supervision of payment institutions operating on a cross-border basis.

These Guidelines do not deal with the definition of characteristics of the freedom of establishment and the freedom to provide services.

1.5. Harmonisation of documents used

The competent authorities acknowledge that the analysis of the situation of payment institutions in their respective Member States calls for a variety of methods and practices respecting the fully harmonised provisions of Title II of the Directive. The exchange of best practices would be improved by means of a common terminology and harmonisation of passport notification documents within the scope allowed by national legislation implementing the Directive.

1.6. Update of these Guidelines

Where appropriate, these Guidelines will be updated by the Secretariat of the PSD Working Group located at l'Autorité de Contrôle Prudentiel on the basis of the information received from the competent authorities, to reflect any changes in the content of the Annexes.

The updated Guidelines will be also sent to the European Commission on a periodic basis, to be made available on the relevant area of its website.

PART II – Services of Payment Institutions: Notifications

2.1. Exercise of the right of establishment and freedom to provide services

2.1.1. Contents of the notification made by the competent authority of the home Member State to the competent authority of the host Member State

Article 25 of the Directive requires a payment institution wishing to carry out payment services activities in another Member State to communicate the following information to the competent authority in its home Member State:

- the host Member State in which the payment institution intends to carry out payment services activities;
- the name and head office address of the payment institution;
- the kind of payment services activities it intends to provide in the host Member State, and additionally, in the case of establishment:
 - the address of the proposed branch;
 - the names of those responsible for the management of the proposed branch, and
 - the organisational structure of the proposed branch (including any additional locations in the host state).

In accordance with Article 17(5), if a payment institution wishes to provide payment services activities in another Member State by engaging an agent, the competent authority of the home Member State shall provide to the competent authority of the host Member State:

- the name and head office address of the payment institution;

- the name and address of the agent;
- the kind of payment services activities the agent intends to provide in the host Member State on behalf of the payment institution,

and additionally, in the case of engaging an agent established in a host Member State:

- the names of those responsible for the management of the proposed agent(s), and
- the organisational structure of the proposed agent in host jurisdiction (NB. a separate organisational structure should be provided for each agent being used).

This does not affect the right of both home and host Member States competent authorities to subsequently request additional information, as necessary for the fulfilment of the competent authority of their supervisory duties, in respect of branch establishment and/or use of an agent. Such requests shall not affect the passporting procedure.

All information shall be written in English or another language accepted by both the respective home and host Member States competent authorities.

2.1.2. Transmission of the notification

This information should be communicated to the competent authority of the host Member State(s) as listed in Annex 3 using the standard notification templates set out in Annexes 1 and 2, as appropriate.

This may be by post, e-mail or other electronic means, depending on whether the competent authorities of the home and host Member States agree to exchange such notifications electronically. Annex 3 contains a list of agreed contact points for competent authorities under the Directive and an indication of whether they have agreed to accept electronic notifications. Even where the competent authority of the host Member State does not accept electronic notification, considering the time constraints provided for in Article 25 of the Directive, any notification regarding branches and agents could be sent by email or fax in order for the competent authority of the host Member State to start its assessment of the project before receiving the original notification by post.

This information must be communicated by the competent authority of the home Member State as soon as it is practicable but no later than one month from its receipt.

2.1.3. Commencement of business

2.1.3.1. Freedom to provide services

Upon communication of the notification by the competent authority of the home Member State to the competent authority of the host Member State, the competent authority of the home Member State shall confirm to the payment institution that such a communication has been made. The payment institution may then provide the notified payment services activities in the host Member State.

The competent authority of the home Member State may then add details of the payment services activities to be carried out in the host Member State(s) – the 'passport' – on the public register in a timely manner.

The competent authority of the host Member State may additionally choose to make the information contained in the notification from the home Member State available on its website.

2.1.3.2. Branch establishment, including the engagement of agents established in a host Member State

Upon the competent authority of the home Member State being provided with all the information required under Article 25 of the Directive, and in the case of engaging an agent, upon having followed Articles 17(1) to (4) of the Directive, it shall inform the competent authority of the host Member State.

The competent authority of the home Member State can henceforth confirm to the payment institution that a communication to the host Member State has been made.

It is recommended that the competent authority of the host Member State acknowledges receipt of the notification to the competent authority of the home Member State in a timely manner.

The competent authority of the host Member State (taking into account any information obtained from another relevant authority, e.g. financial intelligence unit, in that Member State) must then inform the competent authority of the home Member State of any concerns with regards to money laundering or terrorist financing, in connection with the intended establishment of the branch or engagement of the agent, in accordance with Articles 17(6) and 25 of the Directive. This information must be communicated by the competent authority of the host Member State as soon as it is practicable, but no later than one month from receipt by the home competent authority of the notification described in paragraph 2.1.2.

The competent authority of the home Member State shall take any information received in relation to the proposed branch or agent into account, in accordance with Article 17(5) of the Directive.

If, within one month after receipt by the competent authority of the home Member State of all the information required under Article 25 of the Directive, the competent authority of the host Member State does not provide any information, or confirms that it has no relevant information, the competent authority of the home Member State must register the branch or agent in a timely manner.

The competent authority of the host Member State may additionally choose to make the information contained in the notification from the home Member State available on its website.

If the competent authority of the host Member State provides, in accordance with Article 17(6) of the Directive, unfavourable information regarding the agent or branch of the payment institution, the competent authority of the home Member State may decide to register, to refuse to register or to withdraw the registration of the branch or the agent. Such final decision is the responsibility of the competent authority of the home Member State but, in the interests of effective co-operation between competent authorities, full consideration should be given to any opinion expressed by the host authorities. In any event, the competent authority of the home Member State will inform both the competent authority of the host Member State and the payment institution of its decision in a timely manner. (Such information to the competent authority of the host Member State should also include the reasons underlying the decision, where this is in contradiction to the opinion provided by the competent authority of the host Member State.)

2.2. Notification of changes to the information provided in the initial notification

In the light of Article 24 of the Directive, competent authorities agree that any changes to an existing notification made under Article 25 of the Directive, communicated by the payment institution to the competent authority of the home Member State (e.g. addition, reduction, cessation of activities, change of name, revocation of licence, etc.) should be communicated between home and host competent authorities. This will help ensure that details of the services being provided by payment institutions and through their agents across the EEA are maintained and kept up to date as far as is possible, in order to maximise the efficiency of the co-operation between competent authorities.

Notification of such changes should be made as soon as is practicable and no later than one month from the date of receipt by the competent authority of the home Member State and should be based on the notification templates set out in Annexes 1 & 2 as appropriate.

This communication may be done in accordance with paragraph 2.1.2. by post or e-mail, depending on whether the competent authorities of the home and host Member State agree to exchange such notifications electronically. Annex 3 contains a list of agreed contact points for competent authorities under the Directive, and an indication of whether they have agreed to accept electronic notifications whether, for example, by PDF attachment, or 'electronic signature' etc.

Communication of changes to 'static data' (e.g. change of name or address) may be made by simple letter or email.

Annex 1 – STANDARD NOTIFICATION FORM FOR FREEDOM TO PROVIDE SERVICES

Direct line:

Local fax:

Email:

[Date]

Our Ref:

Dear

Notification in accordance with Article 25 of the Payment Services Directive (2007/64/EC)

In accordance with Article 25 of the Payment Services Directive (2007/64/EC), I am writing to notify you that on [DATE], **[Name of PI]**, a payment institution authorised by [competent authority of the home Member State], notified its intention [to undertake the activities listed in the attached schedule for the first time under the freedom to provide services/to widen or reduce the scope of the activities previously notified under the freedom to provide services].

If you have any queries, please do not hesitate to contact me.

Yours sincerely,

[Signatory details]

**SCHEDULE TO NOTIFICATION DATED [Date of letter] PURSUANT TO ARTICLE 25 OF THE
PAYMENT SERVICES DIRECTIVE – FREEDOM TO PROVIDE SERVICES**

Type of notification: [e.g. first time / change of services]

Notification reference: [home Member State ref]

Date of receipt by the home authority [date]

Member State in which PI intends to operate: [host Member State]

Payment institution: [name and registration number of PI]

Address: [address]

Telephone number: [tel.no]

Email: [email]

Contact: [name]

Home state: [home Member State]

Authorisation status: authorised by [home Member State competent authority]

Date from which payment services will be provided: [date]

Payment services to be provided:

- ☐ 1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- ☐ 2. Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- ☐ 3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
 - execution of direct debits, including one-off direct debits
 - execution of payment transactions through a payment card or a similar device
 - execution of credit transfers, including standing orders
- ☐ 4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:^{*1}
 - execution of direct debits, including one-off direct debits
 - execution of payment transactions through a payment card or a similar device
 - execution of credit transfers, including standing orders
- ☐ 5. Issuing and/or acquiring of payment instruments^{*1}
- ☐ 6. Money remittance

- ☐ 7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.*¹

¹ including granting credits in accordance with the rules provided for in Article 16(3) of the Directive

☐ yes

☐ no

**Annex 2 – STANDARD NOTIFICATION FORM FOR BRANCH ESTABLISHMENT OR ENGAGEMENT
OF AN AGENT LOCATED IN A HOST MEMBER STATE**

Direct line:

Local fax:

Email:

PREVIOUSLY SENT BY EMAIL / BY FAX DATED [DATE]

[Date]

Our Ref:

Dear

**Notification in accordance with Article 17 / or Article 25 of the Payment Services Directive
(2007/64/EC)**

In accordance with [Article 25 or Article 17] of the Payment Services Directive (2007/64/EC), I am writing to notify you that on [date] **[Name of PI]**, a payment institution authorised by the [competent authority of the home Member State], notified us that it intends to [establish a branch] / [engage (an) agent(s) located in [host Member State]] to carry out the activities listed in the attached schedule / intends to widen or reduce the scope of the activities previously notified for its branch/agent(s) in [host Member State].

We would be grateful if you could acknowledge receipt of this notification.

If you have any concerns in relation to the branch/agent(s), in accordance with Article 17(6) of Directive 2007/64/EC, please confirm these in writing as soon as practicable and no later than [DATE = one month after receipt of the notification by the competent authority of the home Member State]. If no response is received within this timeframe, we will assume that you are content with these aspects of the notification.

Yours sincerely,

[Signatory details]

SCHEDULE TO NOTIFICATION DATED [Date of letter] PURSUANT TO ARTICLE 17 / OR ARTICLE 25 OF THE PAYMENT SERVICES DIRECTIVE – BRANCH ESTABLISHMENT* AND/OR ENGAGEMENT OF AN AGENT* LOCATED IN A HOST MEMBER STATE (* delete as appropriate)

Type of notification: [e.g. first time / additional services]

Notification reference: [home Member State ref]

Date of receipt by the home authority [date]

Member State in which branch/agent is to be established: [host Member State]

Payment institution: [name of PI]

Address: [home address]

Telephone number: [tel.no]

Contact: [name + email address]

Home State: [home Member State]

Authorisation status: authorised by [home Member State competent authority]

Date from which branch/agent is to be established: [upon host Member State acknowledgement expected by XX/specific date]

Branch/agent address: [branch / agent address]

Fiscal identity number: [number]

Persons responsible for Management of the branch/agent: [names]

Payment services to be provided:

- ☐ 1. Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- ☐ 2. Services enabling cash withdrawals from a payment as well as all the operations required for operating a payment account.
- ☐ 3. Execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider:
- execution of direct debits, including one-off direct debits
 - execution of payment transactions through a payment card or a similar device
 - execution of credit transfers, including standing orders
- ☐ 4. Execution of payment transactions where the funds are covered by a credit line for a payment service user:
- execution of direct debits, including one-off direct debits^{*1}
 - execution of payment transactions through a payment card or a similar device
 - execution of credit transfers, including standing orders

- ☐ 5. Issuing and/or acquiring of payment instruments*¹
- ☐ 6. Money remittance
- ☐ 7. Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services*¹

¹ including granting credits in accordance with the rules provided for in Article 16(3) of the Directive

☐ yes

☐ no

Organisational structure

Requirement	Response*
a) Full description of the branch's/agent's structural organisation (number of business units/premises; initial number of anticipated employees; organisational chart, showing both functional and legal reporting lines) and how the branch/agent fits into the corporate structure of the group b) Full description of the intended use of agents if applicable (in case of a branch's notification) c) Full description of outsourcing arrangements d) Full description of participation or intention to participate in a national or international payment system e) Full details of the anti-money laundering procedures to be adopted by the branch or agent(s) in the host Member State f) Full details of the links with internal control system of the payment institution	

* The space provided in the Response column is simply a prompt, and not necessarily indicative of the level of detail to be provided by the payment institution.

Annex 3 – LIST OF COMPETENT AUTHORITIES FOR NOTIFICATION OF CROSS-BORDER SERVICES AND ESTABLISHMENT

(Omitted)

Annex 4 – LIST OF NATIONAL PUBLIC REGISTERS FOR PAYMENT INSTITUTIONS (ARTICLE 13)

(Omitted)

Annex 5 – LIST OF OUT-OF-COURT COMPLAINT BODIES IN ACCORDANCE WITH ARTICLE 83 OF THE PSD

(Omitted)

Annex 6 – LIST OF COMPETENT AUTHORITIES FOR HANDLING COMPLAINTS CONCERNING THE RELATIONSHIP PAYMENT INSTITUTIONS / CLIENTS (ARTICLE 80)

(Omitted)