

Response paper

# Response to CP21/9: New Specific Direction on LINK

March 2022

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# 1 Introduction

- 1.1** We concluded our three-week public consultation on the new Direction to replace Specific Direction (SD8) on 16 November 2021. We received ten responses in total. This document summarises those responses.

## 2 Support for the new Direction

- 2.1** We asked respondents for their views on whether we should issue a new Specific Direction to continue to support the operator of LINK in ensuring that it can meet the objective of continuing to maintain a broad geographic coverage of the free-to-use (FTU) ATM Network in the UK and meet service-user needs.

- **Eight out of the ten respondents** supported the Direction.
- **One respondent** did not support the issue of a new Direction, particularly given the planned access to cash legislation. They questioned the proportionality of issuing a new Direction.
- **One respondent** did not provide a clear opinion

### Our response

- 2.2** We note the overall support for the issue of the Direction. Our cost benefit analysis and proportionality and equality impact assessment, which is published alongside this, provides an explanation of the evidence which supports issuing the Direction.

## 3 Section 3: Definitions

**3.1** We wanted to support and underpin a commitment made by the operator of LINK in early February 2018 to protect the geographic scope of its ATMs, whilst also making a new Direction less prescriptive and more flexible than SD8. As part of this, we proposed replacing the '1km rule' with a 'Defined Radius', set by the operator of LINK.

- **Two respondents** agreed with the Direction having a reference to a 'Defined Radius' as in **Section 3.2**.
- **Three respondents** were in favour of a dynamic measure of the geographic spread, suggesting varying this on a site-by-site basis based on population, urban/rural areas or number of economic units.
- **Three respondents** raised concerns on the updating of the designation of **Protected ATMs** in **Section 3.7** to January 2022. They view the change in date as a baseline change<sup>1</sup> with a number of implications:
  - 60 cases currently in Direct Commissioning would lose their status as a Protected ATM.
  - Previously unprotected ATMs would gain Protected ATM status. One respondent quantified this as 200 ATMs installed since SD8, raising the annual cost of higher protected levels of interchange rates and applicable premiums (funded by interchange fees) by around £750,000.
  - 173 protected locations currently served by a Post Office would not form part of the new Protected ATM listing.
  - Public reporting on the ATM footprint would need to be reset, reducing transparency.

### Our response

**3.2** We are aiming to be less prescriptive with this Direction and do not want to mandate a dynamic radius.

**3.3** We note the observations on proposed update to the reference date. We have redrafted **Section 3.7** on **Protected ATMs** to revert to the baseline date of February 2018.

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<sup>1</sup> In [Specific Direction 8 \(SD8\)](#) the baseline date was February 2018

## 4 Section 5: Requirement to have in place and maintain appropriate policies and measures

**4.1** We proposed requiring LINK to have in place effective and well-defined policies and measures, including financial incentives to enable the continued operation of Protected ATMs, a Defined Radius to set a reasonable distance in which service-users could seek alternative sources of cash access, a filter and criteria to determine the circumstances in which alternative cash access is considered an adequate substitute for a Lost ATM:

- **Two respondents** wanted the Direction to include a periodic review of Protected ATMs, to allow for the removal of ATMs no longer meeting the criteria for protection.
- **One respondent** wanted the Protected ATM Premium to be abolished. They noted that many Protected ATMs are among the most active ATMs in terms of number of transactions.
- **One respondent** suggested that a cap be put on interchange fees earned at high volume sites, and felt this would reduce oversupply of ATMs in some areas.
- **Five respondents** supported the inclusion of initiatives that can act as a suitable alternative to a Lost ATM. A few respondents wanted the Direction to explicitly mention initiatives such as cashback without purchase.
- **One respondent** was sceptical of alternatives to ATMs, and thought that clear processes would be required to assess if they provide a reasonable level of access. The respondent deemed them as a lower quality, insufficient to address consumer needs, and focusing attention away from the fundamental issues affecting the ATM network.
- **Five respondents** commented on LINK's interchange fees and financial incentives. The varying responses indicated that:
  - LINK's financial incentives are insufficient to keep ATMs open
  - interchange fees need to be calculated using a cost study or be set independently
  - interchange fees should include a zonal calculation to reduce oversupply in some areas
  - LINK should introduce a deposit interchange scheme to help the longevity, sustainability, and carbon footprint of the cash ecosystem

## Our response

- 4.2** We note the support for Protected ATMs and alternatives for replacing a Lost Protected ATM. To maintain flexibility, we do not state specific options or the criteria for designating these alternatives.
- 4.3** Like SD8, the specifics on pricing and interchange fees do not form part of the new Direction, though we will continue to monitor the direction their effectiveness and make recommendations to LINK as part of our reviews.

## 5 Section 7: Variations

- 5.1** We proposed a non-objection clause in which LINK would have to give the PSR a minimum one-month notice of their intention to make any variation to its policies and measures, and not bring any changes to which the non-objection clause applies if the PSR raises an objection.
- **Three respondents** commented the non-objection clause in Section 7.
  - **One respondent** supported the non-objection clause; however, they questioned if the one-month notice period was sufficient to provide certainty for investment, given that the time horizon for investments in the ATM network is measured in years.
  - **Two respondents** did not support the non-objection clause, believing that:
    - it represents an indirect approval
    - section 54 of FSBRA does not give the PSR the right to approve changes to policies and measures giving effect to obligations under a direction (while these rights are expressly provided in relation to payment system rules (section 55))
    - it represents a veto power, conflicts with Treasury and FCA guidance, and compromises LINK's independence
    - it limits LINK's flexibility to respond to market conditions and deploy the right solutions to meet customer needs
    - we have alternative enforcement powers
    - the one-month non-objection period was too lengthy

## Our response

- 5.2** We note the specific concerns that some stakeholders raised regarding the non-objection clause in the draft SD. We have amended the requirement to reflect stakeholder feedback.
- 5.3** Following feedback on the non-objection clause, we have made the following changes to the Direction:
1. We reduced the non-objection period from four weeks to two weeks.
  2. We have amended the non-objection clause to introduce three restrictions on the circumstances in which an objection can be raised. This means that the clause can be invoked only where we have a 'reasonable belief' (restriction 1) that the proposed changes 'are likely to' (restriction 2) have an 'adverse impact' (restriction 3) on the objective. We consider this to be proportionate because it provides appropriate limits on the scope of the clause so as to give LINK flexibility over its policies while still allowing us to act where appropriate, so that we can only object if we have a reasonable belief that the proposed changes are likely to have an adverse impact on LINK's objective of maintaining the broad geographic spread of the FTU ATM Network.
- 5.4** Lastly, we consider section 54 of FSBRA to be sufficiently wide for us to make a direction of this kind under this statutory provision.

## 6 Section 8: Monitoring and reporting requirements

- 6.1** We wanted to reduce the monitoring burden on LINK while ensuring that the new Direction requires LINK to provide clear and transparent information about how well it is sticking to its commitment:
- **Three respondents** requested enhanced transparency on the Direct Commissioning process. They specifically asked for:
    - reports on the high turnover of closed Protected ATMs to be in a standardised format
    - more information in the monthly footprint report on areas at risk, as well as a breakdown of installation costs, and information on how effectively consumers use newly installed ATMs
    - additional information to justify the closure and non-replacement of Protected ATMs in specific locations

## Our response

- 6.2** We made recommendations to enhance the transparency of the Direct Commissioning process as part of our second SD8 review.<sup>2</sup> LINK has already updated its reporting to reflect recommendations.

# 7 Section 10: Commencement and duration

- 7.1** There was a general support for the proposed three-year duration, or keeping the Direction in place until legislation on access to cash is in place.
- 7.2** **Three respondents** wanted the review period to assess that the Direction and the upcoming Access to Cash legislation<sup>3</sup> were aligned; or that legislation did not supersede the need for a Direction. There was also general support for the 12 and 24-month review period.

## Our response

- 7.3** During the design of the Direction and following consultation feedback, we continued to meet with the Treasury to share our proposals. This also enabled us to check that there was no conflict between the new Direction and proposed legislation. We welcome the support on the review periods and length of the Direction.

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<sup>2</sup> <https://www.psr.org.uk/publications/policy-statements/second-annual-review-of-specific-direction-8-2021/>

<sup>3</sup> <https://www.gov.uk/government/consultations/access-to-cash-consultation>



## 8 Other comments

- 8.1** **One respondent** asked for the Direction to mandate LINK membership.
- 8.2** **One respondent** asked for the Direction to prohibit FTU to pay-to-use conversions in deprived areas; introduce a mandatory 12-month notice period for conversions; and introduce restrictions on deployers stopping them from closing an ATM until an alternative deployer is found.

### Our response

- 8.3** We addressed the notice period for closing an ATM as part of our second SD8 review. We do not want to be prescriptive in our mandates, and note that membership of LINK is voluntary at present.

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