

## Position Paper on the upcoming revision of the PSD2

Brussels, 30 May 2023

### Introduction

In a speech delivered on 7 February 2023<sup>1</sup>, EU Commissioner McGuinness, in charge of financial services, financial stability and the EU capital market, confirmed that the European Commission would present a proposal for a revision of Directive (EU)2015/2366 on Payment Services (PSD2) for the second quarter of 2023, as announced in its work programme.

Ahead of the presentation of this proposal, UPEI, Europe's independent fuels suppliers' association, would like to reiterate its views on the specificities of the fuel cards sector, which so far was excluded from the scope of the PSD and the PSD2. In this position paper, we plea for this exclusion, namely the limited range and the very limited network exclusions to be maintained.

UPEI has also analysed the VVA CEPS Study<sup>2</sup> on the application and impact of the Directive and broadly shares its recommendations as regards improving the consistent application of PSD2 across Member States, addressing legal uncertainty about its scope.

Finally, the proposal should be fully compatible with the recommendations from the ad hoc group of stakeholders and VAT Experts Group set up by the European Commission DG TAXUD on implementing the Vega International Case (C-235/18).

### 1. Fuel cards are not typical payment instruments

UPEI has constantly emphasised that fuel cards are unique transaction authorisation systems. They are used for the authorisation of the sale and purchase of goods and services related to mobility on the road, such as refuelling, recharging, vehicle servicing, maintenance, parking, tolls, etc. The business model is complex and there is a variety of operating setups.

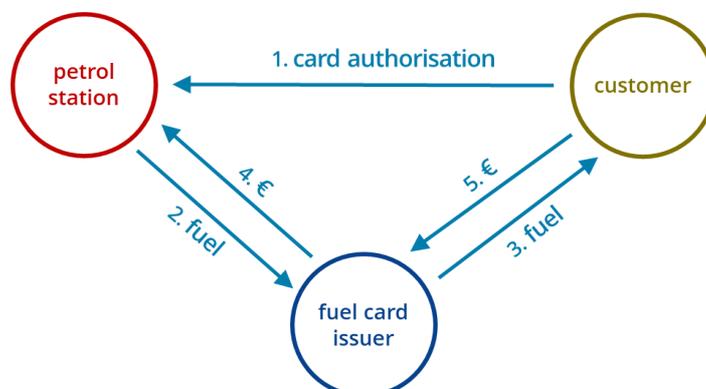
The following scheme provides a simplified standard fuel card business model (showing different steps in the transaction chain):

---

<sup>1</sup> [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_23\\_529](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_23_529)

<sup>2</sup> <https://www.ceps.eu/download/publication/?id=39289&pdf=a-study-on-the-application-and-impact-of-directive-EV0423061ENN.pdf>





More details can be found in the annex, providing an overview of the main differences between typical payment instruments and fuel cards.

Several EU Member States do not even consider fuel cards to be a payment instrument and consider them simply as an authorisation tool, fully out of the scope of the PSD2.

## 2. Maintain exclusions

Fuel cards do not show typical features of payment instruments, as they do not initiate transfer of funds like regular payment cards, but rather initiate the purchase & sale transactions within the fuel supply chain. For this reason, they are not the kind of services primarily targeted by PSD2, and thus they logically benefit from the exclusions that the current Directive provides for, as indicated in recital 14.

For example, unlike payment cards issuers, fuel card issuers bear the pricing risk. The price for the supply of fuel to the fuel card company may differ from the price charged by the fuel card company to the customer (due to independent price negotiations) - resulting in the fact that the price for the refuelling is not exactly passed on by the fuel card company (limits of this may be seen in the ECJ case “Vega International”) and the margin of the fuel card company can be positive or negative. The retail station operator has no knowledge of the card customer and the price agreed with him.

The fuel card issuer is also fully responsible for the quality of the fuel. All warranty claims, claims for damages and claims for payment of agreed fees from the sale exist only between the fuel card issuer and card customer. Furthermore, the fuel card issuer also bears the currency risk as the payment between the fuel card issuer and petrol station can be different from the settlement currency between the fuel card issuer and its clients.

A wide range of companies issue fuel cards, from large organisations to small, independent, and family-owned fuel suppliers. UPEI counts within its membership a significant proportion of fuel card issuers operating only a handful of retail stations,

typically on a regional level. Due to its extensive requirements, the latter cannot afford to go through a full authorisation under the provisions of PSD2. The possibility of exclusions is therefore essential for small and medium businesses to remain competitive, keeping the measures proportional with the objectives of PSD2.

Most UPEI members' business models would be seriously jeopardised, should the exclusions cease to exist. This would in turn negatively affect the competition in the market. Smaller hauliers would partly lose competitiveness as they usually get less advantageous price offers from big petrol stations chains and independent petrol stations would not be able to service them without the support from fuel card issuers. Also, they would face an increased administrative burden, as fuel card issuers usually handle VAT returns for them.

### **3. Introduce simplified procedures**

PSD 2 has brought forward many new payment services. Especially SMEs and family businesses were hit hard by the increase of regulation and the consequent bureaucratic burden that was partly unnecessary. There is no dedicated exemption for every payment service. Therefore, there is a need for simplified procedures for the authorisation of payment service providers.

Especially, should the exclusions mentioned above cease to exist in the future, simplified procedures for the authorisation of payment institutions will be all the more necessary to avoid severe competitive disadvantages for SMEs and family businesses, such as the independent fuel suppliers.

### **4. Coherence with the Vega International Case implications**

UPEI has participated in the work of the ad hoc group of stakeholders and VAT Expert Group ("VEG") set up by DG TAXUD following the publication of Working paper n°1046 and shares its conclusions.

In particular, regarding the Commission's comments in part 4. of this Working Paper we believe that there should (where certain conditions are met) continue to be a supply of goods both in the buy/sell model and the commissionaire model.

From our perspective, the clearest and preferred solution is that fuel card arrangements are treated for VAT purposes as a supply of fuel through the supply chain based on Article 14(1) in the case 2 of the prevalent buy/sell model and based on Article 14(2)(c) in the case of a commissionaire model. This is also in line with the approach taken by the VAT Committee for e-mobility.

Alternatively, if this preferred solution cannot be agreed by, and elaborating further on the EU Commission's analysis in Working Paper 1046, the more prevalent buy/sell model can for VAT purposes be equated to the commissionaire model, as a supply of fuel through the supply chain for VAT purposes, if a number of conditions described by the ad hoc group are fulfilled.

As proposed by the ad hoc group, there is an opportunity with the revision of the PSD2 to enshrine these considerations in legislation, which would ensure a more consistent approach and minimise the need for further input from the CJEU on the interpretation of Article 14(1) in the case of chain transactions, further legislative updates from the Commission and Member States are required.

## Conclusion

UPEI remains at the disposal of the European Commission, and later of the EU Council and the European Parliament to discuss the specificities of the fuel cards sector during the legislative process of revision of the PSD2.

## ANNEX

<b>Main differences between typical payment instruments and fuel cards</b>	
<b>Payment instrument</b>	<b>Fuel card (transaction authorisation instrument)</b>
Used to instruct the bank to make a payment to a third-party bank account	Used to instruct the retailer or service station to deliver goods/services
The amount to be paid is fixed	At the end of the month typically, the actual equivalent price at the moment of sale is calculated and rebates are applied
Authentication of the card holder means the digital signature of the payment transfer	Authentication of the card holder means the right to receive goods/services up to a certain threshold
Positive response triggers the proper processing of the payment instruction	Positive response by fuel card issuer triggers the formal sale of the services/ goods from service station to fuel card issuer and the mandate to provide the services/ goods to the card holder

<p>Holder of instrument is by design authorised to give payment orders from that account to the payee's account</p>	<p>Holder of purchase instrument is not (by definition) authorised to give payment orders that relate to the billing account of the fleet owner</p>
<p>Periodic account statement for payments made or (as in the case of credit cards): aggregated invoice for total value of payments made, followed by direct debit.</p>	<p>Aggregated invoice for goods and services delivered, sent to the corporate treasurer of the customer, and followed by standard settlement of the invoice as per agreement with the customer.</p>