

**Position Paper
on the revision of the Payment Services Directive (PSD2)**

- COM/2023/367 final on payment services in the internal market and amending Regulation (EU) No 1093/2010 (PSR)
- COM/2023/366 final on payment services and electronic money services in the Internal Market amending Directive 98/26/EC and repealing Directives 2015/2366/EU and 2009/110/EC (PSD3)

Brussels, 22 November 2023

Introduction

UPEI, representing Europe's independent fuels suppliers and fuel cards providers, offers a set of amendments on both texts presented by the European Commission on 28 June 2023,

- COM/2023/367 final on payment services in the internal market and
 - COM/2023/366 final on payment services and electronic money services in the Internal Market,
- currently under discussion in the ECON Committee of the European Parliament.

PSR – Recital 13 - Amendment 1

Text proposed by the Commission.

(13) To assess whether a limited network should be excluded from scope, the geographical location of the points of acceptance of such network as well as the number of the points of acceptance should be considered. Specific-purpose instruments should allow the holder to acquire goods or services only in the physical premises of the issuer, whereas usage in an online store environment should not be covered by the notion of premises of the issuer. Specific-purpose instruments should include, depending on the respective contractual regime, cards that can only be used in a particular chain of stores or a particular shopping

Amendment.

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centre, fuel cards, membership cards, public transport cards, parking ticketing, **meal vouchers** or vouchers for specific services, which may be subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in social legislation, such as childcare vouchers or ecological vouchers. Specific-purpose instruments should also include electronic money-based instruments once they meet the requirements of this exclusion. Payment instruments which can be used for purchases in stores of listed merchants should not be excluded, as such instruments are typically designed for a network of service providers which is continuously growing.

service) the functional connection between the goods or services shall be taken into account. Specific-purpose instruments should include, depending on the respective contractual regime, cards that can only be used in a particular chain of stores or a particular shopping centre, fuel cards, membership cards, public transport cards, parking ticketing, meal vouchers or vouchers for specific services, which may be subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in social legislation, such as childcare vouchers or ecological vouchers. Specific-purpose instruments should also include electronic money-based instruments once they meet the requirements of this exclusion. Payment instruments which can be used for purchases in stores of listed merchants should not be excluded, as such instruments are typically designed for a network of service providers which is continuously growing. **In case the respective contractual regime does not constitute payment service (e.g., reselling chains) the instrument shall not be considered as payment or specific-purpose instrument and also not under this Regulation.**

Explanatory Statement.

UPEI represents fuel and energy distributors who issue authorisation instruments known as fuel or fleet cards. Unlike typical payment instruments, these cards initiate a chain of reselling transactions rather than straightforward payment transactions. When a fuel card is used, the issuers purchase the fuel from the point of acceptance, where they have a specific contractual relationship. Subsequently, the goods are sold directly to the final customer, who is the cardholder. Invoices for the provided goods, including relevant VAT, are then issued separately by the fuel card issuers.

Since fuel cards facilitate standard sale and purchase provisions with subsequent payment by the customer, the fuel card issuers do not handle the client's monetary funds. Therefore, there is no need to apply safeguards under PSR in such cases. It is important to note that the description provided above is subject to a particular contractual setup, but it generally applies to the vast majority of fuel card business models.

Referring to fuel cards as an example of specific-purpose instrument in the original draft of the PSR (similarly in PSD2) without further clarification could lead to oversimplified misclassification of fuel cards as payment instruments. Therefore, by including examples of reselling chains, we aim to emphasise what recital 13 already mentions, i.e., the classification of whether an instrument fulfils the definition of a payment service should always be subject to a specific contractual setup assessment.

In rare cases where a specific model of a fuel card categorises as a payment service, it would typically fall under the exemption for a limited range of goods or services. To address this, we propose emphasising the examination of the functional connection between specific goods. In the case of fuel cards, this could include all goods required to operate a vehicle, such as fuel, ad-blue, motor oil, screen-wash fluids, etc.

PSD3 – Article 3 -, paragraph 7 (new), Amendment 2

Text proposed by the Commission.

Amendment.

None

(7) Member States shall install simplified authorisation procedures for certain applicants such as independent or family undertakings, offering payment services to a very surveyable number of merchants who do not have the financial and administrative means to obtain and maintain the licensing procedure of this Directive to ease those undertakings off certain authorisation and maintenance requirements in order to safeguard the proportionality principle.

Explanatory Statement.

UPEI represents fuel and energy distributors. As far as a vast majority of their business models do not fulfil the definition of payment services, some particular schemes may fall under such definition. Unlike large payment institutions, in these cases these service providers are rather classified as small or medium enterprises with very low risk for the client and the merchant.

To safeguard the proportionality principle, it is necessary to introduce simplified authorisation procedures to the PSD3 framework for small and medium independent and family businesses, who are overburdened with the administrative and financial requirements of the current PSD authorisation procedure.

Some of our members operate singular retail stations as well as petrol station networks up to 250 stations. Even the largest of these do not have the capacity to fulfil all conditions and requirements for authorisation as a payment institution. Hence, they suffer severe competition disadvantages. Moreover, they could even be eliminated and pushed out of the market if their business model becomes illegal simply for not having the financial and administrative means to comply with the requirements of being granted and of maintaining the authorisation. They can neither afford to hire a CFO with a minimum of 10 years' experience in the financial sector, nor can they hire additional accountants to comply with the reporting requirements to maintain the authorisation. For those businesses it can be impossible to undergo the demanding authorisation procedure and fulfil strict requirements, which might lead to a cease of their business.

Therefore, we would like to include a possibility for the Member States to introduce rules for simplified authorisation procedure in order to enable SMEs to provide certain form of payment services.

PSD3 - Article 39 - paragraph 1 - Amendment 3
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Text proposed by the Commission.

(1) Member States shall require service providers that carry out either of the activities referred to in Article 2(1), points (j), (i) and (ii), of Regulation XXX [PSR] or carrying out both activities, for which the total value of payment transactions executed over the preceding 12 months exceeds EUR 1 million, to inform the competent authorities about the services offered, specifying under which exclusion as referred to Article 2(1), points (j), (i) and (ii), of Regulation XXX [PSR] the activity is considered to be carried out.

Amendment.

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Explanatory Statement

The taxes should remain disregarded to prevent distortions within the notification obligation. Our main products - petrol and diesel - are highly taxed (for example the German energy tax is at 65,45 cents per Liter of Petrol and at 47 cents per Liter of Diesel) Our business is a high-volume business, meaning that there is a high number of transactions. The one million Euro threshold is surpassed very quickly, even by very small businesses such as a singular petrol station.

UPEI represents nearly 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers. They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national, and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers, including those in remote areas.

Since 1962 UPEI has been advocating for a level playing field and fair competition to ensure an affordable, sustainable, and secure energy supply for Europe's consumers. Today, in the context of the transition to a low carbon economy, UPEI and its members are also addressing the challenges of adapting the product range and meeting consumer demand through market-oriented solutions.