



HOW TO CONSIDER FUEL CARDS WITHIN PSD2

5 SUGGESTIONS FOR A CONSISTENT REGULATORY TREATMENT

MAY 2016

— The revised Payment Services Directive (PSD 2) or Directive (EU) 2015/2366 aims among other things at establishing a modern and comprehensive set of rules applicable to all payment services in the European Union. The target is to make cross-border payments as easy, efficient and secure as 'national' payments within a Member State.

The first Payment Services Directive PSD1 provided exclusion for Fuel cards thanks to the limited network and limited range of goods exemption. Directive PSD 2 goes in the same direction, stating that Fuel Cards is one of the payment instruments that can be covered by the limited network exclusion. This exemption is due to particularities that differentiate Fuel Cards from other payment solutions.

PSD 2 Directive has been published in the Official Journal of the European Union on 23 December 2015. The Directive entered into force on 13 January 2016. Member States are required to transpose PSD2 into national law by 13 January 2018.

This document intends to provide support and clarifications to the legislators to ensure that the spirit of PSD 2 regarding Fuel Cards is properly transposed in all local legislations across the EU.

PAYMENT INSTRUMENT

The purpose of Fuel Cards is to allow the payment of goods and services related to mobility on the road, by the employees (drivers) of the customers of the fuel cards issuer. PSD 2 explicitly uses the term "fuel cards" in the Preamble of PSD2 (14) which, however, could be misleading if understood strictly in the material sense (plastic card) given the development of modern technologies. The term "fuel card" must be understood in line with the definition of a "payment instrument" as defined under article 4 (14) of PSD 2.

B2B MOBILITY FOCUS

While PSD2 rightly focusses on consumers' protection for the use of payment methods across the European Union, the users of fuel cards are mainly the employees (drivers) of the customers of the fuel card issuer for purchase of business related fuel and services on the basis of a business-to-business (B2B) contractual relationship. Hence, the purpose of the fuel card is mainly for "B2B mobility".



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THE LIMITED NETWORK APPLICATION

Fuel cards meet several conditions for the application of the limited network exclusion as specified in Section 13 of the Preamble and Article 3 k (i) of PSD 2, namely the following:

- The network is by definition limited to the fuel stations/partners of the Fuel Card issuer
- The entities involved are directly linked by a direct commercial agreement;
- A single payment brand is used and that payment brand is used at the points of sale and appears on the fuel card

— SUGGESTION 1

Given that the EU legislator has not been very specific in the definition of the limited network exclusion in PSD 2, we suggest that in the preparation of the new legislation transposing PSD 2, the legislator uses the option given in section 14 of the preamble to PSD 2 and includes a provision expressly stipulating that fuel cards are subject to the limited network exclusion as specified in Article 3 (k) (i) and Section 13 of the Preamble of PSD 2.

A DISTINCT PAYMENT SOLUTION

WHAT & WHOM FOR

A fuel card is a personalized device mainly used by the employees (drivers) of the customers of the fuel cards issuer on the basis of a contractual business-to-business (B2B) relationship. The “function” of the fuel card is mainly for B2B mobility.

WHY

Its purpose is to allow the payment of goods and services related to mobility on the road (and sometimes combined with other transportation) by these drivers.



WHAT FOR

The products accessible with a fuel card represent a very limited range of goods which are functionally connected to the purpose of providing mobility on the road.

WHERE

Fuel cards are accepted in a limited network linked to a single brand in order to initiate a payment order between the payment service user and the payment service provider.

HOW

Given the development of modern technologies, this payment instrument can have a material or non-material form, such as a mobile application for instance or an on-board unit, for instance.

THE VERY LIMITED RANGE OF GOODS OR SERVICES

While it is clear that the purpose of fuel cards is to allow mobility on the road sometime combined with train, ferries, boats, ..., one can group goods accessible in the acceptance limited network of a given fuel card in 3 different categories of goods and services. “Functionally related goods and services” should be interpreted in the statement of reasons as having a common denominator ie vehicle mobility, which is then Category 1+2, described below.

— SUGGESTION 2

Given that the EU legislator has not been very specific in clarifying the definition of the limited range of functionally related goods and services exclusion in PSD 2, we suggest that in the preparation of the new legislation transposing PSD 2, the legislator uses the option given in section 14 of the preamble to PSD 2 and includes a provision expressly stipulating that fuel cards are subject to the very limited range of functionally related goods and services exclusion as specified in Article 3 (k) (ii) and Section 13 of the Preamble of PSD 2, provided the accessible products are limited to the Categories 1 and 2 below.

THREE CATEGORIES OF GOODS OR SERVICES

— While it is clear that the purpose of fuel cards is to allow mobility on the road sometime combined with train, ferries, boats, one can group goods accessible in the limited acceptance network of a given fuel card in different categories of goods and services.



INTERCONNECTED FUNCTIONALITIES

Given the technology developments, enabling an interconnection of several payment functionalities in a single medium may be considered in the future. Hence the medium, on which the payment instrument “fuel card” is recorded, can include other functionalities

— SUGGESTION 3

We suggest that in the preparation of the new legislation transposing PSD 2, the legislator should specify in the statement of reasons that *in the event of ensuring a reliable separation of payment instruments and other functionalities, the payment instrument (in the material sense) may be used as a medium with multiple functionalities which are both subject to regulation pursuant to PSD 2 and not.*

THE 1 MILLION LIMIT

According to Article 37.2, Member States shall require that service providers for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of EUR 1 million, send a notification to competent authorities containing a description of the services offered, specifying under which exclusion referred to Article 3 (k)(i) and (ii) of the activity is considered to be carried out. On the basis of that notification, the competent authority shall confirm their motivated decision on the basis of criteria referred in Article 3 (k) (i) and (ii).

— SUGGESTION 4

We suggest that in the preparation of the new legislation transposing PSD 2, since Tolls are in most countries collected on behalf of the states, the legislator explicitly mentions that toll amounts are being excluded from the calculation of the 1 million euros limit.

EXEMPTION FOR THE EUROPEAN ELECTRONIC TOLL SERVICE (“EETS”)

The European Union is working on the implementation of the European Electronic Toll Service (“EETS”), which would eliminate the need to register a vehicle in individual national toll systems and have many On Board Units (OBUs) on the windshield. Purchase of receivables, called “agent model”, is one of the scenarios considered within this project in some countries. Under this scenario, the toll system operator (Toll Charger) issues invoices including the relevant VAT, if applicable, for the end user (the hauler), and a toll service provider (Service Provider) receives a request for payment from the Toll Charger and issues a request for payment for the end user in cascade.

The payment service of money remittance is defined in Section 4 (22) of PSD 2 as 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;”

In our opinion, the above-specified agent model scheme does not directly meet the definition of money remittance as specified in PSD 2 (especially because of the existence of payment accounts in the name of the payer at the service providers). The above-described agent scheme should be viewed as a part of the toll collection system rather than a payment service.

— SUGGESTION 5

We suggest that in the preparation of the new legislation transposing PSD 2, the legislator includes in the statement of reasons that “agent model” as a part of the toll collection system is not covered by the definition of money remittance, and as a consequence is exempt from PSD2 obligations for obtaining a payment institution license.