



PAYSYS REPORT

Issue 6-7 – November 2021

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1.PSD2: The Limited Network Exclusion (LNE)

Within PSD2, the so-called "Limited Network Exclusion" (LNE) plays an important role in practice. A recent consultation by the EBA has put the topic back on the agenda. The application of the LNE is handled completely differently in the several Member States. New guidelines from the EBA are intended to achieve a certain degree of harmonization. Little is known about the LNE market so far. Based on the registrations of larger service providers, we have taken a closer look at this market.

Appendix: Genese of the LNE in EMD and PSD

PSD2: The Limited Network Exclusion (LNE)

(hg) Not every payment service provider (PSP) automatically falls under the EU's Second Payment Services Directive 2015/2366 (PSD2) and is therefore subject to authorisation.

In Art. 3, the PSD2 lists a number of exclusions for services, payment transactions and payment instruments that do not fall under the PSD2, including the so-called Limited Network Exclusion (LNE) in section k.

This exclusion contains three groups of specific payment instruments that can only be used in a limited way:

- only in the premise of the issuer or in a limited network of merchants;
- only to acquire a very limited range of goods or services;
- only in the context of specific national social or tax purposes (usage limited to a Member State).

This PSD2-exclusion originated in the first E-Money

Directive (2000/46/EC, hereafter referred to as EMD1) as an optional waiver for member countries for limited-use e-money, such as prepaid cards within a university.

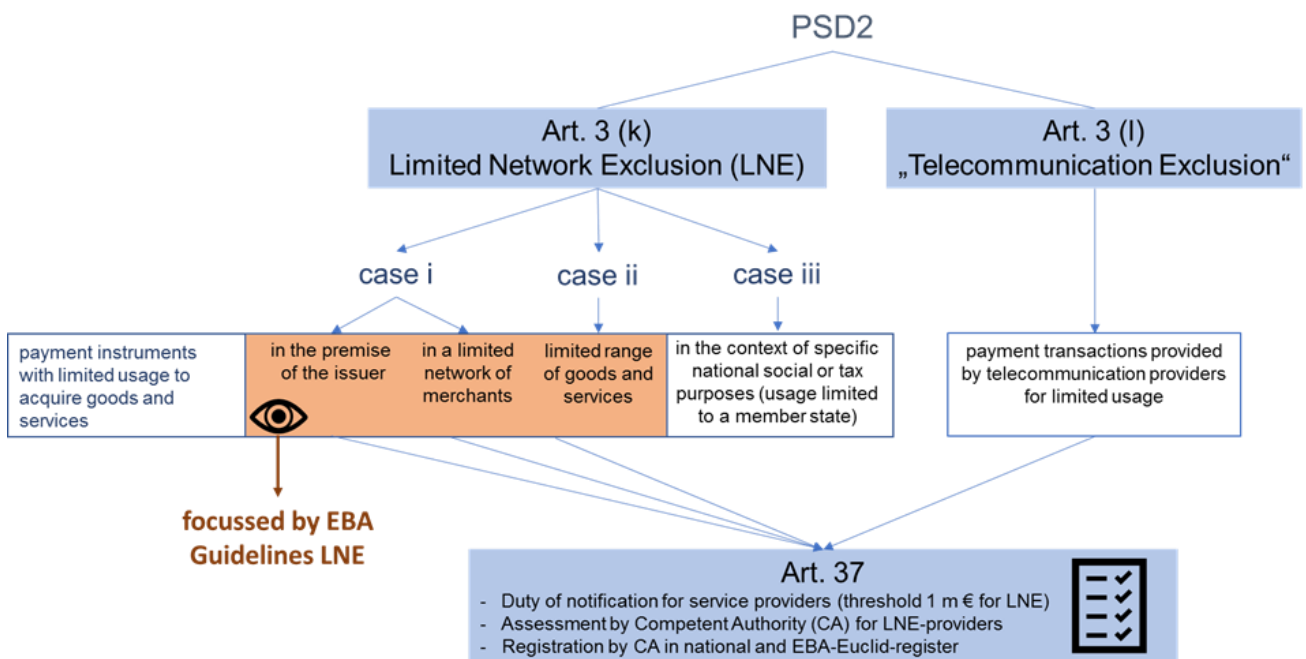
The PSD1 (2007/64/EC) adopted this LNE also for payment instruments that are not based on e-money. In addition, another category has been added to the exemption.

Since then, this exception also applies to payment instruments that are not limited by network size but by the range of products which can be purchased, such as fuel cards, meal vouchers, etc.

With the revision of both directives (EMD2 in 2009 and PSD2 in 2015), this exclusion was further specified in detailed recitals. With the adoption of PSD2 (2015), another category (social and tax purposes) was added to the exclusion.

The category "limited range", on the other hand, has

Fig. 1: Overview of the LNE-Regulation in the PSD2



been further narrowed down. See appendix "Genese of the LNE".

PSD2 also introduced a notification obligation for the issuers of these payment instruments to the competent national supervisory authority ("Competent Authority"-CA) if the annual payment volume exceeds the €1 million limit (Art. 37).

Based on the notification, the competent authorities (CA) are to check whether the conditions for the use of the LNE are met.

If the exclusion is still justified, these companies are to be listed in a national, publicly accessible register, as well as at EU level in a register of the European Banking Authority (EBA). So much for the theory.

In practice, the criteria of the three categories are sometimes interpreted completely differently by the respective national CAs. This has led to a colourful regulatory patchwork within the EU. The same product that falls under the LNE in Member State A, for example, is classified as e-money in Member State B, requiring a licence.

In the Commission's review report on EMD2 (2018¹), *"the issue of divergent interpretations with regard to limited*

networks" was already identified as a *"particular concern"* (p.6) that should be addressed by improving PSD2.

The CAs also perform their statutory duties with regard to notification, verification and subsequent registration with varying degrees of intensity, or even not at all in some cases. For these reasons, the EBA proposed a set of "Guidelines on the LNE under PSD2"² in mid-July 2021 for harmonisation.

These guidelines (GL) were subject to an EU-wide consultation until 15 October 2021.

The participation of many associations shows that the LNE is obviously not only relevant for small players operating in a market niche.

Our Comment:

Why LNE? Does volume matter?

Art. 3 (PSD2) lists a number of exclusions for payment services, transactions and instruments, such as the ones relevant for the LNE. The reasons for the respective exclusions are not explicitly mentioned.

Apparently, these are regarded as low-risk types of payment services that do not require regulation by the PSD2 or they are already regulated in other laws.

It is, therefore, to be welcomed that the EBA clarifies the reason for the LNE in its draft Guidelines:

"While the use of these instruments is limited to the purchase of specific goods and services or within specific distribution channels, thus reducing the risk to customers, it should be noted that users carrying out transactions with these payment instrument do not benefit from the protection envisaged under PSD2." (Recital 4)

So, according to the EBA, *"reducing the risk to customers"* is key for exemptions from the provisions of the PSD2. But the risks to customers should not depend on the payment volumes generated by these

The LNE-criteria are sometimes interpreted completely differently by the respective national CAs

This has led to a colourful regulatory patchwork within the EU

limited payment instruments.

Basically, PSD2 focuses on certain payment services that are offered within the EU subject to authorisation and are listed in Annex 1 of the directive, such as the issuing of payment instruments, like debit or credit cards. As a rule, the volumes do not play a role.

The authorisation requirement and the rule are the same whether one issues 100 or 1 million cards.³ It is therefore the inherent logic of the PSD2 that the answer to the question of which payment services are regulated and which fall under the exclusions must be answered regardless of the volume.

In relation to the LNE, this principle means that the limited application (limited network & limited range) leads to a payment instrument not requiring regulation even if millions of consumers use these instruments (e.g. a public transport cards in a metropolis).

In the past, this principle has been overlooked by regulators. In the PSD2 (2015), the LNE was amended. The criterion for the second category "limited range of goods and services" was further restricted by adding the adjective "very".

This further restriction of the criteria for the "limited range" case group was justified in Recital 13 with the allegedly high market volume of the payment instruments benefiting from this exclusion:

"Feedback from the market shows that the payment activities covered by the limited network exclusion often comprise significant payment volumes and values and offer to consumers hundreds or thousands of different products and services. That does not fit the purpose of the limited network exclusion as provided for in Directive 2007/64/EC and implies greater risks and no legal protection for payment service users, in particular consumers, and clear disadvantages for regulated market actors." (underlined by author)

Apart from the fact that the purpose of the LNE, which is assumed to be known here, was not revealed in PSD1 and the alleged "significant payment volumes" have not been proven, both arguments – consumer

protection and competitive disadvantage for regulated players – are not valid.

Volume doesn't matter!

The LNE only refers to criteria for product features, which limits the risks of non-regulation for the user. Volume doesn't matter! The second argument does not hold either, since the supervised players (e.g. the issuer of a credit card that can be used worldwide) are active in other markets in terms of products, and supervision is not a disadvantage, but often a predicate.

In the upcoming review report on PSD2, the Commission will also have to deal with the impact of this LNE tightening in the coming months. Are the "significant payment volumes" identified at the time, which, so far, have flown under the PSD2 radar (in the "LNE stealth"), now covered and enjoying the protection of PSD2 regulation?

We do not want to prejudice the outcome of the PSD2 review here, but doubts are warranted as to whether the objective was achieved. Even then, we raised the question in this report (March 2014) whether the "significant payment volumes" not covered by the PSD2 existed or not. At that time, only fuel cards came into question, whose payment volumes were considerable, and with which one could not only refuel, but also pay the toll and buy a coffee-to-go at the petrol station shop.

The PSD2 now requires in Recital 13 that "the scope of use is effectively limited to a closed number of functionally connected goods or services". In some countries, the scope of use of fuel cards has been further limited as a result of PSD2.⁴

Overall fuel cards - as a consequence of PSD2 - continue to fall under the LNE. Currently, approx. 45% of the LNE service providers registered in the EU (Germany and Italy excluded) issue fuel cards. See Fig. 4. Let's wait and see if the Commission will try to change this in the upcoming PSD3 proposal (expected in 2022).

It is interesting in this context that the Commission, in the review report on EMD2 (2018), introduces a new intermediate category of a "large limited network". Such a network would be subject to "some but not all EMD2 requirements" (p. 7).

At the same time, the Commission is pursuing a harmonisation of the regime for small EMI (and consequently also for small PI), according to which the regime can no longer be introduced optionally by individual Member States. In the end, we may get a "regulation regime light" for small PSPs (EMI and PI) and for "large limited networks" in the PSD3.

However, this result would contradict the logic of the LNE, according to which the respective payment instruments do not represent a risk due to their product-specific limitation and not due to their volume and therefore do not require regulation.

Almost 40% of the registrations in this part of the EBA Euclid-register are obviously wrong.

Which payment instruments are covered by the LNE?

The national CAs also have different views on this issue. It is therefore to be welcomed that the EBA provides clarification in the proposed guidelines:

"Competent authorities should take into account that

the specific payment instruments that can be used only in a limited way under Article 3(k) of PSD2 are payment instruments as defined in Article 4(14) of PSD2." (Art. 1.1. of the Guidelines).

According to Art. 4(14) of the PSD2 a payment instrument is defined as follows: "a personalised device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order".

In our understanding, a device (e.g., a payment card) is "personalised" if there is a connection between the rightful holder (payer) and the device, whereby only the holder can use the instrument (e.g., through the identification by name and/or through the presence of a personalised security credential, such as a PIN).

Accordingly, cash is not a payment instrument within the meaning of PSD2. Gift cards, which by their nature are not linked to a specific holder and are not issued to a specific person, are accordingly also not payment instruments under Art. 4(14) of PSD2. This statement applies to all anonymous and therefore non-personalised means of payment.

However, the opinions of the national CAs regarding the LNE-relevance for gift cards diverge.⁵ Here, too, the Guidelines should provide clarity.

The duty of notification for larger LNE-service providers

Service providers offering payment instruments that meet the criteria of the LNE are obliged to notify the respective national CA if the total value of payment transactions in the previous twelve months exceeds the amount of 1 million euros.

However, this reporting obligation does not apply to companies that offer payment instruments of the third category of so-called special-purpose cards ("social or tax purposes"). It remains a mystery why this subgroup is excluded here. Accordingly, we have no knowledge of which payment instruments and to what extent these exclusions are used in the EU.

According to Art. 37 No. 2 of PSD2, the notification shall contain a description of the services offered as well as an indication of which subgroup (case i or case ii; see Fig. 1) is used.

Based on the data provided in the notification, the national CA should assess whether or not the condi-

tions for an LNE are met.

The PSD2 provides for *“a duly motivated decision on the basis of criteria referred to in point (k) of Article 3”*, which must be communicated to the reporting service provider. Following this decision, the “negatively tested” entities will be included in a national register, and parallel in the EBA register (so-called Euclid-register⁶).

The registers usually contain the name and registered office of the company, description of the activity, category and start date of the activity.

What is the rationale for a reporting requirement?

Recital 19 states some reasons. Without notification, service providers must rely on a self-assessment of the LNE regulations. Due to the notification, at least the larger providers are checked by the respective CA. This makes sense.

In addition - according to Recital 19 - the CA can detect circumvention attempts. In the past, there would be providers who have redesigned their business model to meet the LNE requirements. A strange statement. Why, for example, should the further limitation of the use of a payment instrument constitute circumvention?

Last but not least, the Commission hopes that the notification requirement will *“provide better guidance to competent authorities to assess the applicability of the legal framework”* and lead to a *“homogeneous interpretation of the rules throughout the internal market”*(Recital 19).

One thing is certain, this goal has not been achieved (see case study “fashioncheque” and the case of gift cards, discussed above). The development of uniform guidelines by the EBA is therefore by no means superfluous.

Notification practice within the EU: huge differences

Practice shows that the notification procedure (requirements, content, processing and verification of the notification) is handled completely differently in the Member States. This does not exactly lead to the repeatedly invoked “level playing field” for the companies concerned in the internal market.

In the notification, the company should provide the information necessary for an assessment by the CA (e.g. product range, payment instrument, foreign use, acceptance partner, contractual relationship with the issuer, etc.).

Germany: wrong data; Italy: black box.

However, there are immense differences in the content of the notification in the individual Member States. For example, the notification form of Austrian CA comprises five pages with detailed information on the respective payment instrument and its possible uses. An extract from the commercial register and a sample of the payment instrument is required as an attachment. The questionnaires in France, Ireland and Italy have a similar or even larger scope. The Italian supervisory authority even requires confirmation of the information by an auditor.

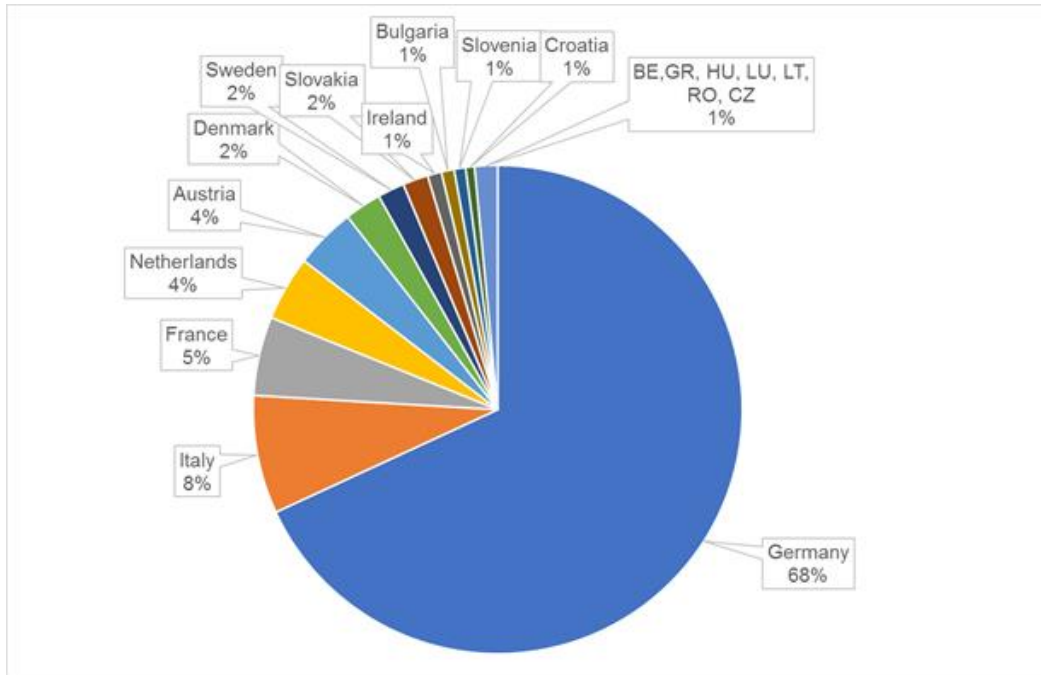
In Germany, on the other hand, the BaFin (as CA) only requires the identification of the activity by means of a cross in a pre-selection table (“city card”, “clothing card”, “stadium card”, etc.).

The German minimalism by means of a 5-minute notification has of course its low-resource charm for both sides but is difficult to reconcile with the PSD2 requirement of a properly justified assessment by the respective CA based on the LNE criteria. Apparently, in Germany, even the assessment of bigger LNE-service providers is still left to the respective market players.

It can be assumed that the EBA guidelines will also bring about harmonisation of these diverging notification procedures. The guidelines explicitly assume an active role of the supervisory authorities in the assessment of the notified payment instruments.

As a result, the definition and interpretation of a num-

Fig. 2: Registered LNE-service providers in the EU (status October 2021).
Total volume: 1,188 service providers.



Sources: EBA-Euclid-Register and BaFin-Register

ber of detailed criteria will be harmonised. The EBA requires that the notification must contain sufficient information from the notifying entities on these individual criteria to enable a review based on these criteria (GL 6.9).

For example, the definition of a *“leading product”* in the 2nd case group (limited range) would lead to the provider having to classify the products to be acquired with the payment instrument accordingly and explain the functional relationship (see GL 4.2.).

A logical consequence of envisaged harmonisation based on detailed criteria in the Guidelines is the renewal of the notifications already made since the implementation of PSD2 in the individual member states after the adoption of the Guidelines (expected: October 2022).

LNE: Market overview

Due to the notification and the public registration, we can at least see which larger service providers are making use of the LNE with which products.

Based on the registrations, we have taken a closer look at this market.

We are assuming that there are no mis-representations

and that all service providers listed in the national register and in the Euclid-register are fulfilling both requirements: their activities are based on specific payment instruments within the LNE and the value of these activities exceeds 1 m. euro.

Our analysis is based on data from the EBA Euclid register (as at October 2021) supplemented by data from the BaFin register for Germany.⁸ Under the title *“service provider excluded from scope PSD2”* we find a total of 1,188 entries, excluding 205 telecommunications companies that make use of the exclusion pursuant to Art. 3(l) of PSD2.

Of these 1,188 LNE-service providers, 809 (68%) are companies included in the German register. See Fig. 2. This result is striking. Was BaFin particularly diligent and thorough (German *“Gründlichkeit”*) or does regulation in Germany exert a special attraction for LNE providers (regulatory arbitrage)?

Where is the German “Gründlichkeit”?

Based on the industry categories specified by BaFin, notifications from the following industries predominate:

- Public transport: 378 (48%)
- Fuel cards: 235 (29%)

- Others (mainly betting shops): 167 (21%)

We have taken a closer look at the issuance of payment instruments within these market segments. In public transport, only about 7 to 10 of these registered mainly local public transport companies are issuing a payment instrument, which could have a payment volume above 1 m. Euro.

All other public transport companies seem to have listed because they have a license to issue payments cards or a payment app. But, until now, they are not using this license. So, we see about 370 flawed registrations within this segment.

The other segment with flawed registrations consists of German sport betting agencies (about 140 notifications). Most of them are very small one-person-kiosks which are allowed to issue or are already issuing a prepaid card for sport betting within a franchise chain.

Most of these cards can only be used at the issuing agency (strictly closed-loop without PSD2 relevance). Only in few cases, these cards can be used for payments at other regional agencies. Only in these cases, these non-closed loop cards are subject to PSD2.

Based on our market research, it is pretty unrealistic that such one-man-kiosks (partly kebab shops) are issuing prepaid cards for sport betting with a volume of more than 1 m. Euro per kiosk!

Again, notification was not made by the service provider itself, but presumably by the licensor of the respective payment instrument for precautionary reasons. In our research we have found that many registered service providers are unaware that they are listed in the national register.

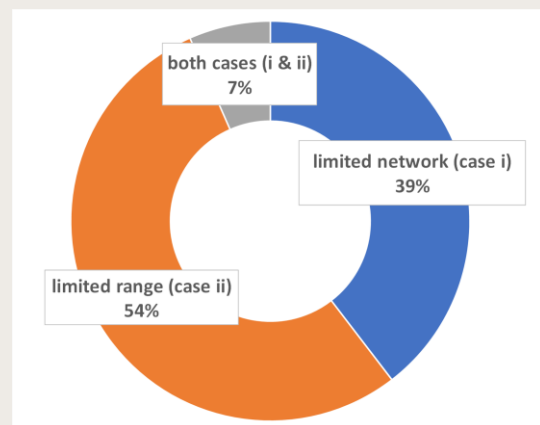
The situation is probably similar for the "fuel cards" segment. Here, too, there were collective reports regardless of whether the 1 m euro threshold had been reached or not.

We have spoken to registered small petrol stations whose fuel cards are nowhere near the threshold. There are also several false reports from service providers whose fuel cards make use of the limited range exclusion, but can also be used to purchase a wide range of goods in the affiliated Coop markets. Instead of limited range (case ii), one should have opted for "limited network" (case i).

Due to the misreporting in Germany, we see at least about 500 flawed registrations of service providers in the Euclid-Register of a total of 1,188 registrations of LNE-service provider. As result, almost 40% of the registrations in this part of the EBA Euclid-register are obviously wrong.

The question arises as to how such a huge volume of misreporting can occur if the registration was made after a required "duly motivated decision" by the CA in accordance with Art. 37 (2) of PSD2.

Fig. 3: Type of exclusion used by LNE-service provider. Total: 379 service providers (excluding Germany).



Source: EBA-Euclid-Register (October 2021)

It will certainly be interesting to see if the German dominance in the country comparison of LNE notifications will disappear after all service providers have to re-register and be examined by BaFin following the adoption of the Guidelines.

Currently, German data cannot be used for market analysis.

The same applies to the almost 100 registrations in Italy. The PSD2(Art. 37) requires that a registration contains the "description of activity" In the national LNE-register of the Italian CA (Banca d'Italia) and in the EBA register this information is lacking. In both registers the exclusion category is mentioned twice, which makes no sense.

We have tried to generate this missing information ourselves. Unfortunately without success. Not a single LNE service provider from Italy has responded to our

request. To sum up: Germany: wrong data; Italy: black box. For the other member states, however, we are confident that the data are robust.

With regard to the use of the LNE categories, there is a slight dominance of the category "limited range" (ii). See Fig. 3. A reason for this is the relatively high proportion of fuel cards (45%), which are often classified as "limited range".

Excluding Italy, the share of "limited range" would increase to 70%. In Italy, almost all service providers opt for "limited network". Unfortunately, we do not know which payment instruments and sectors are involved.

It is striking that as many as 7% of the companies make use of both categories at the same time. According to the proposed EBA-Guidelines (1.11.), this will no longer be possible in the future.

Not surprisingly, most LNEs relate to fuel cards (including non-card payment instruments and payment apps for refuelling electricity).

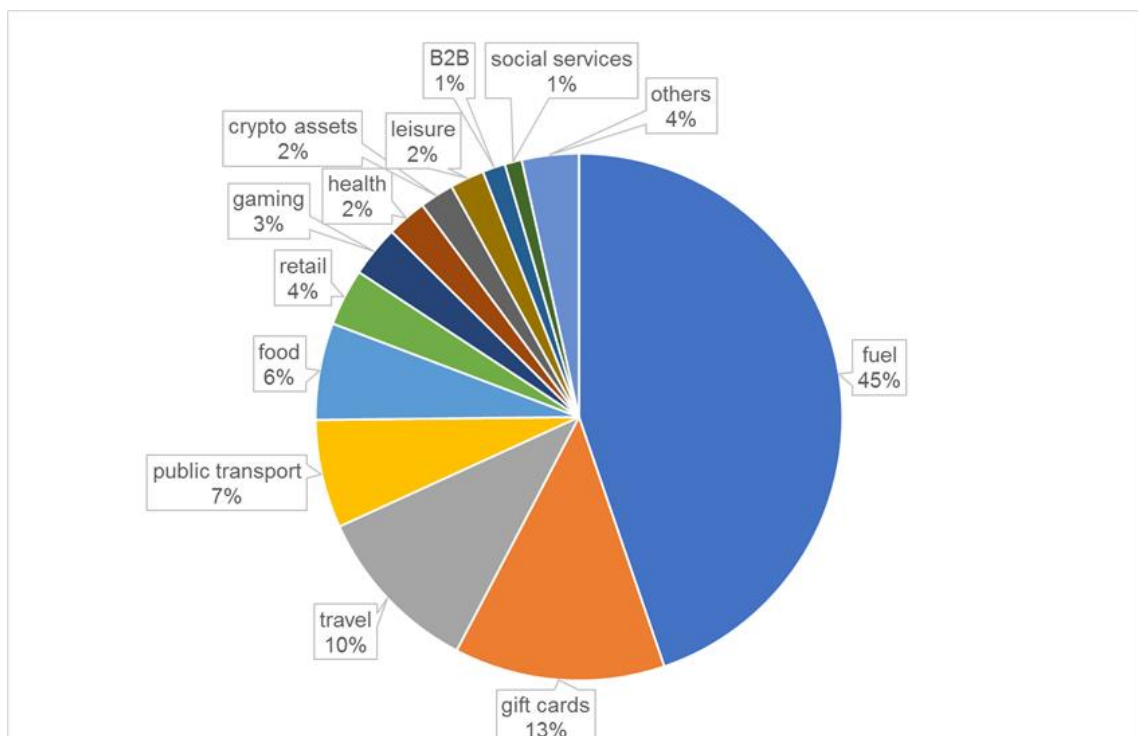
Other important segments are gift cards (13%) and payment instruments in the transport sector (public transport, car sharing, taxi payment and parking) accounting for a total of 17%.

In Recital 14 of the PSD2, cards are still predominantly mentioned as examples for the LNE. In practice, these instruments still play an important role (fuel cards, gift cards), but in addition they are often proprietary payment instruments for online payment of goods and services offered on internet platforms, such as food delivery, car sharing etc.

It is therefore to be welcomed that the new Guidelines of the EBA explicitly provides for the application of LNE payment instruments for "online stores only" (GL 2.3.).

However, the question arises whether the use of a "common brand" is sufficient for a digital platform to still be classified as a "limited network" (case i). It is difficult to imagine that the platform "Amazon", for example, is still a limited network.

Fig. 4: Type of industry-related activity by LNE-service providers. Total: 286 service providers (excluding providers registered in Germany & Italy).



Source: EBA-Euclid-Register (October 2021)

Case Study Fashioncheque

Fashioncheque is a gift card for fashion, established in the market since 2008 and issued by the Fashioncheque Holding in the Netherlands. The gift card is available in several EU Member States, like the Netherlands, Germany and Belgium.

Despite the card's limitation to fashion items (limited range), the payment instrument is classified differently by CAs in different countries. In the Netherlands, the card is classified as e-money, according to which the issuer must be either an e-money institution or a bank. For this reason, the legal issuer here has been a bank (German-based solarisBank) since 2016. In Germany, on the other hand, the same product falls under the LNE (case ii for limited range). In Austria, the non-personalised card would not fall under PSD2 and thus not under the LNE. In Denmark, on the other hand, the card is classified as limited network, but with the condition that certain consumer protection provisions of PSD2 are relevant.

So we see four national CA with four different approaches for the same product. It is questionable whether the proposed Guidelines can achieve the necessary harmonisation here.



Some pain points of the proposed Guidelines

- The current administrative practice of the national CAs could result in identical products falling under the LNE in Member State A and as regulated payment instruments in Member State B (either under PSD2 or EMD2). See case study "Fashioncheque". It is quite conceivable that despite the introduction of the EBA guidelines, such differences will continue to exist in the future and thus lead to a violation of the "level playing field" principle. The EBA rejects a coordinated approach between the respective national authorities with reference to the additional workload (Recital 59 of the GL). It would be welcome if, at least in the case of different classifications by national CAs, there were some kind of arbitration body, e.g. at the EBA.
- The EBA Guidelines are focused on LNE cases i (limited network) and ii (limited range). For the

third group (social or tax purposes), the EBA only confines itself to the statement that the CAs should not require to fulfil the requirements relevant for limited network and limited range for these kind of payment instruments (GL 7). However, according to the PSD2, the usage of these instruments should somehow be limited too.

The only restrictions mentioned in PSD2 (Art. 3 (k)) are the limitation of the application in a single member state and the requirement of a direct commercial agreement between the acceptance points and the professional issuer.

The EBA simply states: "The EBA did not find merit in providing more clarity on the exclusion under Article 3(k)(iii) of PSD2, since the specific aspects on the use of the instrument, including its funding, are specified in the respective national social or tax law." (Recital 69). Accordingly, there are no guidelines and no notification obligation. This is somehow unsatisfactory in terms of harmonisation in the internal market. It remains

to be seen whether this restraint will be honoured by the market participants in the consultation process.

- If a provider issues several different payment instruments that fall under the LNE (e.g., citycard in city A and in city B), the €1 million threshold should refer to the total payment volume of all LNE products offered by that company and not to each portfolio (GL 6.7.). The EBA refers to the text of Art. 37 No. 2 of PSD2, but the text is not clear here and explicitly refers to individual activities covered by the LNE.

The EBA justifies this requirement with the risk of circumvention: *"This would be particularly relevant if a single service provider, with the intention to circumvent the requirements of PSD2, issues a large number of payment instruments not breaching the thresholds but at the same time generating a very high amount of transactions"* (Recital 62).

This argumentation is inconsistent and contradicts the principle of PSD2 mentioned above, which was affirmed by the EBA, that market volumes may not play a role in the question of the LNE due to the inherent logic of the directive. All criteria as to whether there is an authorisation requirement or an LNE are only product-related, irrespective of any volumes. In the case of a self-assessment and a "five-minute notification", we think one could still let this requirement pass. But this will no longer be the case in the future. The EBA's requirement may lead to a time-consuming

notification and assessment of mini-systems.

Once adopted, the guidelines will come into force in October 2022.

The CAs have the usual "comply or explain" option. The guidelines relevant to the LNE (PSD2 and EMD2) currently offer a lot of room for interpretation.

With the EBA clarifies certain interpretations of the Directives by means of the Guidelines, the question arises as to whether the EBA may be exceeding its competence. Is it not rather the task of the legislator to provide clarity by means of a revised PSD (PSD3)?

Appendix

Genese of the LNE in EMD and PSD

Directive	Content	Comments
EMD1 (2000) Art. 8 & Recital 15	e-money <i>"accepted as payment only by a limit number of undertakings, which can be clearly distinguished by:</i> <ul style="list-style-type: none"> • <i>their location in the same premises or other limited local area or</i> • <i>their close financial or business relationship with the issuing institution, such as common marketing or distribution scheme"</i> 	Optional decision by a Member State to waive the application of some or all of the provisions of the EMD1; Further requirements: <ul style="list-style-type: none"> • Maximal storage amount 150 Euro, • Domestic usage; no passport, • Periodical reporting of activities and of the outstanding e-money volume.

<p>PSD1 (2007) Art. 3(k)</p>	<p><i>"Services based on instruments that can be used to acquire goods or services</i></p> <ul style="list-style-type: none"> <i>only in the premises used by the issuer or</i> <i>under a commercial agreement with the issuer either within a limited network of service providers or</i> <i>for a limited range of goods or services"</i> 	<p>General exclusion: no application of the Directive; No further explanation in Recital 6.</p>
<p>EMD2 (2009) Art. 1(4) & Recital 5</p>	<p><i>"This Directive does not apply to monetary value that is used to make payment transactions exempted as specified in Article 3(k) of the PSD1</i></p>	<p>Extended explanation in Recital 5:</p> <ul style="list-style-type: none"> <i>"Specific pre-paid instruments, designed to address precise needs";</i> <i>"in a specific store or chain of stores";</i> <i>"limited range of goods or services, regardless of the geographical location of the point of sale";</i> Examples: <i>"store cards, petrol cards, membership cards, public transport cards, meal vouchers or vouchers for social services (such as vouchers for childcare, or vouchers for social or services schemes which subsidise the employment of staff to carry out household tasks such as cleaning, ironing or gardening)";</i> The instruments (probably referring to "vouchers for social services") <i>"are sometimes 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.";</i> No exemption: <ul style="list-style-type: none"> <i>"where such a specific-purpose instrument develops into a general-purpose instrument" and</i> <i>"instruments which can be used for purchases in stores of listed merchants"...as such instruments are typically designed for a network of service providers which is continuously growing'.</i>
<p>PSD2 (2015) Art. 3(k) & Recitals 13 & 14</p>	<p>"services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:</p> <ul style="list-style-type: none"> <i>(i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;</i> <i>(ii) instruments which can be used only to acquire a very limited range of goods or services;</i> <i>(iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer"</i> 	<p>Extended explanation in Recital 13 and 14:</p> <ul style="list-style-type: none"> Addition of a third category (tax & social purposes) <i>"where the payment instrument is regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services";</i> Further restrictions: <ul style="list-style-type: none"> No usage of the instrument within more than one limited network, Narrowing the interpretation of limited range by adding the adjective "very" and the requirement of <i>"a closed number of functionally connected goods or services".</i> Example for the content of the required <i>"direct commercial agreement"</i>, <i>"which provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used there";</i> Same examples mentioned in Recital 5 of EMD2 by adding "parking ticketing"; Same conditions for no exemption according Recital 5 of EMD2.

Notes

- 1 European Commission, COM(2018) 41 final of 25 January 2018
- 2 <https://www.eba.europa.eu/eba-consults-draft-guidelines-limited-network-exclusion-under-revised-payment-services-directive>
- 3 However, member states have the possibility to apply a "regulation light" for e-money issuers and payment service providers (PSPs) whose volumes remain below certain thresholds (so-called "small" or "exempted" payment institutions and e-money institutions according to Art. 32 of PSD2 and Art. 9 of EMD2). Several Member States make use of these options, such as the Netherlands, Czech Republic, Denmark, Latvia, Lithuania, Poland, Finland, Italy, Sweden, Belgium and Norway. Currently, the EBA register lists 2,243 exempted PIs and 73 exempted EMIs.
- 4 In Germany, for example, the motto is: "Everything that moves the car can be purchased with it".
- 5 FMA, the Austrian CA, for example, takes the view outlined above regarding the relevance of the Austrian payment services law "ZaDiG" (2018), which implemented the PSD2: "Accordingly, it is not a payment instrument within the meaning of the ZaDiG 2018 if the instrument does not provide any information about the payment service user, since in such cases there is no personalization and there can be no personalized process flow. Consequently, the ZaDiG 2018 does not apply to such instruments." (FMA Rundschreiben "Begrenzte Netze" of 21 January 2020, p. 8). Other CAs (such as BaFin in Germany) are of the opinion that non-personalized gift cards may fall under the ZAG (German law in which PSD2 is implemented), according to which the requirements of the LNE could also apply to such cards. Gift card providers are often represented in the LNE segment (approx. 13% of registered companies; see Fig. 4). Apparently, CAs in several countries (e.g. Denmark, France, Netherlands, Ireland) do not represent the view of the Austrian FMA.
- 6 <https://euclid.eba.europa.eu/register/pir/disclaimer?returnUrl=%2Fpir%2Fsearch>
- 7 European Commission, Review EMD2, COM(2018) 41 final, p. 6
- 8 Although the publicly accessible BaFin register was last updated in August 2020, it contains more entries than the EBA register and is therefore "more up-to-date". Obviously, the last update of the EBA registrations for Germany was before August 2020.

Should you have any questions or comments please contact:

Dr. Hugo Godschalk (hgodschalk@paysys.de)
 Dr. Malte Krueger (mkrueger@paysys.de)

Please, send us your views to:
paysys-report@paysys.de

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PaySys Consultancy GmbH

Im Uhrig 7
 60433 Frankfurt /Germany
 Tel.: +49 (0) 69 / 95 11 77 0
 Fax.: +49 (0) 69 / 52 10 90
 email: paysys-report@paysys.de
www.paysys.de

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