

POSITION PAPER

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UPEI views on the 'limited network' and 'very limited range of goods and services' exclusions under PSD2

In the context of the development of EBA own-initiative guidelines on the exclusions for 'limited network' and 'very limited range of goods and services' under PSD2, UPEI appreciates the opportunity to share views from the experience of fuel card issuers across Europe.

1. Fuel cards are not typical payment instruments

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.

Please refer to the enclosed factsheet for more details.

Please find an overview of the main differences between typical payment instruments and fuel cards in annex.

2. Exclusions are essential for fuel card issuers

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 logically benefit from the exclusions that the 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 of fuel cards exist only between the fuel card issuer and card customer. Furthermore, the fuel card issuer generally purchases fuel from its supplier in the currency of the country where the relevant filling station is operated. On the other hand, selling price is set in the same currency only for clients located in this country, for all the other clients the price is converted into EUR.

A wide range of companies issue fuel cards, from large organisations to small, independent and family-own 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.

Should these exclusions cease to exist in the future, simplified procedures for the authorisation of payment institutions would be needed to avoid severe competitive disadvantages for SMEs and family businesses such as the independent fuel suppliers.

3. Addressing current issues with the implementation of the exclusions

While they are essential for fuel cards issuers to operate, clarifying the scope of the exclusions is needed as some aspects are neither fit for purpose, equally understood nor consistently applied across Member States.

a. Singular logo requirement

Certain Member States such as Germany require a singular logo to be eligible for the “limited network” exclusion. Small and medium fuel suppliers had to change their fuel card models but with no advantage for the customer (e.g. network of 10 retail stations operating with two logos had to separate their customer network by issuing two payment instruments and invoicing separately). Indeed, the customer is confused to why he would have to deal with two payment instruments while it is the same company. The alternative, e.g. if shop goods cannot be sold anymore via the card system, would be even less comprehensible for the customer. In the specific case of independent fuel suppliers, the customer is not misled because:

- Companies operate in very regional markets;
- There is no exponential growth of our retail station networks;
- If a station or two are added to the network, the customer would be informed;
- Unlike with very fast-growing card systems, the customer is unlikely to lose track of the scope;
- Companies typically are family businesses that in many cases have been run for generations and the customer relations have grown historically;
- It is never two networks merging, it is always one company operating two brands.

For all these reasons, there is no risk of misleading customers with multiple logos, and the implementation of this requirement has created an unnecessary burden for both fuel cards issuers and their customers.

The interpretation of the limited network exclusion should be clarified to allow fuel card issuers to provide fuel cards that can be used at differently flagged retail stations (bearing two logos/colours), while operating a single payment brand as per the requirements of the PSD2. If they want to limit this possibility, Member States could impose strict conditions. These conditions could for example include effective customer communication and information of a possible network extension, in addition to restricting it to single companies using two logos (as opposed to two networks of two different companies merging) and operating in a regional market (as opposed to operating nationally).

b. Acquiring of payment transactions

In Germany, independent fuel suppliers, due to their business model, have been made acquirers of payment transactions requiring authorisation by accepting credit and debit cards.

In this situation, the fuel supplier owns the fuel, while the lessee of the retail station owns the shop goods. The fuel supplier handles the invoicing for the lessee, and holds the contracts with credit card acquirers. These contracts include clauses that in case of fraud (e.g. credit card not covered) the lessee will be fully reimbursed by the fuel supplier. In practice, the fuel supplier and lessee settle by offset as follow: the lessee offsets daily the cash in intake resulting from the fuel sales against his claims resulting from the shop good sales paid by card. Because of this offset settlement, there is no actual transfer of funds.

For our members this had severe consequences, while we believe that:

- There is no advantage for the customer, unlike with the Strong Customer Authentication for example. The customer's debit/credit card is already fully regulated. Regulating the acquiring of his card is of no further advantage to him.
- Furthermore it does not increase the insolvency protection of the lessee ("protection of the merchant"). Keeping the cash intake as a result of a daily offset is the best insolvency protection there is.

For these reasons, UPEI calls for a clarification of acquiring as a payment institution and the objectives it aims to achieve. We believe that the current classification of the outlined business model contravenes the proportionality principle, as no exclusion is therefore available. We suggest guidelines clarifying the protective purpose of acquiring of payment transactions as well as an assessment, whether there is an actual gain from classifying fuel card issuers as acquirers considering the daily offset model and the fuel supplier bearing the delcredere risk. This would help ensure the consistent and harmonised implementation of PSD2 provisions by Member States.

c. Very limited range of goods and services

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. It is generally accepted that the following goods and services are directly related to the vehicle and therefore fall under the exclusion:

- Articles allowing daily mobility on the road: conventional and alternative fuels, additives (serving for the purpose of fulfilling the EU emission standards e.g. AdBlue), motorway toll, vignettes, parking, tunnel fees, ferries etc.
- Articles directly related to the vehicle operation: lubricants, windshield wiper fluid, breaking fluid, tyres, washing and cleaning services, windscreen wiper rubber, vehicle first aid kits, tachograph discs, etc.

On the other hand, goods not related to the vehicle operation but widely available at petrol stations for the driver (sandwiches, drinks, fruits, yogurt, cigarettes etc) are not limited and therefore cannot be purchased with a fuel card in the framework of the "very limited range of goods and services" exclusion.

UPEI suggests clarifying this interpretation in the upcoming guidelines.

We stand at EBA disposal to elaborate further on concrete cases of misinterpretation and inconsistent implementation of PSD2 exclusions, as well as on our recommendations.

ANNEX

Main differences between typical payment instruments and fuel cards

Payment instrument	Fuel card (transaction authorisation instrument)
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, 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 trigger 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
Holder of instrument is by design authorised to give payment orders from that account to the payee's account	Holder of purchase instrument is not (by definition) authorised to give payment orders that relate to the billing account of the fleet owner
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.	Aggregated invoice for goods and services delivered, sent to the corporate treasurer of the fleet owner, and paid for using the direct debit instrument

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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.

With its strong track record in pioneering the supply of renewable fuels in the EU, UPEI's members remain committed to delivering and embracing new, cost effective solutions which further promote energy efficiency and reduce pollutants and emissions.