



•ALERT•

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PSD2 and payment instruments with limited use

Payment instruments that can be used only in a limited way are excluded from the application of PSD2 under certain conditions.

Article 3(k) of Directive (EU) 2015/2366 (PSD2) regulates the cases included in the so-called “Limited Network Exclusion” (LNE) and, as a result, excluded from the scope of PSD2 itself.

The LNE is applied with respect to various services based on specific payment instruments that can be used only in a limited such as, for example, 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, gift cards etc.

It should, therefore, be recalled that the issuance of such instruments by companies is in principle equivalent to the provision of payment services, which would normally require the granting of a specific licence to operate as payment institution or e-money institution, but which is not necessary if the payment instrument can be used in a limited manner.

In particular, according to the LNE, PSD2 (and thus the discipline of payment services) does not apply to “*services based on specific payment instruments that can be used only in a limited way, that meet one of the following conditions*”.

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;



- ii. instruments which can be used only to acquire a very limited range of goods or services;*
- 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.”*

In order to implement this provision, the **Bank of Italy** has adopted Provisions of 11 October 2018, as subsequently amended, establishing the obligation of issuers of instruments with limited expendability to notify the Bank of Italy, by 30 April of the year following the previous reference calendar year, of the total value of the payment transactions carried out through such instruments, in the event such value exceed the threshold of EUR 1 million on an annual basis (see Article 37(2) of PSD2).

Subsequently, issuers:

- if the Bank of Italy considers that the requirements for the application of the LNE are fulfilled, they are entered in a national list in the appendix to the Register of Payment Institutions (**Appendix**), as well as in the corresponding list maintained by the European Banking Authority (**EBA**);
- are obliged to make a new notification to the Bank of Italy only to communicate any changes with respect to operativity of the instrument already rendered, and wi-

thout prejudice to the possibility for the Bank of Italy to request a new notification containing updated information should it deem it necessary.

However, the application of LNE was very uneven across Europe because of different interpretations provided by regulatory authorities of Member States. To remedy this market-distorting situation, the EBA decided on 24 February 2022 to publish the *"Guidelines on the limited network exclusion under PSD2"* (**Guidelines**) with the to ensure a uniform application of the exemption across Europe.

The Guidelines, which are applicable as of **1 September 2022**, provide national competent authorities with guidance on the requirements that limited payment instruments must meet to be covered by the exemption.

Among the most relevant indications included in the guidelines are the following: (i) the LNE can also be applied to the purchase of purely digital goods or services; (ii) the use of payment intermediaries does not allow intermediaries to benefit from the exemption granted to the issuer; (iii) the authorities must verify whether the issuer applies technical or contractual restrictions to the payment service; (iv) customers must be clearly informed by the issuer that the payment service is exempt and therefore cannot benefit from the protections provided by PSD2-related regulation.

Lastly, it should be noted that, following the publication of the Guidelines and in order to enable the Bank of Italy to reevaluate the instrument in light of the latter, the Bank of Italy has requested the companies already listed in the Appendix to make (between 1 June and by 1 September 2022) a new specific notification explaining once again the operation of the relevant instrument and its eligibility for the NEC perimeter.

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