

The EBA logo consists of the letters 'EBA' in a bold, white, sans-serif font. To the right of the letters is a vertical bar with a gradient from blue to orange. The background of the slide is a low-angle photograph of modern skyscrapers with glass facades, rendered in a light blue, semi-transparent style.

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## **PUBLIC HEARING ON THE DRAFT GUIDELINES ON THE LIMITED NETWORK EXCLUSION UNDER PSD2**

*Dirk Haubrich, Head of Unit  
Antonio Barzachki, Senior Policy Expert  
Conduct, Payments and Consumers Unit, EBA*

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# Outline of the presentation

- Introduction to the EBA
- Purpose of the public hearings
- Legal basis for developing the Guidelines
- Development of the Guidelines
- Draft Guidelines on the Limited Network Exclusion
- Next Steps

# Introduction to the EBA

- Independent member-based authority, accountable to the EU Parliament and EU Council;
- Having the objective of protecting the public interest by contributing to the stability and effectiveness of the financial system;
- Achieving its objective through many tasks, including through contributing to the sound, effective and consistent level of regulation and supervision;
- Different legal instruments at EBA's disposal, including Technical Standards, Guidelines, Opinions;
- PSD2 conferred 12 mandates on the EBA, which have already been delivered with additional clarifications provided through EBA Opinions and the EBA Q&A tool.



# Purpose of the public hearings

**The EBA organises ‘public hearings’ for its Technical Standards and Guidelines to allow interested parties to ask clarification questions.**

➤ An EBA public hearing takes place during the consultation period, usually a month or so before the submission deadline of responses to the Consultation Paper (CP).



➤ The purpose of the hearing is for the EBA to present a summary of the CP, reproduce the questions of the CP, and ask attendees whether they require additional explanations or clarifications from the EBA so as to be able to answer the questions in the CP.

➤ The public hearing does therefore not replace written responses to the CP, as it is only through written responses that the EBA is able to give the views of stakeholders the required consideration.

# Legal basis for developing the Guidelines (1)

## ➤ Article 16 of the EBA Regulation

*To establish consistent, efficient and effective supervisory practices within the ESFS, and to ensure the common, uniform and consistent application of Union law, the EBA shall issue guidelines addressed to all competent authorities or all financial institutions.*

## ➤ Article 3(k) of PSD2 prescribes that the Directive 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’*

# Legal basis for developing the Guidelines (2)

## ➤ Recital 13 and 14 of PSD2

Provide further explanation of the purpose and intent behind the Article 3(k) exclusion.

## ➤ Article 37(2), (4) and (5) of PSD2 prescribes that :

*“2. Member States shall require that service providers carrying out either of the activities referred to in points (i) and (ii) of point (k) of Article 3 or carrying out both activities, 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 in point (k)(i) and (ii) of Article 3 the activity is considered to be carried out.*

*4. Notwithstanding paragraph 1, competent authorities shall inform EBA of the services notified pursuant to paragraphs 2 and 3, stating under which exclusion the activity is carried out.*

*5. The description of the activity notified under paragraphs 2 and 3 of this Article shall be made publicly available in the registers provided for in Articles 14 and 15.”*

# Development of the draft Guidelines

## ➤ Reason for the development of the Guidelines

- Questions on the interpretation and application of the requirements of Article 3(k) exclusion (LNE) and Article 37 of PSD2;
- Divergent practices applied across Member States; and
- Need for transparency for consumers who are sometimes not aware that the protection under PSD2 does not apply to excluded instruments.

## ➤ Development approach

- Information contained in the above-mentioned questions;
- Additional issues raised by external stakeholders;
- Issues raised by competent authorities; and
- Fact finding exercise on existing supervisory practices.

# Draft Guidelines on the LNE (1)

## Specific payment instruments under the LNE

- These are payment instruments as defined by PSD2;
- All types of payment instruments can fall within the scope of the LNE;
- No restriction on funding of the instrument;
- Additional intermediaries to the issuer not covered by LNE;
- Technical and contractual restrictions limiting the use of the instrument should apply;
- Excluded instruments can be reloadable and for one-off use only;
- The LNE applies for each payment instrument;
- Service providers can issue more than one excluded instrument;



# Draft Guidelines on the LNE (2)

## Specific payment instruments under the LNE (cont.)

- A single card-based means of payment can accommodate simultaneously more than one excluded instrument, but it is not possible to mix regulated and excluded instruments;
- Redeemability of the monetary value stored in the payment instrument is not a defining feature;
- The issuer of the excluded instrument can be located in a Member State different from the one where the LNE is being sought; and
- The LNE cannot be combined with other exclusions under PSD2.

**Q1. Do you have comments on Guideline 1 on the specific payment instruments under Article 3(k) of PSD2?**

# Draft Guidelines on the LNE (3)

## Limited network of service providers

### ➤ Proposed criteria for qualifying a network of service providers as limited:

- Direct contractual relationship between the issuer and the provider of goods and services;
- Envisaged maximum number of providers;
- Envisaged geographical area for provision of goods and services;
- Use of a common brand.

### ➤ Additional indicators to be taken into account depending on the business model – volume and value of envisaged transactions on annual basis, envisaged maximum amount to be credited on the instrument, envisaged maximum number of users, categories of customers, risks for consumers, centralized management.

# Draft Guidelines on the LNE (4)

## Limited network of service providers (cont.)

- The limited network of service providers can consist of physical stores only, online stores only or a combination of the two;
- No differentiation between the types of stores and types of goods and services in the assessment of the criteria and additional indicators;
- A payment instrument cannot be used in different networks of service providers;
- Restrictive application of the provisions to avoid an excluded instrument to develop into a general-purpose instrument.

**Q2. Do you have comments on Guideline 2 on the limited network of service providers under Article 3(k)(i) of PSD2?**

# Draft Guidelines on the LNE (5)

## Instruments used within the premises of the issuer

- Exclusion applicable to physical locations only;
- Applicable to more than one physical location;
- Not applicable to online purchases.

**Q3. Do you have comments on Guideline 3 on the instruments used within the premises of the issuer under Article 3(k)(i) of PSD2?**

# Draft Guidelines on the LNE (6)

## Limited range of goods and services

- Existence of a direct functional connection between the goods and services that can be acquired with the payment instrument;
- Leading product and description of the functional connection with ancillary goods and services;
- Functional connection between physical and digital goods and services can exist;
- Restrictive application of the provisions to avoid an excluded instrument to develop into a general-purpose instrument;

# Draft Guidelines on the LNE (7)

## Limited range of goods and services (cont.)

### ➤ Additional indicators to be taken into account depending on the business model:

- volume and value of envisaged transactions on annual basis;
- envisaged maximum amount to be credited on the instrument;
- envisaged maximum number of users;
- categories of customers;
- risks for consumers; and
- centralized management.

**Q4. Do you have comments on Guideline 4 on the limited range of goods or services under Article 3(k)(ii) of PSD2?**

# Draft Guidelines on the LNE (8)

## Provision of excluded services by regulated entities

- Regulated payment service providers and electronic money issuers can provide services excluded under the LNE;
- Clear distinction between regulated and non-regulated services, including through the use of different brands;
- Information to the users of the excluded instruments in a simple and clear way that these are not regulated and supervised activities and that users do not benefit from the protection under PSD2;
- Competent authorities to take supervisory actions if the delineation between regulated and non-regulated services is not clear and appropriate or if the excluded services may impair the financial situation of the entity or the supervision of the regulated activities.

**Q5. Do you have comments on Guideline 5 on the provision of services under Article 3(k) of PSD2 by regulated entities?**

# Draft Guidelines on the LNE (9)

## Notifications under Article 37(2) of PSD2

- Notifications to be sent to the competent authority in each jurisdiction where the goods and/or services are provided and where the thresholds set out in Article 37(2) of PSD2 are breached;
- Information to be contained in the notification – type of exclusion and description of the activity, including type of goods and services offered, Member States where the entity provides the same services and other.
- One-off submission of the notification;
- New notification required if the information provided to the competent authority has changed substantially or a new excluded instrument is to be offered;
- Clarified that a substantial change can include situations where services are terminated, the number of envisaged providers or geographical area are to change, new services are to be offered, change in the leading or ancillary goods and services.



# Draft Guidelines on the LNE (10)

## Notifications under Article 37(2) of PSD2 (cont.)

- Competent authorities can request a new notification with updated information if they consider this necessary;
- Calculation of thresholds under Article 37(2) of PSD2 to be done at the level of each service provider. The calculation should include the sum of all payment transactions carried out with all excluded instruments offered by the service provider in the respective Member State; and
- Competent authorities should include in the national and EBA registers excluded service providers only once, together with the description of all activities under the LNE.

**Q6. Do you have comments on Guideline 6 on the notifications under Article 37(2) of PSD2?**

# Draft Guidelines on the LNE (11)

## Limited network under Article 3(k)(iii) of PSD2

- Separate exclusion that has no dependency with the exclusions on limited network of service providers and on the limited range of goods and services;
- No additional provisions since the specific aspects on the use of the instrument, including on its funding, are specified in the respective national social or tax law.

**Q7. Do you have comments on Guideline 7 on the limited network under Article 3(k)(iii) of PSD2?**

## Next steps

- **8 September 2021** – Public hearing;
- **15 October 2021** – Consultation period ends;
- **By Q1 2022** – Assessment of the responses to the CP and decision on what, if any, changes will be made to the draft Guidelines;
- **H1 2022** – The EBA will publish a Final report on the Guidelines on the limited network exclusion under PSD2.

The logo for the European Banking Authority (EBA) is located in the top left corner. It features the letters 'EBA' in a large, white, sans-serif font. To the right of 'EBA', the words 'EUROPEAN BANKING AUTHORITY' are written in a smaller, white, sans-serif font, stacked vertically. The logo is set against a dark blue rectangular background with a subtle grid pattern.

**EBA**

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## **EUROPEAN BANKING AUTHORITY**

Floor 24-27, Tour Europlaza  
20 Avenue André Prothin  
92400 Courbevoie, France

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Tel: +33 1 86 52 70 00  
E-mail: [info@eba.europa.eu](mailto:info@eba.europa.eu)

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<https://eba.europa.eu/>