



GUIDELINE	SECTION	CONTENT	COMMENTS/PROPOSALS
1 (Specific payment instruments under Article 3(k) of PSD2)	1.4.	<i>“Competent authorities should check when assessing the information provided by service providers, which provide services based on a payment instrument falling under the scope of Article 3(k) of PSD2 within their jurisdiction, whether these service providers apply technical and contractual restrictions limiting the use of the payment instrument. Competent authorities should not consider a contract between the service provider and the user of the instrument as a technical restriction.”</i>	<p>We welcome this guideline, which no doubt helps competent authorities to enforce the requirements set forth in PSD2 in connection with limited networks.</p> <p>In this sense, we kindly suggest clarifying the type of information that the competent authorities will check to verify that the service providers are applying technical and contractual restrictions. We are mainly concerned about technical restrictions, provided it is a very broad concept, and it could be difficult to give evidence in this regard.</p>
1 (Specific payment instruments under Article 3(k) of PSD2)	1.6	<i>“Competent authorities should take into account that a single card-based means of payment can accommodate simultaneously more than one specific payment instrument within the scope of Article 3(k) of PSD2. Competent authorities should ensure that the technical and contractual restrictions specified in Guidelines 1.4 and 1.5 apply to each specific payment instrument.”</i>	<p>Please note that Guideline 1.6 and Guideline 1.7 are not coherent:</p> <p>Guideline 1.6 allows the combination of more than one payment instrument within the scope of Article 3(k) of PSD2 in the same means of payment, whereas Guideline 1.7 does not allow a single means of payment to accommodate simultaneously payment instruments within the scope of PSD2 and specific payment instruments within the scope of Article 3(k) of PSD2. It should not be determining whether the different payment instruments are within the scope of PSD2 or within the scope of Article 3(k) of PSD2, provided that the exemption applies to the payment instrument and not to the means of payment, and provided that they comply with the technical and contractual restrictions specified in Guidelines 1.4 and 1.5.</p> <p>Combining payment instruments within the scope of Article 3(k) and ‘regulated’ instruments in the same means of payment should be permitted, as long as each instrument within the means of payment is clearly differentiated from the rest of instruments available in the same device through differentiated naming (not necessarily differentiated brands) or by attributing the instrument different numbers,</p>
	1.7.	<i>“Competent authorities should also ensure that a single card-based means of payment cannot accommodate simultaneously payment instruments within the scope of PSD2 and specific payment instruments within the scope of Article 3(k) of PSD2.”</i>	



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			<p>and provided that the payment users have been properly informed and are aware of the features of the different payment instruments.</p> <p>This is in line with Article 8.6 of the REGULATION (EU) 2015/751 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2015 on interchange fees for card-based payment transactions, regarding co-badging and choice of payment brand or payment application, that expressly foresees that <i>“payment card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.”</i></p> <p>Giving the user this choice, plus establishing clear limits between the different instruments under a single card-base means of payment should enable the user to clearly distinguish such instruments. To this end, we suggest naming the instruments in a different way (not necessarily with different brands) or attributing them different numbers.</p> <p>Furthermore, it would be aligned with Guideline 5.2, regarding provision of regulated and not regulated services/electronic money by the same service provider or electronic money issuer, where it suffices to distinguish between them in a clear and easily recognisable way.</p> <p>Finally, we draw your attention to the fact that, in practice, combining instruments within the scope of Article 3(k) and ‘regulated’ instruments in the same means of payment has the effect that the non-regulated instruments benefit from the regulatory requirements that must be met by regulated instruments. For instance, a credit card</p>

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			including regulated and non-regulated payment instruments complies with all the security obligations set forth in PSD2.
2 (Limited network of service providers under Article 3(k)(i) of PSD2)	2.1. d)	<i>“The service provider offers goods and services under a common brand that characterises the limited network and provides visual manifestation to the user of the payment instrument.”</i>	In this connection, we suggest broadening the reference to a “common brand” to a “common payment instrument brand”. This way, the user would identify and differentiate the service providers belonging to a limited network.
2 (Limited network of service providers under Article 3(k)(i) of PSD2)	2.2	<p><i>“Complementary to the assessment under Guideline 2.1, and depending on the specific business model for provision of services and the size and specificity of the market within the respective Member State, competent authorities should take into account the following additional indicators:</i></p> <p><i>a) The size of the geographical area for provision of goods and services;</i></p> <p><i>b) The volume and value of payment transactions envisaged to be carried out with the payment instruments on annual basis;</i></p> <p><i>c) The envisaged maximum amount to be credited to the payment instruments;</i></p>	<p>Section 34 of the Consultation Paper (from which this Guideline derives from) states that the competent authorities can take into account complementary <u>optional</u> indicators in their assessment for determining a limited network of service providers. <u>However, the drafting of this Guideline (i) does not indicate that such indicators are optional; and (ii) uses the modal verb “should”, which may imply an obligation.</u> In order that Section 34 and Guideline 2.2 are coherent we kindly propose inserting the adverb “optionally” in the first paragraph of the aforementioned Guideline as follows:</p> <p><i>“Complementary and optionally to the assessment under Guideline 2.1, and depending on the specific business model for provision of services and the size and specificity of the market within the respective Member State, competent authorities should take into account the following additional indicators: (...)”</i></p> <p>On the other hand, we propose narrowing down the list of indicators to g), being the rest considered as additional factors to be reported by the service providers, so that</p>



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		<p>d) <i>The envisaged maximum number of users of the payment instrument;</i></p> <p>e) <i>The categories of customers being targeted;</i></p> <p>f) <i>The risks which consumers may be exposed to; and</i></p> <p>g) <i>Whether the management of the network is centralised."</i></p>	<p>the competent authorities have complete information in this regard. Otherwise, factors such as size of the geographical area could be used on an asymmetrical way by the competent authorities across the EU, when they are just descriptive characteristics that do not determine how limited a network is.</p> <p>Particularly, indicator f) should be taken into consideration by the payment services providers and be supervised by the competent authorities, but not be established beforehand by the competent authorities.</p>
3 (Instruments used within the premises of the issuer under Article 3(k)(i) of PSD2)	3.1	<p><i>"Competent authorities should take into account that instruments allowing the holder to acquire goods or services only in the premises of the issuer can only be used in physical premises and cannot be used in online stores."</i></p>	<p>Nowadays we live in a digital world, where websites are considered more and more as "extensions" of the corporate addresses, and the relationships between service providers and users are physical and digital indistinctly (sometimes even simultaneous. For example, when the user transacts online while being physically in the service provider premises). We kindly ask the EBA to bear this in mind and consider the following amendment:</p> <p><i>"Competent authorities should take into account that instruments allowing the holder to acquire goods or services only in the premises of the issuer can only be used <u>both</u> in physical premises and cannot be used in online stores."</i></p>
4 (Limited range of goods or services under Article	4.2	<p><i>"When assessing the functional connection between the goods and/or services, competent authorities should take into account that a leading good or service is established. Competent authorities should check whether the service provider has</i></p>	<p>In order to avoid interpretation issues, <u>a definition of "leading good or service" and some examples would be needed.</u></p>

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3(k)(ii) of PSD2)		<i>identified the leading good or service and the ancillary goods and/or services and has described the functional connection between them in the notification under Article 37(2) of PSD2."</i>	Furthermore, we draw your attention to the fact that this criterion should not be decisive for limited networks of general retailers that sell diverse good and/or services.
5 (Provision of services under Article 3(k) of PSD2 from regulated entities)	5.2	<i>"Competent authorities should ensure that in the cases where authorised payment service providers or electronic money issuers provide also services under Article 3(k) of PSD2, the regulated entities distinguish the regulated payment services/electronic money from the services excluded under Article 3(k) of PSD2 in a clear and easily recognisable way, including through the use of different brands."</i>	While we fully embrace this Guideline, we suggest including the use of different naming as additional criterion to the use of different brandings, reading the text as follows: <i>"Competent authorities should ensure that in the cases where authorised payment service providers or electronic money issuers provide also services under Article 3(k) of PSD2, the regulated entities distinguish the regulated payment services/electronic money from the services excluded under Article 3(k) of PSD2 in a clear and easily recognisable way, including through the use of different brands <u>and naming</u>."</i>

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