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Our ref 1625025

15 October 2021

**EBA/CP/2021/28**

**CONSULTATION ON DRAFT GUIDELINES ON THE LIMITED NETWORK EXCLUSION UNDER PSD2**

Dear Madame or Sir,

Thank you for the opportunity to submit our comments to the EBA Consultation on the Draft Guidelines on the Limited Network Exclusion under PSD2 (**EBA GL LNE**).

We appreciate the EBA's intention to harmonise the interpretation of the Limited Network Exclusion within the meaning of Article 3 lit. k of the Directive (EU) 2015/2366 (**PSD2**). A harmonised PSD2-framework should not only apply to the regulation of payment service providers but should also be applied to exemptions and defining the perimeter of regulated and non-regulated payment services.

**Q6. DO YOU HAVE COMMENTS ON GUIDELINE 6 ON THE NOTIFICATIONS UNDER ARTICLE 37(2) OF PSD2?**

In light of the harmonisation of PSD2 and for efficiency reasons, the notification under Article 37(2) Directive (EU) 2015/2366 (**PSD2**) should apply if the threshold of EUR 1m is reached across the EU and the notification should only be made in the home member state of the service provider (as described in Option 4.1 and 4.2.1 of the Consultation Paper (EBA/CP/2021/28) (**EBA CP**).

As the EBA confirmed in the EBA CP, cross-border services can be offered under the exemptions for limited networks and limited range of goods and service instruments. Full harmonisation under PSD2 also covers Article 3 lit. k PSD2. The proposed EBA Guidelines on the limited network exclusion under PSD2 will provide further harmonisation for the application and supervision of exempted payment instruments.

Therefore, Article 37(2) PSD2 should be applied at a European, rather than a Member State level. Application at the European level will ensure that the notification can be efficiently submitted by

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service providers, reducing the overall cost and administrative burden of conducting business across the EU.

If a Member State level process was adopted, service providers would face considerable costs for filing multiple notifications in various Member States. This is particularly true as the notification forms may substantially differ and may not always be available in English. Additional registration requirements may also exist in order to be able to submit the notification in the first place. A Member State level notification approach would in fact result in additional fragmentation, rather than harmonisation regarding the application and review of the limited network exclusion criteria.

In our view, supervision by national competent authorities (**NCA**) in the host member states is sufficiently and appropriately ensured, the relevant notifications can be shared through the EBA PSD2 register and the existing regulatory passporting channels. This process is already envisaged by Article 37(4) and (5) PSD2 because a NCA that receives a notification is expected to forward the notification to EBA. The proposed approach would thus streamline the communication between the EBA and the NCAs. If notifications in the home state and the host states were required, the number of exchanged notifications and entries in the EBA PSD2 register would be higher.

Information about cross-border use of the exemptions can be included in the notification under Article 37(2) PSD2. This would also provide a central database for the public. Unlike some national PSD2 registers, the EBA PSD2 register already contains information about existing passports of regulated payment and e-money institutions. This approach could be replicated for the limited network exclusion.

NCAs can request further information from the service provider if required for regulatory purposes. Contact details for the service provider will be included in the notification and will allow home and host NCAs to directly request information from service providers.

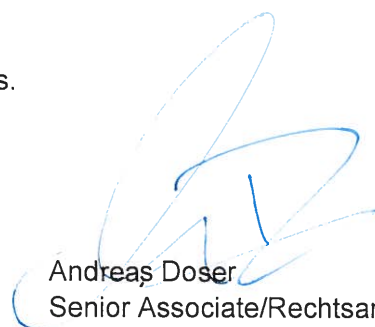
In this context, it should also be considered that Article 37(2) PSD2 requires service providers to notify their use of the exemption but there is no authorisation or other prior approval required. In line with the wording of the provision, the notification should be limited to the key information about the exempted payment instrument (provider, relevant exemption, product description) that is required to notify regulators about the use of the exemption. Further information can be shared upon request.

Please let us know if you have any questions or comments.

Kind regards,



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