



Irish Financial Services Regulatory Authority
Central Bank of Ireland
PO Box 599,
Dame Street
Dublin 2 D02P656

15th August 2016

Dear Sir/Madam,

PSD2: CONSISTENT REGULATORY TREATMENT OF FUEL CARDS

I am writing to you on behalf of UPEI, and my own company Emo Oil Ltd and its parent DCC plc. regarding the above Directive. UPEI is the European Association of the Independent Fuel Suppliers, and a number of its members distribute and operate fuel cards in most of the European countries.

In line with the approach of the European Commission, fuel cards are outside of the scope of existing payment services regulations. This is widely accepted and customers benefit greatly from the convenience and the security of Fuel cards.

With the introduction of PSD2 - Directive (EU) 2015/2366, and due to the scale of fuel card operations, regulators across Europe will have the opportunity to confirm the continued treatment fuel cards as being outside of the scope of those regulations.

Member States are required to transpose Directive (EU) 2015/2366 on payment services in the internal market into national law by 13 January 2018.

Because Fuel cards are not the main payment instrument covered in PSD2, we are pleased to propose our contribution for the preparation of the transposition of the Directive, and provide you our analysis in regard to Fuel cards. We have identified 6 topics which we think, should be considered in the preparation of the local text of law.

You will find attached a detailed document giving the background of our suggestions.

If you would like to arrange a meeting to discuss this in further detail please contact me at Killian.bane@dccoilireland.com or on my direct line at 057 8674712.

I look forward to hearing from you.

Yours faithfully,

Killian Bane
Finance Director
Emo Oil Ltd

Brussels, June 2016

UPEI White paper Fuel cards and PSD2

General context of PSD2 Directive

The revised Payment Services Directive (PSD2) or Directive (EU) 2015/2366 has been published in the Official Journal of the European Union on 23 December 2015. The Directive entered into force on 13 January 2016. Member States are required to transpose PSD2 into national law by 13 January 2018. The timeline above creates the framework for additional lobbying activities carried out by UPEI in Brussels or in EU member states. This Directive will replace Directive 2007/64/EC on 13 January 2018.

The entire document may be accessed by the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2366&from=EN>

During the process of EU consultation, a modification of the wording of PSD 2 allowed to get fuel cards explicitly mentioned as exempt from the directive, however misinterpretation of some of its other articles may occur and it is essential to ensure that the spirit of PSD 2 is properly transposed into all local legislations across the EU.

High level likely timeline:

2016 Local interpretation and preparation of local text of law

2017 Presentation of law text, validation with EC and local adoption

PSD2 Directive exempts fuel cards from its scope due to their characteristics that differentiate them from other payment instruments and therefore should go along with a different approach when it comes to consumer protection standards. Arguably, such an exemption requires careful wording in order to achieve its intended aim.

By providing more detailed information, this document intends to provide to local legislators clarifications to ensure that the spirit of PSD 2 is properly transposed in all local legislations.

Topics covered by this document:

Section 1 : Interpretation of “fuel cards”

Section 2 : Interpretation of “limited network”

Section 3 : Interpretation of “limited range of goods and services” and “functionally connected goods”

Section 4 : Interpretation of “amount of EUR 1 million”

Section 5 : Multiple functions in a single medium

Section 6 : Agent model (factoring) for toll collection and Money remittance payment service



Section 1 : Interpretation of “fuel cards”

What is a fuel card ?

The purpose of fuel cards is to allow the payment of goods and services related to mobility on the road (and sometimes combined with train, ferries, boats, ...) by the drivers of the customers of the fuel cards issuer.

PSD 2 explicitly uses the term “fuel cards” in the Preamble of PSD2 (14) which, however, could be misleading if understood strictly in the material sense (plastic card) given the development of modern technologies. We believe that this term must be understood in the non-material sense, more precisely rather as a concept which may have various forms, such as a mobile application for instance. The term “fuel card” thus needs to be interpreted as a “payment instrument” in line with Article 4 (14) of PSD 2, i.e. personalized device(s) and/or set of procedures agreed between the payment service user and the payment service provider and used in order to initiate a payment order.

*Preamble PSD2 (14): Payment instruments covered by the limited network exclusion could include store cards, **fuel cards**, membership cards, public transport cards, parking ticketing, meal vouchers or vouchers for specific services, which are sometimes subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in social legislation.*

Conclusion: We suggest that in the preparation of the local legislation, the legislator specifies that the term “**fuel card**” must be understood in line with the definition of a “**payment instrument**” as defined under Article 4 (14) of PSD 2.

Where can a fuel card be used ?

A fuel card is issued by a “fuel card issuer” to be used within a network of points of sale linked on the basis of a direct commercial agreement. The consequence is that the use of the fuel card is by definition limited to the business partners of the fuel card issuer, constituting the acceptance network of a given fuel card. See Section 3 for more details.

Which goods may be purchased with a fuel card ?

Fuel cards give access to part of the goods available in the acceptance network. These products may represent a limited range of goods which are functionally connected to the purpose of providing mobility on the road. See Section 4 for more details.

Who are the users of fuel cards ?

While PSD2 rightly focusses on consumers’ protection for the use of payment methods across the European Union as explained in Preamble (6) “*Equivalent operating conditions should be guaranteed, ..., and ensuring a high level of **consumer protection** in the use of those payment services across the Union as a whole.*”, the users of fuel cards are mainly the employees (drivers) of the customers of the fuel card issuer, for purchase of business related fuel and related services, on the basis of a business-to-business (B2B) contractual relationship. Hence, the “function” of the fuel card is mainly, but not exclusively focusing on “B2B mobility”.

Conclusion: We suggest that in the preparation of the local legislation, the legislator clearly specifies what applies to private consumers versus business clients in a B2B contractual relation with the fuel card issuer.

Section 2 : Interpretation of “limited network”

In our opinion, fuel cards meet several conditions for the application of the limited network exclusion as specified in Section 13 of the Preamble to PSD 2, namely the following:

- The entities involved are directly linked by a commercial agreement;
- A single payment brand is used and that payment brand is used at the points of sale and appears on the fuel card;
- The fuel cards may only be used for a very limited range of goods or services; and
- The fuel card's use is limited to a closed number of functionally connected goods.

*Preamble PSD2 (13): A payment instrument should be considered to be used within such a **limited network** if it can be used only in the following circumstances: first, for the purchase of goods and services in a specific retailer or specific retail chain, where the entities involved are directly linked by a commercial agreement which for example provides for the use of a single payment brand and that payment brand is used at the points of sale and appears, where feasible, on the payment instrument that can be used there*

*Preamble PSD2 (14): Payment instruments covered by the limited network exclusion could include store cards, **fuel cards**, membership cards, public transport cards, parking ticketing, meal vouchers or vouchers for specific services, which are sometimes subject to a specific tax or labour legal framework designed to promote the use of such instruments to meet the objectives laid down in social legislation.*

Conclusion: Given that the EU legislator has not been consistent in clarifying the definition of the limited network exclusion in PSD 2, we suggest that in the preparation of the new legislation transposing PSD 2, the legislator uses the option given in Section 14 of the Preamble to PSD 2 and include a provision expressly stipulating that fuel cards are subject to the limited network exclusion as specified in Section 13 (k) (i) and (ii) of PSD 2.

Section 3 : Interpretation of “limited range of goods and services” and “functionally connected goods”

*Preamble (13): A payment instrument should be considered to be used within such a limited network if it can be used only in the following circumstances: ... ; second, for the purchase of a very **limited range of goods or services**, such as where the scope of use is*

*effectively limited to a closed number of **functionally connected goods or services** regardless of the geographical location of the point of sale*

While it is clear that the purpose of fuel cards is to allow mobility on the road (sometime combined with train, ferries, boats, ...), one can group goods accessible in the acceptance network of a given fuel card in 3 categories of “functionally related products” as mentioned in the PSD2 Preamble (13):

Category 1: Articles allowing mobility on the road: Diesel, Gasoline, Biofuels, AdBlue (or other similar additives serving for the purpose of fulfilling the EU emission standards), Gas (CNG, LNG), Motorway toll, vignettes, Parkings, Tunnels, Ferries, ...

Category 2: Other liquids or non-liquids directly related to vehicle operation and mobility: lubricants, windshield wiper fluid, breaking fluid, tyres, washing and cleaning services, windscreen wiper rubber, vehicle first aid kits, tachograph discs, ...

Category 3: Other goods not directly related to vehicle operation but widely available at petrol stations including: Sandwiches, Drinks, Fruits, Yogurt, Cigarettes, ...

While it may be argued that Category 3 gives access to goods for the driver and that the driver is a key enabler of the vehicle’s mobility, we think it is too wide and almost unlimited (including alcohol which obviously cannot be considered as allowing mobility on the road). This category does not allow for the limits of a limited range of goods and services to be respected.

Hence, it is our conviction that “functionally related goods” should be interpreted as having a common denominator ie vehicle mobility, which is then Category 1+2.

Conclusion: We suggest that in the preparation of the new legislation, the legislator includes a section dedicated to this issue in the statement of reasons. We recommend that the term “functionally connected goods and services” be interpreted in the statement of reasons pursuant to the **definition specified under Category 1+2**, described above.

Section 4 : Interpretation of “amount of EUR 1 million”

*Article 37 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. On the basis of that notification, the competent authority shall take a duly motivated decision on the basis of criteria referred to in point (k) of Article 3 where the activity does not qualify as a limited network, and inform the service provider accordingly.*

Tolls are in most countries collected on behalf of the states, hence should not be counted in the total amount of transactions.

Conclusion: We suggest that in the preparation of the new legislation, the legislator explicitly mentions toll as being excluded from the calculation of the 1 million euros limit.

Section 5 : Multiple functions in a single medium

In relation to our comment regarding the interpretation of the term “fuel card” in Section 1 hereof, to be understood as a “payment instrument”, we would like to clarify the issue of connecting multiple functions in a single payment instrument. Given the technology developments, enabling an interconnection of several functionalities in a single medium may be considered in the future, ie for instance holders would use a smart phone app for functions such as:

- a) “Fuel card function” which is not subject to regulation pursuant to PSD 2;
- b) Other payment functions in line with Section 2 (15) of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions which is subject to regulation pursuant to PSD 2;
- c) Other functionalities which are subject to regulation pursuant to PSD 2 or not.

We do not believe that the term “fuel card” implies that the medium, on which the payment instrument is recorded, cannot include other functionalities, provided that it is possible to ensure a secured and reliable separation of functionalities pursuant to PSD2 and other functionalities. Such a requirement would be illogical as its circumvention would be possible if the issuer distributed such functionalities, regulated and not regulated under PSD 2, into multiple media which would, nevertheless, decrease the comfort of end users.

Conclusion: For the avoidance of doubt, we suggest that in the preparation of the new legislation, the legislator specifies in the statement of reasons that in the event of ensuring a reliable separation of payment instruments and other functionalities, **the payment instrument (in the material sense) may be used as a medium with multiple functionalities which are both subject to regulation pursuant to PSD 2 and not.**

Section 6 : “Agent model” for toll collection and “Money remittance” payment service

The European Union is working on the implementation of the European Electronic Toll Service (“EETS”), which would eliminate the need to register a vehicle in individual

national toll systems. Purchase of receivables, called “agent model”, is one of the scenarios considered within this project. Under this scenario, the toll system operator (Toll charger) issues invoices including the relevant VAT, if applicable, for the end user (the hauler), and a toll service provider (Service Provider) purchases the invoices and issues a request for payment for the end user.

The payment service of money remittance is defined in Section 4 (22) of PSD 2 as a “*payment service where funds are received from a payer, **without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;***”

In our opinion, the above-specified agent model scheme does not directly meet the definition of money remittance as specified in PSD 2 (especially because of the existence of payment accounts in the name of the payer and the service providers), unless an economic approach is applied with which, however, we think it should not apply because the above-described agent scheme should be viewed as a part of the toll collection system rather than a payment service.

Conclusion: We suggest that in the preparation of the new legislation, the legislator includes in the statement of reasons that “**agent model**” as a part of the toll collection system is not covered by the definition of money remittance, and as a consequence is exempt from PSD2 obligations for obtaining a payment institution license.

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UPEI represents European importers and wholesale/retail distributors of refined petroleum products and their alternatives, supplying Europe’s customers, independently of the major petroleum producers.

Independent suppliers, covering more than a third of Europe’s demand, play a crucial role in an evolving market by bringing competition which is vital to the economy. Their independence enables them to respond rapidly to changes in terms of market structure, products and services, contributing to security of supply on a local, regional and national level.

UPEI was created in 1962 with the aim of ensuring a level playing field for the supply of energy on the European market and safeguarding a competitive approach. The organisation brings together national associations and suppliers across Europe.

Today, UPEI also acts as an informed and responsible partner to Europe’s decision-makers on the risks and opportunities involved in the transition to a genuine European Energy Union.



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