

# FCE Position Paper

## Study on the application and Impact of PSD2



March 2023

### Introductory remarks

In the light of the review of the PSD2 framework, Fleet Cards Europe ("FCE") would like to comment on some of the conclusions that the recent study on the application and impact of PSD2 draws.

Our concerns primarily relate to the issues identified in the report around the Limited Network Exclusion ("LNE") in PSD2 and, in particular, the idea of setting a certain threshold for the volume of payment transactions above which a firm can no longer benefit from the exclusion and must therefore be authorised. Although the study rightly points to the arguments made that justify why fuel cards should continue to be outside the scope of PSD2, we are seriously concerned about the implications of introducing such a threshold, which would effectively bring fuel cards into the scope of PSD2.

FCE members believe that fuel cards should be out of scope of PSD2 entirely. However, FCE members are aware of the exemptions articulated in the framework and currently make use of the LNE regime under Article 3 (k) (ii).

This paper aims to outline the reasons why a threshold for the volume of payment transactions should not be introduced for fuel cards. In addition, this document seeks to emphasise, as the study also points out in different chapters, the need for a harmonised approach to LNE notifications under PSD2.

### Why should fuel cards be outside the scope of PSD2?

#### Unique business model

- Fuel cards are not payment instruments. Fuel cards are **identification instruments** which give access to a very limited range of goods or services with a functional connection. Fuel cards are unlike payment instruments, as the authentication process that legitimises fuel card users is separate to the payment process. **Fuel cards specifically do not initiate any transfer of funds and are not consumer focused**, predominantly being used on a business-to-business basis.
- A fuel card is an identification tool for the "buy and resell" business model of fuel card issuers. There is no transfer of funds, like in the case of payment instruments. In the classic fuel card business, based on independent agreements, at least three parties (in B2B relationships) conclude supply transactions for fuels or other motor vehicle-related supplies. As such, unlike payment cards which are general-purpose, fuel cards are niche instruments which serve a very specific purpose.



- For the question at stake, it is therefore important to bear in mind that, given the specificities of the business model, fuel cards should continue to not be required to fulfil the obligations that the PSD2 framework establishes for payment instruments.

### Existing safeguards minimise any risks

- FCE members believe that any potential risk stemming from their business operations is already sufficiently mitigated due to the **nature of the fuel card business and its inherent safeguards**. Fuel cards operate via a "closed loop" or limited network and thus provide a high-level of security, keeping card misuse to a minimum.
- Fuel cards are predominantly used on a **B2B basis so consumer protection in the context of fuel cards is not a warranting consideration**. Therefore, the point the study raises at page 107 on the possibility for exempted market players to generate risks for customers (specifically inadequate consumer protection) is not an issue when it comes to fuel cards.

### Issues identified with a possible payment transaction volume threshold

FCE members believe that the introduction of a threshold for the volume of payment transactions above which a firm cannot rely on the LNE, without taking into consideration the unique arguments of the fuel cards industry (which demonstrate why it should be outside of PSD2), would be extremely detrimental for the operations and growth of fuel card companies, which play an integral role in the European single market. In addition, this idea raises the following concerns:

- A successful development of the business and thus an increase in volumes/transactions does not substantially affect the way business is conducted nor should it constitute a justification to request more legal requirements to fulfil. Growth in payment transaction volumes does not equate to new risks due to the nature of the fuel card business and the safeguards in place that ensure customers are protected. FCE members have both contractual and technical limitations in place to ensure that only a very limited range of goods and services may be acquired with fuel cards, in accordance with Article 3(k)(ii).
- We would further question the parameters under which the suggested threshold would be implemented. An increase and also a decrease in the transactions of a given market player is a volatile indicator and can be caused to a large extent by exogenous factors like the state of the economy and do not relate to the risk profile of the companies making use of the exemption.

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### The need for a harmonised approach to LNE notifications under PSD2

The study on the application and impact of PSD2 notes in various instances that PSD2 has led to a divergent implementation of this exemption across Member States, and that such differences have also created legal uncertainty for service providers. In this regard, FCE members would like to reiterate their efforts in bringing about a more harmonised LNE notification process across EU Members States, an issue that has been also recognised by the EBA. Despite its Guidelines published in February 2022, there continues to be a lack of harmonisation between Member States on the application of the LNE notification procedures.

FCE members believe that a continued divergence in the application of the LNE notification process does not align with the core principles of the internal market and puts an undue administrative burden on service providers which are currently deemed by National Competent Authorities to fall under the LNE. It is FCE's strong view that a more harmonised LNE notification approach is needed. This should include a single LNE notification procedure with the same form and information requirements for all and timeframe in which a competent authority should respond to a notification, plus explicit guidance to ensure that the criteria for exclusion does not extend to an examination of the operational infrastructure of the business, except as required to ensure that the limits of exclusion will be complied with.

### About FCE

[Fleet Cards Europe \(FCE\)](#) represents the independent fuel card sector in Europe, which facilitates the access and supply of fuel and other related on-the-road goods and services for millions of commercial users across Europe. FCE members represent a major share of the B2B fuel cards market in Europe and our membership base includes key independent players in this market which are headquartered and operate across the continent. The majority of European logistics, transportation and other fleet businesses rely on the services (issuing, billing, fuel discounts, etc.) provided by FCE members, helping them to move goods and people efficiently and seamlessly across Europe on a daily basis. For further information, please contact the FCE Secretariat at: [fleetcardseurope@pentagroup.co](mailto:fleetcardseurope@pentagroup.co)

FCE stands ready to engage with policymakers and regulators to further explain the business models of its members, focusing also on the mechanics of the functioning of the card or any alternative device used for the identification of the user of the services.