

# **Study on the application and impact of Directive (EU) 2015/2366 on Payment Services (PSD2)**

## **Questionnaire**

**For payment service providers**

**(EU associations)**

22/02/2022

## 1. WHICH KIND OF ORGANISATION DO YOU REPRESENT?

Fleet Cards Europe (FCE) represents the independent fuel card sector in Europe, which facilitates the purchase 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@humbrophy.com](mailto:fleetcardseurope@humbrophy.com)

Our membership includes:



## 2. IN WHICH COUNTRIES ARE YOU ACTIVE?

FCE members represent a major share of the fuel cards market across Europe. Concretely, FCE members are active in all EU & EEA Member States, excluding Iceland, Malta and Cyprus.

## 3. ARE YOU AWARE OF THE REVISED PAYMENT SERVICES DIRECTIVE (PSD2, DIRECTIVE (EU) 2015/2366?)

FCE members are aware of the Revised Payment Services Directive as they make use of the Limited Network Exclusion regime under Article 3(k) of PSD2.

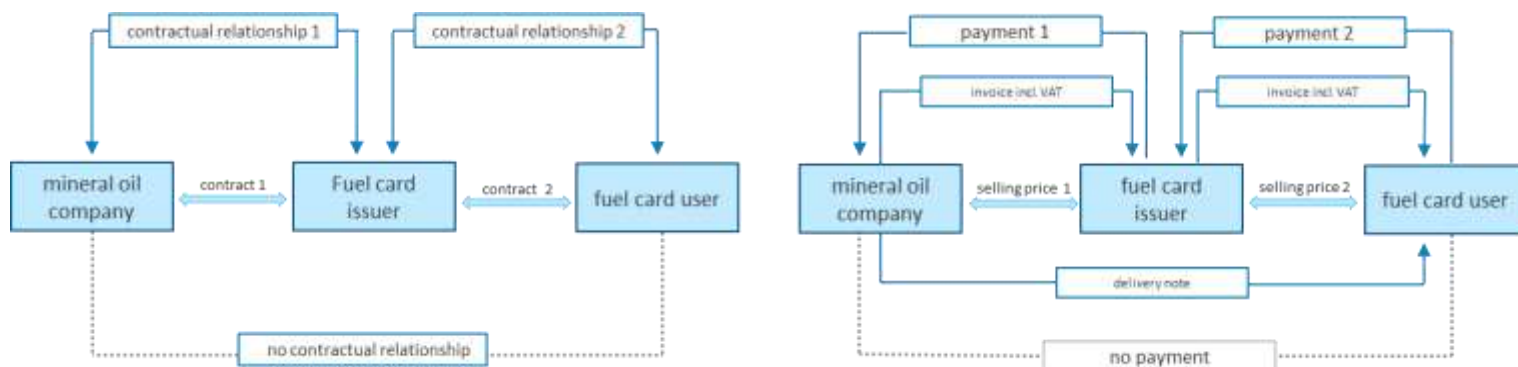
**7. IN YOUR OPINION, IS THE SCOPE OF THE PSD2 SUFFICIENTLY CLEAR? IF NOT, WHICH ACTORS/INSTRUMENTS/EXCLUSIONS SHOULD BE ADDED, DELETED OR SPECIFIED?**

*[Answer refers to exclusions under Article 3(k), in particular to the use case of fuel cards].*

FCE firmly believes that many features of fuel cards are not typical of a payment instrument. The card issued by the fuel card issuer has no payment function whatsoever but exclusively serves the purpose of legitimising the fuel card user as the person acting for and on behalf of the fuel card issuer. By using the card at acceptance points (petrol or service stations) with whom the fuel card issuer has a commercial arrangement in place, an authentication process is initiated electronically. That process makes it clear to the fuel station operator that the supply of fuel is provided in the name and for the account of the fuel card issuer. This authentication process that legitimises the fuel card user is separate to the payment process, which will only be initiated at a later stage after the fuel card user receives an invoice.

Nonetheless, as fuel cards are considered payment instruments according to PSD2, FCE believes that the limited network exclusion under Art. 3 ("Exclusions") of PSD2 should continue to apply to fuel cards, as has been the case to date. As outlined in further detail below, we believe that the nature of the business model warrants a separate regulatory treatment of fuel cards.

This is so because a fuel card is an identification tool for the "Buy and Resell" business model of Card Issuers. There is no transfer of funds, like in the case of other 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 (hereinafter referred to uniformly as "fuel"). As such, unlike payment cards which are general-purpose, fuel cards are niche instruments which serve a very specific-purpose and can only be used in a limited way.



- A mineral oil company sells fuel to the fuel card company ("fuel card issuer").
- The fuel card issuer sells fuel to the fuel card user (= customer of the fuel card issuer).
- Only the physical delivery of the fuel takes place directly from the mineral oil company to the fuel card user.

## 9. IN YOUR VIEW, WHAT POTENTIAL RISKS ARE STEMMING FROM UNREGULATED SERVICES? AND WHAT RISKS ARE CREATED BY THE INTRODUCTION BY PSD2?

*[Answer refers to exclusions under Article 3(k), in particular to the use case of fuel cards].*

FCE believes that any potential risk stemming from unregulated services is already sufficiently mitigated due to the nature of the fuel card business and available safeguards.

As explained in the previous answer, the fuel card business model is distinct and unlike that of "classic" payment cards (i.e. credit or debit cards). Fuel cards are niche instruments which serve a very specific-purpose and can only be used in a limited way. There are few risks associated with using a fuel card, which operate via a "closed loop" or limited network and thus provide a high-level of security, keeping card misuse to a minimum.

Strengthening consumer protection was and remains a key objective of PSD2. Fuel cards are predominantly used in a B2B context - helping commercial transport operators and fleet managers control their on-the-road expenses – so consumer protection in the context of fuel cards is not a warranting consideration. As a result, it is absolutely justified that fuel cards are and should continue to be excluded from the ambit of PSD2.

Further, fuel cards are only accepted at locations where the card issuer has entered in to a specific agreement with the network operator and then only enable the availability of a limited range of goods and services linked by a common purpose - i.e. vehicle-related.

More concretely:

- **Consumer protection.** It is important to state that fuel cards are not consumer focused and predominantly used in a B2B context. Consumer protection is therefore not an issue when it comes to fuel cards, which are niche instruments that serve a very specific-purpose and can only be used in a limited way. Fuel cards will continue to be specific-purpose instruments in the future used for the purchase on account of a very limited range of goods and services, meaning there will be no increased risk associated with fuel cards in coming years.
- **Competition.** First of all, it is worth stressing that the fuel card market is highly competitive, with numerous independent fuel cards issuers (many of which are FCE members) operating in the European market. In addition, many fuel suppliers (mineral oil companies) issue brand-specific fuel cards which can be used at their own service stations. It is this competition which affords hauliers and fleet operators a wealth of options (choice) when deciding which fuel card(s) to procure. The fact that fuel cards are excluded instruments according to PSD2 does not therefore signify that competition is undermined.

This competition also applies to new environmentally friendly service offerings to support the move to electric vehicles and non-carbon fuels. As the world changes and the use of mineral oil derived fuels declines, the fuel card industry plays a leading role in the shift towards more sustainable means of transport.

What's more, the fact that fuel cards are a niche instrument used for the purchase of a very limited range of goods/services, means they do not compete with payments instruments or "classic" payment cards, because they serve an entirely different specific purpose. Following this logic, fuel cards cannot be deemed to undermine competition, because they do not compete with other payment instruments in the first place. Fuel cards are distinct, serving end users in a specific market.

A fuel card, as an identification instrument to obtain fuel and vehicle-related goods and services, is primarily an expense management and reporting tool that provides administrative ease to the customer that helps managing financial risk and prevent fraud by its user. Fuel card providers provide far more detailed data (level 3 data) to their customers on transactions than providers of regular payment instruments are able to do. This is important for customers as this allows them to have more grip and control on their expenses.

- **Security of payments.** Fuel cards are based on a "closed loop" or limited network and can only be used for the purchase of a very limited range of goods within specific fuel and service stations (a limited range of merchants), meaning they are innately more secure and provide the customer with more control than payment cards (i.e. credit and/or debit cards) which are more prone to fraud or misuse. Fuel card issuers enable cardholders to block, limit and place customer orders 24/7, thereby providing a high-level of security. More specifically, fuel cards enable configurable security choices for the customer, including: i) Product restrictions; (ii) Day/Time restrictions; (iii) Geographical restrictions; (iv) Card velocity limits (daily + weekly + monthly amount limits and transaction count limits); (v) Client velocity limits (daily + weekly + monthly amount limits); and (vi) Maximum amount of transactions.] Any attempt to make payments outside of the technically restricted limitations of the fuel cards will be automatically "declined".

Transport companies and fleet managers can also monitor and track all on- the-road expenses in "real time", meaning potential misuse of fuel cards can also be quickly identified. For the driver, fuel cards are therefore a safer and more practical alternative to carrying cash or payment cards (i.e. credit and/or debit cards).

**19. IS THE COLLABORATION BETWEEN THE RESPECTIVE SUPERVISORY BODIES IN THE MEMBER STATES IN WHICH YOUR MEMBERS OPERATE, AND BETWEEN SUPERVISORY AUTHORITIES IN DIFFERENT MEMBER STATES EFFECTIVE?**

*[Answer refers to exclusions under Article 3(k), in particular to the use case of fuel cards].*

Notification requirements should be harmonised in order to create a "level playing field" within the internal market. The administrative and bureaucratic burden on businesses should be lessened where possible. We do not presently see effective collaboration between the supervisory bodies, as their approach remains fragmented and does not take in to consideration the decisions of other authorities.

In our experience, notification processes and requirements diverge widely across the Member States. There are, for example, different requirements in terms of timelines, details that service providers are required to provide as part of the activity description, or the frequency of the submission in the various Member States. Application forms vary from short and standardised ones paired with prompt reactions from the responsible Competent Authority to very burdensome ones that require the continuous submission of information over an extended period of time. In short, there is a lack of harmonisation.

We believe that the notification requirements would benefit from further clarity on the requirements for the exemption to apply in order to ensure that the application of PSD2 is harmonised across the EU.

The continued unharmonised interpretation of the exemption renders it almost impossible for market participants to operate across the EU with an exempted payment instrument and it would also adversely affect end users who would not know to what extent an instrument can be used in individual EU countries. This is particularly problematic given that fuel cards are frequently used in numerous countries by drivers traversing Europe and crossing borders; their use is very often not limited to a single domestic market. Imagine a truck driver who relies on his fuel card to be used for toll charges or roadside assistance only to find that this is not possible in a certain EU Member State.

We would also call for further harmonisation and information exchange among NCAs. While we appreciate the initial administrative effort this could entail, we believe this will ultimately lead to efficiencies for all parties and may be the only way to truly achieve a coordinated approach across the EU, which should be the aim. Should this pressing issue not be addressed, the current regime of 27 largely diverging application processes will likely continue to be the norm, even after the implementation of the new EBA Guidelines on the Limited Network Exclusion.

FCE members are concerned about the complications, time effort, costs, administrative burden, business risks and lack of legal clarity caused by notification requirements in each jurisdiction if the application of the exemption is not sufficiently harmonised across the EU at the same time.

We believe that the information exchange among NCAs is fundamental to ensuring a "level playing field" across the EU. In addition, identical notification procedures with respect to format and scope of information should be implemented by NCAs across the EU. This would be particularly helpful in fostering timely decisions for approval or rejection of applications within agreed standard timeframes.

Given the significant burden placed on service providers and competent authorities of submitting and reviewing multiple notifications for payment instruments used across the EEA, we would suggest introducing a system for notifications based on the existing processes for the submission and review of regulatory passport notifications. As with regulated payment service providers that exercise passport rights to provide regulated services across the EEA, it would be in the interests of harmonisation and administrative efficiency for a service provider to submit notifications only to its home member state competent authority and for that competent authority to take a lead role in reviewing the notification, including where this relates to the use of payment instruments under the LNE in other member states. The home member state competent authority could then notify the competent authorities in other relevant member states. This should ensure better information sharing between competent authorities and would be in keeping with the core principles of the internal market.

**22. HAVE THERE BEEN ANY OBSTACLES (E.G. REGARDING THE INTERACTION WITH THE COMPETENT AUTHORITIES) TO THE IMPLEMENTATION OF THE EU-PASSPORT REGIME? IS THE CURRENT EU-PASSPORT REGIME FIT FOR PURPOSE OR DOES IT NEED TO BE ADJUSTED (E.G. WITH REGARD TO NOTIFICATION REQUIREMENTS)?**

*[Answer refers to exclusions under Article 3(k), in particular to the use case of fuel cards].*

While we acknowledge that the current EU-Passport regime is tailored at regulated market activities, we would nonetheless call for an urgently needed harmonisation of notification requirements in general, also referring to activities making use of the exclusion under Art. 3(k) PSD2.

As mentioned in our response to Question 19, notification requirements diverge widely across EU Member States to the detriment of market participants and legal certainty. We believe that the harmonisation of requirements across the common market is of the utmost importance. This could be achieved via the harmonisation of notification procedures with respect to format and scope.

We would also stress that the recently adopted EBA Guidelines on the Limited Network Exclusion under PSD2 do not sufficiently address the lack of harmonisation and legal certainty across the EU.

Concrete examples of potential improvements to the notification requirements could be:

- Introduction of timeframes for application and responses/decisions
- Introduction of standardised application and notification requirements
- Consideration of decisions of one NCA by other NCAs

**39. ARE THERE OPPORTUNITIES TO REVISE OR SIMPLIFY THE LEGISLATION TO REDUCE UNNECESSARY COSTS OR MAXIMISE BENEFITS? IF SO, INDICATE THE LEGISLATIVE REQUIREMENT, HOW A REVISION/SIMPLIFICATION COULD CONTRIBUTE TO LOWER COSTS OR HIGHER BENEFITS. WOULD THIS HAVE AN IMPACT ON THE INTENDED OBJECTIVES OF PSD2? (REMINDER: THE ORIGINAL OBJECTIVES OF THE PSD ARE: IMPROVING COMPETITION AND CROSS-BORDER PAYMENTS, SUPPORTING INNOVATION, INCREASING TRANSPARENCY, EFFICIENCY AND CHOICE FOR USERS AS WELL AS ENSURING HIGH-LEVEL PROTECTION FOR USERS)**

*[Answer refers to exclusions under Article 3(k), in particular to the use case of fuel cards].*

As mentioned in our response to Question 19, FCE believes that the harmonisation of notification requirements would not only create a “level playing field” within the internal market, but also lessen the administrative and bureaucratic burden for NCAs and businesses alike.