

In the event of any conflict between the English and the French versions of this Position, the French version shall prevail

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# Position on the notions of "limited network of acceptors" and "limited range of goods and services".

## Position 2022-P-01

This position is based on the legislative and regulatory provisions resulting from the transposition of the Payment Services Directive 2015/2366 (PSD2) and the Electronic Money Directive 2009/110 (EMD2). This position replaces Position 2017-P-01 to take into account new market developments and the European Banking Authority's Guidelines on the limited network exclusion under PSD2 issued on 24 February 2022 (EBA/GL/2022/02)<sup>1</sup>.

Reference texts: articles L.511-7, II, L.521-3, L.525-5, L.525-6 and R.561-16-1 of the French Monetary and Financial Code (MFC); EBA/GL/2022/02 Guidelines

This position aims to clarify the criteria for assessing:

- exclusions from authorisation as a payment institution or an electronic money institution for the provision of payment instruments used within a limited network of acceptors or to acquire a very limited range of goods or services as provided for in Article L.521-3, L.525-5 and L.525-6 of the French Monetary and Financial Code (MFC).
- waiver of the prohibition set in Article R.561-16-1 of the MFC to top up an electronic money medium with cash, where it is used to acquire goods and services within a limited network of acceptors or for a very limited range of goods and services, with regard to AML CFT requirements.

This clarification is important for market participants who wish to check whether the services they provide are eligible for the exclusions and the waiver mentioned above.

## 1. The criteria for the exclusion from authorisation and waiver of AML-CFT requirements

As a preamble, it should be noted that exclusions from authorisation and waiver of due diligence requirements laid down in Articles L.561-5 and L.561-5-1 of the MFC under the criteria defined in Article R.561-16-1 shall apply only to means of payment<sup>2</sup> and/or electronic money used to acquire non-financial<sup>3</sup> goods or services. These goods or services may be physical and/or digital.

In this context, some activities cannot be excluded from authorisation or due diligence requirements:

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<sup>1</sup> Within the scope of the ACPR's partial declaration of compliance only (see the compliance memorandum published in the ACPR's official register).

<sup>2</sup> In French law, **means of payment** are, according to article L.311-3 of the MFC, all instruments which enable any person to transfer funds, regardless of the technical medium or process used.

**A payment instrument** is, alternatively or cumulatively, any personalised device and/or set of procedures agreed between the payment service user and the payment service provider and used by the payment service user to initiate a payment order (Art. L. 133-4, c) MFC).

<sup>3</sup> Indeed, financial services are subject to specific regulations and cannot be excluded from an authorisation as a payment institution or an electronic money institution.

- donation platforms to charitable organizations for which donations do not represent the payment of a good or service (donations to charitable organizations may nevertheless benefit from another type of exclusion as defined in Articles L. 521-3-1 and L. 525-6-1 of the MFC);
- crowdfunding platforms granting donations or loans for which it was considered that they were only collecting funds on behalf of the beneficiaries, without any underlying acquiring of goods or services.

In order to benefit from such exclusions, the means of payment used to acquire goods or services must fill one of the following two conditions:

- be used to acquire a very limited range of goods and services,
- be used in the premises of the company<sup>4</sup> or in a limited network of acceptors ("points of sale").

The ACPR ensures that entities issuing payment instruments benefitting from an exclusion apply technical and contractual restrictions on the use of the payment instrument.

Furthermore, a means of payment may accommodate several payment instruments benefitting from exclusions. A means of payment may also accommodate a payment instrument benefitting from an exclusion and a payment instrument which is not eligible for an exclusion. The conditions for these cumulative instruments are set out below.

Some activities governed by specific legislative and regulatory provisions are excluded from the scope of the regulation on payment services and electronic money ("titres spéciaux de paiement", collection agencies, real estate agent with a professional card mentioning real estate management activity, etc.). Therefore, these activities can be carried out without regard to the provisions of the MFC on payment services and electronic money.

## 1.1. The limited range of goods and/or services

PSD2<sup>5</sup> provides little clarification on the notion of a very limited range of goods and services. Recital (13) states that this criterion may be considered to be fulfilled "[...] 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".

According to the ACPR, in the context of an exclusion, this criterion of the limited range of goods and services is to be assessed considering whether the goods or services belong to a specific "theme", which has to be precise and limited enough, so that it is not confused with a "universal" means of payment, i.e. with a broad scope.

For example, the ACPR has already considered that overly broad thematic offers, such as "wedding lists" or "birth lists", which cover a very wide range of goods or services or which belong to several thematic offers (e.g. online games and music), cannot benefit from an exclusion.

A limited range of goods and/or services should also be comprised of "functionally connected goods and services". A functional connection consists in the presence of a specific category of goods and/or services with a common purpose. This notion is assessed with regard to the proximity and complementarity of goods and services to be purchased under the exclusion.

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<sup>4</sup> Payment instruments enabling users to acquire goods or services only in the premises of the undertaking may only be used in physical premises, thus excluding online shops.

<sup>5</sup> Exclusions for the provision of electronic money are laid down in EMD2 by reference to PSD2.

As regards services, exclusions have been granted by the ACPR for car-sharing, vehicles rental, boats rental, meal delivery, small DIY, moving platform, electric vehicles charging stations, taxis, veterinarians and parking ticketing.

As regards goods, exclusions have been granted for market places in a wide range of fields such as medicines, parapharmacy, wine, agricultural products or ticketing.

Moreover, in view of market developments, goods and services may be functionally linked even if they are distributed through different channels (physical and digital). In all cases, the functional connection should be described by undertakings in their notification, as well as in the annual reporting form (see *Annex*).

In addition to the functional connection and depending on the size and specificity of the market, the ACPR takes into account the following criteria:

- The volume and value of payment transactions to be carried out with the payment instruments on an annual basis, as envisaged by the undertaking;
- the maximum amount to be credited to payment instruments as envisaged by the undertaking;
- the maximum number of payment instruments to be issued, as envisaged by the undertaking; and
- the risks faced by the customer when using the payment instrument as identified by the undertaking.

Note: A payment instrument benefitting from an exclusion cannot cover several limited ranges of goods and/or services.

## **1.2. The concept of a "limited network of acceptors"**

A limited network of acceptors may consist of either physical shops only, online shops only or a combination of the two. The ACPR makes no distinction between types of shops. Furthermore, the ACPR does not require the type of goods and services offered in online shops to be dependent on the type of goods and services offered in physical shops, or vice versa.

In its assessment of the payment instruments used for the purchase of goods or services within a "limited network of acceptors", the ACPR takes into account all the following criteria:

- the existence of a common brand or a common commercial name: for example, a network of acceptors that operates under the same commercial name or brand, or under closely related names -especially in mass retailing where commercial offers can be marketed through several names. For example, the ACPR has granted exclusions for gift card offers that can be used in all outlets under a single brand.
- the existence of close business relationships: contracts must then show an effective relationship between the issuer of the means of payment and the acceptors of the network; this relationship should not be limited to accepting such means of payment. This may include franchise agreements, exclusive distribution contracts, concession agreements, intellectual property licenses (for trademarks, distinctive signs or know-hows). However, this criterion should not apply to networks consisting of merchants included on a list which by nature is bound to grow, as specified in recital (14) of PSD2.

Depending on the size and specific nature of the market, the other objective criteria taken into account by the ACPR are:

- the specific geographical area: the network of acceptors must be geographically limited and must not be bound to grow (shopping centre, downtown shops, local community...). For example, the ACPR has granted an exclusion for a market place that sells products from merchants located in the same local community.

- the envisaged maximum number of providers of goods and services operating within the limited network, as specified by the undertaking in its notification;
- the volume and value of payment transactions to be carried out with the payment instruments on an annual basis, as envisaged by the undertaking;
- the maximum amount to be credited to payment instruments as envisaged by the undertaking;
- the maximum number of payment instruments to be issued as envisaged by the undertaking; and
- the risks faced by the customer when using the payment instrument benefitting from the exclusion, as identified by the undertaking.

These criteria may be used individually or simultaneously as a "body of evidence" to assess whether the use of a specific payment instrument is limited within a limited network of acceptors.

In any case, the benefit of the exclusion should be ruled out whenever the assessment of the payment instrument, made in accordance with the restrictive criteria set out above, shows that it is accepted in more than one limited network, that the network of acceptors is bound to grow or that the means of payment is bound to be universal.

## **2. Specific points of attention and follow-up for exclusions**

Undertakings benefitting from an exclusion can provide payment services or issue and manage electronic money without authorization as a payment institution or an electronic money institution. This absence of authorisation has consequences for users.

### **2.1. Waiver of requirements regarding consumer protection, safeguarding of funds and AML-CFT**

As stated in recital (14) of PSD2, the exclusion regime should remain limited as "this implies greater risks and no legal protection for payment service users".

In this respect, it should be recalled that undertakings which are excluded from authorisation (in particular some e-commerce platforms) are not, contrary to authorised institutions, subject to the rules regarding:

- protection of payment service users as defined in Titles III and IV of PSD2;
- obligations relating to the safeguarding of funds of payment service users and electronic money holders;
- AML-CFT obligations.

Thus, in the event of bankruptcy, the payees or, where applicable, holders of electronic money have no guarantee as to the repayment of their funds.

To mitigate this risk, the ACPR recommends that companies that benefit from the exclusion regime, including exclusions that are not subject to a notification, segregate the funds they receive on behalf of users in a dedicated account, in order to ensure the security of the means of payment they issue.

When assessing the exclusions that are subject to notification (volume of payments or volume of electronic money in circulation exceeding EUR 1 million), the ACPR checks whether a dedicated account exists. This requirement was approved by the Conseil d'État in a decision published on 24 April

2013<sup>6</sup>. Other methods for safeguarding users' funds (insurance, collateral) may be considered depending on the situation and will be analysed on a case-by-case basis by the ACPR.

The ACPR recommends that entities that benefit from an exclusion explicitly mention in their terms and conditions the regulatory framework under which they operate.

## **2.2. The combination of payment instruments benefitting from exclusions and/or regulated activity by the same undertaking**

### **2.2.1. The combination of a regulated activity and a payment instrument benefitting from an exclusion**

The payment service providers referred to in Article L.521-1-I of the MFC and issuers of electronic money as referred to in Article L.525-1 of the same Code may provide services based on payment instruments benefitting from an exclusion and that can only be used in a limited way.

However, the beneficiary of the exclusion must ensure that its activities are segregated depending on the status under which they are provided, and that there is no risk of confusion for the users.

A clear distinction should be made so that users are informed when they are not covered by the provisions set by the MFC relating to the protection of payment service users. Furthermore, they need to be able to differentiate between electronic money and regulated payment services on the one hand and services benefitting from an exclusion on the other.

The ACPR takes all appropriate measures if it turns out that, when assessing the notification:

- the distinction between regulated payment services and/or electronic money and services benefitting from an exclusion is not clear or appropriate enough, and/or
- services benefitting from an exclusion are likely to impair either the financial soundness of the payment service provider or the issuer of electronic money, or the ACPR's ability to supervise them.

In this context, provided that the conditions described above - specifically with regard to technical and contractual restrictions or information to users - are met, and depending on the assessment of the situation by the ACPR, the same means of payment can accommodate simultaneously a payment instrument benefitting from an exclusion and a regulated payment instrument.

### **2.2.2. Multiple payment instruments benefitting from exclusions on the same means of payment**

Any undertaking may issue more than one payment instrument benefitting from an exclusion and accommodate those different instruments on the same means of payment, provided that each of those instruments meets the requirements laid down in this position, specifically with regard to technical and contractual restrictions or information to users.

Where an undertaking provides services based on several payment instruments benefitting from exclusions, the calculation of the volume of payments or of electronic money in circulation for the EUR 1 million threshold must be carried out by combining all payment transactions executed in France with all such payment instruments provided by the same undertaking.

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<sup>6</sup> Conseil d'État, Item 354957, 9th and 10th subsections combined, 24 April 2013

## **2.3. Identification of payment instruments benefitting from exclusions and notification arrangements**

Given that these instruments are not subject to the provisions regarding consumer and fund protection, it is essential that payment service users and electronic money holders are able to identify payment instruments benefitting from exclusions. In this respect, national competent authorities publish a list of the entities which benefit from an exclusion (see below) and which have been subject to prior approval. This list can be found on their websites (in France: [www.regafi.fr](http://www.regafi.fr)), as well as in the European Banking Authority's central register.

Provided that the volume of payment (executed volume of payments over the last 12 months) or electronic money in circulation exceed EUR 1 million, undertakings must address a notification to the ACPR to benefit from an exclusion.

When issuing payment instruments benefitting from exclusions to users in more than one Member State, undertakings shall comply with the thresholds referred to in the previous paragraph in each of the Member States. They shall address a notification to the competent authority of each State where the thresholds are exceeded.

## **2.4. Improved monitoring of exclusions**

Undertakings benefitting from an exclusion are subject to a reporting obligation to the ACPR. They must therefore provide a reporting on an annual basis in order to ensure that they still comply with the criteria for the exclusion and that the means of payment they issue are still secure. This reporting shall be sent each year to the ACPR by June 30.

For efficiency reasons, it is proposed that undertakings should fill out a standardised form in accordance with the simplified template set out in Annex I.



## Déclaration annuelle

**MERCI DE REMPLIR LE FORMULAIRE**

### I. L'entreprise

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#### Désignation de l'entreprise

Dénomination  
sociale

Capital Social

#### Personne qui assure la responsabilité du dossier

Nom

Prénom

Titre/fonction

N° de téléphone

E-mail

Date

Signature

#### Coordonnées de l'entreprise

*Si le siège social de l'entreprise a changé (extrait K-bis à joindre) :*

Adresse du siège social ou de l'adresse professionnelle :

Code postal

ville

pays

N° téléphone

Adresse principale du lieu d'exploitation *(si différente du siège social)*

#### Dirigeant (y compris entrepreneur individuel)

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***S'il y a eu un changement de direction (extrait K-bis à joindre) :***

Nom

Prénom(s)

Date et lieu de naissance

Adresse :

## **II. L'activité**

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***Le réseau d'accepteurs des moyens de paiement a-t-il été étendu ? Si oui, décrivez-le de façon précise.***

***L'éventail de biens et de services pouvant être acquis a-t-il été étendu ou modifié ? Si oui, décrivez-le de façon précise (précisez s'il s'agit de biens physiques ou numériques), ainsi que le lien fonctionnel entre ces biens ou services.***

***La nature des opérations a-t-elle changé? Si oui, décrivez-la***

***L'entreprise propose-t-elle ou prévoit-elle de proposer le moyen de paiement bénéficiant de l'exemption dans de nouveaux pays de l'EEE ? Si oui, indiquez les nouvelles autorités nationales notifiées.***



***L'entreprise prévoit-elle de fournir de nouveaux moyens de paiement tels que prévus aux articles L. 521-3, L. 525-5 et L. 525-6 du CMF reposant sur un instrument de paiement n'ayant pas encore fait l'objet d'une notification ?***

***Les moyens de paiement choisis ont-ils changé? Si oui, décrivez-les***

***Le schéma des flux financiers entre les différents intervenants présenté lors de votre dernière déclaration est-il toujours d'actualité ? (ex : changement de partenaire bancaire) Si oui, veuillez fournir un nouveau schéma.***

***Y a-t-il des changements notables en matière de sécurité opérationnelle (p.ex. changement de prestataire technique pour la gestion des paiements ou l'hébergement du site, nouvelle procédures de traitement des données sensibles etc.)? Si oui, décrivez-les de façon précise.***

### III. Sécurité des moyens de paiement

#### **Services de paiement :**

Évolution des moyens de paiement mis en œuvres :

Pour chaque moyen de paiement (carte, virement, prélèvement, etc.) mis à disposition du public ou géré, indiquer les volumes et valeur en émission et réception ainsi que le nombre de transactions frauduleuses et la valeur globale pour chaque moyen de paiement.

Préciser les typologies de fraudes observées et indiquer les mesures prises ou envisagées.

**Pour la période allant du 01/01/20xx au 31/12/20xx uniquement (si non concerné écrire « NEANT »)**

Nature du moyen de paiement :					
Total transactions				Fraude <sup>(1)</sup>	
Volume (en unité)		Valeur (en € sans décimales)		Nb de transactions frauduleuses (en unité)	Montant des transactions frauduleuses (en € sans décimales)
Émis	Reçu	Émis	Reçu		
Typologie de fraude		Mesures prises ou envisagées		Évolutions prévues	

(1) La fraude, en ce qui concerne ce tableau de statistiques, désigne notamment le comportement de toute personne morale ou physique [le « fraudeur »] qui :

- Fait un usage anormal ou irrégulier d'un moyen de paiement, des éléments qui le constituent ou des informations qu'il contient, avec l'intention d'obtenir de manière indue un bien, un service ou un enrichissement, et/ou de causer un préjudice financier à celui qui a distribué le moyen de paiement, à son utilisateur légitime ou à un tiers,
- ou utilise la manipulation et/ou la contrainte envers un utilisateur légitime de moyen de paiement pour le conduire à en faire usage au bénéfice du fraudeur ou d'un complice et/ou dans le but de causer un préjudice financier à l'utilisateur légitime du moyen de paiement, à celui qui a distribué le moyen de paiement ou à un tiers,
- ou conteste de mauvaise foi un ordre de paiement valide dont elle est l'initiatrice.

Les utilisations d'un moyen de paiement qui sont irrégulières du seul fait d'un défaut de provision suffisante sont exclues du périmètre de la fraude.

## **Monnaie électronique :**

Pour la période allant du 01/01/20xx au 31/12/20xx uniquement (si non concerné écrire « NEANT »)

<b>Monnaie électronique</b>		<b>Fraude<sup>(1)</sup></b>	
<b>Volume d'émission sur l'exercice (en € sans décimale)</b>	<b>Encours au 31 décembre 20XX (en € sans décimales)</b>	<b>Nb de transactions frauduleuses (en unité)</b>	<b>Montant des transactions frauduleuses (en € sans décimales)</b>
<b>Typologie de fraude</b>	<b>Mesures prises ou envisagées</b>	<b>Évolutions prévues</b>	

(1) La fraude, en ce qui concerne ce tableau de statistiques, désigne notamment le comportement de toute personne morale ou physique [le « fraudeur »] qui :

- Fait un usage anormal ou irrégulier d'un moyen de paiement, des éléments qui le constituent ou des informations qu'il contient, avec l'intention d'obtenir de manière indue un bien, un service ou un enrichissement, et/ou de causer un préjudice financier à celui qui a distribué le moyen de paiement, à son utilisateur légitime ou à un tiers,
- ou utilise la manipulation et/ou la contrainte envers un utilisateur légitime de moyen de paiement pour le conduire à en faire usage au bénéfice du fraudeur ou d'un complice et/ou dans le but de causer un préjudice financier à l'utilisateur légitime du moyen de paiement, à celui qui a distribué le moyen de paiement ou à un tiers,
- ou conteste de mauvaise foi un ordre de paiement valide dont elle est l'initiatrice.

Les utilisations d'un moyen de paiement qui sont irrégulières du seul fait d'un défaut de provision suffisante sont exclues du périmètre de la fraude.