

Position Paper

on the EBA Consultation on the draft Guidelines on the limited network exclusion under PSD2

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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The German Banking Industry Committee (**GBIC**) welcomes EBA's initiative to provide more clarity on the interpretation of Article 3(k) PSD2 as well as to harmonise the application of the limited network exclusion (**LNE**) within the Union.

In response to the public consultation, we would like to submit the following comments on draft **Guideline 5 on the provision of services under Article 3 (k) PSD2 by regulated entities**:

General Comments on Guideline 5 on the provision of services under Article 3 (k) PSD2 by regulated entities

In general, we would like to emphasize that regulated entities are allowed to provide services under the LNE. Article 18(1)(c) PSD2 explicitly states that payment institutions are allowed to engage in business activities other than the provision of payment services. In this context, it is important that a level playing field between regulated and non-regulated entities in the provision of services under the LNE is ensured.

Comments on draft Guideline 5.2.

We acknowledge that it is important to distinguish payment services regulated under PSD2 from non-regulated services provided under the LNE. A clear distinction between these services is usually achieved by clearly communicating the usability of instruments issued under the LNE and the limitations of their usability (such as limited network acceptance, no cash-out etc.). Such information is already provided in the terms and conditions of such instruments and ensures that the customers are aware of the limited usability of such services.

We do not see a legal basis for requiring regulated entities to use a different brand or separate legal entities when providing services under the LNE. Such restriction would create a strong competitive disadvantage for regulated entities and could obstruct regulated entities from providing services under the LNE, leading to an unlevel playing field between regulated and non-regulated entities. Furthermore, the legal right of payment institutions to use their usual brand must remain unaffected.

To ensure a clear distinction between regulated payment services under PSD2 and non-regulated services under the LNE it would be sufficient to use a different product name when providing services under the LNE. In addition, the standardised terminology of payment services introduced by the Payment Accounts Directive 2014/92/EU already ensures that the most representative services linked to a payment account are clearly distinguished from other services.

Comments on draft Guideline 5.3.

As stated above, a clear distinction between payment instruments issued under PSD2 and instruments issued under the LNE can be achieved by clearly communicating the limitations of instruments issued under the LNE in their terms and conditions as well as by using different product names. Therefore, we see no need to further inform customers that they do not benefit from the protection for payment services users under PSD2. In addition, introducing such a requirement only for regulated entities would create a competitive disadvantage for regulated entities. This would lead to an unlevel playing field between regulated and non-regulated entities in the provision of services under the LNE.