



PVD position paper on selected topics  
of the Questionnaires for EU Associations of VVA  
of 22 February 2022

Final version: 7 June 2022

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## Exclusion für Telecom Service Providers (Q. 10)

(Marion Stein)

**Are you aware of the exclusion for telecom service providers?**

We are aware that in the German market, mobile carriers in particular are invoking the exemption for billing digital content and voice services. In our opinion, there is still a need to maintain this exemption.

**How are they applied regarding the thresholds for the exemption?**

To our knowledge, the threshold value of 50 euros per transaction and the limit of 300 euros are observed and complied with according to the explanations of BaFin. This is also reported annually to BaFin by those providers who invoke the exemption rule (only BaFin can provide precise information on the question of who reports what, as the reports are not published).

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## Exclusion für Telecom Service Providers (Q. 10)

### Are the thresholds appropriate (Art. 3 lit. I PSD2)?

Telecommunications providers, especially mobile operators, are seeing a strong increase in demand for the billing of digital goods. This is due on the one hand to the increasing use of smart phones in the population and on the other hand to the fact that more and more highly innovative digital offerings are being developed, and the providers of these digital offerings would also like to bill them via mobile communications. Also, more and more high-quality and therefore more expensive content, such as security packages or streaming offers, is being offered for use with mobile devices. In this context, it should be taken into account that customers who purchase a new mobile device in particular purchase digital goods on a special scale immediately after purchasing the mobile device, so that the limit of EUR 300 is quickly reached. Therefore, an adjustment of the threshold and the limit in Art. 3 lit I PSD 2 is urgently needed. This would also promote the further the development and growth market for digital goods.

Irrespective of this, the increase in the threshold value of 50 euros and the limit of 300 euros should take into account the inflation of recent years and the now sharply rising inflation, which is also making itself felt in the market for digital goods.

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## Concept of e-money (Q. 11)

(Hartwig Gerhartinger, Hugo Godschalk, Marion Stein, Christian Walz)

### No clear demarcation between e-money according to EMD2 and e-money tokens in the sense of MiCAR (various draft versions).

- Assumption: EMD2 will be integrated into PSD3.
- The e-money definition in PSD3 should be formulated in a technology-neutral way.
- E-money as defined in PSD3 and products exempted from e-money regulation (Art. 1(4) and (5) of EMD2) should not fall within the scope of MiCAR, even if the monetary values are stored using DLT.

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## Concept of e-money (Q. 11)

### **No clear demarcation between payment accounts held in credit, e-money accounts and deposit business:**

Proposal:

- Credit balances on payment accounts held by payment institutions and e-money institutions should only be permitted in the amount of a specific payment order already issued when the credit balance is deposited (specific earmarking).
- Balances on e-money accounts should only be allowed to be used for the execution of payment transactions without the need for a corresponding payment order to already exist at the time of deposit (abstract earmarking).
- If none of the above circumstances apply, credit balances on accounts should be deposits that may only be accepted by credit institutions (no earmarking).

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## Concept of e-money (Q. 11)

### **No meaningful demarcation between payment and e-money institutions**

Proposal (3 categories of Payment Institutions):

- Payment institutions without any ownership of other people's funds (account information service and payment initiation service).
- Payment institutions that may accept third-party funds only with a specific earmarking (execution of a specific payment order).
- Payment institutions that are allowed to accept third-party funds as electronic money with an abstract earmarking (execution of payment transactions without the existence of a corresponding payment order).

Differentiation in regulatory intensity (e.g. capital requirements, cf. the systematics in Art. 28(2), Art. 29 of Directive 2013/36/EU).

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## Article 3 k) Limited Network Exclusion (Q. 47)

(Peter Hammer, George Wyrwoll)

### Experience with 3k exemptions in Germany

- **3ki "limited network"**

- The *limited network* exclusion is **well established in Germany**, has **many use cases** and provides a **clear framework**.
- The corresponding regulation can be found in the German Payment Services Supervision Act (Zahlungsdienstaufsichtsgesetz, ZAG) with corresponding interpretations by BaFin (CA), which are also referred to e.g. by the tax authorities.
- The framework for regional voucher cards is a noteworthy example. Corresponding voucher cards can only be redeemed at certain retailers within a two-digit zip code and directly geographically neighboring two-digit zip code areas.

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## Article 3 k) Limited Network Exclusion (Q. 47)

- **3kii "limited range"**

- The *limited range* exclusion is also **well established** in Germany. Although there is a **smaller number of examples**, the specific regulation also provides a **clear framework**.
- The corresponding regulation can be found in the German Payment Services Supervision Act (Zahlungsdienstaufsichtsgesetz, ZAG) with corresponding interpretations by BaFin (CA), which are also referred to e.g. by the tax authorities.
- With fuel cards, fitness club vouchers, cards for public transportation or gift cards for clothing, there are also some well-known applications.

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## Article 3 k) Limited Network Exclusion (Q. 47)

- **3kiii “social or tax purposes”**
  - The *“instruments for social and tax purposes”* exclusion is **hardly used in practice in Germany** because there is **great ambiguity** as to what exactly is covered.
  - The corresponding regulation can be found in the German Payment Services Supervision Act (Zahlungsdienstaufsichtsgesetz, ZAG). However: Corresponding interpretations are **too narrow defined by the BaFin in Germany**.
  - Clear examples of "social and tax purposes" on EU level are required and should include all instruments for social and tax purposes. This would ensure a uniform interpretation of the regulation in Europe and would prevent an excessively narrow interpretation in Germany.