

Joint Position: Retaining the CDD exemption for low-risk, low-value e-money products

1. E-money exemption to the great benefit of consumers

Customers greatly benefit from the exemption for obliged entities (“issuers”) to abstain from carrying out certain customer due diligence (CDD) measures with respect to low-risk, low-value electronic money, i.e. if there is a proven low risk, the customer does not need to be identified. The exemption enables **uncomplicated access** to low-risk e-money products, **supports financial inclusion and data protection**, and makes it easy for consumers to use new low-risk payment methods for small value payment transactions. **Privacy and data protection are important concerns** for the acceptance of payment methods, as also currently discussed in the context of the digital euro. Such possibility should also be retained in the field of **e-money**, which is, unlike cash, **very well traceable and always leaves an electronic footprint**. Without the exemption, popular e-money products such as e-money gift cards might disappear, to the detriment of honest consumers. This would be significant given that e-money falling under the exemption is the last remaining regulated payment instrument to carry out low-value, low-risk payments on the internet without providing consumer’s identity information.

2. Abolishing the e-money-exemption will hamper innovative business models

The **e-money exemption is important for users and issuers** of these low-value, low-risk products and **also for all retailers / businesses** partnering with issuers to **distribute** such products. The e-money exemption **supports the digital economy, digitisation and innovative business models**. The ease of access to exempt low-value, low-risk e-money products allows the continued provision of simple, controlled products (e.g. e-money gift cards) and is an efficient way to provide new payment methods to users. Disproportionate identification requirements for low-value, low-risk e-money transactions will prevent consumers from using these products. The e-money exemption is an important and valuable provision for the retail and financial services market.

3. E-money-exemption in line with FATF Recommendations

A legal opinion, commissioned by the Prepaid Association of Germany, concludes that such **an exemption can be incorporated in a regulation in a compliant way and following the risk-based approach**, without being in conflict with EU legislation and FATF Recommendations. The proposed AML-Regulation should therefore **cater for the possibility that e-money products with a proven low-risk are exempted from certain CDD provisions**. The e-money exemption shall **only apply to products with a proven low risk**. The issuer of an e-money product (the obliged entity) will have to **carry out a risk assessment, verifying the low-risk nature of the particular e-money product**, taking into account the findings of the Supra National Risk Assessment (SNRA) drawn up by the Commission as well as the NRAs carried out by the Member States. If a **Member State wishes to opt-out of such an exemption following the results of its NRA, this remains possible**. In addition, the application of the CDD exemption is **subject to strict conditions** and issuers would still be required to **carry out a sophisticated transaction monitoring** to detect and prevent unusual and suspicious transactions on the exempted e-money products.

In other jurisdictions, such as the United States, which follow the same FATF standards, low-risk e-money products with a proven low risk can also be used without prior customer identification.

4. Limited Network Exclusion is no viable alternative

It has been stated that companies currently issuing low-risk, low-value e-money products could instead make use of the **Limited Network Exclusion (LNE) provided for in PSD2 (Art. 3 (k))**, in place of the current e-money exemption. However, **the e-money exemption is different** and cannot simply be substituted in this way. The exemption applies to products that are classified as e-money; a financial services product which is subject to the regulatory framework for operating e-money products (e.g. both issuers / product users are subject to certain statutory rights and obligations and that funds linked to the products are safeguarded in a particular way). Whereas **products that qualify under the LNE are not considered to be e-money** and there is no possibility for an e-money product to qualify under an LNE, unless the product itself is altered so that it is no longer classified as e-money. Note, **PSD2 is currently under review** and consequently there might be further changes to framework conditions for products that qualify under an LNE. There is therefore also uncertainty as to whether market participants could even offer their products in the future under the LNE. The changes mean

the withdrawal of valuable products in the marketplace which will be a significant loss to both the issuers of such products and to their users.

Background

Currently, Article 12 of the Anti-Money Laundering Directive contains a possibility to permit low-value, low-risk e-money products to be sold to and used by persons without requiring such person(s) to be identified and their identity information verified. The identity and verification procedure is known as customer due diligence (CDD). Unless products fall within the conditions of the permitted exemption, customer due diligence (CDD) must be carried out on all persons purchasing / using an e-money product. The exemption enables uncomplicated access to low-value, low-risk e-money products, supports financial inclusion and privacy of personal data. It also provides a simple, low cost and efficient procedure for consumers to try new low-risk payment methods for small value payment transactions.

Privacy and data protection are important concerns for users and providers of these types of payment methods. It is no surprise that privacy and data protection are also currently discussed in the context of the digital euro. Low-value, low-risk e-money products falling under the exemption are the last remaining regulated payment instruments that can be used by persons to make payments without having to provide their identity information. Unlike cash, the use of these products does not mean they are truly anonymous – payment transactions using them are still traceable and always leave an electronic footprint. Low-value, low-risk e-money products that qualify for this exemption include among others gift cards that can be purchased and spent with retailers (physical and online shops).

In the absence of this exemption, all purchasers / users of e-money products would be required to provide personal information for every transaction, regardless of the risk and value of the transaction. The proposed law does allow the scope or timing of CDD measures to vary if the e-money product is low-risk (referred to as Simplified Customer Due Diligence (SDD)) but importantly, unlike the current exemption, it still requires for CDD measures to be carried out. The collection and verification of identity information would change the accustomed way of purchasing and using such products.

Typical features of e-money gift cards (as example for the relevance of the exemption) include that they

- (i) are provided at low cost (often free to the user);
- (ii) have with a limited financial amount loaded on the product (max value €150 and a €50 online transaction limit);
- (iii) can only be used in a limited way;
- (iv) are typically bought by one person as a gift/reward/facility to access goods or services to be used by another person; and
- (v) are used within a short time frame;

In these cases, the application of SDD becomes more challenging, if not impractical to apply. This would likely lead to a reduction in issuers offering such types of products and therefore constitutes a lasting threat to many companies and innovative business models.

About Us

BrancheVereniging Cadeaukaarten Nederland (BVCNL)

BVCNL is the industry organisation representing the interests of the gift card industry in the Netherlands. It represents the Dutch Key Players in a €1.7 billion gift card market. With over 40 members including retailers, issuers and service providers BVCNL provides a platform and infrastructure for members to collaborate, share best practice and keep up to date with a fast growing and dynamic industry. BVCNL actively promotes the collective interests of its members. It monitors the reputation of the industry and liaises with stakeholders to create maximum benefits opportunities for its members.

Electronic Money Association (EMA)

The Electronic Money Association (EMA) is the trade body representing the interests of e-money issuers and innovative payment service providers globally for over 20 years. Our membership includes large e-commerce businesses, fintech service providers, prepaid card issuers, crypto currency businesses, AIS/PIS providers, acquirers, bill payment providers, corporate incentive providers, mobile payment specialists, and business to business services. The EMA acts as a forum for industry, enabling the sharing of know-how and the development of good practice. It represents its members in discussions with governments, EU policymakers, consumer bodies and other parties. We have offices in Brussels and London. The EMA also has local branches in 5 European countries: Ireland, Lithuania, Luxembourg, Malta, and the Netherlands.

European Payment Institutions Federation (EPIF)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. EPIF thus represents roughly one third of all authorized Payment Institutions ("PI") in Europe. All our members operate online. Our diverse membership includes a broad range of business models, and we aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

EuroCommerce

EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.

European Association of Payment Service Providers for Merchants (EPSM)

The EPSM is a non-profit trade association mainly for card acquirers and other merchant facing PSPs in the SEPA region. Non-voting members include major card schemes, terminal manufacturers, and processors. There are currently more than 60 members based in more than 15 countries across Europe. Main activities are regular physical and virtual meetings, online-working groups as well as contributions to European policy makers. A more detailed profile can be found at www.epsm.eu.

Gift Card & Voucher Association (GCVA)

The Gift Card & Voucher Association (GCVA) is a not for profit trade body & membership organisation, which represents the key players in the gift card and stored value solutions market. With over 80 members representing key retailers, issuers and suppliers operating in the UK and EU, the GCVA provides an information and reference point for the Gift Card & Voucher industry and is at the forefront of the issues affecting the industry. Its main objective is to provide a platform and infrastructure for the industry and to raise the profile and use of gift cards, positively positioning the sector to consumers, businesses, government and their interested parties.

Independent Retail Europe

Independent Retail Europe is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers. Independent Retail Europe represents 24 groups and their 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons. Find more information on our [website](#), on [Twitter](#), and on [LinkedIn](#).

Payments Innovation Forum (PIF)

The Payments Innovation Forum (PIF) is the not-for-profit industry body representing regulated payment service providers. Our members are delivering innovative products and solutions for consumers, businesses and public sector organisations in the UK and EU. PIF's primary goal is to support and champion innovation in payments by promoting the highest possible standards of regulatory compliance, advocating for our members on important policy matters, improving the perception of new and existing payment services and facilitating the exchange of knowledge and experience to drive performance across the industry.

Prepaid Verband Deutschland e.V. (PVD)

Founded in 2011, the Prepaid Verband Deutschland (PVD) e. V. is an industry association representing the interests of the prepaid industry operating in Germany. These include, for example, providers of prepaid payment methods (such as banks and electronic money institutions), processing companies, retailers and E-Commerce companies issuing gift cards, technical service providers of loyalty and prepaid systems and distributors of prepaid payment products in the retail sector. By actively developing the prepaid market, the association represents the interests of its members and is the point of contact for politicians, authorities and the public. At present, more than 20 companies are members of the PVD.