

Notification of the use of the limited network exclusion under Article 3(k) of the Law of 10 November 2009 on payment services JUNE 2022

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# Preliminary remarks and general principles

**1.1** Article 4 of the Law of 10 November 2009 on payment services (hereinafter the “**Law**”), as amended, transposing the Directive 2015/2366 (“**PSD2**”) into national law, specifies that ‘*No person other than a payment service provider shall be allowed to provide payment services. This prohibition does not apply to activities expressly excluded from the scope of this Law*’.

The exclusions of the scope of the Law are listed in Article 3 of the said law. One of these is the ‘limited network exclusion’ as set out in letter (k) of the same article. With regards to this exclusion, Article 3-1(1) of the Law provides for a notification obligation for the service providers carrying out either of the activities referred to in points (i) and (ii) of letter (k) of Article 3, for which the total value of payment transactions executed over the preceding 12 months exceeds the amount of 1 million EUR.

**1.2** In order to clarify the scope of the limited network exclusion and the notification requirements, the European Banking Authority (“**EBA**”) published in February 2022 its Guidelines on the limited network exclusion under PSD2 (the “**Guidelines**”) which are available on its [website](https://www.eba.europa.eu/regulation-and-policy/payment-services-and-electronic-money/guidelines-limited-network-exclusion-under-psd2). These Guidelines have been adopted by the CSSF in its [Circular CSSF 22/812](https://www.cssf.lu/en/Document/circular-cssf-22-812/). In this context, the present section aims at describing the details of the notification requirements as per the Law and the Guidelines.

**1.3** The present notification form shall allow the **issuers** of specific payment instruments that can be used only in a limited way and that meet one of the following conditions:

i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer; or

ii) instruments which can be used only to acquire a very limited range of goods or services

to introduce such notification to the CSSF whenever the value of the related payment transactions exceeds 1 million EUR for the preceding 12 months.

**1.4** This notification is a one-off notification which shall be submitted to the CSSF at the latest one month after that the conditions for notification set out in Article 3(k)(i) or (ii) and Article 3-1(1) are met. This deadline also applies in the case where the threshold specified in Article 3-1(1) would be reached within a shorter period of time (i.e. shorter than 12 months).

**1.5** The present notification form shall be duly filled in and sent to the CSSF along with potential annexes to the following email address: ipig@cssf.lu.

**1.6** Notwithstanding point 1.4, the issuer shall submit a new notification whenever an information related to the same specific payment instrument as provided with the initial notification has changed substantially. This includes, but is not limited to the cases where:

* the provision of the excluded services has terminated;
* the issuer intends to increase the number of providers of goods and/or services (cf. point 5.2.7 of the present form);
* the issuer intends to expand the specific geographical area for the provision of goods and/or services (cf. point 5.2.10 of the present form);
* the issuer intends to offer services under Article 3(k)(i) or (ii) of the Law based on an instrument not covered in the original notification; or
* the previously notified specific category of goods and/or services with a common purpose is intended to be changed (cf. point 5.3.6 of the present form).

**1.7** If the CSSF comes to the conclusion that the notified services fall within the limited network exclusion as provided by Article 3(k)(i) or (ii) of the Law, the CSSF will, in conformity with Article 3-1(3) and (4) of said law, inform the EBA of the services that have been notified and specify in the context of which exclusion the activity is carried out and make available the description of the notified activity to the public in the both CSSF (cf. Article 36 of the Law) and EBA registers (cf. Article 15 of PSD2).

In this context, the issuer should inform the CSSF (ipig@cssf.lu) of any changes concerning its contact or identification details as indicated under section 2 and 3 of the present notification form in order to allow the CSSF to update these registers.

**1.8** If the CSSF comes to the conclusion that the notified services do not fall within the limited network exclusion as provided by Article 3(k)(i) or (ii) of the Law, the CSSF shall take a duly motivated decision on the basis of criteria referred to in the said article where the activity does not qualify as a limited network, and inform the issuer accordingly.

If so, the CSSF will contact the issuer in order to determine whether a payment or electronic money license would be necessary.

**1.9** If an exclusion has been granted to an issuer but that the conditions for notification are no longer met, it should advise the CSSF by email (ipig@cssf.lu) within one month of the date from which the conditions were no longer met.

**1.10** The information provided by the issuer should be true, complete, accurate and up-to-date.

**1.11** Should the CSSF require clarifications on the information that has been submitted, the issuer should provide such clarification without delay.

**1.12** All data requested under the present notification form is needed for its assessment and will be treated by the CSSF in accordance with the professional secrecy obligations set out in the Law, without prejudice to applicable Union law and national requirements and procedures on the exercise of the right to access, rectify, cancel or oppose.

Terms not otherwise defined in the present application form shall have the meaning of the definition provided in PSD2 and/or the Law.

# Contact details

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| **2.1** Name(s) of the person(s) in charge of dealing with the notification file and their contact details (i.e. address, phone number and email address) | Click or tap here to enter text. |
| Click or tap here to enter text. |
| Click or tap here to enter text. |
| Click or tap here to enter text. |

# Identification details

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| **3.1** Corporate name:  | Click or tap here to enter text. |
| **3.2** Trade name (if different): | Click or tap here to enter text. |
| **3.3** Trade register number:  | Click or tap here to enter text. |
| **3.4** Address of the applicant’s registered office:  | Click or tap here to enter text. |
| **3.5** Applicant’s electronic address and website:  | Click or tap here to enter text. |
| **3.6** Is the applicant regulated by a national competent authority in the financial sector ? |[ ]  Yes, please specify the name of the national competent authority: Click or tap here to enter text.***Please also fill*** [***section 6***](#_Regulated_entities)***.*** |
|  |[ ]  No. |

# General information

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| **The threshold** |
| **4.1** Provide the total value of payment transactions executed over the preceding 12 months (in euro) in Luxembourg. Note that the calculation of the threshold under Article 3-1(1) of the Law is to be carried out at the level of the issuer. If the issuer provides services based on more than one specific payment instrument under Article 3(k)(i) and/or (ii) of the Law, the calculation of the threshold should be carried out by combining all payment transactions executed in Luxembourg with all specific payment instruments offered by the same issuer.(cf. Article 3-1(1) of the Law and GL6.8 of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **The instrument** |
| **4.2** Can you confirm that the instrument for which this notification is submitted is a ‘payment instrument’ as per Article 1(26) of the Law?(cf. Article 3(k) of the Law and GL1.1 of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes. Please provide a legal qualification: Click or tap here to enter text. |
|  |  | Reference to the Annex (if any): Click or tap here to enter text. |
|  |[ ]  No.Please provide a legal justification: Click or tap here to enter text. |
|  |  | Reference to the Annex (if any): Click or tap here to enter text. |
| **4.3** Precise which exclusion is requested. Please only select **one** exclusion: a single payment instrument cannot benefit from more than one exclusion from the scope of application of the Law, including other exclusions under Article 3(k) of the Law.(cf. GL1.11 of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Article 3(k)(i) of the Law – specific instrument allowing the holder to acquire goods or services **only** **in the premises of the issuer**. **Please fill**[**section 5.1**](#_Exclusion_for_instruments) |
|  |[ ]  Article 3(k)(i) of the Law – specific instrument allowing the holder to acquire goods or services **only** **within a limited network of service providers** under direct commercial agreement with a professional issuer. **Please fill** [**section 5.2**](#_Exclusion_for_instruments_1) |
|  |[ ]  Article 3(k)(ii) of the Law – specific instrument which can be used only to acquire a **very limited range of goods or services.****Please fill** [**section 5.3**](#_Exclusion_for_instruments_2) |
| **4.4** Did the applicant already (or intends to) notify another Member State for the same specific instrument?*(cf. GL6.4(b) of the Guidelines* as adopted by Circular CSSF 22/812*)* |[ ]  Yes. Please insert the name(s) of the Member State(s) and the related exclusion(s): Click or tap here to enter text. |
|  |[ ]  No. |
| **4.5** Does the means of payment on which the instrument is accommodated, accommodate for another payment instrument? *(cf. GL 1.6 and 1.7 of the Guidelines* as adopted by Circular CSSF 22/812*)* |[ ]  Yes. Please clarify if the other instruments are excluded under Article 3(k) of the Law or regulated: |
|  |  |[ ]  excluded under Article 3(k) of the Law or the law of another Member State. Please specify the name of these instruments and the related exclusion:Click or tap here to enter text. |
|  |  |[ ]  regulated under the Law or the law of another Member State. Please specify the name of these instruments and the Member State(s) where they are regulated: Click or tap here to enter text. |
|  |[ ]  No. |

# Types of exclusion

## Exclusion for specific instruments used only in the premises of the issuer – Article 3(k)(i)

***Please only fill this section if you selected exclusion “Article 3(k)(i) of the Law – specific instrument allowing the holder to acquire goods or services only in the premises of the issuer” in point 4.3.***

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| **General information** |
| **5.1.1** Provide a detailed description of the instrument for which this notification is submitted. This description shall include information on: * whether the goods and/or services that can be acquired are physical and/or digital;
* whether the stores are physical and/or digital stores.

Provide in the Annex detailed flow charts for all types of transaction that can be carried out using this instrument (i.e. funding and transfers).  (cf. GL6.4(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex: Click or tap here to enter text. |
| **5.1.2** Can you confirm that the instrument can only be used in the physical premises of the issuer?(cf. GL3.1 of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes.Please justify: Click or tap here to enter text. |
|  |[ ]  No.Please explain: Click or tap here to enter text. |
| **5.1.3** Describe the contractual restrictions which are in place to limit the use of the payment instrument. Please provide us with the contract between the issuer and the payment instrument holders in the Annex.(cf. GL1.4 of the Guidelines as adopted by Circular CSSF 22/812)  | Click or tap here to enter text. |
|  | Reference to the Annex: Click or tap here to enter text. |
| **5.1.4** Describe the technical restrictions which are in place to limit the use of the payment instrument. (cf. GL1.4 and GL1.5(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any): Click or tap here to enter text. |

## Exclusion for specific instruments used within a limited network of service providers – Article 3 (k)(i)

***Please only fill this section if you selected exclusion “Article 3(k)(i) of the Law –*** ***specific*** ***instrument allowing the holder to acquire goods or services only within a limited network of service providers under direct commercial agreement with a professional issuer” in point 4.3.***

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| **General information** |
| **5.2.1** Provide a detailed description of the instrument for which this notification is submitted. This description shall include information on: * whether the goods and/or services that can be acquired are physical and/or digital;
* whether the stores are physical and/or digital stores.

Provide in the Annex detailed flow charts for all types of transaction that can be carried out using this instrument (i.e. funding and transfers). (cf. GL6.4(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex: Click or tap here to enter text. |
| **5.2.2** Can you confirm that the instrument can only be used within **one** limited network of service providers?(cf. GL2.5 of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes.Please describe the limited network: Click or tap here to enter text. |
|  |[ ]  No.Please explain: Click or tap here to enter text. |
| **5.2.3** Describe the contractual restrictions which are in place to limit the use of the payment instrument. Please provide us with the contract between the issuer and the payment instrument holders in the Annex.(cf. GL1.4 of the Guidelines as adopted by Circular CSSF 22/812)  | Click or tap here to enter text. |
|  | Reference to the Annex:Click or tap here to enter text. |
| **5.2.4** Describe the technical restrictions which are in place to limit the use of the payment instrument.(cf. GL1.4 and GL1.5(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any): Click or tap here to enter text. |
| **Specific information** |
| **5.2.5** Can you confirm that a direct contractual agreement is concluded between the issuer and each provider of goods and services (or acceptor) operating within the limited network?(cf. GL2.1(a) of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes.  |
|  |[ ]  No. Please explain:Click or tap here to enter text. |
| **5.2.6** Can you advise whether the conclusion of the above mentioned contractual agreement is delegated either by the issuer **or** the providers of goods and services? (cf. GL2.6 of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes. Please describe this delegation:Click or tap here to enter text. |
|  |[ ]  No.  |
| **5.2.7** Provide the envisaged maximum number of providers of goods and services operating within the limited network. (cf. GL2.1(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.8** Can you confirm that the limited network is characterised by a common brand? (cf. GL2.1(c) of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes. Please provide us with a description of this common brand: Click or tap here to enter text. |
|  |[ ]  No. Please explain: Click or tap here to enter text. |
| **5.2.9** Can you confirm that the limited network has a dedicated visual manifestation ? (cf. GL2.1(c) of the Guidelines as adopted by Circular CSSF 22/812) |[ ]  Yes. Please provide us with a description of this visual manifestation: Click or tap here to enter text. |
|  |  | Reference to the Annex (if any): Click or tap here to enter text. |
|  |[ ]  No. Please explain: Click or tap here to enter text. |
| **5.2.10** Provide the specific geographical area for the provision of goods and services.(cf. GL2.2(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.11** Provide the volume of payment transactions to be carried out with the payment instruments on an annual basis.(cf. GL2.2(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.12** Provide the value (in euro) of payment transactions to be carried out with the payment instruments on an annual basis.(cf. GL2.2(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.13** Provide the maximum amount to be credited to the payment instruments (if applicable). (cf. GL2.2(c) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.14** Provide the maximum number of payment instruments to be issued. (cf. GL2.2(d) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.2.15** Provide a description of the risks faced by the customer when using the specific payment instrument. (cf. GL2.2(e) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |

## Exclusion for specific instruments used to acquire a very limited range of goods and services – Article 3(k)(ii)

***Please only fill this section if you selected exclusion “Article 3(k)(ii) of the Law – specific* instrument which can be used only to acquire a very limited range of goods or services*” in point 4.3.***

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| **General information** |
| **5.3.1** Provide a detailed description of the instrument for which this notification is submitted. This description shall include information on: * whether the goods and/or services that can be acquired are physical and/or digital;
* whether the stores are physical and/or digital stores.

Provide in the Annex detailed flow charts for all types of transaction that can be carried out using this instrument (i.e. funding and transfers). (cf. GL6.4(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| Reference to the Annex:Click or tap here to enter text. |
| **5.3.2** Describe the contractual restrictions which are in place. Please provide us with the contract between the issuer and the payment instrument holders in the Annex. (cf. GL1.4 of the Guidelines as adopted by Circular CSSF 22/812)  | Click or tap here to enter text. |
| Reference to the Annex (if any): Click or tap here to enter text. |
| **5.3.3** Describe the technical restrictions which are in place to limit the use of the payment instrument. (cf. GL1.5(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| Reference to the Annex (if any): Click or tap here to enter text. |
| **Specific information** |
| **5.3.4** Provide an exhaustive list of the goods and/or services that can be acquired with the instrument. (cf. GL4 of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| Reference to the Annex (if any): Click or tap here to enter text. |
| **5.3.5** Describe the functional connection between the goods and services listed at point 5.3.4. Please note that this description shall at the very least include: * the specific category of goods and/or service to which the above list belongs; and
* the common purpose of these goods and services.

(cf. GL4.1 and GL4.2 of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| Reference to the Annex (if any): Click or tap here to enter text. |
| **5.3.6** Provide the volume of payment transactions to be carried out with the payment instruments on an annual basis.(cf. GL4.4(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.3.7** Provide the value (in euro) of payment transactions to be carried out with the payment instruments on an annual basis.(cf. GL4.4(a) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.3.8** Provide the maximum amount to be credited to the payment instruments (if applicable). (cf. GL4.4(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
| **5.3.9** Provide the maximum number of payment instruments to be issued. (cf. GL4.4(c) of the Guidelines as adopted by Circular CSSF 22/812)  | Click or tap here to enter text. |
| **5.3.10** Provide a description of the risks faced by the customer when using the specific payment instrument. (cf. GL4.4(d) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |

# Regulated entities

***Please only fill this section if you answered ‘Yes’ to point 3.6.***

|  |  |
| --- | --- |
| **6.1** Indicate the type of institution of the applicant.  |[ ]  Payment institution |
|  |[ ]  Electronic money institution  |
|  |[ ]  Credit institution |
|  |[ ]  Other, please specifyClick or tap here to enter text. |
| **6.2** Describe all the measures in place to distinguish between regulated services and excluded services. (cf. GL5.2 of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any):Click or tap here to enter text. |
| **6.3** Describe all the measures in place to inform the users of the specific payment instrument about the fact that the excluded services are excluded from the Law and that they do not benefit from the related protection. (cf. GL5.3 of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any): Click or tap here to enter text. |
| **6.4** Demonstrate that the services excluded under Article 3(k)(i) or (ii) of the Law do not impair the financial soundness of the institution.(cf. articles 11(3) and 24-7 (3) of the Law and GL5.4(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any): Click or tap here to enter text. |
| **6.5** Demonstrate that the services excluded under Article 3(k)(i) or (ii) of the Law do not impair the ability of the CSSF to monitor compliance with the legal requirements under the Law. (cf. GL5.4(b) of the Guidelines as adopted by Circular CSSF 22/812) | Click or tap here to enter text. |
|  | Reference to the Annex (if any): Click or tap here to enter text. |

# Declaration

The applicant declares that the information provided is true, complete, accurate and up-to-date.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Name(s)** |  | **Signature(s)** |  | **Date(s)** |  |
| Click or tap here to enter text. |  | Click or tap here to enter text. |



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