

Response to HM Treasury Consultation on the Implementation of the Revised EU Payment Services Directive II dated February 2017

This response is made on behalf of the members of the UK Gift Card and Voucher Association (UKGCVA).

The UKGCVA is a UK trade association representing businesses involved in issuing or distributing gift vouchers and gift cards. The Association represents the key players in the gift voucher and gift card markets, which is worth over £5 billion per year in the UK.

Membership of the UKGCVA is open to any company selling gift vouchers or gift cards and to companies that offer support services. As well as leading high street retailers, members include hotels, experience companies and incentive agencies along with service providers such as gift card processors and gift card and voucher printers.

Currently, the UKGCVA has 85 members.

The UKGCVA has been operating since 1991 and is run by members for its members.

The UKGCVA promotes best practice within the industry and works with government agencies on industry legislation and projects. Most recently it worked with the Department for Business, Energy & Industrial Strategy (formerly Business, Innovation and Skills) and the Law Commission on their enquiries into consumer protection for prepayments made in the retail sector. The UKGCVA has participated in discussions with HM Treasury and the Financial Conduct Authority's predecessor, Financial Services Authority on the implementation of the second Electronic Money Directive and the Payment Services Directive into national law.

A key role of the UKGCVA is to keep members up to date with trends within the marketplace and to develop opportunities for business development amongst members. Members issuing gift cards and gift vouchers may submit gift card sales data to enable the UKGCVA to be the authoritative voice industry.

The UKGCVA does not aim to influence individual members to adopt a majority or general view in any aspect of business practice. The integrity of each member company is a basic premise and remains the responsibility of each participating representative who engages with Association.

The objectives of the UKGCVA are to:

- Represent the interests of the gift card & voucher industry;
- Promote the concept of gift cards, vouchers and e-gifts;
- Enhance the standing and raise the profile of the gift card & voucher industry;
- Maintain and promote communications, networking and social activity between members;

- Improve awareness of market developments within the gift card & voucher business;
- Address consumer and legal issues relating to the gift card & voucher industry;
- Enhance members' knowledge of issues relating to the production, distribution and redemption of gift cards, vouchers and e-gifts, and to establish standards of best practice;
- Carry out market research on behalf of our members to understand the customers and drive the overall Gift Card, vouchers and e-gifts.

For more information on the UKGCVA please go to <http://www.ukgcva.co.uk>.

Please see our comments in response to the questions below. Please note our response is limited to [] only.

Consultation Questions

Question 1: Do you agree with the government's proposed approach to implementation of the PSDII? Bearing in mind the maximum harmonising nature of the PSDII, do you think the structure of the regulatory regime will allow the UK's competent authorities to enforce the regulations in a fair and equal way towards all payment service providers?

Answer: Yes we broadly agree with the governments proposed approach but recognise that its ability to continue to apply a particular approach will be limited to where it is permitted to do so under PSDII i.e. where PSDII imposes an obligation, government may only derogate from that obligation so far as it is permitted to do so in PSDII.

Question 2: A consultation stage impact assessment of the proposed changes will be published before the end of the consultation. Do you have any comments on the impact of the PSDII set out in the impact assessment?

Answer: None.

Question 3: Do you agree that the government should continue to exempt the institutions listed above from the PSDII?

Answer: We have no comment to make.

Question 4: If you intend to make use of the electronic communications networks and services exemption, how do you intend to track the €50 and €300 spending limit?

Answer: We are not aware of any Members of the UKGCVA intending to make use of this exemption.

Question 5: Is the approach on cascading useful to intermediaries given the limits on the exemption and the potential need for authorisation or registration for other services provided? What types of business models would benefit?

Answer: *We have no comment to make.*

Question 6: Do you agree with the government's interpretation of the limited network and commercial agent exemptions? Which business models do you think may now be brought into scope that were previously exempt?

Answer: *With respect to the limited network exemptions, we have the following comments:*

We don't believe it is clear which types of programmes are intended to be brought into the scope of PSD2.

Recital 13 in PSD2 refers to the exemption only applying to a payment instrument if it can be used only for the purchase of goods and services in a specific retailer or specific retail chain. However, neither Article 3(k) in PSD2, nor Schedule 1 Part 2, Paragraph 2(k) of the draft Payment Service Regulations 2017 (Draft PSR) refer to programmes being limited in the way described in Recital 13 of PSD2. In any event the reference to a "specific retailer or specific retail chain" does not clarify the type of programmes that are intended to be excluded.

We agree with the government's approach of not drafting the exemption in the Draft PSr in a prescriptive manner, this helps reduce the risk of excluding particular programmes unintentionally. However, the consequence of this is that without guidance from government and/or the Financial Conduct Authority our members and new entrants to the market who wish to rely on this exemption will not know whether they can.

We appreciate that the intention behind PSD2 is to limit the range and size of programmes operated under the limited network exemption, but we remain unclear as to how the limitation will be applied and this is a concern for some of our members. For example, some of our members operate gift card programmes under which a gift card may be used at a range of retailers, that are not part of the same retail chain, or group of companies. In each case the issuer has a commercial agreement in place with specific retailers with whom it agrees can accept the issuer's gift card for payment of goods / services. Example gift card programmes are National Book Tokens (issuer of gift cards that can spent in book shops), Store Financial and Intu (providers of shopping centre gift cards). These programmes are limited, by virtue of the fact the gift cards can only be spent in a limited geographical location such as a shopping centre, or by the nature of the goods or services sold by a retailer, an example here is book stores participating in the National Book Token gift card programme.

These programmes are by their nature limited in scale - by location or range of goods / services that may be purchased using the particular gift card and is smaller in size in comparison to a retail branded gift card that may be spent in any store within the retailers chain of stores, particularly the large high street retailers.

PSD2 cites the significant payment volumes, values and the offer to consumers of hundreds or thousands of different products and services with no legal protection imply a greater risk to consumers. To provide context[Can we provide some stats here? What is the average load on a gift card, what's the average spend time? We could also refer to the Law Commission Report which came to the conclusion that gift cards presented a low risk to consumers in retailer insolvency.]

With respect to the notification to the competent authority (FCA), we would welcome guidance on the process; in the form of notification, timeframe for an expected response and the procedure to follow in the event the FCA viewed an exempt programme as one that should be brought into scope.

Question 7: Do you agree with the proposed change to safeguarding to ensure funds can be deposited with the Bank of England?

Answer: We support the proposed change.

Question 8: Do you agree with the government's proposed approach to access to payment systems and payment account services?

Answer: We support the government's approach.

Question 9: Do you agree with the approach to continue to exercise the SPI exemption, with the same conditions as under the PSD?

Answer: We agree with the government's approach.

Question 10: Do you agree that the government should extend the right of termination to overdrawn current accounts?

Answer: We have no comment to make.

Question 11: Do you agree that the Title III provisions should continue to apply to transactions involving micro-enterprises in the same way as those involving consumers?

Answer: We agree with this principle.

Question 12: Do you agree with the government's proposal to maintain the thresholds set for low-value payment instruments in the PSRs?]

Answer: We agree with the government's proposal.

Question 13: Do you think PSPs should be required to provide monthly statements to payers and payees?

Answer: We don't believe that it should be necessary for PSPs to provide a monthly statement to payers and payees if a PSP is able to provide a facility for its users to access, download and/or print statements online.

Question 14: Do you agree with the government's proposal to provide access to out-of-court procedures (in the form of the FOS) only where the complainant would usually be eligible to refer a complaint to the FOS?

Answer: We agree with governments proposal and look forward to the consultation on widening the remit to small businesses and understand the thresholds that would apply.

Question 15: Do you agree that the prohibition on surcharging should be limited to payment instruments regulated under Chapter II of the IFRs?

Answer: We agree with the government's proposal.

Question 16: Do you agree with the proposal to maintain the thresholds set for low-value payment instruments under the PSRs?

Answer: We agree with the government's proposal.

Question 17: Do you agree with the proposed approach to consent, authentication and communication?

Answer: We have no comment to make.

Question 18: Do you agree with the information and payment functionality that will be available to AISPs and PISPs?

Answer: We have no comment to make.

Question 19: Do you agree with the government's interpretation of the definition of AIS and PIS?

Answer: We have no comment to make.

Question 20: What services are currently provided that you think may be brought into scope of the PSDII by the broad reading of the definition of AIS and PIS?

Answer: We have no comment to make.

Question 21: Do you agree with this description of the rights and obligations for ASPSPs, AISPs and PISPs?

Answer: We have no comment to make.

Question 22: Do you have any comments on the initial period of implementation, before the EBA RTSs are fully in force?

Answer: We have no comments to make.

9 March 2017

DRAFT