

UKGCVA
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Dear Shamma and Clare,

Thank you for meeting with the UKGCVA on 17 October. It is important for our members to understand their obligations under the revised E-money Regulations 2011 and your input is appreciated.

As we discussed in our meeting, we set out below those questions that were raised by members which you agreed to look into and respond to us.

1. LNE interpretation

(i) With respect to gift card programmes that fall under the LNE of “a very limited range of goods or services”? Can the FCA confirm that “functional connection” between goods / services is only an example of demonstrating the limited range, but it is not the defining element required to qualify under this exemption? Businesses may issue gift cards that permit the cardholder to purchase specific (and a limited range of) goods or services but such goods / services may not necessarily be functionally connected. We would expect these types of gift cards to also benefit from the exemption. Will the FCA provide additional guidance on this point?

(ii) Is the FCA currently, or proposing to share information / assessment criteria on programmes that do / do not fall within the LNE with other Member States?

2. Notification process and steps in the event the FCA do not believe a particular gift card programme falls within the LNE

(i) Can the FCA outline the procedure in the event it viewed an unregulated gift card programme as one that should be brought into scope of the EMR?

(ii) In this regard, can the FCA provide details of the appeal process to the Upper Tribunal?

(iii) Can the operator still operate its gift card programme pending the outcome of its appeal to the Upper Tribunal?

(iv) What would happen to existing gift cards (and funds loaded on them) if an existing exemption was revoked? Members have gift cards in circulation with a validity period ranging from 6 months to no expiry.

(v) How long after the LNE exemption is revoked would a business have to find an electronic money issuer / become authorised?

(vi) Does the FCA intend to publish the appeal process in its Guidance?

3. Engaging with gift card operators

(i) How is the FCA intending to engage with / police gift card operators who are not members of key trade associations e.g. UKGCVA and Prepaid International Forum? It is the UKGCVA's observation that such operators are unlikely to have dealings with the FCA and they are likely not to be aware of these regulatory obligations.

4. Closed Loop Gift Card Programmes Outside of Scope of EMR

(i) The FCA proposed in its recent consultation paper (CP18/25) "Our Approach to final Regulatory Technical Standards and EBA guidelines under the revised Payment Services Directive (PSD2)" to clarify its view on closed loop gift cards (those that are issued by and only accepted at a single legal entity), so that it is made clear in its Guidance that operators of closed loop gift cards do not need to notify the FCA about such programmes.

Can the FCA confirm this clarification is going to be made and if so when will it be published? A number of members operate such programmes are waiting to hear from the FCA on this.

Relevant extract of the Consultation is below:

"Closed loop gift cards

7.10 When we originally consulted on implementation of PSD2, we were asked by stakeholders to clarify whether 'closed-loop' gift cards, that do not come under the definition of e-money, were within scope of the limited network exclusion (LNE) and subject to the notification requirements for businesses operating under this exclusion.

We acted on this feedback by amending Question 40 of PERG to clarify that excluded instruments under the LNE could include store cards, eg, closed-loop gift cards.

7.11 We have since received feedback that the term has different interpretations and is causing confusion amongst industry participants.

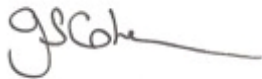
7.12 We consider that 'gift cards' are not payment instruments in the way that is intended in PSD2 where the issuer is a retailer and the gift card can only be used to obtain goods or services from that retailer. We propose to make this clarification in PERG (see Appendix 1).

7.13 The outcome of changes to this guidance will be that notifications would not be expected from issuers of gift cards (such as retailers) where the issuer is the only possible beneficiary when the gift card is 'spent'. That includes retailers that issue their own gift cards.

7.14 We propose to remove reference to 'closed loop' and provide further clarification."

If you have any queries please do not hesitate to contact us.

Kind regards



Gail Cohen
Director General
UK Gift Card and Voucher Association