

Review of the EBA Guidelines on the Limited Network Exclusion (2022)

Preliminary Observations and Areas for Improvement

Purpose and framing

This paper responds to the request by Fleet Cards Europe (FCE) for members to review the European Banking Authority's 2022 Guidelines on the Limited Network Exclusion (LNE), with a view to identifying areas for improvement ahead of an upcoming revision. The timing of this review is particularly relevant as the form and content of PSD3 is being considered (including the notification framework under Article 39).

The intention is not to seek a reduction in regulatory standards. Rather, the objective is to support the European Banking Authority in achieving its own stated aims more effectively by:

- Improving supervisory consistency
- Reducing unnecessary operational complexity
- Strengthening proportionality and perimeter discipline
- Supporting the functioning of the EU single market

These observations are grounded in practical, pan-European operating experience across FCE member schemes.

Anchoring to the EBA's objectives

The 2022 Guidelines were issued to promote common, uniform and consistent application of Article 3(k) PSD2. In doing so, they seek to advance four core regulatory objectives:

- Prevent consumer harm and regulatory arbitrage
- Support a functioning EU single market
- Promote consistent interpretation and supervision across Member States
- Ensure proportionality relative to risk

FCE members fully support these objectives. The observations below are framed explicitly against them.

Problem reframed: supervisory divergence as a single-market issue

Core insight:

- A consistent insight across FCE members is that divergent national interpretations of the same EBA guidance are actively undermining the EBA's own objectives.
- This is not a question of industry resistance to regulation. It is a question of implementation effectiveness.

Observable outcomes - across Member States, FCE members report:

- Inconsistent thresholds, indicators and evidence requirements applied by NCAs
- Identical business models being classified differently depending on jurisdiction
- Defensive over-compliance by firms to manage legal uncertainty
- Supervisory effort increasingly focused on borderline classification questions rather than areas of higher inherent payment-system risk

Taken together, these outcomes point to a single-market issue, not a compliance failure.

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FCE as a technical partner

FCE represents pan-European schemes operating at scale, often under centralised business models deployed consistently across multiple jurisdictions.

This provides FCE members with a unique vantage point on:

- How the Guidelines are interpreted in practice
- Where genuine risk arises
- Where operational complexity does not translate into improved consumer protection

FCE therefore seeks to act as a technical partner to the EBA, contributing evidence-based insights to improve the effectiveness and consistency of the LNE framework.

Identifying genuine win-wins

The areas below represent mutual gains for regulators and market participants. None require dilution of consumer protection.

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Preface

These proposed clarifications to the 2022 Guidelines on the Limited Network Exclusion (LNE) are submitted in the context of the transition from PSD2 to PSD3 and the introduction of the notification framework set out in Article 39 PSD3.

The proposals are not intended to modify the scope of the limited network exclusion, nor to introduce new notification obligations or reduce supervisory discretion. They do not seek to anticipate or reopen legislative outcomes currently under consideration by the co-legislators.

Instead, their purpose is to:

- support the consistent and proportionate implementation of Article 39 PSD3;
- clarify how existing indicators and criteria should be interpreted and applied in practice;
- reduce supervisory divergence that has emerged under the PSD2 framework;
- improve legal certainty and supervisory efficiency for cross-border business models;
- and support the functioning of the EU internal market.

In particular, the proposed clarifications focus on the operationalisation of indicators already referenced in the Guidelines (such as scale, volume, and network characteristics), distinguishing clearly between:

- indicators that may justify enhanced supervisory attention or information-gathering, and
- criteria that should be determinative of regulatory classification.

This distinction is intended to assist competent authorities in applying Article 39 PSD3 in a manner that is risk-based, consistent across Member States, and aligned with the objectives of consumer protection, proportionality, and supervisory convergence.

The proposed wording has been deliberately framed as incremental clarification rather than substantive amendment, in order to facilitate adoption within the EBA's existing mandate and to support national competent authorities in the effective implementation of the forthcoming PSD3 framework.

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Guideline section	Summary of guidance	Observed challenge	Why this undermines EBA objectives	FCE Member evidence / examples (anonymised)	Suggested clarification (policy intent)	Proposed draft wording (new / amended / clarified)
2.1(b)	Issuers should specify the envisaged maximum number of service providers in the network.	Treated by some NCAs as a hard numerical cap; firms introduce artificial caps defensively.	Encourages box-ticking and divergent thresholds; focus shifts from structural limitation to numbers.	Identical fuel card model required to cap acceptance points in one Member State but not in others.	Clarify that this is indicative, not determinative.	Insert after existing sentence: “The envisaged maximum number of service providers should be treated as an indicative data point only and assessed alongside objective structural constraints that ensure the network remains limited in practice. It should not be determinative in isolation.”
2.2(b) and 4.4(a)	NCAs may consider the volume and value of transactions envisaged.	Growth in volume/users treated as ipso facto regulatory risk, triggering reassessment without functional change.	Conflates scale with functionality; weakens perimeter discipline; discourages scaling of low-risk models.	Members asked to re-justify LNE status solely due to transaction growth.	Separate supervisory attention from classification.	Insert clarification sentence: “Volume and value indicators may inform supervisory prioritisation and the need for further information, but should not be used as a standalone basis for determining whether an instrument performs payment services or falls outside the limited network exclusion.”

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2.7	LNE should be applied in a restrictive way to avoid circumvention.	“Restrictive” interpreted differently across NCAs, leading to local over-tightening.	Undermines harmonisation and convergence; creates patchwork outcomes.	Same model accepted in one Member State but treated as in-scope in another due to “stricter” application.	Define what “restrictive” means in practice.	Amend by adding second sentence: “Restrictive application should focus on preventing unlimited acceptance, unlimited categories of goods or services, and account-like fund transfer functionality. It should not rely on nationally specific numerical thresholds where functional constraints are clearly demonstrated.”
4.1-4.3	Goods/services must form a specific category with a common purpose and functional connection.	Disputes over how narrow a category must be; inconsistent treatment of ancillary services.	Shifts focus to taxonomy debates rather than substantive constraints on use.	Mobility ecosystems (fuel + tolls + parking) treated inconsistently across jurisdictions.	Clarify treatment of ancillary but functionally linked services.	Insert clarification sentence: “A functional connection may include closely related ancillary services that are integral to the same closed-use purpose, provided that contractual and technical restrictions prevent general-purpose use.”

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1.4-1.5	Limitations should be supported by technical restrictions, not only contractual terms.	Divergent expectations of what level of technical control is “sufficient”.	Creates operational complexity without improving consumer protection.	Some NCAs require bespoke technical solutions beyond standard acceptance controls.	Reinforce proportionality and outcome-focus.	Insert clarification sentence: “Technical restrictions should be proportionate to the risk of general-purpose use and should focus on preventing out-of-scope acceptance, rather than mandating a specific technical architecture.”
6.2–6.4	Notification required in each Member State where thresholds are exceeded.	Multiple notifications for identical business models; inconsistent forms, timelines and feedback.	Undermines single-market objective; duplicates effort without added supervisory value.	Members report paper forms in some countries, portals in others, and no formal process elsewhere.	Set minimum process expectations.	Insert new paragraph after 6.4: “Competent authorities should acknowledge receipt of notifications, provide indicative assessment timelines, and, where an identical business model has already been assessed in another Member State, take due account of that assessment to avoid unnecessary duplication.”

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6.7	NCA may require re-notification where necessary.	Open-ended interpretation leads to repeated re-submissions absent material change.	Reduces predictability; increases defensive compliance.	Members asked to re-notify following minor commercial changes unrelated to functionality.	Define what “necessary” means.	Amend sentence by adding: “Re-notification should be limited to circumstances where there is a material change to the instrument’s functionality, acceptance scope, or risk profile relevant to its qualification under the limited network exclusion.”
Cross-cutting (all guidelines) – centralised cross-border models	Guidance does not distinguish between operating models.	Centralised pan-EU schemes assessed repeatedly country-by-country despite identical structure.	Inefficient supervision; inconsistent outcomes for identical models.	Single HQ model accepted by one NCA but re-assessed from first principles elsewhere.	Recognise centralised, single-model structures.	Insert cross-cutting clarification (new paragraph): “Where an issuer operates a single, centralised business model deployed consistently across multiple Member States, competent authorities should assess the model on a consistent basis and may rely on assessments already conducted for the same structure, subject to local

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