

Joint PSD2-SMART2 workshop on EBA Guidelines How to report e-money transactions under the EBA Fraud Reporting Guidelines Open questions around e-money definition

Status: **Version 1.0**

Background and purpose of this note

On 18 July 2018, the European Banking Authority (EBA) published its final Guidelines on reporting requirements for fraud data under Article 96(6) PSD2 (“EBA Fraud Reporting Guidelines”), which, among other things, details fraud reporting requirements to be met by payment service providers (PSPs). The Guidelines require PSPs to distinctly report fraudulent e-money payment transactions to their national competent authorities (see EBA Fraud Reporting Guidelines 1.5 and 7 in particular).

To better understand these requirements, the Euro Banking Association hosted several workshop sessions at the request of participants in the PSD2 Practitioners' Panel and the SCT Inst Migration Action Round Table (SMART2). The aim of several of these sessions was to zoom in on the EBA Fraud Guidelines and any underlying definitions to determine which fraudulent transactions would need to be identified for and reported under the electronic money (e-money) category defined by the EBA Fraud Reporting Guidelines.

Against this background, participants in the joint PSD2-SMART2 workshop on EBA Guidelines revisited the existing e-money definitions in the first half of 2019, including the original regulatory definition provided by Directive 2009/110/EC. Since September 2009, when this Directive was published, the payment market has significantly evolved, and new payment instruments and products have seen the light of day.

The workshop participants identified a number of open questions on the reporting requirements for e-money transactions as well as on the underlying concepts and scope. They share the concern that the e-money definition as given in the E-money Directive provides only limited guidance on which payment instruments fall within the scope of the e-money definition. This makes it difficult to determine which fraudulent payment transactions would fall under the e-money category in the reporting templates of the EBA Fraud Reporting Guidelines.

This note has been put together to spell out open questions and create awareness around them with a view to seeking further clarification and guidance from the relevant authorities.

Existing e-money definitions

The Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (“E-money Directive”) sets out the rules for the business practices and supervision of e-money institutions. This Directive defines the term “e-money” as follows:

“Electronic money’ means electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions as defined in point 5 of Article 4 of Directive 2007/64/EC, and which is accepted by a natural or legal person other than the electronic money issuer.”¹

The European Central Bank (ECB) defines e-money as

“[...] an electronic store of monetary value on a technical device that may be widely used for making payments to entities other than the e-money issuer. The device acts as a prepaid bearer instrument which does not necessarily involve bank accounts in transactions.”²

The ECB further explains that e-money products can be hardware-based or software-based and that this depends on the technology that is used to store the monetary value. Hybrids mixing both hardware- and software-based features may also exist:

Hardware-based products

In the case of hardware-based products, the purchasing power resides in a personal physical device, such as a chip card, with hardware-based security features. Monetary values are typically transferred by means of device readers that do not need real-time network connectivity to a remote server.

Software-based products

Software-based products employ specialised software that functions on common personal devices such as personal computers or tablets. To enable the transfer of monetary values, the personal device typically needs to establish an online connection with a remote server that controls the use of the purchasing power. Schemes mixing both hardware and software-based features also exist.”³

The EBA Fraud Reporting Guidelines clearly refer to the E-money Directive definition of e-money transactions:

“For e-money payment transactions as defined in Directive 2009/110/EC, the payment service provider should provide data in accordance with Data Breakdown F in Annex 2.”⁴

It is unclear whether this definition would be replaced with the above-mentioned, more detailed ECB definition once the revised version of the Regulation on payment statistics (ECB/2013/43) comes into effect, which is foreseen to include and supersede the EBA Fraud Reporting Guidelines.

However, participants in the joint PSD2-SMART2 workshop on EBA Guidelines expressed their concern that both definitions only provide limited clarity with regard to determining the exact scope of e-money transactions.

¹ E-money Directive, Art. 2(2) – as PSD2 (Directive 2015/2366/EU) entered into force on 12 January 2016 and replaced PSD1 on 13 January 2018, reference should be made to PSD2 Art. 4(5) and the slight amendments therein, instead of PSD1 Art. 4(5) referred to in this Article.

² https://www.ecb.europa.eu/stats/money_credit_banking/electronic_money/html/index.en.html, retrieved on 21 March 2019.

³ Idem

⁴ EBA Fraud Reporting Guidelines, guideline 7.1

The difficulty of identifying card-related e-money transactions

One type of e-money transaction is clearly identified in the EBA Fraud Reporting Guidelines: prepaid cards. This can be concluded from statement Nr. 9 under "Scope of Application," which refers to "payments with cards with an e-money function only (e.g. prepaid cards)."

Exclusion of limited-purpose cards?

It should be highlighted that while a few participants still have a remaining doubt whether the definition of prepaid card encompasses limited-purpose cards, there was a majority of participants that agreed that limited-purpose cards are excluded.

According to the E-money Directive and PSD2 limited-purpose cards such as gift cards that are only accepted as payment instrument by the e-money issuer are not defined as e-money, since payment instruments that are issued in a strictly closed-loop environment are not covered by the E-money Directive:

*"Subject matter and scope", point 4: "This Directive does not apply to monetary value stored on instruments exempted as specified in Article 3(k) of Directive 2007/64/EC."*⁵

*"Services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services."*⁶

For the sake of completeness, it should be mentioned that the European Commission sees a need to revisit and clarify the application of the limited network provision in its Report on the implementation and impact of Directive 2009/110/EC in particular on the application of prudential requirements for electronic money institutions:

*"The issue of divergent interpretations with regard to limited networks is of particular concern for e-money services and the so-called closed loop schemes (such as gift cards, store cards, petrol cards), semi-closed loop (a variant of the close loop category, determined by the scope of the network in which the card can be used) and open loop schemes (such as general purpose prepaid debit cards)."*⁷

How to report on multi-purpose cards with a prepaid functionality?

While there remains a doubt about how to handle limited-purpose cards, it seems safe to assume that widely-accepted prepaid cards (i.e. which are accepted not only by the issuer or a very limited range of providers) are considered as e-money products and

⁵ E-money Directive, Art.1 – as PSD2 (Directive 2015/2366/EU) entered into force on 12 January 2016 and replaced PSD1 on 13 January 2018, reference should be made to PSD2 Art. 3(k) and the amendments therein, instead of PSD1 Art. 3(k) referred to in this Article.

⁶ Directive (EU) 2015/2366 on payment services in the internal market (PSD2), amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, Art. 3(k)(i)

⁷ Report from the Commission to the European Parliament and the Council on the implementation and impact of Directive 2009/110/EC in particular on the application of prudential requirements for electronic money institutions ("European Commission Report") of 25 January 2018: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:52018DC0041>, retrieved on 26 April 2019, p. 6

fraudulent transactions paid with that type of card are to be reported as e-money transactions.

However, it is not entirely clear whether this requirement also applies to cards that host other functions aside from an e-money function, e.g. debit cards with a prepaid feature to pay at parking terminals. In full, the above statement Nr. 9 reads *“Payments with cards with an e-money function only (e.g. prepaid cards) should not be included in card payments but be reported as e-money.”* This seems to differ from the statement of Guideline 7.1 saying *“When providing data on e-money transactions, the payment service provider should include e-money payment transactions (...) where a card with an e-money functionality is used.”* Tables C and D in Annex 2 of the EBA Guidelines appear to reiterate statement Nr. 9 though, since they require that the data breakdown for (regular) card-based payment transactions should include all card payments *“except cards with an e-money function only”*.

Taking into account these (partly contradictory) references, the workshop participants have been wondering whether it would be safe to conclude that under the EBA Fraud Reporting Guidelines

- any transactions paid **with a prepaid card** need to be reported as **e-money transactions** (i.e. in table F)?
- any transactions paid with a **prepaid functionality** on a card that has other functionalities need to be reported as regular **card transactions** (i.e. in tables C or D)?

During the workshop discussion, the question was raised whether the anonymity of the payment transactions could be seen as the differentiating factor of e-money transactions, meaning that (only) non-personalised prepaid cards would qualify as e-money because they constitute a virtual equivalent of cash. However, table F in Annex 2 makes it clear that the reporting of e-money transactions also covers payment transactions *“authenticated via strong customer authentication”*, which is an approach that is not compatible with the use of non-personalised prepaid cards. Thus, the anonymity of the underlying payment transactions was not considered to be a defining factor for e-money products.

The difficulty of identifying any other e-money transactions

Prepaid cards are the only example of an e-money product provided by the EBA Fraud Reporting Guidelines. Given the limited clarity provided by the existing definitions mentioned earlier, participants in the PSD2-SMART2 workshop found it difficult to determine and agree on any other products falling under that definition.

As an example, there seemed to be agreement among the participants that cryptocurrencies are not in scope of the current e-money definition, since e-money is a payment instrument that is regulated by a (national) competent authority while cryptocurrencies are not a regulated payment instrument. However, the question was raised (but not solved) in this context whether the situation of so-called *“stable coins”* in permission-less blockchain networks should be seen as being different and whether they should be considered as e-money and regulated accordingly, unless the related transactions can be proven to be conducted in a completely closed loop (i.e. accepted by issuer only).

On a general note, the participants fully agreed with the findings of the EC Report on the E-money Directive mentioned earlier, which acknowledges that there are challenges

when it comes to clearly defining and distinguishing e-money products and accounts from payment products and accounts:

“One of the key challenges identified by the economic study is the classification of products and services as e-money or as payment services, as e-money accounts or payment accounts, and thus the application of the appropriate legal framework.”⁸

Conclusion on the reporting of e-money transactions

The participants of the joint PSD2-SMART2 workshop on EBA Fraud Reporting Guidelines reached the following conclusions with regard to reporting e-money transactions under the said EBA Guidelines:

1. The only fraudulent transactions to be reported by payment service providers in the reporting template provided for e-money transactions (template F) are transactions involving a prepaid card, i.e. a card that only offers a prepaid functionality.
2. Any other card transactions – including transactions that are based on a prepaid functionality located on a multi-purpose card – seem to be out of scope of the e-money transaction reporting and thus should be reported as regular card transactions (templates C or D). Given the contradictory statements on this matter in the EBA Guidelines, this point would probably benefit from further clarification.
3. No other transactions were identified as being subject to e-money reporting under the EBA Fraud Reporting Guidelines, since there was agreement that all of them are either related to a (regular) card, credit transfer or direct debit instrument.

The workshop participants further agreed that the current definitions of e-money as provided by the E-money Directive and the ECB are not clear enough and would benefit from a detailed review and subsequent clarification.

Way forward on the general topic

This note should serve as a supporting document for creating awareness around and discussing the open questions identified above with regard to the definition of e-money, in particular, and to seek further clarification and guidance from the relevant authorities.

List of endorsing AS-PSPs

This recommendation note has been jointly created by participants in a joint workshop of the PSD2 Practitioners' Panel and the SCT Inst Migration Action Round Table (SMART2). Both practitioners' groups are open to representatives of account-servicing payment service providers (AS-PSPs) operating in Europe and are facilitated by the Euro Banking Association as part of its Market Practices and Regulatory Guidance stream.

For more information about both groups, please consult: <https://www.abe-eba.eu/market-practices-regulatory-guidance/>

⁸ European Commission Report, p. 6

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Fraud Reporting Guidelines, version 1.0

Classification: Closed User Group

The note has been endorsed by representatives of the following AS-PSPs:

Aktia Bank plc
Bank of Ireland
Barclays Bank UK Plc
BCEE
CaixaBank
Danske Bank
Erste Group Bank AG
Helaba
KBC Bank
Raiffeisen Bank International AG
UniCredit Bank AG

Contact details

For any comments or questions concerning the above note, please contact the Secretariat of the Euro Banking Association at association@abe-eba.eu.