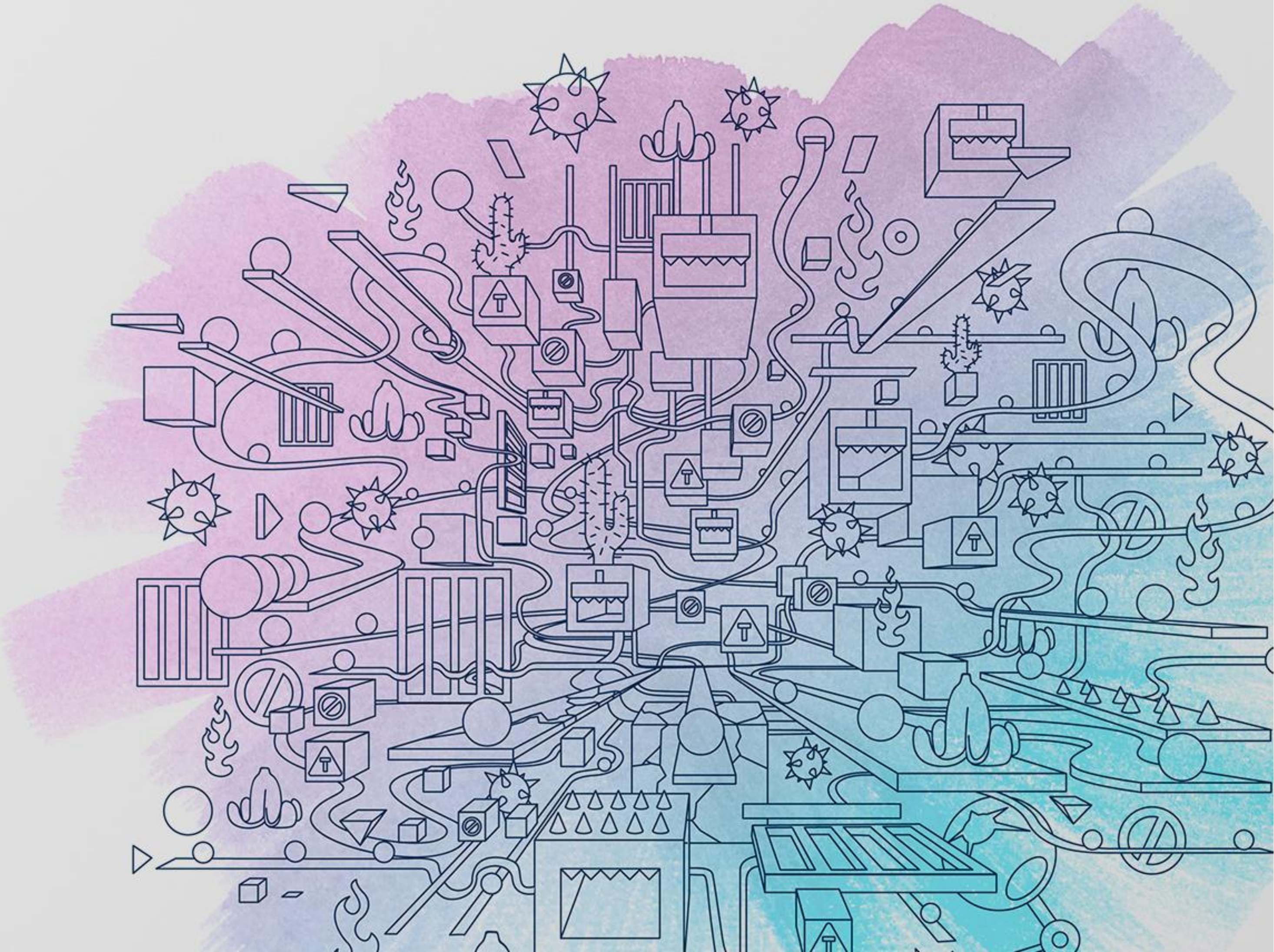
IN THE KNOW PAYMENTS

Exclusions Table



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EXCLUSIONS

The PSR has made changes to some of the existing PSD2 exclusions and has introduced new ones. Firms which currently benefit from any of the PSD2 exclusions should consider these changes. Highlights include:

CHANGE	DESCRIPTION	ALIGNMENT TO UK
Commercial Agent Exclusion	A requirement is added that the agreement between the payer/payee and the commercial agent must give the commercial agent **real scope** to negotiate with the payer or payee or conclude the sale or purchase of goods or services. Within a year of the PSR coming into force the EBA will issue guidelines around the interpretation of this exclusion.	This brings the EU legislation more in line with the current approach by the FCA as set out in its perimeter guidance which explains that in its view, an agent "must have real margin to negotiate or conclude". However, we await the impact of the guidance and whether this narrows the definition further.
A new exclusion for payment transactions made exclusively in e-money tokens	This exclusion applies to transactions in e-money tokens made directly from the payer to the payee without any intermediary intervention.	No equivalent in the UK currently.
A new exclusion for payment transactions carried out by a crypto-asset service provider intermediating between a buyer and a seller where e-money tokens are exchanged for other e-money tokens or for cryptoassets, as well as the exchange of e-money tokens for funds	This exclusion means that when a cryptoasset service provider is facilitating or executing exchanges involving electronic money tokens (e.g. swapping them for other tokens, crypto-assets, or funds), those transactions are excluded from regulation.	No equivalent in the UK currently.
Limited Network Exclusion	To specifically include electronic money-based instruments, as well as specifying that the issuer's premises includes both physical premises and online stores of the issuer, and includes instruments restricted to be used in transactions between payment service users who are not consumers.	This brings the EU position in line with the UK, where the FCA's perimeter guidance includes within the exclusion that cards that can only be used at the issuer's premises or website. The position in the UK due to FCA guidance provides that cards which can be used on wider online marketplaces are unlikely to benefit from the exclusion. As PSD3 specifies that the exclusion applies to online stores "of the issuer", it is

CHANGE	DESCRIPTION	ALIGNMENT TO UK
		likely not intending to expand the LNE wider than the UK position.
A new exclusion on payment transactions carried out between cryptoasset service providers or their branches for their own account	This exclusion means that PSD3 does not apply to payments made internally by crypto-asset firms for their own business purposes, rather than on behalf of clients.	No equivalent in the UK currently.

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