



STATUTORY INSTRUMENTS.

S.I. No. 132 of 2013

EUROPEAN UNION (REQUIREMENTS FOR CREDIT TRANSFERS
AND DIRECT DEBITS IN EURO) REGULATIONS 2013

EUROPEAN UNION (REQUIREMENTS FOR CREDIT TRANSFERS
AND DIRECT DEBITS IN EURO) REGULATIONS 2013

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AND DIRECT DEBITS IN EURO) REGULATIONS 2013

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) No. 260/2012 of the European Parliament and of the Council of 14 March 2012¹, hereby make the following regulations:

PART 1

PRELIMINARY PROVISIONS

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Requirements for Credit Transfers and Direct Debits in Euro) Regulations 2013.

(2) These Regulations come into operation on 15th March 2013.

Interpretation

2. (1) In these Regulations—

“Bank” means Central Bank of Ireland;

“Financial Services Ombudsman” means the person holding office as such under Part VIIB of the Central Bank Act 1942 (No. 22 of 1942);

“payment service provider” means—

(a) a payment service provider falling under any of the categories referred to in Article 1(1), or

(b) a legal or natural person referred to in Article 26,

of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007² but excludes the bodies which are listed in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006³ benefiting from a waiver under Article 2(3) of the first mentioned Directive;

“payment service user” means a natural or legal person making use of a payment service in the capacity of payer or payee, or both;

¹OJ No. L 94, 30.03.2012, p.22

²OJ No. L 319, 05.12.2007, p. 1

³OJ No. L 177, 30.06.2006, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th April, 2013.*

“relevant records” means records of information, however compiled, recorded or stored, and includes—

- (a) any book, a register and any other document containing information, and
- (b) any disc, tape or other article from which information is capable of being produced in any form capable of being reproduced visually or aurally,

relating to the business of a payment services provider;

“search warrant” means a search warrant issued under Regulation 8;

“SEPA” means the single euro payments area;

“SEPA Regulation” means Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009¹.

(2) A word or expression used in the SEPA Regulation and also these Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the SEPA Regulation.

Purpose of these Regulations

3. The purpose of these Regulations is to supplement the SEPA Regulation as regards its application to the State.

PART 2

ENFORCEMENT OF SEPA REGULATION

Bank to be competent authority for purposes of SEPA Regulation and these Regulations

4. (1) The Bank is the competent authority in the State for the purposes of the SEPA Regulation and these Regulations.

(2) The Bank shall monitor compliance with the SEPA Regulation effectively and take all necessary measures to ensure compliance.

Bank’s power to give directions

5. (1) Where the Bank considers it necessary to do so in the interests of the proper and orderly supervision of payment services, it may give a direction in writing to a payment service provider for the purpose of securing effective compliance with the SEPA Regulation.

(2) A direction under paragraph (1)—

- (a) takes effect on the date, or on the occurrence of the event, specified in the direction, and

(b) ceases to have effect on the earlier of—

- (i) the date, or the occurrence of the event, specified in the direction for the purpose, or
- (ii) the end of the period of 12 months immediately following the day on which the direction took effect.

(3) A payment service provider to whom a direction is given under paragraph (1) shall comply with the direction within such reasonable period as may be specified in the direction.

(4) If a direction under this Regulation is not or has not been complied with or is, in the opinion of the Bank, unlikely to be complied with, the Bank may apply to the High Court in a summary manner for an order enforcing the direction.

(5) At the hearing of an application made under paragraph (4), the High Court may make such order as it considers appropriate in the circumstances (including an order dismissing the application).

(6) A decision under this Regulation to give a direction to a payment service provider is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

Bank's power to appoint authorised officers

6. (1) The Bank may, in writing, appoint persons as authorised officers for the purposes of monitoring compliance with the SEPA Regulation.

(2) The Bank may, at any time in writing, revoke the appointment of an authorised officer appointed under this Regulation.

(3) Subject to paragraph (2), the appointment of an authorised officer under this Regulation may be for a specified or an indefinite period or for a specified purpose.

(4) The Bank shall provide every authorised officer with a certificate of appointment as such.

(5) An appointment made under this Regulation ceases—

- (a) if the Bank revokes the appointment, at the time of revocation,
- (b) if the person appointed dies, at the time of death,
- (c) if the appointment is for a specified period, at the end of that period,
- (d) if the appointment is for a specified purpose, on the completion of that purpose, or
- (e) if the person appointed is, when appointed, an officer of the Bank, when the person ceases to be such an officer.

Powers of authorised officers

7. (1) An authorised officer may do all or any of the following for the purpose of monitoring compliance with the SEPA Regulation:

- (a) enter premises at which the officer reasonably believes that a payment service provider is carrying on, or has carried on, business as such or where relevant records are kept;
- (b) search and inspect the premises, and any relevant records kept on the premises;
- (c) secure for later inspection any part of the premises in which relevant records are kept or in which the officer reasonably believes relevant records are kept;
- (d) require a person who carries on the business of a payment service provider, and any person employed in connection with such a business, to produce to the officer relevant records, and if any of those records are in a non-legible form to reproduce them in a legible form, or to give the officer such information as the officer reasonably requires regarding entries in them;
- (e) inspect and take copies of relevant records inspected or produced to the officer (including, in the case of information in a non-legible form, a copy of all or part of the information in a permanent legible form);
- (f) remove and retain relevant records inspected or produced under these Regulations for such period as may be reasonable to allow their further examination;
- (g) require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by the SEPA Regulation and to produce to the officer all relevant records that the person has or to which the person has access;
- (h) require a person by whom, or on whose behalf, data equipment is or has been used, or a person who has charge of, or is otherwise concerned with the operation of, that equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation to its operation;
- (i) require a person who is in charge of, or has access to, relevant records to explain entries in those records.

(2) When exercising a power conferred by this Regulation, an authorised officer shall produce his or her certificate of appointment, together with some form of personal identification, whenever asked to do so by a person in relation to whom the power is to be exercised. Failure to comply with this paragraph renders the exercise of the power unlawful.

(3) Where an authorised officer has reasonable cause to believe that a contravention of these Regulations has been or is being committed, or relevant records connected with such a contravention are in any premises, the authorised officer may—

- (a) use force when necessary, when entering a premises in accordance with a search warrant, and
- (b) may enter premises comprising or forming part of a private dwelling (other than a part of the dwelling used as a place of work) only with the consent of the occupier or in accordance with a search warrant.

(4) If a person from whom production of a relevant record is required claims a lien over it, its production does not affect the lien.

(5) An obligation to produce a relevant record or report or to provide information or assistance under this Regulation applies to-

- (a) a liquidator or receiver of, or a person who is or has been an officer or employee or agent of, a payment service provider, and
- (b) any other person who appears to the Bank or the authorised officer to be in possession of, or have control over, a relevant record or report or to be able to provide information or assistance.

(6) An authorised officer may, if the officer considers it necessary, be accompanied by a member of the Garda Síochána when exercising a power under this Part.

Warrant required to enter premises in certain cases

8. (1) An authorised officer who believes that evidence of or relating to the commission or intended commission of an offence under the SEPA Regulation is to be found on land or premises who—

- (a) is prevented from exercising the power to enter premises conferred by Regulation 7, or
- (b) believes that relevant records are being kept on premises that comprise, or form part of, a private dwelling,

may apply to a judge of the District Court for a warrant authorising the officer or another authorised officer to enter the premises.

(2) If, on the hearing of an application under paragraph (1), a judge of the District Court is satisfied on sworn information of the authorised officer that he or she—

- (a) has been prevented from exercising the power to enter premises conferred by Regulation 7, or

- (b) has reasonable grounds for believing that relevant records are kept on premises that comprise, or form part of, a private dwelling,

the judge may issue a warrant authorising the authorised officer to enter, if necessary by force, the premises and to exercise there the powers specified in Regulation 7.

(3) A warrant issued under this Regulation may be executed at any time within 4 weeks from the date of its issue and not otherwise.

(4) In executing a warrant, an authorised officer can be accompanied by not more than a number of members of the Garda Síochána specified in the warrant.

Offences to obstruct authorised officer in exercise of officer's powers

9. (1) A person who—

- (a) obstructs or interferes with an authorised officer in the exercise of a power conferred by this Part, or
- (b) without reasonable excuse, refuses or fails to comply with a request or requirement of an authorised officer made in accordance with a power conferred by this Part, or
- (c) gives an authorised officer information that the person knows, or ought reasonably to know, is false or misleading in a material respect,

commits an offence.

(2) If an authorised officer, on reasonable grounds, believes that a person has committed an offence under these Regulations, the officer may require that person to give the officer their name and the address at which he or she ordinarily resides.

(3) A statement of admission made by a person as a result of a requirement under Regulation 7(1) is not admissible as evidence in proceedings brought against the person for an offence (other than an offence under paragraph (1)).

(4) A person who falsely represents himself or herself to be an authorised officer commits an offence.

Liability of directors and others for offences committed by corporate bodies or on behalf of unincorporated bodies

10. If an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, the person also commits an offence and is liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

Penalties for offences under this Part

11. A person who commits an offence under this Part is liable on summary conviction to a class A fine.

Prosecution of offences

12. (1) Proceedings for an offence under this Part may be brought and prosecuted by the Bank, but nothing in this paragraph precludes any other person authorised by law to do so from bringing and prosecuting such an offence.

(2) Proceedings for an offence under this Part may be brought no later than 12 months after the date on which the offence is alleged to have been committed.

Infringements of SEPA Regulation

13. A payment service provider who is alleged to have infringed the SEPA Regulation may be dealt with in accordance with Part IIIC of the Central Bank Act 1942 and, if found to have committed the infringement, is liable to the penalties provided for under that Part.

PART 3

COMPLAINT AND OUT-OF-COURT REDRESS PROCEDURES FOR
THE SETTLEMENT OF DISPUTES

Jurisdiction of Financial Services Ombudsman

14. (1) The Financial Services Ombudsman has jurisdiction over the settlement of disputes between payment service providers and payment service users or other interested parties concerning rights and obligations arising under the SEPA Regulation.

(2) Paragraph (1) does not extend to payment service users unless they are—

(a) consumers, or

(b) the operators of undertakings that were, at the relevant time, consumers and microenterprises.

Complaints to Financial Services Ombudsman

15. (1) Subject to paragraph 14(2), a payment service user may make a complaint to the Financial Services Ombudsman relating to an alleged infringement by a payment service provider of the SEPA Regulation.

(2) A complaint made under paragraph (1) is to be determined in accordance with Part VIIB of the Central Bank Act 1942.

Bank to inform complainant about available out-of-court redress procedure

16. If a complaint relating to an alleged infringement of the SEPA Regulation by a payment service provider is in the first instance made to the Bank, the Bank shall inform the complainant of the right to make a complaint to the Financial Services Ombudsman and to have the complaint determined in accordance with Part VIIB of the Central Bank Act 1942.

Financial Services Ombudsman required to co-operate with competent authorities of other Member States

17. If a cross-border dispute occurs, the Financial Services Ombudsman shall actively co-operate in resolving the dispute with the competent authorities and other bodies (if any) responsible for out-of-court redress procedures in the other Member State concerned.

Existence of complaints procedure not to affect right to bring legal proceedings

18. The existence of the complaints procedure established by this Part to deal with complaints arising under the SEPA Regulation does not affect the right to bring proceedings before a court of competent jurisdiction in relation to the matters complained of.

PART 4

MISCELLANEOUS

Bank to issue guidelines

19. (1) The Bank may issue guidelines to identify corresponding national payments whenever it considers it necessary to do so.

(2) The Bank shall actively co-operate with the Payments Committee established in accordance with Article 85 (1) of Directive 2007/64/EC² to ensure the consistency of guidelines for corresponding national payments.

Bank not precluded from investigating matters concerning alleged infringements of SEPA Regulation

20. Nothing in these Regulations precludes the Bank from performing its supervisory functions in relation to information received in connection with a compliant made by a payment service user under Part 3.

Consequential amendments of Central Bank Act 1942

21. Schedule 2 to the Central Bank Act 1942 (No. 22 of 1942) is amended—

(a) in Part 1, in item 24 by substituting “The whole Act other than Part III and section 77” for “The whole Act other than Parts II and III and section 77”, and

(b) in Part 2—

(i) in item 47 by deleting “(other than Part 3)”, and

(ii) by inserting after the last item the following:

“

52	S.I. No. 132 of 2013	European Union (Requirements for Credit Transfers and Direct Debits in Euro) Regulations 2013	The whole instrument
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GIVEN under my Official Seal,
12 March 2013.

MICHAEL NOONAN,
Minister for Finance.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.81



Wt. (B29786). 285. 4/13. Clondalkin. Gr 30-15.