



STATUTORY INSTRUMENTS.

S.I. No. 255 of 2019



EUROPEAN UNION (PAYMENT SERVICES) (AMENDMENT)
REGULATIONS 2019

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I, PASCHAL DONOHOE, 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 further effect to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015¹, hereby make the following Regulations:

Citation

1. These Regulations may be cited as the European Union (Payment Services) (Amendment) Regulations 2019.

Amendment of European Union (Payment Services) Regulations 2018

2. The European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018) are amended—

- (a) in Regulation 7(6), by the substitution of “Regulations 97, 113 and 115” for “Regulations 97, 112, 113 and 115”,
- (b) by the substitution of the following for Regulation 14:

“Method C

14. (1) Where a payment institution is directed by the Bank to calculate its own funds requirement in accordance with this Regulation, that payment institution’s own funds requirement shall be calculated as follows:

$$\text{OFR} = \text{MF} * \text{K}$$

where—

OFR is the own funds requirement,

MF is the multiplication factor calculated in accordance with paragraph (3),

K is the scaling factor described in Regulation 15.

- (2) (a) The relevant indicator is the sum of the following in respect of the payment institution concerned:
 - (i) interest income;

¹ OJ No. L 337, 23.12.2015, p. 35.

- (ii) interest expenses;
 - (iii) commissions and fees received;
 - (iv) other operating income.
 - (b) In calculating the relevant indicator—
 - (i) an amount paid to the payment institution concerned shall be given a positive value,
 - (ii) an amount paid by the payment institution concerned shall be given a negative value,
 - (iii) income from extraordinary or irregular items shall not be used, and
 - (iv) business estimates for the amounts referred to in subparagraph (a) may be used to calculate the relevant indicator where audited figures are not available.
 - (c) Expenditure on the outsourcing of services rendered by third parties may be used to reduce the relevant indicator if the expenditure is incurred from an undertaking subject to supervision under these Regulations or the law of another Member State giving effect to the Payment Services Directive.
 - (d) The relevant indicator is calculated over the previous financial year on the basis of the 12-monthly observation at the end of the previous financial year.
- (3) The amount of the multiplication factor is as follows:
- (a) in a case in which the relevant indicator is less than or equal to €2,500,000, 10 per cent of the amount of the relevant indicator;
 - (b) in a case in which the relevant indicator is greater than €2,500,000 and less than or equal to €5,000,000, €250,000 plus 8 per cent of the amount by which the relevant indicator exceeds €2,500,000;
 - (c) in a case in which the relevant indicator is greater than €5,000,000 and less than or

equal to €25,000,000, €450,000 plus 6 per cent of the amount by which the relevant indicator exceeds €5,000,000;

- (d) in a case in which the relevant indicator is greater than €25,000,000 and less than or equal to €50,000,000, €1,650,000 plus 3 per cent of the amount by which the relevant indicator exceeds €25,000,000;
- (e) in a case in which the relevant indicator is greater than €50,000,000, €2,400,000 plus 1.5 per cent of the amount by which the relevant indicator exceeds €50,000,000.

- (4) Where the own funds requirement of a payment institution calculated in accordance with paragraph (1) for the previous financial year is less than 80 per cent of the average of the own funds requirements calculated in accordance with paragraph (1) for the previous 3 financial years, the own funds requirement of that financial institution is the amount of that average.”,

- (c) by the substitution of the following for Regulation 33:

“*Competent authority*

33. (1) Subject to paragraph (2), the Bank is the competent authority in the State for the purposes of the Payment Services Directive.

(2) As respects a case under Regulation 86(6) where—

- (a) the payee is a trader (within the meaning of the Consumer Protection Act 2007 (No. 19 of 2007)) that is not a regulated financial service provider (within the meaning of the Act of 1942), and
- (b) the payer is a consumer (within the meaning of the Consumer Protection Act 2007),

the Competition and Consumer Protection Commission is the competent authority in the State for the purposes of the Payment Services Directive in so far as it relates to Article 62(4) of that Directive.

- (3) Paragraph (1) shall not be construed as implying that the Bank is required to supervise any business activity of a payment institution other than the provision of payment services and the activities referred to in Regulation 29(1).
 - (4) Save as provided for in paragraph (5), the Bank shall monitor compliance with these Regulations and take all necessary measures to ensure compliance.
 - (5) As respects a case specified in paragraph (2), the Competition and Consumer Protection Commission shall monitor compliance with Regulation 86(6) and take all necessary measures to ensure compliance.
 - (6) The Bank and the Competition and Consumer Protection Commission shall collaborate so that they can discharge their respective duties under these Regulations effectively.”,
- (d) in Regulation 42(1), by the substitution of the following paragraph for paragraph (a):
- “(a) exempt from the application of the procedure and conditions set out in Regulations 7 to 32, with the exception of Regulation 7(1), subparagraphs (a), (b), (e) to (h), (j), (l), (n), (p) and (q) of Regulation 7(2), Regulation 7(7), Regulation 25 and Regulation 26, and”,
- (e) in Regulation 76(e)(vi), by the substitution of “Regulations 112 and 113” for “Regulation 112”,
- (f) in Regulation 85(1)(a), by the substitution of “Regulations 96, 98, 100, 101, 104, 112 and 113” for “Regulations 96, 98, 100, 101, 104 and 112”,
- (g) in Regulation 86, by the insertion of the following paragraph after paragraph (6)—
- “(7) Any provision of a contract which requires a payer to pay a charge for the use of—
 - (a) a payment instrument referred to in paragraph (6)(a), or

- (b) a payment service referred to in paragraph (6)(b), is unenforceable.”,
- (h) in Regulation 100(5), by the substitution of “in addition to the right referred to in paragraph (1)” for “in addition to the rights referred to in paragraphs (1) to (4)”,
- (i) in Regulation 112—
 - (i) in paragraph (10), by the substitution of “under paragraph (9)” for “under paragraph (1)”, and
 - (ii) in paragraph (15), by the substitution of “under paragraph (9) or (12)” for “under paragraph (9), (10) or (11)”, and
- (j) in Regulation 115(1), by the substitution of “under Regulation 97, 112 or 113” for “under Regulation 97 or 112” in each place where it occurs.

Amendment of Consumer Protection Act 2007

3. The Consumer Protection Act 2007 (No. 19 of 2007) is amended—
 - (a) in section 2(1), in the definition of “relevant statutory provisions”—
 - (i) in paragraph (l), by the substitution of “,” for “, and”,
 - (ii) in paragraph (m), by the substitution of “, and” for “;”, and
 - (iii) by the insertion of the following paragraph after paragraph (m):
 - “(n) the following provisions of the European Union (Payment Services) Regulations 2018 (No. 6 of 2018):
 - (i) paragraphs (2), (5) and (6) of Regulation 33, and
 - (ii) paragraph (6) of Regulation 86, to the extent that that paragraph applies as respects a case where—
 - (I) the payee (within the meaning of those Regulations) is a trader that is not a regulated financial service provider (within the meaning of the Central Bank Act 1942), and
 - (II) the payer (within the meaning of those Regulations) is a consumer;”, and

(b) in section 67, by the insertion of the following paragraph after paragraph (l):

“(m) any contravention of Regulation 86(6) of the European Union (Payment Services) Regulations 2018 where—

- (i) the payee (within the meaning of those Regulations) is a trader that is not a regulated financial service provider (within the meaning of the Central Bank Act 1942), and
- (ii) the payer (within the meaning of those Regulations) is a consumer,”.

Amendment of European Communities (Electronic Money) Regulations 2011

4. The European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011) are amended—

(a) in Regulation 3(1), by the substitution of the following definition for the definition of “Payment Services Regulations”:

“ ‘Payment Services Regulations’ means the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018);”, and

(b) by the substitution of the following for Regulation 5:

“Electronic monetary value to which these Regulations do not apply

5. These Regulations do not apply to—

- (a) monetary value stored on specific payment instruments that can be used only in a limited way, that meet one of the following conditions:
 - (i) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
 - (ii) instruments which can be used only to acquire a very limited range of goods or services;
 - (iii) instruments valid only in a single Member State provided at the request of an undertaking or a public sector entity and regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers having a commercial agreement with the issuer, or

- (b) monetary value that is used to make payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service—
 - (i) for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill, or
 - (ii) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets,

provided that the value of any single payment transaction referred to in clauses (i) and (ii) does not exceed €50 and—

- (I) the cumulative value of payment transactions for an individual subscriber does not exceed €300 per month, or
- (II) where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed €300 per month.”.

Amendment of European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013

5. The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) are amended, in Regulation 25, by the insertion of the following paragraph after paragraph (5):

- “(6) Nothing in this Regulation shall affect the operation of Regulation 86 of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018).”.

Amendment of Central Bank Act 1942

6. The Central Bank Act 1942 (No. 22 of 1942) is amended, in section 2(2A)—

- (a) in paragraph (av), by the substitution of “and of the Council of 12 December 2017;” for “and of the Council of 12 December 2017.”, and
- (b) by the insertion after paragraph (av) of the following paragraph:

“(aw) Commission Delegated Regulation (EU) 2018/389 of 27 November 2017.²”.



GIVEN under my Official Seal,
7 June, 2019.

PASCHAL DONOHOE,
Minister for Finance.

² OJ No. L 69, 13.3.2018, p. 23.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give further effect to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (the “revised Payment Services Directive” or “PSD2”), principally by giving effect to the corrigendum to PSD2 published in the Official Journal of the European Union on 23 April 2018.

The Regulations also designate the Competition and Consumer Protection Commission as a competent authority in respect of a contravention of the prohibition on surcharging contained in Regulation 86(6) of the European Union (Payment Services) Regulations 2018 where the payee is a trader that is not a regulated financial service provider.

This statutory instrument also makes amendments to bring clarity to the calculation of own funds for a payment institution under Method C, to correct certain references relating to account information service providers, and to reflect PSD2 changes to the limited network and electronic communications networks exclusions in the European Communities (Electronic Money) Regulations 2011.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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