



STATUTORY INSTRUMENTS.

S.I. No. 547 of 2022



EUROPEAN UNION (RECOVERY AND RESOLUTION OF CENTRAL
COUNTERPARTIES) REGULATIONS 2022

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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 full effect to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Recovery and Resolution of Central Counterparties) Regulations 2022.

Interpretation

2. (1) In these Regulations –

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Bank” means the Central Bank of Ireland;

“CCP” has the meaning assigned to it by Regulation 3;

“CCP Recovery and Resolution Regulation” means Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties¹;

“ESMA” means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010²;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016³ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“Governor” means the Governor of the Bank;

“Member State” means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“Minister” means the Minister for Finance;

“OTC derivatives, central counterparties and trade repositories Regulations” means Regulation (EU) No. 648/2012 of the European Parliament and of the

¹ OJ No. L 22, 22.01.2021, p. 1

² OJ No. L 331, 15.12.2010, p. 84

³ OJ No. L 119, 4.5.2016, p.1

Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories⁴;

“personal data” means personal data within the meaning of Article 4 of the General Data Protection Regulation and section 69 of the Data Protection Act 2018 (No. 7 of 2018);

“resolution authority” means the authority designated under Regulation 4.

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

Application

3. These Regulations apply to the recovery and resolution of central counterparties (in these Regulations referred to as “CCPs”) within the State.

Designated resolution authority

4. The Bank is designated as the resolution authority in the State that carries out the functions and duties of a resolution authority provided for in the CCP Recovery and Resolution Regulation.

Designated competent ministry

5. The Minister is designated as responsible for the exercise and carrying out of the functions of a competent ministry provided for and referred to in Article 3(8) of the CCP Recovery and Resolution Regulation.

Bank as resolution authority and competent authority

6. The functions and duties of the Bank as resolution authority and as competent authority in the State shall be carried out in accordance with Regulation 7 and references in these Regulations to the functions and duties of the resolution authority and competent authority designated in the State shall be construed accordingly.

Resolution authority and Bank

7. (1) The Governor shall be responsible for exercising the functions of the resolution authority under these Regulations.

(2) Without limitation to the generality of paragraph (1), the Governor may delegate any of the functions referred to in that paragraph to a Head of Function (within the meaning given by section 2 of the Act of 1942) or an officer or employee of the Bank.

⁴ OJ No. L 201, 27.7.2012, p. 1

(3) In accordance with Article 3(3) and (7) of the CCP Recovery and Resolution Regulation, the Bank shall ensure adequate structural arrangements are in place to ensure operational independence and to avoid conflicts of interest between the –

- (a) functions of the Bank as a resolution authority for the purposes of the CCP Recovery and Resolution Regulation, and
- (b) other functions of the Bank (other than those functions conferred on the Bank as the resolution authority for the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014⁵).

(4) Nothing in paragraph (3) shall limit the exchange of information necessary for the performance of functions under the CCP Recovery and Resolution Regulation and these Regulations.

(5) Nothing in these Regulations prevents the performance by the Governor or the Bank of their functions arising under the treaties governing the European Union (within the meaning given by section 1 (amended by section 2 of the European Union Act 2009 (No. 33 of 2009)) of the European Communities Act 1972 (No. 27 of 1972)) or the ESCB Statute (within the meaning given by section 2 of the Act of 1942).

Powers of Bank

8. (1) The Bank shall have all the powers necessary for the performance of its functions and duties under the CCP Recovery and Resolution Regulation and these Regulations.

(2) The powers provided for in these Regulations in respect of the Bank shall not be exercised in a manner or for a purpose inconsistent with the Bank's obligations pursuant to the CCP Recovery and Resolution Regulation and these Regulations.

(3) Without limitation to the generality of paragraph (1), the Bank shall, in particular, have the powers set out in Regulations 9, 10, 11 and 12.

Sanctions and contraventions

9. (1) Notwithstanding Part IIIC of the Act of 1942, where a contravention referred to in paragraph (2) has occurred, the Bank may –

- (a) following an inquiry under section 33AO of the Act of 1942,
- (b) in accordance with section 33AR of the Act of 1942, or
- (c) in accordance with section 33AV of the Act of 1942,

decide to impose, in addition to the sanctions set out in section 33AQ of the Act of 1942, one or more of the following sanctions:

⁵ OJ No. L 173, 12.6.2014, p.190

- (i) a public statement that identifies the natural person, CCP, or other legal person responsible and the nature of the contravention concerned;
- (ii) subject to paragraph (3), in the case of a legal person, a monetary penalty of up to 10 per cent of the total annual net turnover of that legal person in the preceding business year;
- (iii) in the case of a natural person, a monetary penalty of up to €5,000,000;
- (iv) a monetary penalty of up to twice the amount of the benefit derived from the contravention where that benefit can be determined;
- (v) a direction requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;
- (vi) a temporary ban against a member of the senior management of the CCP, or any other natural person who is held responsible, from exercising functions in a CCP.

(2) Each of the following is a contravention referred to in paragraph (1):

- (a) failure to draw up, maintain and update recovery plans, in breach of Article 9 of the CCP Recovery and Resolution Regulation;
- (b) failure to provide all the information necessary for the development of resolution plans, in breach of Article 13 of the CCP Recovery and Resolution Regulation;
- (c) failure of the CCP to notify the competent authority when the CCP is failing or likely to fail, in breach of Article 70(1) of the CCP Recovery and Resolution Regulation.

(3) Where the legal person is a subsidiary of a parent undertaking, the relevant annual net turnover shall be the turnover resulting from the consolidated accounts of the parent undertaking in the preceding business year.

Publication of administrative penalties or other administrative measures

10. (1) Subject to paragraphs (2), (3), (4) and (6), the Bank shall publish on its official website all decisions under Regulation 9 imposing a sanction for a contravention referred to in that Regulation, including information on –

- (a) the type and nature of the contravention, and
- (b) the identity of the natural or legal person on whom the sanction is imposed,

without undue delay after the person on whom the sanction is imposed is informed of the imposition of that sanction.

(2) Where the Bank publishes a decision to impose a sanction that is subject to an appeal, the Bank shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.

(3) Where a sanction has been imposed on a natural person for a contravention referred to in Regulation 9, the Bank shall, before publishing the identity of or other personal data relating to that person, assess whether the publication of personal data would be disproportionate.

(4) The Bank shall publish the sanctions referred to in paragraph (1) on an anonymous basis in circumstances, where, in the opinion of the Bank –

- (a) following an assessment under paragraph (3), publication of identity or personal data would be disproportionate,
- (b) publication would jeopardise the stability of financial markets,
- (c) publication would jeopardise an ongoing criminal investigation, or
- (d) publication would cause disproportionate damage to the CCPs or natural persons involved.

(5) Where any of the circumstances referred to in paragraph (4) are likely to cease within a reasonable period of time, publication may be postponed for such a period of time.

(6) Publication under this Regulation shall not occur where the publication involves the disclosure of confidential information, the disclosure of which is prohibited by –

- (a) the Rome Treaty,
- (b) the ESCB Statute (within the meaning given by section 2 of the Act of 1942), or
- (c) the supervisory EU legal acts (within the meaning of section 33AK(10) of the Act of 1942).

Maintenance of central database by ESMA

11. Subject to professional secrecy requirements, the Bank shall inform ESMA in writing of all sanctions imposed for contraventions referred to in Regulation 9 including any appeal in relation thereto and the outcome of any such appeal.

Exercise of powers to impose sanctions

12. The Bank, when determining the type and level of sanction to be imposed for a contravention referred to in Regulation 9, shall take into account all relevant circumstances, including, where applicable, the following:

- (a) the gravity and the duration of the contravention;
- (b) the degree of responsibility of the natural or legal person responsible;

- (c) the financial strength of the natural or legal person responsible, including, among other things, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
- (d) the amount of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
- (e) the losses for third parties caused by the contravention, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority and the resolution authority;
- (g) previous contraventions by the responsible natural or legal person;
- (h) any potential systemic consequences of the contravention.

Amendment of Act of 1942

13. The Act of 1942 is amended –

- (a) in section 2(2A) –
 - (i) in paragraph (bf), by the substitution of “2020;” for “2020.”, and
 - (ii) by the insertion of the following paragraph after paragraph (bf):

“(bg) Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020⁶.”,
- (b) in section 33AK(10), in the definition of “supervisory EU legal acts” –
 - (i) in paragraph (al), by the substitution of “2020,” for “2020;”, and
 - (ii) by the insertion of the following paragraph after paragraph (al):

“(am) Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020⁷;”,
- (c) in section 33BC, by the insertion of the following subsection after subsection (19):

“(20) This section does not apply where Regulation 10 of the European Union (Recovery and Resolution of Central Counterparties) Regulations 2022 (S.I. No. 547 of 2022) applies.”,

⁶ OJ No. L 22, 22.1.2021, p. 1

⁷ OJ No. L 22, 22.1.2021, p. 1

and

- (d) in Part 2 of Schedule 2, by the insertion of the following item:

“

82.	S.I. No. 547 of 2022	European Union (Recovery and Resolution of Central Counterparties) Regulations 2022	The whole instrument.
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Amendment of European Communities (Financial Collateral Arrangements) Regulations 2010

14. The European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010) are amended –

- (a) in Regulation 2(1), by the insertion of the following definition:

“ ‘CCP Recovery and Resolution Regulation’ means Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020¹;”,

- (b) in Regulation 3, by the substitution of the following paragraph for paragraph (8):

“(8) Regulations 6 to 12 shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, close out, netting or set-off provision that is imposed by virtue of Chapter 4, 7 or 8 of Part 4 of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015), or of Title V, Chapter III, Section 3, or Chapter IV of the CCP Recovery and Resolution Regulation, or to any restriction that is imposed by virtue of similar powers in the law of the State to facilitate the orderly resolution of an entity referred to in paragraph (2)(c) or (d) which is subject to safeguards at least equivalent to those set out in Title V, Chapter V of the CCP Recovery and Resolution Regulation.”,

and

- (c) by the insertion of the following Regulation after Regulation 19A:

“Relationship with law giving effect to CCP Recovery and Resolution Regulation

19B. Nothing in these Regulations affects the application of the European Union (Recovery and Resolution of Central Counterparties) Regulations 2022 (S.I. No. 547 of 2022).”.

¹ OJ No. L 22, 22.01.2021, p. 1.

Amendment of Regulation 2 of European Union (Bank Recovery and Resolution) Regulations 2015

15. Regulation 2 of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) is amended by the insertion of the following paragraph after paragraph (1):

“(1A) These Regulations shall not apply to entities that are also authorised in accordance with Article 14 of Regulation (EU) No. 648/2012⁵.”.



GIVEN under my Official Seal,
5 December, 2022.

PASCHAL DONOHOE,
Minister for Finance.

⁵ OJ No. L 201, 27.7.2012, p. 1

EXPLANATORY NOTE

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

These Regulations give effect to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties. The objective of a recovery and resolution framework is to ensure that Central Counterparties (CCPs) set out measures to recover from financial distress, to maintain the critical functions of a CCP which is failing or likely to fail while winding up the remaining activities through normal insolvency proceedings, and to preserve financial stability and to avoid a significant adverse effect on the financial system.

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