



STATUTORY INSTRUMENTS.

S.I. No. 253 of 2023

EUROPEAN UNION (REQUIREMENTS FOR CREDIT TRANSFERS AND
DIRECT DEBITS IN EURO) (AMENDMENT) REGULATIONS 2023

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I, MICHAEL MCGRATH, 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 Regulation (EU) No. 260/2012 of the European Parliament and of the Council of 14 March 2012¹, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Requirements for Credit Transfers and Direct Debits in Euro) (Amendment) Regulations 2023.

(2) These Regulations shall come into operation on 1 June 2023.

2. In these Regulations, “Principal Regulations” means the European Union (Requirements for Credit Transfers and Direct Debits in Euro) Regulations 2013 (S.I. No. 132 of 2013).

3. Regulation 2 of the Principal Regulations is amended, in paragraph (1), by the substitution of the following definition for the definition of “Financial Services Ombudsman”:

“ ‘Financial Services and Pensions Ombudsman’ means the person appointed under section 8(1)(a) of the Financial Services and Pensions Ombudsman Act 2017 (No. 22 of 2017);”.

4. Regulation 5 of the Principal Regulations is amended –

(a) by the substitution of the following paragraph for paragraph (1):

“(1) Subject to paragraph (5D), where the Bank considers it necessary to do so for the purposes of its functions and duties under the SEPA Regulation or these Regulations, as the case may be, it may give a direction in writing to a person who is a payment service provider, a payee or a payer to take, or refrain from taking or to prohibit the person from taking, such actions as are specified in the direction, for the purpose of –

(a) securing effective compliance with the SEPA Regulation or these Regulations, as the case may be, or

(b) preventing that person from contravening, or continuing to contravene, a provision of the SEPA

¹ OJ No. L 94, 30.3.2012, p. 22.

Regulation or these Regulations, as the case may be.”,

(b) in paragraph (2), by the insertion of “or (3A), as the case may be,” after “paragraph (1)”,

(c) in paragraph (3), by the substitution of “A person to whom a direction is given under paragraph (1) or (3A), as the case may be, shall” for “A payment service provider to whom a direction is given under paragraph (1) shall”,

(d) by the insertion of the following paragraphs after paragraph (3):

“(3A) Subject to paragraph (5D), where the Bank considers it necessary to do so for the purposes of paragraph (1), it may, on or after the date on which a direction given under that paragraph ceases to have effect, give another direction to the person referred to in paragraph (1) to take, or refrain from taking or to prohibit that person from taking, such actions as are specified in the direction given under this paragraph.

(3B) A person to whom a direction is given under paragraph (1) or (3A), as the case may be, may apply to the High Court for, and the High Court may, as it considers it appropriate in the circumstances, grant, an order affirming, setting aside or varying the direction concerned.

(3C) An application under paragraph (3B) shall be made not later than 14 days after the date of receipt, by the applicant, of the direction given under paragraph (1) or (3A), as the case may be, or within such extended period as the High Court allows.”,

(e) in paragraph (5), by the substitution of “paragraph (3B) or (4), as the case may be,” for “paragraph (4)”,

(f) by the insertion of the following paragraphs after paragraph (5):

“(5A) The High Court may direct the hearing together of applications made under paragraphs (3B) and (4) that relate to the same direction.

(5B) Where the High Court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, the whole or any part of proceedings before it relating to an application

under paragraph (3B) or (4), as the case may be, may be heard otherwise than in public.

(5C) A person to whom a direction is given under paragraph (1) or (3A), as the case may be, has a right to be heard, make representations or provide comments, where the person considers that the person should not have to comply with the direction concerned, before a determination as that direction is made.

(5D) A direction given under paragraph (1) or (3A), as the case may be, shall only be given to payers and payees in respect of acts or infringements undertaken when they are not acting as consumers.”,

and

(g) by the deletion of paragraph (6).

5. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 5:

“Power of Bank to require information, records, plans, etc.

5A. (1) Where the Bank considers it necessary to do so for the purposes of its functions and duties under the SEPA Regulation or these Regulations, as the case may be, it may, by notice in writing given to a person who is a payment service provider, a payee or a payer, require the person to –

- (a) provide the information,
- (b) provide the records, or
- (c) prepare and provide the forecasts, plans, accounts or other documents,

specified in the notice, to the Bank.

(2) A person to whom a notice is given under paragraph (1) shall comply with the requirement –

- (a) at such time or times, or within such period, as may be specified in the notice, and
- (b) at such place as may be so specified.

(3) The Bank may require that information, records, forecasts, plans, accounts or other documents provided in compliance with a requirement under paragraph (1) be certified or attested as to their authenticity or correctness in such manner as the Bank may reasonably require, including by statutory declaration.

(4) The Bank may take copies of, or extracts from, any records or other documents provided in compliance with a requirement under paragraph (1).

(5) This Regulation shall not limit any other power of the Bank to require the provision of information or records or the preparation and provision of documents.”.

6. The Principal Regulations are amended by the insertion of the following Regulation after Regulation 5A (inserted by Regulation 5):

“Privilege”

5B. (1) Where a person refuses to comply with a requirement under Regulation 5A or 7, as the case may be, on the grounds that information contains privileged legal material, the Bank may, at any time not later than 6 months (or such longer period as the High Court may allow) from the date of such refusal, apply to the High Court for a determination as to whether the information, or any part of the information, is privileged legal material where, in relation to the information concerned

—

- (a) the Bank has reasonable grounds for believing that it is not privileged legal material, or
- (b) due to the manner or extent to which such information is presented together with any other information, it is impossible or impractical to extract only such information.

(2) A person who refuses to comply with a requirement under Regulation 5A or 7, as the case may be, on the grounds that information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under paragraph (1) and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the High Court considers appropriate.

(3) A person shall be considered to have complied with the requirement under paragraph (2) to preserve information where the person has complied with such requirements as may be imposed by an authorised officer under subparagraph (d) or (g), as the case may be, of Regulation 7(1).

(4) Where an application is made by the Bank under paragraph (1), the High Court may give such interim or interlocutory directions as the High Court considers appropriate including, without limiting the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the High Court considers to be appropriate for the purpose of —

- (a) examining the information, and
- (b) preparing a report for the High Court with a view to assisting or facilitating the High Court in the making by the High Court of its determination as to whether the information is privileged legal material.

- (5) (a) An application under paragraph (1) shall be by motion.
- (b) Where the High Court is satisfied that it is desirable, because of the nature or the circumstances of the case, or having regard to the interests of justice, then the whole or any part of proceedings relating to an application under paragraph (1) before it may be heard otherwise than in public.

(6) In this Regulation –

‘information’ means –

- (a) for the purposes of Regulation 5A, information, records, forecasts, plans, accounts or other documents, and
- (b) for the purposes of Regulation 7, relevant records, reports or information (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);

‘privileged legal material’ means information which, in the opinion of the High Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.”.

7. Regulation 6 of the Principal Regulations is amended –

- (a) in paragraph (1), by the insertion of “and these Regulations” after “the SEPA Regulation”,
- (b) by the insertion of the following paragraph after paragraph (4):
“(4A) When exercising a power conferred on an authorised officer under this Part, an authorised officer shall produce the certificate of appointment provided under paragraph (4), together with some form of personal identification, if requested to do so by a person affected by the exercise of the power.”,
and
- (c) in paragraph (5), by the insertion of the following subparagraph after subparagraph (b):
“(ba) if the person resigns, at the time of resignation.”.

8. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 7:

“Powers of authorised officers

7. (1) An authorised officer may do one or more than one of the following for the purpose of monitoring compliance with the SEPA Regulation or these Regulations, as the case may be:

- (a) subject to Regulation 8(1), at all reasonable times enter any place at which the authorised officer reasonably believes there are relevant records;

- (b) subject to Regulation 8(1), enter any place without prior notice, at which the authorised officer reasonably believes that a person to whom the SEPA Regulation or these Regulations, as the case may be, apply, is carrying on, or has carried on, activities which are relevant to the SEPA Regulation, in order to ensure that obligations in relation to payment accessibility (as set out in Article 9 of the SEPA Regulation) are being complied with;
- (c) search and inspect a place and any relevant records at that place;
- (d) secure for later inspection any place, or any part of any place, for such a period as may reasonably be necessary for the purposes of the exercise of his or her powers under this Part;
- (e) require a person at a place or any person employed in connection with activities carried out at such place, to produce to the authorised officer relevant records, and where any of those relevant records are in a non-legible form to –
 - (i) reproduce them in a legible form, or
 - (ii) give the authorised officer such information as that officer reasonably requires regarding entries in them;
- (f) inspect and take copies of relevant records inspected or produced under this Regulation (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);
- (g) secure for later inspection any relevant records so provided or found and any data equipment, including any computer, on which the authorised officer reasonably believes relevant records may be held;
- (h) remove and retain some or all of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate their further examination;
- (i) require a person at a place to give to the authorised officer information (including information by way of a written report) that that officer reasonably requires in relation to activities covered by the SEPA Regulation or these Regulations, as the case may be, and to produce all relevant records that the person has in his or her possession or to which he or she has access;
- (j) require a person at a place 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 authorised officer access and all reasonable assistance in relation to its operation;

(k) require a person at a place to explain entries in relevant records to the authorised officer;

(l) require a person to whom this Part applies to answer questions.

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

(3) An obligation to produce a relevant record or report, or to provide information or assistance, under this Regulation applies to –

(a) an examiner, liquidator or receiver of, or any person who is or has been an officer or employee or agent of a payment service provider, a payee or a payer, or

(b) any other person who appears to the Bank or the authorised officer concerned to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.

(4) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more than one of the following:

(a) a member of the Garda Síochána;

(b) an authorised officer.

(5) In this Regulation and Regulation 8, ‘place’ means a place entered by an authorised officer pursuant to subparagraph (a) or (b), as the case may be, of paragraph (1) and includes the following:

(a) a dwelling or a part thereof;

(b) a building or a part thereof;

(c) a vehicle, whether mechanically propelled or not;

(d) a vessel, whether sea-going or not.”.

9. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 8:

“Search warrant

8. (1) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of a private dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.

(2) Where an authorised officer in the exercise of the authorised officer’s powers under Regulation 7 is prevented from entering any place, whether or not a private dwelling, where he or she believes that there are relevant records, the authorised officer may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place.

(3) Without prejudice to the powers conferred on an authorised officer by or under any provision of these Regulations, an authorised officer may, for the purposes of an investigation into an offence under these Regulations, apply to a judge of the District Court for a warrant in relation to any place.

(4) Where, on the hearing of an application under paragraphs (2) or (3), as the case may be, a judge of the District Court is satisfied on sworn information of the authorised officer that he or she –

- (a) has been prevented from entering any place that is not a private dwelling,
- (b) has reasonable grounds for believing that relevant records are kept at a place that comprise, or form part of, a private dwelling, or
- (c) has reasonable grounds for suspecting that evidence of, or relating to, the commission of an offence under these Regulations is to be found in any place,

that judge may issue a warrant under the judge's hand authorising one or more than one authorised officer accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by reasonable force, the place or private dwelling and exercise any of the powers referred to in Regulation 7.”.

10. Regulation 14 of the Principal Regulations is amended, in paragraph (1), by the substitution of “Financial Services and Pensions Ombudsman” for “Financial Services Ombudsman”.

11. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 15:

“Complaints to Financial Services and Pensions Ombudsman”

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

(2) A complaint made under paragraph (1) shall be determined in accordance with Parts 5 and 6 of the Financial Services and Pensions Ombudsman Act 2017.”.

12. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 16:

“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 and Pensions Ombudsman and to have the complaint determined in accordance with Parts 5 and 6 of the Financial Services and Pensions Ombudsman Act 2017.”.

13. Regulation 17 of the Principal Regulations is amended by the substitution of “Financial Services and Pensions Ombudsman” for “Financial Services Ombudsman”.



GIVEN under my Official Seal,
24 May, 2023.

MICHAEL MCGRATH,
Minister for Finance.

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