



STATUTORY INSTRUMENTS.

S.I. No. 608 of 2017



EUROPEAN UNION (INFORMATION ACCOMPANYING TRANSFERS
OF FUNDS) REGULATIONS 2017

EUROPEAN UNION (INFORMATION ACCOMPANYING TRANSFERS OF FUNDS) REGULATIONS 2017

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) 2015/847 of the European Parliament and of the Council of 20 May 2015¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Information Accompanying Transfers of Funds) Regulations 2017.

Interpretation

2. (1) In these Regulations —

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

“Bank” means the Central Bank of Ireland;

“Funds Transfer Regulation” means Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015¹;

“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).

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

Purpose of these Regulations

3. The purpose of these Regulations is to supplement the Funds Transfer Regulation as regards the application of that Regulation to the State.

Competent authority for purposes of Funds Transfer Regulation

4. (1) The Bank is the competent authority in the State for the purposes of the Funds Transfer Regulation.

(2) The Bank shall have all the supervisory and investigatory powers necessary for the performance of its functions under the Funds Transfer Regulation and these Regulations.

¹OJ No. L 141, 05.06.2015, p.1

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 2nd January, 2018.

(3) The Bank shall monitor, in an effective manner, compliance on the part of payment service providers and intermediary payment service providers with the Funds Transfer Regulation and shall take measures that are reasonably necessary to ensure such compliance by those providers.

(4) The measures that are reasonably necessary include the reporting to the Garda Síochána and the Revenue Commissioners any knowledge or suspicion the Bank has that a payment service provider or an intermediary payment service provider has been or is engaged in money laundering or terrorist financing.

(5) In determining, in any particular case, whether a payment service provider or intermediary payment service provider has complied with the requirements of the Funds Transfer Regulation, the Bank shall consider whether the person is able to demonstrate to the Bank that the requirements have been met.

(6) If the Bank, in the course of monitoring a payment service provider or intermediary payment service provider under these Regulations, acquires any knowledge or forms any suspicion that another person has been or is engaged in money laundering or terrorist financing, it shall report that knowledge or suspicion to the Garda Síochána and the Revenue Commissioners.

(7) 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 its obligations pursuant to the Funds Transfer Regulation and these Regulations.

Reporting mechanisms

5. (1) The Bank shall establish effective mechanisms to enable the reporting to it of potential or actual contraventions of the Funds Transfer Regulation and these Regulations.

- (2) Those mechanisms referred to in paragraph (1) shall include at least —
- (a) specific procedures for the receipt of reports on potential or actual contraventions and their follow-up,
 - (b) appropriate protection for employees of payment service providers and intermediary payment service providers, or persons in a comparable position, who report potential or actual contraventions committed within the payment service provider or intermediary payment service provider,
 - (c) appropriate protection for an accused person, and
 - (d) protection of the identity and personal data of both the person who reports a potential or actual contravention and the natural person who is allegedly responsible for the contravention, at all stages of the procedures unless the disclosure of the identity or personal data is required by law or in the context of further investigation or subsequent administrative or judicial proceedings in accordance with the Data Protection Acts 1988 and 2003.

(3) Payment service providers, in cooperation with the Bank, shall establish appropriate internal procedures for their employees, or persons in a comparable position, to report potential or actual contraventions of these Regulations or the Funds Transfer Regulation, through a secure, independent, specific and anonymous channel.

(4) The procedures referred to in paragraph (3) shall be proportionate to the nature and size of the payment service provider concerned.

Administrative sanctions

6. (1) Notwithstanding Part IIIC of the Act of 1942 and the sanctions set out in section 33AQ of that Act, sanctions may be imposed by the Bank —

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

for contraventions of the Funds Transfer Regulation and may include any or all of the following:

- (i) a public statement which indicates the person responsible for the contravention and the nature of the contravention concerned;
- (ii) an order requiring the person responsible for the contravention to cease, and desist from, the conduct concerned;
- (iii) withdrawal or suspension of any authorisation granted by the Bank;
- (iv) a temporary ban against any member of the institution's management body or any other natural person, who is held responsible, from exercising management functions in the legal person concerned;
- (v) subject to paragraph (2), a direction to pay to the Bank a monetary penalty not exceeding €1,000,000 or twice the amount of the benefit derived from the contravention where that benefit can be determined (including where that sum that exceeds €1,000,000 or the maximum amount specified in paragraph (2)).

(2) Without prejudice to paragraph (1)(v) and the sanctions set out therein, where a contravention listed in Article 18 of the Funds Transfer Regulation is committed by a credit institution or financial institution, the following sanctions may also be imposed:

- (a) in the case of a legal person, a direction to pay to the Bank a monetary penalty not exceeding €5,000,000 or 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body of the institution concerned and paragraph (3) supplements this subparagraph, or

- (b) in the case of a natural person, a direction to pay to the Bank a monetary penalty not exceeding €5,000,000.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013², the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Application of sanctions

7. The Bank, when imposing a sanction in respect of a contravention by a person of the Funds Transfer Regulation or of a prescribed contravention, as defined in section 33AN of the Act of 1942, shall have regard to all the relevant circumstances including, where appropriate, the following:

- (a) the gravity and duration of the contravention;
- (b) the degree of responsibility of the person concerned;
- (c) the financial strength of the person concerned, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of the profits gained or losses avoided by the person responsible for the contravention, insofar as they can be determined;
- (e) the level of cooperation with the Bank of the person responsible for the contravention, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous contraventions by the person responsible for the contravention;
- (g) measures taken by the person responsible for the contravention to prevent its repetition.

Obligation to cooperate with other Member States

8. The Bank shall cooperate with the competent authorities of other Member States when dealing with cross-border cases for the purpose of —

- (a) carrying out of its duties, under these Regulations or under the Funds Transfer Regulation, with those competent authorities of other Member States, or
- (b) making use of the powers of those competent authorities of other Member States, whether set out in these Regulations or under the Funds Transfer Regulation.

²OJ No. L 182, 29.06.2013, p. 19

Offences

9. (1) A payment service provider or intermediary payment service provider who contravenes any provision of the Funds Transfer Regulation commits an offence.

(2) A payment service provider or intermediary payment service provider who commits an offence under paragraph (1) shall be liable on summary conviction to a class A fine.

Liability of legal persons

10. (1) This Regulation is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a legal person resulting in criminal liability or, as the case may be, civil liability of that legal person for those acts.

(2) If a person commits one or more acts for the benefit of a legal person and the following conditions are satisfied:

- (a) the first-mentioned person stands (at the time of the commission of those acts) in the relationship to that legal person specified in paragraph (4); and
- (b) those acts constitute a contravention listed in Article 18 of the Funds Transfer Regulation,

then that legal person, as well as the first-mentioned person, shall be guilty of the contravention (and of an offence accordingly) and liable to be proceeded against and subject to the same sanctions (and, in the case of an offence, punishments) as if it were guilty of the first-mentioned contravention, and it is immaterial, for the purposes of this Regulation, whether the first-mentioned person was acting individually (as distinct from acting as part of an organ of the legal person).

(3) If a person under the authority of a legal person commits one or more acts for the benefit of the legal person and the following conditions are satisfied:

- (a) the commission of those acts was attributable to the requisite degree of supervision or control of the first-mentioned person by another person (the “third person”) not having been exercised;
- (b) the third person stands (at the time of the commission of those acts) in the relationship to that legal person specified in paragraph (6); and
- (c) those acts constitute a contravention listed in Article 18 of the Funds Transfer Regulation,

then that legal person, as well as the first-mentioned person, shall be guilty of the contravention (and of an offence accordingly) and liable to be proceeded against and subject to the same sanctions (and, in the case of an offence, punishments) as if it were guilty of the first-mentioned contravention and it is

immaterial, for the purposes of this Regulation, whether, at the time the foregoing degree of supervision or control was not exercised, the third person was acting individually (as distinct from acting as part of an organ of the legal person).

(4) The relationship, mentioned in paragraph (2)(a), of the first-mentioned person in that paragraph to the legal person referred to therein is that the first-mentioned person has a leading position within that legal person based on —

- (a) a power to represent that legal person,
- (b) an authority to take decisions on behalf of that legal person, or
- (c) an authority to exercise control within that legal person.

(5) The reference in paragraph (3)(a) to the requisite degree of supervision or control is a reference to the degree of supervision or control (of the first-mentioned person in paragraph (3)) that ought to have been exercised in the circumstances by the third person mentioned in that paragraph.

(6) The relationship, mentioned in paragraph (3)(b), of the third person to the legal person referred to therein is that the third person has a leading position within that legal person based on —

- (a) a power of representation of that legal person,
- (b) an authority to take decisions on behalf of that legal person, or
- (c) an authority to exercise control within that legal person.

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

11. (1) Where 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.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Prosecution of offences

12. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Bank.

Publication of sanctions

13. (1) The Bank shall, in accordance with Article 19 of the Funds Transfer Regulation, publish any decision imposing an administrative sanction or measure for a contravention of Article 17 or 18 of that Regulation on its website without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision.

(2) The publication under paragraph (1) shall include at least information on the type and nature of the contravention and the identity of the persons responsible.

(3) Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the Bank to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, the Bank shall —

- (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist,
- (b) publish the decision to impose the sanction or measure on an anonymous basis if such anonymous publication ensures an effective protection of the personal data concerned, or
- (c) not publish the decision to impose a sanction or measure at all in the event that the options set out in subparagraphs (a) and (b) are considered to be insufficient to ensure —
 - (i) that the stability of financial markets would not be put in jeopardy, and
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(4) In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

(5) Where the decision to impose a sanction or measure is the subject of an appeal, the Bank shall also publish, immediately, on its website such information and any subsequent information on the outcome of such appeal.

(6) Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(7) The Bank shall ensure that any publication in accordance with this Regulation remains on its website for a period of at least 5 years after its publication.

(8) Personal data contained in a publication under this Regulation shall only be kept on the official website of the Bank for the period which is necessary in accordance with the Data Protection Acts 1988 and 2003.

Consequential amendments of Act of 1942

14. The Act of 1942 is amended —

(a) in section 2(2A) by inserting the following paragraph:

“(an) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015¹,”

(b) in section 33BC, by inserting after subsection (9) the following:

“(10) This section does not apply where Regulation 13 of the European Union (Information Accompanying Transfers of Funds) Regulations 2017 applies.”

and

(c) in Part 2 of Schedule 2 by inserting the following:

“

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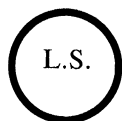
¹OJ No. L 141, 05.06.2015, p.1

Revocation and saver

15. (1) The European Communities (Information on the Payer Accompanying Transfers of Funds) Regulations 2007 (S.I. No. 799 of 2007) are revoked.

(2) The revocation effected by paragraph (1) —

- (a) does not affect any direction given by the Bank, any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.



GIVEN under my Official Seal,
19 December 2017.

PASCHAL DONOHOE,
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.

€3.05



Wt. (B33234). 285. 12/17. Essentra. Gr 30-15.