



STATUTORY INSTRUMENTS.

S.I. No. 150 of 2018



EUROPEAN UNION (CAPITAL REQUIREMENTS) (AMENDMENT)
REGULATIONS 2018

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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 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Capital Requirements) (Amendment) Regulations 2018.

2. The European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014) are amended—

(a) in Regulation 3(1)—

(i) by substituting for the definition of “ESRB” the following:

“ ‘ESRB’ means European Systemic Risk Board;”, and

(ii) by deleting the definition of “European Stability Review Board” and inserting the following:

“ ‘European Systemic Risk Board’ means the body established pursuant to Regulation (EU) No 1092/2010;”,

(b) in Regulation 33, by inserting after paragraph (7) the following:

“(7A) Where a financial institution is carrying on business in accordance with paragraph (3) of Regulation 32 and no longer fulfils one or more of the conditions set out in that paragraph, the Bank shall notify the competent authorities of any Member State in which the financial institution has established a branch or in which the financial institution provides services in accordance with the Capital Requirements Directive or these Regulations.”,

(c) in Regulation 54, by substituting for paragraph (1) the following:

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

¹OJ No. L 176, 27.06.2013, p. 338

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

for the contraventions listed in paragraph (2) and may include any or all of the following:

- (i) a public statement that identifies the natural person, institution, financial holding company or mixed-financial holding company responsible, and the nature of the breach concerned;
- (ii) an order requiring a natural or legal person responsible for the contravention to cease, and desist from, the conduct concerned;
- (iii) in the case of a body corporate or unincorporated body, administrative pecuniary penalties of up to 10 per cent of the total annual net turnover including the gross income consisting of—
 - (I) interest receivable and similar income,
 - (II) income from shares and other variable or fixed-yield securities, and
 - (III) commissions or fees receivable,

in accordance with Article 316 of the Capital Requirements Regulation, of the undertaking in the preceding business year;

- (iv) in the case of a natural person, administrative pecuniary penalties of up to €5,000,000;
- (v) administrative pecuniary penalties of up to twice the amount of the benefit derived from the contravention where that benefit can be determined;
- (vi) suspension of the voting rights of the shareholder or shareholders held responsible for the contraventions referred to in paragraph (2).”,

(d) in Regulation 59, by substituting the following for paragraph (3):

“(3) Institutions shall have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.”,

and

(e) in Regulation 111, by substituting for paragraph (2)(b) the following:

“(b) report (other than in respect of the reporting required under Article 394 of the Capital Requirements Regulation) to the Bank any significant transaction with the entities referred to in paragraph (a).”.

3. Section 9I (amended by Regulation 17 of the European Union (Single Supervisory Mechanism) Regulations (S.I. No. 495 of 2014)) of the Central Bank Act 1971 (No. 24 of 1971) is amended by inserting after subsection (3) the following:

“(4) A failure by the Bank to notify an applicant within 6 months of receipt of an application or, where an application is incomplete, within 6 months of receipt of the complete information required, in accordance with subsection (1), is an appealable decision for the purposes of Part VIIA of the Act of 1942.”.

4. Section 17 of the Building Societies Act 1989 (No. 17 of 1989) is amended in subsection (12) (amended by Regulation 24 of, and Schedule 5 to, the European Union (Single Supervisory Mechanism) Regulations (S.I. No. 495 of 2014)) by inserting after paragraph (a) the following:

“(aa) failure by the Central Bank to notify the society within the period specified in section 17E(1).”.

5. The amendment of Regulation 54 of the European Union (Capital Requirements) Regulations 2014 by Regulation 2(c) shall not—

(a) 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 amendment, 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 those Regulations or any misconduct which may have been committed before the commencement of the amendment.



GIVEN under my Official Seal,
1 May 2018.

PASCHAL DONOHOE,
Minister for Finance.

EXPLANATORY NOTE

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

This statutory instrument amends the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014). The amendments include technical amendments to definitions, to notifications to be sent to competent authorities of other Member States in certain circumstances, to the provision ensuring that institutions have in place procedures for employees to internally report potential or actual breaches, to the provision covering contraventions, and to clarify that a failure by the Bank to notify an applicant of rejection in the case of certain applications is an appealable decision.

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