



STATUTORY INSTRUMENTS.

**S.I. No. 183 of 2010.**



EUROPEAN COMMUNITIES (CROSS BORDER PAYMENTS)  
REGULATIONS 2010

**(Prn. A10/0603)**

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I, BRIAN LENIHAN, 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 (EC) No. 924/2009<sup>1</sup> of the European Parliament and of the Council, dated 16 September 2009, hereby make the following regulations:

**PART 1**

**PRELIMINARY PROVISIONS**

*Citation and commencement*

1. (1) These Regulations may be cited as the European Communities (Cross Border Payments) Regulations 2010.

(2) These Regulations come into operation on the day after the day on which notice of their making is published in *Iris Oifigiúil*.

*Interpretation*

2. (1) In these Regulations—

“Bank” means the Central Bank and Financial Services Authority of Ireland;

“EC Cross Border Payments Regulation” means Regulation (EC) No. 924/2009 of the European Parliament and of the Council dated 16 September 2009<sup>2</sup>;

“Financial Services Ombudsman” means the person holding office as such under Part VIIIB of the Central Bank Act 1942;

“Member State” means a Member State of the European Communities and includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992<sup>3</sup> (as adjusted by the Protocol signed at Brussels on 17 March 1993<sup>4</sup>), as amended from time to time;

“relevant records” means books, records or other documents relating to the business of a payment services provider;

“search warrant” means a search warrant issued under Regulation 8.

<sup>1</sup>OJ L266/11 dated 9.10.2009

<sup>2</sup>See Note 1.

<sup>3</sup>OJ L 1, 3 January 1994, p. 3.

<sup>4</sup>OJ L 1, 3 January 1994, p. 572.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 18th May, 2010.*

(2) A word or expression used in the EC Cross Border Payments Regulation and also used in these Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EC Cross Border Payments Regulation.

*Purpose of these Regulations*

3. The purpose of these Regulations is to supplement the EC Cross Border Payments Regulation as regards its application to the State.

*Bank to be competent authority for purpose of EC Cross Border Payments Regulation*

4. (1) The Bank is the competent authority of the State for the purposes of the EC Cross Border Payments Regulation.

(2) The Bank shall monitor compliance with the EC Cross Border Payments Regulation effectively and take all necessary measures to ensure compliance by Payment Service Providers.

## PART 2

### ENFORCEMENT OF EC CROSS BORDER PAYMENTS REGULATION

*Bank's power to give directions*

5. (1) If the Bank considers it necessary to do so in the interests of the proper and orderly supervision of payment services the Bank may give a direction in writing to a payment service provider but only for the purpose of securing effective compliance with the EC Cross Border Payments Regulation.

(2) A direction under paragraph (1)—

(a) takes effect on the date, or on the occurrence of the event, specified in the direction, and

(b) ceases to have effect on the earlier of—

(i) the date, or the occurrence of the event, specified in the direction for the purpose, or

(ii) the end of the period of 12 months immediately following the day on which it took effect.

(3) A payment service provider to whom a direction is given under paragraph (1) shall comply with the direction within such reasonable period as may be specified in the direction.

(4) If a direction under this Regulation is not or has not been complied with or is, in the opinion of the Bank, unlikely to be complied with, the Bank may apply to the High Court in a summary manner for an order enforcing the direction.

(5) At the hearing of an application made under paragraph (4), the High Court may make such order as it considers appropriate in the circumstances (including an order dismissing the application).

(6) A decision under this Regulation to give a direction to a payment service provider is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

*Power to appoint authorised officers*

6. (1) The Bank may, in writing, appoint persons as authorised officers for the purposes of monitoring compliance with the EC Cross Border Payments Regulation and these Regulations.

(2) The Bank may, at any time in writing, revoke the appointment of an authorised officer appointed under this Regulation.

(3) The appointment of an authorised officer under this Regulation may be for a specified period or an indefinite one.

(4) The Bank shall provide every authorised officer with a certificate of appointment as such.

(5) An appointment made under this Regulation ceases—

(a) if the Bank revokes the appointment, at the time of revocation,

(b) if the person appointed dies, at the time of death,

(c) if the appointment is for a specified period, at the end of that period,  
or

(d) if the person appointed was, when appointed, an officer of the Bank, when the person ceases to be such an officer.

*Powers of authorised officers*

7. (1) An authorised officer may do all or any of the following for the purpose of monitoring compliance with the EC Cross Border Payments Regulation and these Regulations:

(a) enter premises at which the officer reasonably believes that a payment service provider is carrying on, or has carried on, business as such or where relevant records are kept;

(b) search and inspect the premises, and any relevant records kept on the premises;

(c) secure for later inspection any part of the premises in which relevant records are kept or in which the officer reasonably believes relevant records are kept;

- (d) require a person who carries on the business of a payment service provider, and any person employed in connection with such a business, to produce to the officer relevant records, and if any of those records are in a non-legible form, to reproduce them in a legible form or to give the officer such information as the officer reasonably requires regarding entries in them;
- (e) inspect and take copies of relevant records inspected or produced to the officer (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);
- (f) remove and retain relevant records inspected or produced under these Regulations for such period as may be reasonable to allow their further examination;
- (g) require a person to give to the officer information (including information by way of a written report) that the officer reasonably requires in relation to activities covered by the EC Cross Border Payments Regulation and to produce to the officer all relevant records that the person has or to which the person has access;
- (h) require a person 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 officer all reasonable assistance in relation to its operation;
- (i) require a person who is in charge of, or has access to, relevant records to explain entries in those records.

(2) When exercising a power conferred by this Regulation, an authorised officer shall produce the certificate, together with some form of personal identification, whenever asked to do so by a person in relation to whom the power is to be exercised. Failure to comply with this paragraph renders the exercise of the power unlawful.

(3) An authorised officer—

- (a) may use force to enter premises only in accordance with a search warrant, and
- (b) may enter premises comprising or forming part of a private dwelling (other than a part of the dwelling used as a place of work) only with the consent of the occupier or in accordance with a search warrant.

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

(5) An obligation to produce a relevant record or report or to provide information or assistance under this Regulation applies to—

- (a) a liquidator or receiver of, or a person who is or has been an officer or employee or agent of, a payment service provider, or
- (b) any other person who appears to the Bank or the authorised officer to be in possession of, or have control over, a relevant record or report or to be able to provide information or assistance.

(6) An authorised officer may, if the officer considers it necessary, be accompanied by a member of an Garda Síochána when exercising a power under this Part.

*Warrant required to enter premises in certain cases*

8. (1) An authorised officer who—

- (a) is prevented from exercising the power to enter premises conferred by Regulation 7, or
- (b) believes that relevant records are being kept on premises that comprise, or form part of, a private dwelling,

may apply to a judge of the District Court for a warrant authorising the officer or another authorised officer to enter the premises.

(2) If, on the hearing of an application under paragraph (1), a judge of the District Court is satisfied that the applicant or another authorised officer—

- (a) has been prevented from exercising the power to enter premises conferred by Regulation 7, or
- (b) has reasonable grounds for believing that relevant records are kept on premises that comprise, or form part of, a private dwelling,

the judge may issue a warrant authorising the applicant or another authorised officer to enter, if necessary by force, the premises and to exercise there the powers specified in Regulation 7.

(3) A warrant issued under this Regulation may be executed at any time within 4 weeks from the date of its issue and not otherwise.

(4) In executing a warrant, an authorised officer can be accompanied by not more than a number of members of an Garda Síochána specified in the warrant.

*Offence to obstruct authorised officer in exercise of officer's powers*

9. (1) A person who—

- (a) obstructs or interferes with an authorised officer in the exercise of a power conferred by this Part, or
- (b) without reasonable excuse, refuses or fails to comply with a request or requirement of an authorised officer made in accordance with a power conferred by this Part, or

- (c) gives an authorised officer information that the person knows, or ought reasonably to know, is false or misleading in a material respect,

commits an offence.

(2) If an authorised officer, on reasonable grounds, believes that a person has committed an offence under these Regulations, the officer may require that person to give the officer the person's name and the address at which the person ordinarily resides.

(3) A statement of admission made by a person as a result of a requirement under Regulation 7(1) is not admissible as evidence in proceedings brought against the person for an offence (other than an offence under paragraph (1)).

(4) A person who falsely represents himself or herself to be an authorised officer commits an offence.

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

10. (1) If 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.

*Penalties for offences under this Part*

11. A person who is found guilty of an offence under this Part is liable on summary conviction to a fine not exceeding €5,000.

*Prosecution of offences*

12. (1) Proceedings for an offence under this Part may be brought and prosecuted by the Bank, but nothing in this paragraph precludes any other person authorised by law to do so from bringing and prosecuting such an offence.

(2) Proceedings for an offence under this Part may be brought no later than 12 months after the date on which the offence is alleged to have been committed.

*How alleged infringements of EC Cross Border Payments Regulation are to be dealt with*

13. A payment service provider who is alleged to have infringed the EC Cross Border Payments Regulation may be dealt with in accordance with Part IIIC of the Central Bank Act 1942 and, if found to have committed the infringement, is liable to the penalties provided for under that Part.

**PART 3****COMPLAINT AND OUT-OF-COURT REDRESS PROCEDURES FOR  
THE SETTLEMENT OF DISPUTES**

*Jurisdiction of Financial Services Ombudsman in relation to settlement of disputes arising under the EC Cross Border Payments Regulation*

14. (1) The Financial Services Ombudsman has jurisdiction over the settlement of disputes between payment service users or other interested parties and payment service providers concerning rights and obligations arising under the EC Cross Border Payments Regulation.

(2) Paragraph (1) does not extend to payment service users unless they are consumers or the operators of undertakings that were at the relevant time micro enterprises.

*Payment service user may complain to Financial Services Ombudsman regarding alleged infringement by payment service provider*

15. (1) A payment service user may make a complaint to the Financial Services Ombudsman relating to an alleged infringement by a payment service provider of the EC Cross Border Payments Regulation.

(2) A complaint made under paragraph (1) is to be determined in accordance with Part VIIB of the Central Bank Act 1942.

*Bank to tell complainant about available out-of-court redress procedure*

16. If a complaint relating to an alleged infringement of the EC Cross Border Payments 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 Ombudsman and to have the complaint determined in accordance with Part VIIB of the Central Bank Act 1942.

*Financial Services Ombudsman required to co-operate with competent authorities of other Member States*

17. If a cross-border dispute occurs, the Financial Services Ombudsman shall actively co-operate in resolving the dispute with the competent authorities and other bodies (if any) responsible for out-of-court redress procedures in the other Member States concerned.

*Existence of complaints procedure not to affect right to bring legal proceedings*

18. The existence of the complaints procedure established by this Part to deal with complaints arising under the EC Cross Borders Payments Regulation does not affect the right to bring proceedings before a court of competent jurisdiction in relation to the matters complained of.



## PART 4

## MISCELLANEOUS

*Bank to issue guidelines*

19. (1) The Bank shall issue guidelines to identify corresponding national payments whenever it considers it necessary to do so.

(2) The Bank shall actively co-operate with the Payments Committee established in accordance with Article 85(1) of Directive 2007/64/EC to ensure the consistency of guidelines for corresponding national payments.

*Bank not precluded from investigating matters concerning alleged infringements of EC Cross Border Payments Regulation*

20. Nothing in these Regulations precludes the Bank from performing its supervisory functions in relation to information received in connection with a complaint made by a payment service user under Part 3.

*Revocation of superseded Regulations*

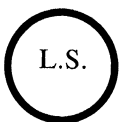
21. The European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002) are revoked.

*Consequential amendment of Central Bank Act 1942*

22. Schedule 2 to the Central Bank Act 1942 (No. 22 of 1942) (as substituted by section 31 of the Central Bank and Financial Services Authority of Ireland Act 2003) is amended as follows:

- (a) by deleting from Part 2 the item relating to the European Communities (Cross Border Payments in Euro) Regulations 2002 (S.I. No. 335 of 2002);
- (b) by inserting at the end of that Part:

“S.I. No. 183 of 2010	European Communities (Cross Border Payments) Regulations 2010	The whole instrument.”
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GIVEN under my Official Seal,

14 May 2010.

BRIAN LENIHAN,  
Minister for Finance.

## EXPLANATORY NOTE

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

These Regulations give further effect in Ireland to Regulation (EC) No. 924/2009<sup>1</sup> of the European Parliament and of the Council, of 16 September 2009, on cross-border payments in the Community.

Regulation 924/2009 provides that equal charges must apply for both national and cross-border payments up to €50,000 for direct debits, credit transfers, electronic payments (including card transactions) and ATM cash withdrawals.

Regulation 924/2009 also introduces temporary rules on multilateral interchange fees between banks and establishes a deadline of November 2010 for full reachability for direct debit transactions in the euro area. For banks from the non-euro area, this deadline is November 2014. The Regulation also repeals EU Regulation 2560/2001.

These Regulations designate the Central Bank and Financial Services Authority of Ireland as the competent authority in the State for the purposes of Regulation 924/2009 and the Financial Services Ombudsman as the body responsible for out-of-court complaint and redress procedures.

Infringements of these Regulations or of Regulation 924/2009 may be prosecuted by the Financial Regulator under its Administrative Sanctions Regime in accordance with Part IIIC of the Central Bank Act 1942 as amended.

<sup>1</sup>OJ L266/11 dated 9.10.2009

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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
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