



STATUTORY INSTRUMENTS.

S.I. No. 481 of 2016



EUROPEAN UNION (CENTRAL SECURITIES DEPOSITORIES)
REGULATIONS 2016

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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving full effect to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Central Securities Depositories) Regulations 2016.

(2) These Regulations come into operation on 16 September 2016.

Interpretation

2. (1) In these Regulations—

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

“Bank” means Central Bank of Ireland;

“CSD Regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

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

Designation of Bank as competent authority

3. The Bank is designated as the competent authority in the State responsible for carrying out the functions of a competent authority referred to in the CSD Regulation.

Sanctions

4. 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—

(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

¹OJ No. L257, 28.08.2014, p. 1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th September, 2016.*

for the infringements listed in Article 63(1) of the CSD Regulation and may include any or all of the following:

- (i) a public statement which indicates the person responsible for the infringement and the nature of the infringement concerned, in accordance with Regulation 7;
- (ii) an order requiring the person responsible for the infringement to cease, and desist from, the conduct concerned;
- (iii) withdrawal of an authorisation granted under Article 16 or 54 of the CSD Regulation, in accordance with Article 20 or 57 of the CSD Regulation;
- (iv) a temporary or, for repeated serious infringements, a permanent 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 institution concerned;
- (v) administrative pecuniary sanctions of up to twice the amount of the profits gained as a result of an infringement where that amount can be determined;
- (vi) in respect of a natural person, administrative pecuniary sanctions of up to €5,000,000;
- (vii) in the case of a legal person, administrative pecuniary sanctions of up to €20,000,000 or up to 10% of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts according to 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 according to the relevant Accounting Directives according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

Application of sanctions

5. The Bank shall, when determining the type and level of administrative sanctions or other measures, take into account all relevant circumstances, including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;

²OJ No. L182, 29.6.2013, p. 19.

- (c) the financial strength of the person responsible for the infringement as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of—
 - (i) the profits gained or losses avoided by the person responsible for the infringement, or
 - (ii) the losses for third parties derived from the infringement, insofar as those profits or losses can be determined;
- (e) the level of cooperation of the person responsible for the infringement with the Bank, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
- (f) previous infringements by the person responsible for the infringement.

Offences

- 6. (1) A person who—
 - (a) provides a service specified in Section A, B or C of the Annex to the CSD Regulation in contravention of Article 16, 25 or 54,
 - (b) obtains an authorisation required under Article 16 by making false statements or by any other unlawful means, or
 - (c) obtains an authorisation required under Article 54 by making false statements or by any other unlawful means, commits an offence.
- (2) A person who commits an offence under paragraph (1) is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both.
- (3) In this Regulation, a reference to an Article is a reference to an Article of the CSD Regulation.

Publication of decisions

- 7. (1) Subject to paragraph (5), the Bank shall publish on its official website all decisions imposing an administrative sanction or other measure for an infringement of the CSD Regulation.
- (2) A publication under paragraph (1) shall—
 - (a) be published without undue delay after the person sanctioned is informed of that decision, and
 - (b) include at least information on the type and nature of the infringement and the identity of a natural or legal person on whom the sanction has been imposed.

(3) Where the decision to impose a sanction or other measure is subject to an appeal before a court or tribunal in the State, the Bank shall, without undue delay, also publish on its official website information on the appeal status and outcome thereof.

(4) The Bank shall publish on its official website all decisions annulling a previous decision to impose a sanction or a measure.

(5) Where the publication of the identity of a legal person or of the personal data of a natural person 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 ongoing investigation, the Bank shall do one of the following:

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

(6) In the case of a decision to publish a sanction or other measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period where it is envisaged that the reasons for anonymous publication will cease to apply within that period.

(7) The Bank shall inform ESMA of all administrative sanctions imposed but not published in accordance with paragraph (5)(c), including any appeal in relation thereto and the outcome thereof.

(8) Subject to its obligations under the Data Protection Acts 1988 and 2003, the Bank shall ensure that information published under this Regulation remains on its official website for at least five years after its publication.

Reporting to ESMA by Bank of its decisions

8. (1) The Bank shall provide ESMA annually with aggregated information regarding all sanctions and other measures imposed by it under these Regulations.

(2) Where the Bank publishes information in accordance with Regulation 7, it shall at the same time report that fact to ESMA.

Reporting of infringements

9. (1) The Bank shall establish effective mechanisms to encourage reporting to it of potential or actual infringements of the CSD Regulation and these Regulations.

(2) The mechanisms referred to in paragraph (1) shall include at least the following:

- (a) specific procedures for the receipt and investigation of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports;
 - (b) appropriate protection for employees of institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment, at a minimum;
 - (c) protection of personal data concerning both the person who reports the potential or actual infringement and the natural person who is allegedly responsible for an infringement in accordance with the Data Protection Acts 1988 and 2003;
 - (d) protection of the identity of both the person who reports the infringement and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.
- (3) (a) Institutions shall have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.
- (b) The procedures referred to in subparagraph (a) shall include the following:
- (i) appropriate protection for employees of institutions who report potential or actual infringements committed within the institution against retaliation, discrimination or other types of unfair treatment, at a minimum;
 - (ii) protection of personal data concerning both the person who reports the potential or actual infringement and the natural person who is allegedly responsible for an infringement in accordance with the Data Protection Acts 1988 and 2003;
 - (iii) protection of the identity of both the person who reports the infringement and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such

disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

Right of appeal

10. (1) A decision taken or measure imposed under the CSD Regulation or these Regulations is an appealable decision for the purpose of Part VIIA of the Act of 1942.

(2) The failure to make a decision in respect of an application for authorisation within six months of the submission of that application where the application contains all the information required under the CSD Regulation is an appealable decision for the purpose of Part VIIA of the Act of 1942.

Amendment of Act of 1942 — prescribed contraventions

11. Section 33AN of the Act of 1942 is amended—

(a) by the designation of that section as subsection (1),

(b) by the insertion of the following definition:

“CSD Regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;”,

(c) in the definition of “prescribed contravention”, by the substitution of “means, other than in respect of the CSD Regulation, a contravention of” for “means a contravention of”, and

(d) by the insertion after subsection (1) of the following subsection:

“(2) ‘prescribed contravention’, in respect of the CSD Regulation, means an infringement listed in Article 63(1) of the CSD Regulation.”.

Amendment of Act of 1942 — insertion of references

12. The Act of 1942 is amended—

(a) in section 2(2A)—

(i) by the substitution of the following paragraph for paragraph (ak):

“(ak) Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016³;”, and

(ii) by the insertion of the following paragraph after paragraph (ak):

“(al) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014⁴.”,

³OJ No. L173, 30.6.2016, p. 47.

⁴OJ No. L257, 28.08.2014, p. 1.

(b) in section 33AK(10) in the definition of “supervisory EU legal acts”—

(i) by the substitution of the following paragraph for paragraph (v):

“(v) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);”, and

(ii) by the insertion of the following paragraph after paragraph (v):

“(x) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.”,

(c) in section 33BC by inserting the following subsection after subsection (7):

“(8) This section does not apply where Regulation 7 of the European Union (Central Securities Depositories) Regulations 2016 (S.I. No. 481 of 2016) applies.”, and

(d) in Part 2 of Schedule 2 by the insertion of the following item after the last item

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65	S.I. No. 481 of 2016	European Union (Central Securities Depositories) Regulations 2016	The whole instrument
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GIVEN under my Official Seal,
16 September 2016.

MICHAEL NOONAN,
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. (B32334). 285. 9/16. Essentra. Gr 30-15.