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**RE: European Communities (Payment Services) Regulations 2009
(S.I. No. 383 of 2009) (“the Regulations”)**

Dear

I refer to previous correspondence in relation to the Central Bank’s review of compliance with the European Communities (Payment Services) Regulations, 2009 (“the Regulations”). This review has now been completed, the main aim of which was to ascertain the level of compliance by retail banks operating in Ireland with certain of the conduct of business requirements in the Regulations.

Eight retail banks were selected for this review and each completed a return that sought information about certain aspects of the Regulations. Additional information and clarification was provided in subsequent follow-up. All of this information was sought in the context of the Central Bank’s supervisory powers as set out in the Regulations. I would like to take this opportunity to thank you and your colleagues for your co-operation during this review.

The purpose of this letter is to provide feedback in relation to some of the findings of the review, which include some areas for improvement, and also to set out the Central Bank’s position in relation to aspects of the Regulations. This letter focuses on our findings in the context of the eight retail banks included in the scope of this review, however the recommendations and clarifications provided are relevant for, and therefore addressed to, all payment service providers. We hope that this letter will be of assistance in developing and ensuring compliance with the Regulations. This letter will be published on the Central Bank’s website and may be considered during other reviews and inspections of payment services. It is important that each payment service provider considers the issues set out below in the context of its own policies, procedures, systems and controls. Where issues with individual payment service providers were identified, these will be addressed in separate correspondence with the relevant payment service provider.



1. Cut-Off Times

The Central Bank is cognisant of the requirement in accordance with Regulation 85 for next day value-dating and availability of payment transactions. We acknowledge that work has been carried out by a number of banks to date to address systems and process limitations in preparation for this requirement. We consider that cut-off times are an important aspect of consumer protection in relation to value-dating and availability of funds, as demonstrated in this example:

EXAMPLE: Cut-off time of 3:30pm

On Monday, a consumer instructs Bank A to transfer €100 from an account in Bank A to an account in Bank B:

- If the instruction is given **before the cut-off time** (e.g. at 3:00pm)
⇒ €100 must be value dated and available in the account in Bank B by close of business the following day i.e. **Tuesday**
- If the instruction is given **after the cut-off time** (e.g. at 4:00pm)
⇒ €100 must be value dated and available in the account in Bank B by close of business on **Wednesday**

During this review, we found that there was inconsistency across retail banks in relation to cut-off times for receipt of payment orders. In view of the Central Bank's role to ensure that the best interests of consumers of financial services are protected and in the context of the European Commission's responses to questions, we consider that payment service providers should establish cut-off times for receiving payment orders as near to the end of the business day as possible, and these times should not be earlier than 15:30 to ensure next day value and availability of payment transactions. We note that some action has recently been taken in this regard. Payment service providers should ensure that cut-off times are set out clearly for consumers in accordance with the requirements in Regulations 52 and 53, and that there are processes in place to enable consumers to request and receive this information on paper or another durable medium, in accordance with Regulation 54, and in a manner that complies with Regulation 63.

2. Charges for Information

We found that a number of the retail banks included in this review relied on the assessment of the 'commercial justification' of an approved bank charge in accordance with Section 149 of the Consumer Credit Act 1995 to confirm compliance with



Regulation 45(3) of the Regulations. Please note that Section 149 approval of a bank charge does not represent evidence that such a charge complies with Regulation 45(3).

We consider that all payment service providers should have a process in place to ensure compliance with Regulation 45. Existing charges as well as those proposed to be imposed in accordance with Regulation 45 should be reviewed to ensure that they are “*appropriate and in line with the payment service provider’s actual costs.*”

3. Monthly Statements

Where monthly statements incorporating payment transactions are provided, we note that banks included in the review confirmed that no charge is imposed and that this is in line with the Regulations. In this regard, and to support compliance with Regulation 63, the Central Bank considers that payment service providers must provide or make statements available on paper or another durable medium if requested by a payment service user. A payment service provider should be in a position to provide evidence that any manner it has agreed for provision of monthly statements is in accordance with the Regulations i.e. that such a method:

- has been agreed with the user;
- allows the information to be easily accessible¹;
- is easily understood and in a clear and comprehensible form; and
- is capable of being stored for a period of time adequate for its purposes and can be reproduced unchanged.

Where additional or more frequent information is requested (e.g. duplicate statements) we note that some banks included in the review confirmed that a charge is imposed and that this may be agreed in line with the Regulations. For the purposes of this review, we looked at charges for duplicate statements. We reviewed the charge that would be applied for an example of a three-page duplicate statement, based on information provided by banks as part of the review. We found that the amounts charged and the methods for calculating charges varied across the retail banks included in this review with the result that the final charge varied considerably. The Central Bank expects all payment service providers to review all relevant charges in the context of Regulation 45 to ensure that each charge is “*appropriate and in line with the payment service provider’s actual costs.*”

¹ A payment service provider should consider whether the information is, at a minimum, both physically and technically accessible by a payment service user.



4. Disputed, Unauthorised and Incorrectly Executed Transactions

The Central Bank found that information relating to disputed, unauthorised and/or incorrectly executed transactions is not captured, recorded, measured or analysed consistently by retail banks included in the review and therefore cannot be reviewed by the Central Bank on a consistent basis to monitor compliance with the Regulations. In order to support compliance, and in accordance with Regulation 96(1)(a), payment service providers must maintain a log of all disputed, unauthorised and/or incorrectly executed transactions. The log should be subject to regular review by Compliance and Audit functions, must be available for submission to the Central Bank on request, and must include, at a minimum, the following information:

- i) date of notification, reference to identify the transaction, value-date and amount of the disputed, unauthorised and/or incorrectly executed transaction and any charges imposed;
- ii) value-date and amount of refund or rectification and whether restoration of a payment account (and/or reversal of charges) was required and/or applied in each case;
- iii) reason for and duration and outcome of any investigation; and
- iv) reason where in any particular case, no refund or rectification was given.

The Central Bank considers that “immediately” for the purposes of the Regulations requires that a transaction be refunded immediately and in any event within a day. If a payment service provider investigates a particular transaction or series of transactions (i.e. where there is a high suspicion of fraud) such investigation must be commenced without undue delay, concluded promptly and must be fully documented. All pertinent information and documentation should form part of the log referred to above.

5. Payment Service Users

We found that the approach taken to the categorisation of payment service users by many of the retail banks included in this review had the effect that, in many cases all users of retail-type payment accounts are afforded the benefits of the consumer protections in the Regulations. The Central Bank considers that this is good practice, is in the interest of all payment service users and is in line with the Regulations. We would encourage all payment service providers to adopt a similar approach.

6. Cash Placed on a Payment Account

The Central Bank acknowledges the work that has been carried out by a number of retail banks to date to address systems and process limitations in respect of cash lodgements. Many retail banks now have systems in place whereby cash lodgements are processed



and available on payment accounts within minutes and in some cases instantly. The Central Bank considers that cash lodged by a consumer to a payment account should be value dated and made available on the account as quickly as possible and at most within two hours.

We note that there are a number of methods offered by retail banks for cash lodgements to payment accounts including mobile units, lodgement/deposit boxes and night safes. It is the Central Bank's view that cash may be taken to be received at the point in time when the relevant method for lodgement is accessed by branch staff e.g. when a mobile unit returns to a main branch or when a lodgement box or night safe is opened. Payment service providers offering these facilities should make these times clear to all consumers relying on these facilities.

7. Access to Information

All banks included in this review confirmed that there are processes in place to ensure that access to the terms and conditions of payment accounts is provided to payment service users on request and free of charge, in accordance with Regulation 54.

8. Changes in Terms and Conditions

We are taking this opportunity to remind payment service providers that where a change to the conditions of a framework contract are proposed that, in addition to all other obligations arising (including, for example, those in the Regulations, any other regulatory requirements and/or the framework contract), the payment service provider must comply with Regulation 55, which includes the following requirements:

- notification must be provided at least two months before the proposed date of effect of the change;
- if the framework contract states that users will be taken to have accepted the change as notified then the notification must state that this will be the case unless a payment service user communicates non-acceptance to the payment service provider prior to the proposed date;
- the notification must also state that the user has the right to terminate the contract immediately and without charge, before the proposed date of effect of the change.

Please note that the issues considered above do not cover all of the requirements in the Regulations.



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If you have any queries in relation to the contents of this letter, email your queries to cpc_PSD@centralbank.ie.

Yours sincerely

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