



STATUTORY INSTRUMENTS.

S.I. No. 668 of 2020

EUROPEAN UNION (RETAIL CHARGES FOR REGULATED INTRA-EU
COMMUNICATIONS) REGULATIONS 2020

EUROPEAN UNION (RETAIL CHARGES FOR REGULATED INTRA-EU COMMUNICATIONS) REGULATIONS 2020

I, EAMON RYAN, Minister for the Environment, Climate and Communications, 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) 2015/2120 of 25 November 2015¹ as amended by Article 50 of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018², hereby make the following regulations:

1. (1) These Regulations may be cited as the European Union (Retail Charges for Regulated Intra-EU Communications) Regulations 2020.

2. (1) In these Regulations -

“Act of 2002” means the Communications Regulation Act 2002 (No. 20 of 2002);

“EU Regulation” means Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015³ as amended by Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018⁴;

“interpersonal communications service” means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipients and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;

“number-based interpersonal communications service” means an interpersonal communications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;

¹ OJ No. L310, 27.11.2015, p.1

² OJ No. L 321, 17.12.2018, p. 1.

³ OJ No. L 310, 26.11.2015. p. 1

⁴ OJ No. L 321, 17.12.2018, p. 1

“regulated intra-EU communications” means any number-based interpersonal communications service originating in the State and terminating at any fixed or mobile number of the national numbering plan of another Member State of the European Union, and which is charged wholly or partly based on actual consumption;

“Regulator” means the Commission for Communications Regulation;

“undertaking” means a person engaged in the provision of publicly available electronic communications networks or services or associated facilities.

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

3. (1) The Regulator is designated as the national regulatory authority in the State for the purposes of Article 5a and Article 6 of the EU Regulation and these Regulations.

(2) A request for a derogation under Article 5a(6) of the EU Regulation shall be made to the Regulator.

(3) Section 10(1) of the Communications Regulation Act 2002 (No. 20 of 2002) is amended by inserting the following paragraph after paragraph (ad):

“(ae) the functions of a national regulatory authority under Article 5a (inserted by Article 50 of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018⁵) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015⁶,.”.

4. (1) Where the Regulator finds that an undertaking has not complied with an obligation under Article 5a of the EU Regulation, the Regulator shall notify the undertaking of its finding and give the undertaking an opportunity to state its views or, if the non-compliance can be remedied, to remedy the non-compliance within a reasonable time-limit as specified by the Regulator.

(2) The Regulator may publish, in such manner as it thinks fit, any notification given by it under this Regulation subject to the protection of the confidentiality of any information that the Regulator considers confidential.

⁵ OJ No. L 321, 17.12.2018, p. 1.

⁶ OJ No. L310, 27.11.2015, p.1

(3) The Regulator may amend or revoke any notification under this Regulation.

(4) Where, at the end of a period specified by the Regulator in a notification under paragraph (1) the Regulator is of the opinion that the undertaking concerned has not complied with its obligations under Article 5a, the Regulator may, whether or not the non-compliance is continuing and subject to paragraph (8), apply to the High Court for an order under paragraph (6).

(5) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (4) and the Court may not refuse interim or interlocutory relief merely because the Regulator may not suffer damage if relief is not granted pending determination of the application.

(6) The High Court may, on the hearing of the application referred to in paragraph (4), make such order as it thinks fit which may include –

- (a) a declaration of non-compliance,
- (b) an order directing compliance with an obligation under Article 5a,
- (c) an order directing the remedy of any non-compliance with the obligation, or
- (d) an order as provided for in paragraph (8).

(7) If the High Court makes an order under paragraph (6) it may make such ancillary orders as it considers appropriate.

- (8)
- (a) An application for an order under paragraph (4) may be for, or include, an application for an order that the undertaking pay to the Regulator such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the obligation as the Regulator may propose as appropriate in the light of the non-compliance or any continuing non-compliance.
 - (b) Such an application for an order in respect of a financial penalty for a period of non-compliance may be made even if there since has been compliance with the obligation.
 - (c) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.

- (d) Any financial penalty ordered by the High Court to be paid by an undertaking under this paragraph shall be paid to and retained by the Regulator as income.
- (e) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance with the obligation including -
 - (i) its duration,
 - (ii) the effect on consumers,
 - (iii) the submissions of the Regulator on the appropriate amount,
 - (iv) any excuse or explanation for the non-compliance, including any evidence from the undertaking that reasonable steps were taken to comply with the obligation or that it was not possible to comply with the obligation, and
 - (v) any evidence that the undertaking profited or has been unjustly enriched, whether directly or indirectly, as a result of the non-compliance.

(9) Where the Regulator has brought proceedings for an offence under these Regulations or given a notice under section 44 of the Act of 2002 in respect of an alleged offence under these Regulations, the Regulator shall not make an application for an order under this Regulation to the High Court to compel compliance by the undertaking with the obligation to which the proceedings or notice relates.

5. (1) Where the Regulator issues a notification under Regulation 4, it shall be in writing, state the reasons on which it is based, be addressed to the undertaking concerned and, as soon as practicable, be sent or given in any of the following ways:

- (a) by delivering it to the undertaking;
- (b) by leaving it at the address at which the undertaking carries on business or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the undertaking ordinarily carries on business or, in a case in which an address for service has been furnished, to that address;
- (d) where there is a facility for receiving the text of the direction or notification by electronic means at the address at which the undertaking ordinarily carries on business or, in a case in which an address for service has been furnished, at that address, by transmitting the text of the direction or notification by such

means to such address, provided that it is also delivered in any of the other ways referred to in this paragraph.

(2) For the purposes of this Regulation, a company formed and registered under the Companies Act 2014 (No. 38 of 2014), or an existing company within the meaning of that Act, shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

6. (1) An undertaking that charges a retail price to consumers for regulated intra-EU communications in contravention of an obligation under Article 5a of the EU Regulation commits an offence.

(2) An undertaking that fails to inform a consumer in accordance with an obligation under Article 5a(2) before he or she chooses a tariff different from that set in accordance with paragraph (1) of that Article commits an offence.

(3) An undertaking that contravenes an obligation under Article 5a(4) of the EU Regulation commits an offence.

(4) A person that commits an offence under this Regulation is liable on summary conviction to a class A fine.

(5) In a prosecution for an offence under this Regulation it is a defence for the person charged to show that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) Proceedings for an offence under this Regulation may be brought and prosecuted by the Regulator.

(7) An offence under this Regulation is an offence to which section 44 of the Act of 2002 applies.

(8) If –

(a) the Regulator has made an application under Regulation 4 to the High Court to secure an undertaking's compliance with an obligation under Article 5a, and

(b) it is an offence to fail to comply with that obligation,

proceedings may not be brought against the undertaking for such an offence under this Regulation and notice may not be given under section 44 of the Act of 2002 in respect of the undertaking's failure to comply with the obligation.

7. 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 any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

8. Regulation 14 (as amended by Regulation 4 of the Communications (Mobile Telephone Roaming) Regulations 2013 (S.I. No. 228 of 2013) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 (S.I. No. 337 of 2011) is amended –

- (a) in paragraph (4) by substituting “paragraphs (4A) and (4B)” for “paragraph (4A)”, and
- (b) by inserting the following paragraph after paragraph (4A):
“(4B) Paragraph (4) shall not apply to a modification to retail prices for regulated intra-EU communications necessary to comply with an obligation under Article 5a (inserted by Article 50 of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018⁷) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015⁸. ”.

GIVEN under my Official Seal,
18 December 2020.

EAMON RYAN
Minister for the Environment, Climate and
Communications.

⁷ OJ No. L 321, 17.12.2018, p. 1.

⁸ OJ No. L310, 27.11.2015, p.1

EXPLANATORY NOTE

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

The purpose of these Regulations is to give full effect to Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012, as amended by Article 50 of Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018.

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