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# Guide to Key Upcoming Legislative Developments for Telecommunications & Online Businesses in Ireland

2022 – 2023

## Introduction

This guide provides a timeline and summary of important upcoming legislative changes for telecommunications and online businesses operating in and from Ireland. It is targeted at business and legal people that want a digestible summary to keep abreast of the latest developments in the telecommunications and digital sectors.

We see a number of common trends and challenges across all new laws in this guide:

## Top 3 Trends



### Strengthening of Regulatory Enforcement Powers

New laws will give regulators more powers to investigate and sanction, and in particular more powers to seek to impose sanctions at the civil standard of proof (balance of probabilities), rather than the higher criminal standard of proof (beyond reasonable doubt), which regulators must satisfy very often at present.



### Growing Importance of General Consumer Protection Laws

New general consumer protection laws will strengthen consumer rights in a manner which will impact all consumer-facing businesses, and other new laws (eg, sector regulation and privacy) will import consumer protection law concepts. As a result, we will see regulators relying on consumer protection laws and concepts more often in future enforcement.



### Beginning of an Unstoppable Tide – Regulation of Online Businesses

We will see a proliferation of laws which are specifically tailored to online businesses. Some of these laws will make online businesses subject to a pre-existing legal framework for the first time (eg, telecoms law) and others will be subject to new laws designed specifically to regulate online businesses.

## Top 3 Challenges



### Ireland as Focal Point

As a European hub for many of the world's largest online businesses, Ireland will be a focal point. In legal areas where enforcement is de-centralised to the national level (rather than concentrated in Brussels), regulators across the EU will look to Ireland for proof of effective enforcement. Companies based here will look to Irish regulators for guidance in interpreting new laws. This creates a need for significant additional resources for Irish regulators and the Irish private enforcement court system.



### Compliance Challenges in Controlling Online Activity

New “regulated activities” in the online environment will be more difficult for companies to control and for regulators to police, in particular due to their volume and speed. As well as requiring additional resources as noted above, Irish regulators will require novel monitoring techniques and pragmatic and priority-driven regulatory enforcement.



### High Number of Decision-Makers with Jurisdiction over Same Activities & Untested Powers

Within Ireland, a number of regulators will be policing the same activities, eg, the Data Protection Commission (“**DPC**”), the Commission for Communications Regulation (“**ComReg**”), the Media Commission, and the Competition and Consumer Protection Commission (“**CCPC**”). This overlap will require increased co-operation between regulators, including both updating of existing agreements between sectoral regulators and making new agreements (for example between the DPC and the CCPC), to ensure each regulator operates within their own remit and to minimise any friction.

In addition, the Irish courts may make decisions – in private and public enforcement litigation – on the compliance of newly regulated activities and on whether regulators’ new powers are exercised in compliance with the relevant statute and wider general legal principles including fair process. Until regulators’ new powers are tested by the Irish courts, there will be some legal uncertainty for companies.

## Conclusion

We hope that this guide is useful to your business. If you have any questions on any matter covered in this guide, we would be very happy to discuss and contact details are included below.

Please note that companies should consider Irish lobbying law before engaging with a “Designated Public Official” in relation to any of the matters covered in this guide. Lobbying in Ireland is governed by the Regulation of Lobbying Act 2015 and the Freedom of Information Act 2014, both of which can generate obligations and result in the public disclosure of information.

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# 1. European Electronic Communications Code

**Summary:** The Directive establishing a European Electronic Communications Code (the “EECC”) is considered a cornerstone of the European Digital Market. The primary purpose of the EECC Directive is to establish a harmonised legal framework which introduces rules on: market regulation to encourage investment in high-speed networks, spectrum for mobile connectivity and 5G deployment, integration into the regulatory regime of OTT services, end-user protection, and numbering and emergency communication.

**Status:** The EECC Directive has not yet been transposed into Irish law. The transposition deadline was 21 December 2020. On 4 February 2021, the European Commission issued Ireland with a letter of formal notice for failure to meet the transposition deadline, which was followed by a ‘reasoned opinion’ issued by the European Commission on 23 September 2021. The legislation intended to transpose the EECC Directive includes the: Communications Regulation Bill 2022 (the “**Communications Regulation Bill**”) and the European Union (Electronic Communications Code) Regulations 2022 (S.I. 444/2022) (the “**Communications Regulations**”). The Communications Regulation Bill, which was published on 25 September 2022, is currently at the third stage of review in Dáil Éireann, however the majority of the EECC Directive will be transposed by way of the Communications Regulations, which have yet to be commenced.

**What it hopes to achieve:** The EECC Directive aims to recast the regulatory framework for electronic communications in Europe and enhance end-user rights. It aims to further harmonise a single European telecommunications market, whilst laying a strong foundation for the EU digital economy. Under the EECC, Member States should encourage network operators and equipment manufacturers to improve access by end-users with disabilities to electronic communications services.

**Who it impacts:** The new definition of ‘electronic communications services’ in the EECC, includes OTT service providers (eg, interpersonal communication services such as instant messaging applications, internet phone calls and personal messaging provided via social media) and aims to create a more level playing field by extending some telecoms regulatory requirements to OTT services for the first time.

This in turn will provide further protection to end-users through the establishment of a Universal Service Obligation, creating a minimum set of services to be offered by all providers, ensuring increased protections for consumers.

## Further reading:

- [Directive Establishing a European Electronic Communications Code](#)
- [Communications Regulation Bill 2022](#)
- [European Union \(Electronic Communications Code\) Regulations 2022 \(S.I. 444/2022\)](#)
- [Communications Regulation \(Enforcement\) Bill 2022 Summary Document](#)
- [Draft European Union \(Electronic Communications Code\) Regulations \(December 2021\)](#)
- [Matheson Cracking the Code Series](#)
- [Matheson Cracking the Code: Overview of the Communications Regulation Bill 2022](#)

## 2. Online Safety and Media Regulation Bill

**Summary:** The Online Safety and Media Regulation Bill (the “OSMR Bill”) introduces a regulatory framework for online safety to tackle the spread of harmful online content. It also provides for the transposition of the revised Audio-Visual Media Services Directive (the “AVMSD”).

The OSMR Bill provides for Irish regulation of ‘video-sharing’ and ‘on demand’ audio-visual services, making them subject to obligations to register with the new Irish Media Commission, as well as new rules on sponsorship and product placement, child protection and content that incites hate or violence. The OSMR Bill will also implement the AVMSD principles of country of origin, co-regulation between Member States, and paves the way for the new Media Commission to impose levies, in particular to support the production of media content in the EU.

The OSMR Bill provides for the establishment of a new multi-person Media Commission (with sanctioning powers) in place of the Broadcasting Authority of Ireland. The Media Commission will include an Online Safety Commissioner who will be tasked with enforcing the online safety aspects of the legislation, as well as forthcoming EU legislation in the area (the Digital Services Act).

**Status:** The transposition deadline for the AVMSD was 19 September 2020. The OSMR Bill was published on 12 January 2022, and has completed the third stage of review in Dáil Éireann. The OSMR Bill was delayed to allow a panel of experts in the telecoms industry, including Senior Counsel Ronan Lupton, to conduct a review the draft Bill, focusing on the need for an individual complaints mechanism.

**What it hopes to achieve:** The OSMR Bill aims to modernise the law on audio-visual media services to reflect convergence of TV and internet.

**Who it impacts:** The OSMR Bill will impact all businesses providing audio-visual media content, and in particular online-only or on-demand providers who are not generally subject to Irish media regulation laws at present.

### Further reading:

- [Text of the revised AVMSD](#)
- [OSMR Bill 2022](#)
- [Matheson Insight: Online Safety and Media Regulation Bill Published – Major Changes to Irish Media Regulation Ahead](#)

### 3. Proposal for a Directive to Review High-Speed Broadband Rules in the EU

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**Summary:** The European Commission proposed to review Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks (the “**Broadband Cost Reduction Directive**”).

**What it hopes to achieve:** This initiative will review the rules in light of technological, market and regulatory developments. It should enable a quicker and more efficient roll-out of very high capacity networks, (including fibre and 5G), ensure the rules are aligned with the EECC, and explore potential environmental safeguards.

**Status:** The proposal to review the Broadband Cost Reduction Directive was published on 19 June 2020 and a public consultation was held and closed on 2 March 2021. The Commission planned to adopt the revised Directive in the second quarter of 2022.

**Who it impacts:** The Directive is likely to have an impact on telecommunications businesses, especially those involved in the development of Next Generation Access infrastructure such as fibre and 5G.

#### Further reading:

- [Proposal for a Directive to Review the Rules on High-Speed Broadband in the EU](#)
- [Summary report on the public consultation on the evaluation and review of the Broadband Cost Reduction Directive](#)



## 4. The Digital Services Act and the Digital Markets Act

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**Summary:** The Digital Services Act (the “**DSA**”) and the Digital Markets Act (the “**DMA**”) will have a transformative impact on online platforms. They have been described as “a world first in the field of digital regulation”. The new laws impose far-reaching obligations on online platforms to investigate and remove suspected illegal content on their platforms, ensure transparency of advertising and introduce stricter rules on terms and conditions for the use of such platforms. The Regulations also provide for the appointment of a Digital Services Coordinator in each Member State, whose role will be to monitor compliance with and ensure enforcement of the new rules.

**Status:** The DMA was published in the EU Official Journal on 12 October 2022 and came into force on 1 November 2022, thereby starting a 6-month transition period before the DMA becomes enforceable in May 2023.

The DSA was adopted by the European Council on 4 October 2022, and was published in the EU Official Journal on 27 October 2022. It enters into force 20 days after its publication, and will be directly applicable across the EU 15 months later (ie, around February 2024). However, the DSA may kick in sooner for Very Large Online Platforms (“**VLOPs**”) and Very Large Online Search Engines (“**VLOEs**”), as it applies to them four months after their designation by the European Commission.

**What it hopes to achieve:** The DSA and the DMA are intended to achieve two primary objectives: firstly, to create a safer digital environment ensuring the protection of fundamental rights; and secondly, to establish a level playing field for online platforms in order to increase competition and innovation. The new laws will create harmonised rules defining and prohibiting certain unfair practices by “gatekeeper” platforms (providers of core platform services) and introduce a new competition tool to deal with structural competition problems across markets which cannot be tackled or addressed using existing competition rules. The new laws include powers for the European Commission to conduct market investigations.

**Who it impacts:** New rules and obligations provided by the proposed legislation will impact providers of intermediary services in the digital space, including social media platforms, online market places and internet search engines. In particular, VLOPs and VLOEs, those with more than 45 million active monthly users in the EU (representing 10% of the population) will face stricter compliance rules.

### Further reading:

- [EU Digital Markets Act published in Official Journal](#)
- [EU Digital Services Act: What Does it Mean For Online Platforms?](#)
- [The EU Digital Markets Act - An Irish Perspective](#)

## 5. Communications (Data, Retention and Disclosure) Bill

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**Summary:** The Communications (Data, Retention and Disclosure) Bill (the “**Retention of Data Bill**”) seeks to revise and replace the Communications (Retention of Data) Act 2011 (the “**2011 Act**”), and clarify and consolidate the law on data retention.

The Government recently published the Communications (Retention of Data) Amendment Act 2022, which amends the 2011 Act, in an effort to address the impact of recent EU case-law, including the decision of the European Court of Justice of the European Union (“**CJEU**”) in the Dwyer case. The CJEU delivered a judgment in the Dwyer case in April 2022, confirming that Irish law (in particular section 6(1)(a) of the 2011 Act) is inconsistent with EU law, insofar it allows the general and indiscriminate retention of traffic and location data for the purposes of ‘combating serious crime’.

The 2022 Act provides that the general and indiscriminate retention of traffic and location data is only permitted on ‘national security grounds’, where approved by a designated judge following an application by the Minister of Justice. The 2022 Act is only intended to be a temporary fix to allow more time for overhaul of the 2011 Act.

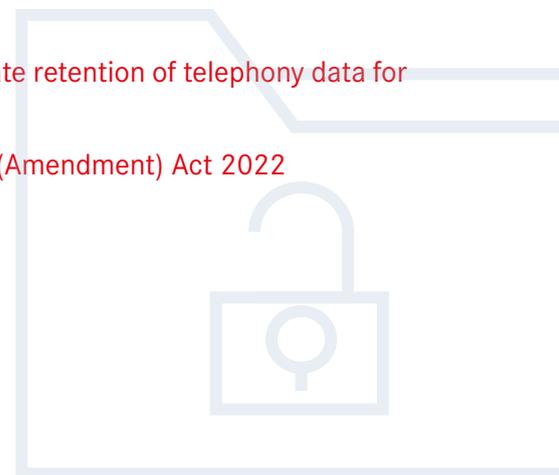
**Status:** The Heads of Bill are in preparation.

**What it hopes to achieve:** The Retention of Data Bill aims to bring Ireland’s regulation of data access and retention for combatting serious crime and for national security purposes into compliance with EU law.

**Who it impacts:** The Retention of Data Bill will impact electronic communications service providers (which may include interpersonal communication services, following implementation of the EEC and will set down safeguards in respect of law enforcement authorities’ powers to access users’ data.

### Further reading:

- [CJEU confirms EU law precludes the general and indiscriminate retention of telephony data for combating serious crime](#)
- [Government publishes Communications \(Retention of Data\) \(Amendment\) Act 2022](#)



## 6. Proposal for a Regulation on ePrivacy

**Summary:** The proposed ePrivacy Regulation forms part of the EU Digital Single Market Strategy. An update to the ePrivacy Directive 2002/58/EC was seen as necessary to address new technological and market developments as well as the emergence of new techniques for tracking users' online behaviour. The proposed ePrivacy Regulation will repeal and replace the ePrivacy Directive 2002/58/EC and will complement the GDPR.

**Status:** The proposal was published on 10 January 2017, and has been subject to lengthy negotiations. In February 2021, Member States agreed on a negotiating mandate for revised ePrivacy rules, earlier proposals having been rejected by the Permanent Representatives Committee of the Council of the European Union. It is currently at the First Reading stage before the European Parliament and European Council.

**What it hopes to achieve:** The proposed ePrivacy Regulation broadens the scope of the ePrivacy Directive, enhances the confidentiality of communications, and aims to simplify the rules on cookies and electronic marketing.

**Who it impacts:** The ePrivacy Regulation will sit alongside the EECC and the GDPR, and therefore will affect both traditional and digital communications businesses, reflecting the expansion of the EU Telecoms Framework pursuant to the EECC.

### Further reading:

- [European Commission Proposal for a Regulation on ePrivacy](#)



## 7. Proposal for a Regulation on Harmonised Rules on Fair Access to and Use of Data (Data Act)

**Summary:** The Data Act and Data Governance Act both promote data sharing. The Data Act focuses on who can use and access data generated in the EU, and under what conditions. On the other hand, the Data Governance Act focuses on providing a legal framework, processes and structures to promote data sharing.

**What it hopes to achieve:** The Data Act aims to increase legal certainty for consumers and businesses to access data generated by the products or related services they own, rent or lease. It will maximise the value of data in the economy and establish fairness by putting in place rules on the use of data created by Internet of Things (“IOT”) devices. It will also contribute to the digital transformation objective of the Digital Decade. These new measures will complement the proposed Data Governance Act .

**Status:** The Data Act was published on 23 February 2022. It is currently at the First Reading stage before the European Parliament and European Council.

**Who it impacts:** This is likely to have an impact on companies, individuals and creators whom use and are involved in the creation of data through the use of IOT devices.

### Further reading:

- [Data Act: Proposal for a Regulation on harmonised rules on fair access to and use of data](#)
- [A European Strategy for data](#)
- [The Data Act](#)



## 8. Proposal for an EU Cyber Resilience Act

**Summary:** The European Commission’s proposal for a Regulation on cybersecurity requirements for products with digital elements, known as the EU Cyber Resilience Act, aims to safeguard consumers and businesses buying or using products or software with a digital component. The proposal introduces mandatory cybersecurity requirements for manufacturers and retailers of such products, with this protection extending throughout the product lifecycle.

**Status:** The EU Cyber Resilience Act, was published on 15 September 2022. While existing internal market legislation applies to certain products with digital elements, most of the hardware and software products are currently not covered by any EU legislation tackling their cybersecurity. In particular, the current EU legal framework does not address the cybersecurity of non-embedded software, even if cybersecurity attacks increasingly target vulnerabilities in these products, causing significant societal and economic costs.

**What it hopes to achieve:** The EU Cyber Resilience Act aims to bolster cybersecurity rules to ensure more secure hardware and software products.

Four specific objectives were set out:

1. ensure that manufacturers improve the security of products with digital elements from the design and development phase and throughout the whole life cycle;
2. ensure a coherent cybersecurity framework, facilitating compliance for hardware and software producers;
3. enhance the transparency of security properties of products with digital elements; and
4. enable businesses and consumers to use products with digital elements securely.

**Who it impacts:** The EU Cyber Resilience Act has a broad scope of application. It applies to “all products with digital elements” whose use includes a direct or indirect logical or physical data connection. A product with digital elements in this context means any software or hardware product with remote data processing solutions. The application is limited or excluded where sectoral rules achieve the same level of protection as that offered by the EU Cyber Resilience Act. This means for example, that Software as a Service (SaaS) shall only be covered by the NIS2 Directive, which ensures a high level of cybersecurity of services provided by essential and important entities.

**Further reading:**

- [Proposal for an EU Cyber Resilience Act](#)
- [European Commission website – EU Cyber Resilience Act](#)

## 9. Proposal for a Directive on Measures for a High Common Level of Cybersecurity Across the Union (NIS2 Directive)

**Summary:** This proposed revision to the Network and Information Security (“**NIS**”) Directive will strengthen the security requirements, address the security of supply chains, streamline reporting obligations, and introduce stricter enforcement requirements, including harmonised sanctions across the EU to address the growing threats posed by digitalisation and the surge in cyber-attacks. The proposal also removes the distinction between operators of essential services and digital service providers. Once adopted, it will replace the current NIS Directive.

**What it hopes to achieve:** The Directive aims to address the shortfalls of the previous NIS Directive, which proved difficult to implement in practice, and resulted in fragmentation at different levels across the internal market. The proposed expansion of the scope of the NIS2, by obliging more entities and sectors to take security measures, will assist in increasing the level of cybersecurity across Europe.

**Status:** The proposal to revise the NIS Directive was published on 16 December 2020. On 13 May 2022, provisional agreement was reached by the European Council and European Parliament.

**Who it impacts:** The Directive is likely to have an impact on all medium-sized and large organisations that operate within the specified sectors in NIS2. It is unlikely to affect entities operating in the following sectors: defence or national security, public security, law enforcement and the judiciary, as well as parliaments and central banks, as these have been specifically excluded from the scope of NIS2.

### Further reading:

- [Proposal for a Directive on measures for a high common level of cybersecurity across the Union](#)



## 10. Cybercrime Bill

**Summary:** The Cybercrime Bill proposes to give effect to those provisions of the Council of Europe Convention on Cybercrime 2001 not already provided for in national law, in order to enable ratification of the Convention.

**Status:** The Bill has yet to be published. Its status is listed as “preparatory work underway” and it is included on the non-priority list under the Autumn 2022 Legislation Programme.

**What it hopes to achieve:** The Cybercrime Bill is intended to consolidate existing legislation on cybercrime into a single piece of legislation, while also giving effect to a number of provisions of the Council of Europe Convention on Cybercrime 2001.

**Who it impacts:** The Cybercrime Bill will impact digital businesses, providing for more effective information sharing and access to regulatory and law enforcement in order to tackle the threats posed by cybercrime.

### Further reading:

- [Council of Europe Convention on Cybercrime](#)
- [Department of Justice Action Plan 2022](#)



# 11. Competition (Amendment) Act 2022

**Summary:** The Competition (Amendment) Act 2022 will transpose the European Competition Network Directive (known as the 'ECN+'). For the Irish competition regulator (the "CCPC"), ECN+ is hugely significant as it requires Ireland to give it an enforcement power it has sought for many years, the power to impose civil fines on parties for competition law infringements (most likely following Court ratification), as an alternative to criminal court prosecution.

**Status:** The Competition (Amendment) Act 2022 was signed into law on 29 June 2022 and it is expected to enter in to full force by the end of 2022.

**What it hopes to achieve:** The main purpose of the Bill is to transpose the ECN+ Directive, but the Bill will also grant increased enforcement powers to the CCPC in relation to 'below-threshold' mergers which are not mandatorily notifiable to it and anti-competitive conduct including 'bid-rigging'.

**Who it impacts:** All businesses with Irish activities, who are subject to Irish competition laws and therefore potentially at risk under the proposed new fining system and powers in relation to 'below-threshold' mergers. How the CCPC will apply its new powers will not be clear for some years to come.

## Related developments:

- [The Competition \(Amendment\) Bill 2022 as amended in the Dáil Eireann](#)
- [Matheson Insight: Competition \(Amendment\) Bill 2021 Update](#)
- [Matheson Insight: 20 Things You Need to Know About Irish Competition Law Changes](#)
- [New Hurdle for Deals and Competition Clearance Needed for 'Below Threshold' Transactions?](#)

## 12. Consumer Rights Bill 2022

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**Summary:** The Consumer Rights Bill 2022 (the “**Consumer Rights Bill**”) proposes the most significant changes to Irish consumer protection law in almost forty years. The Consumer Rights Bill introduces new and enhanced consumer protection measures, particularly in the area of digital goods and services. It consolidates the current patchwork of consumer laws into a single Bill and provides for significantly more severe sanctions for consumer law breaches. Regulators with competence under the Consumer Rights Bill include not only the CCPC, but also ComReg and the Central Bank of Ireland.

**Status:** The Bill was published on 22 April 2022 and having passed the final stage of review before Seanad Éireann on 27 October 2022, is due to be signed into law. The legislation is overdue, as the national measures necessary to comply with the underlying Digital Contents Directive and Revised Sale of Goods Directive were due to be in force by 1 January 2022. The Omnibus Directive was due to be transposed and in force by 28 May 2022.

**What it hopes to achieve:** The Consumer Rights Bill aims to consolidate and update existing consumer protection laws that regulate consumer contracts, as well as introducing new and enhanced rights and remedies for consumers. The Bill aligns Irish consumer law more closely with our European counterparts by giving effect to a number of pan-European consumer rights Directives, including, inter alia, the following:

- Directive 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services (The Digital Contents Directive)
- Directive 2019/771 on certain aspects concerning contracts for the sale of goods (The Revised Sale of Goods Directive); and
- The main provisions of Directive 2019/2161 on the better enforcement and modernisation of EU consumer protection rules (The Omnibus Directive). This Directive itself amends the Unfair Contract Terms Directive 93/13/EEC; the Unfair Commercial Practices Directive 2005/29/EC; the Consumer Rights Directive 2011/83/EU, and the Price Indication Directive 98/6/EC.

The Bill also overhauls the current Irish regulatory framework by repealing and providing amendments to several existing pieces of Irish legislation, collating all existing provisions together in a single enactment.

**Who it impacts:** The Consumer Rights Bill will impact any person who supplies digital content or digital services to consumers in return for payment or the provision of their personal data, or who sells goods, including goods with a digital element, to consumers.

### Further reading:

- [Consumer Rights Bill 2022](#)
- [Consumer Law Update: New and Enhanced Consumer Protection Measures en-route following Publication of Consumer Rights Bill 2022](#)

# 13. Investment Screening Bill

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**Summary:** The Screening of Third Country Transactions Bill 2022 (the “**Investment Screening Bill**”) will implement the EU Investment Screening Regulation 2019/452 into Irish legislation.

**Status:** The text of the Investment Screening Bill was published on 2 August 2022 and has completed the second stage of review in Dáil Éireann.

**What it hopes to achieve:** The Investment Screening Bill will introduce the State’s first investment screening regime for foreign direct investment, which will be implemented alongside the new EU Investment Screening Regulation. Once enacted, the Bill will empower the Minister for Enterprise, Trade and Employment to “respond to threats to Ireland’s security and public order posed by particular types of foreign investment, and to prevent or mitigate such threats”. A dedicated investment screening unit has already been established within the Department of Enterprise, Trade and Employment and acts as a point of contact for Member States and the European Commission.

**Who it impacts:** This may impact foreign investors seeking to invest in Irish energy or renewable businesses, as well as local businesses seeking to work with non-EU investors, in particular those involved in the delivery of critical infrastructure, telecommunications networks and other technologies.

## Further reading:

- [Regulation 2019/452 on Foreign Direct Investment Screening](#)
- [Text of the Public Consultation on Investment Screening April 2020](#)
- [Matheson Response to Public Consultation on Investment Screening](#)
- [Matheson Insight: EU Investment Screening Regulation](#)
- [Investment Screening Bill 2022](#)

## 14. Control of Exports Bill

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**Summary:** The Control of Exports Bill proposes to repeal and replace the Control of Exports Act 2008 to ensure a comprehensive and robust framework for regulating the export of controlled goods and technology.

**Status:** The Control of Exports Bill has yet to be published. The Heads of the Bill were approved on 4 August 2020 and pre-legislative scrutiny of the General Scheme of the Bill has taken place. The Bill is listed as priority on the Autumn 2022 Legislation Programme.

**What it hopes to achieve:** The primary purpose of this Bill is to establish national export controls on military items, services and technology and provide for national measures to both compliment and supplement the EU Dual-Use Regulation. The proposed controls seek to balance the conduct of free trade and the functioning of open markets with maintaining international stability and security. The proposed controls include exports of goods and software, as well as tangible and intangible technologies.

**Who it impacts:** The updated regime is likely to have particular impact on businesses exporting controlled goods and technology, including arms and military hardware or technology, such as surveillance equipment.

### Further reading:

- [Control of Exports Act 2008](#)

## 15. Interception of Postal Packets and Telecommunications Messages (Regulation) (Amendment) Bill

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**Summary:** The Interception of Postal Packets and Telecommunications Messages (Regulation) (Amendment) Bill (the “**Telecoms Bill**”) proposes to amend various pieces of legislation in respect of electronic communications. Interception is controlled, to a limited extent, by the Postal and Telecommunications Services Act 1983, and the Interception of Postal Packets and Telecommunications (Regulation) Act 1993. That legislation is restricted to Telecoms and Postal Service providers (ie, voice calls, text messages and postal packets).

**Status:** A revised general scheme of the Telecoms Bill is currently being prepared. The Bill remains under the non-priority list of the Autumn 2022 Legislation Programme, with Heads of the Bill still in preparation.

**What it hopes to achieve:** Irish legislation relating to interception is out-of-date and needs to be amended to ensure that all communications delivered over the internet are subject to lawful interception. The purpose of the Telecoms Bill is to modernise legislation on the interception of communications to allow the State to intercept internet communications and communications over any other electronic network for the purposes of tackling crime.

**Who it impacts:** Companies providing electronic communications services (including interpersonal communications services) for their customers should be aware of the expanding power of the State in this area.

### Further reading:

- [Department of Justice policy document on proposed amendments to the legislative basis for the lawful interception of communications](#)

# 16. Proposal for two Regulations on Research and Innovation

**Summary:** As part of the Horizon Europe Programme, the Commission published proposals for two Regulations on Research and Innovation: the Partnership for Smart Networks and Services (the “PSN”), and the Partnership for Key Digital Technologies (the “PDT”).

The PSN aims to strengthen Europe’s scientific and industrial leadership. It will help to develop the technologies and standards for the digital infrastructures of the future (next generation internet, smart connectivity and services); and contribute to Europe’s strategic autonomy, growth and jobs and help achieve the Sustainable Development Goals.

The PDT complements the PSN and aims to strengthen electronics value chains to ensure EU technological sovereignty in global competition. It builds on technological trends, including the generation of added value from systems integration, distribution of artificial intelligence applications across the cloud, the network edge and end devices, as well as new computing paradigms.

**Status:** The European Commission adopted both the PSN and the PDT proposals on 23 February 2021.

**What it hopes to achieve:** The PSN aims to strengthen electronics value chains, ensuring EU technological sovereignty in global competition, while the PDT is intended to strengthen the EU’s scientific and industrial leadership by investing in economic growth and jobs creation in the digital economy.

**Who it impacts:** The two proposed regulations may have impacts for European digital businesses, particularly in relation to AI and cloud storage systems.

## Further reading:

- [Proposal for a Regulation on Research and Innovation: Partnership for Smart Networks and Services](#)
- [Proposal for a Regulation on Research and Innovation: Partnership for Smart Networks and Services](#)

# 17. Proposal for a Regulation on Artificial Intelligence

**Summary:** This proposal builds on various European Commission policy-making initiatives on Artificial Intelligence (“AI”) since 2018, most notably its February 2020 White Paper setting out policy and regulatory options to enable a trustworthy and secure development of AI in Europe. The proposed “EU Artificial Intelligence Act”, would, if enacted, be the first ever legal framework governing AI. On a domestic level, the National AI Strategy is also moving towards finalisation. Provisionally titled “AI – Here for Good”, it aims to provide a harmonised high-level direction to the development, deployment and governance of AI in Ireland.

**Status:** The EU Artificial Intelligence Act was published by the European Commission on 21 April 2021. A public consultation closed at the end of August 2021 and it is currently at the First Reading stage before the European Parliament and European Council.

**What it hopes to achieve:** The EU Artificial Intelligence Act aims to:

- ensure that AI systems placed and used on the EU market are safe and respect existing law on fundamental rights and EU values;
- ensure legal certainty to facilitate investment and innovation in AI;
- enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems; and
- facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation.

**Who it impacts:** The EU Artificial Intelligence Act will apply primarily to providers of AI systems but will also apply to users of High-Risk systems. Like other EU law instruments, it will apply to providers based outside the EU whose systems are available and have an impact within the EU.

**Further reading:**

- [Proposal for a Regulation laying down harmonised rules on artificial intelligence](#)
- [Proposal for a Regulation on machinery products](#)
- [Communication on Fostering a European approach to Artificial Intelligence](#)
- [White Paper on Artificial Intelligence – A European approach to excellence and trust](#)
- [Irish government briefing on National AI Strategy](#)
- [Combatting Cyber Threats with Artificial Intelligence \(“AI”\) - Will the New EU AI Regulation Help?](#)

# 18. Proposal for a Directive on Artificial Intelligence Liability

**Matheson**

**Summary:** The purpose of this proposal is to address shortcomings in liability rules where AI systems are used, setting out standardised rules for access to information and easing the burden of proof in relation to AI claims. Current liability rules, particularly fault-based rules, are not suitable for handling AI liability claims. Because of the complex nature of AI, specifically the so-called ‘black box’ effect, it is difficult for victims to successfully prove the requirements for their claims. To help claimants overcome the challenges in establishing a causal link between fault, based on non-compliance with duty of care requirements, and output by AI systems, a ‘presumption of causality’ is introduced in the proposal. The presumption is rebuttable however and claimants are required to meet a number of conditions such as demonstrating that the output produced by the AI system gave rise to the damage in question. In cases where high-risk AI is involved, claimants will also have a right of access to information from companies.

**Status:** The AI Liability Directive is currently at the First Reading stage before the European Council.

**What it hopes to achieve:** In line with the objectives of the European Commission’s White Paper on Artificial Intelligence in 2020, and the European Commission’s Proposal for an EU Artificial Intelligence Act, the Proposal for the AI Liability Directive is proposing new uniform rules for simplifying the process for obtaining compensation and ensuring the protection of victims for damages caused by AI products or services, while fostering innovation in the AI sector by increasing guarantees.

The AI Directive proposes a presumption of causality for those claiming injuries by AI-enabled products or services. It also proposes an enhanced right of access to evidence from providers of AI products and services. This means companies would be required to disclose information about the design or functionality of its AI systems to allow liability to be fully assessed.

**Who it impacts:** The AI Directive will apply to providers of AI products and services. Companies considering supplying AI products or services to EU countries, should take account of and start planning for an enhanced liability regime.

## Further reading:

- [Proposal for a Directive on adapting non-contractual civil liability rules to AI \(AI Liability Directive\)](#)

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