



Matheson

# Legal and Regulatory Developments Autumn 2022

# Welcome to the Autumn edition of the Matheson Horizon Tracker

Welcome to the Autumn edition of the Matheson Horizon Tracker which follows the publication of the Autumn Legislative Programme by the Irish Government. In this edition we continue to focus on topical themes. We are aware that as the year closes, geopolitical events are shaping the everyday concerns of our domestic and international clients. In that context concerns over energy shortages lead to a continued focus on particular aspects of a number of our practice areas operating in the ESG space.

This autumn we have chosen to focus on clean energy, alternative fuels, and legislative frameworks shaping how our clients operate in these sectors. We hosted a fascinating event on ESG Financing and these matters are covered in the Financial Services section. The introduction of the Central Bank (IAF) Bill 2022 is an important milestone, particularly regarding senior executive accountability. The proposed legislation covers other important issues. Please consult our webinars and insights on this subject.

The EU continues to drive legislative change particularly as regards sustainability including developments in corporate sustainability reporting. We continue to monitor developments in Employment law and, in this edition, our Litigation practice area describes a number of important initiatives in the administration of justice generally, all relevant to many practice areas.

As usual, we include detailed consideration of legislative and regulatory developments where these have taken place since the Summer Horizon Tracker. These updates include domestic and EU developments.

Links to further reading and expert Matheson analysis are available throughout the document. If you have any further questions, or require detailed advice please get in touch with your usual Matheson contact or the Matheson PSL Faculty.



# Legislative and Regulatory Developments

Climate, Energy and Natural Resources	05
Corporate Law- Enforcement and Reporting	13
Competition Developments	17
Taxation	20
Sustainable Finance	28
Asset Management and Investment Funds	31
Financial Services Regulation	35
Finance and Capital Markets	47
Commercial Real Estate	51
Litigation	54
Data Protection, Privacy and Techonology	60
Employment	65
Other Legislative and Regulatory Developments	69
Glossary	71

-  [Contents Page](#)
-  [Key Contacts](#)
-  [Matheson Website](#)
-  [Web Version](#)



Click on the sections to go straight to a chapter

## Legal and Regulatory Developments | Introduction

Following our commentary and analysis this part of the Autumn Horizon Tracker 2022 provides a concise and current guide to legislative and regulatory developments. This is done by relevant practice and subject areas. Each section is divided into parts describing proposed legislation, Bills which have been prepared and are going through the legislative process, Acts awaiting commencement, national consultations, regulatory initiatives and on to EU legislation. The table below describes these parts. Please note that you can refer to your usual Matheson advisor or any member of the Knowledge Management Team or the **PSL Faculty** who will assist you with your query. **The information provided here is up to date as at 25 October 2022.**

CATEGORY	FURTHER INFORMATION
Irish Legislation Passed since the Matheson Horizon Tracker Summer 2022	Any bills that have been enacted in the intervening period.
Acts commenced since the Matheson Horizon Tracker Summer 2022	Acts which had been passed and which have been commenced in the intervening period.
Irish Proposed Legislation	Irish proposed legislation from the Spring and Summer Legislative Programmes and mentioned again in the Autumn Legislative Programme. This covers the entire of 2022. This includes any legislation which is identified in any of the legislative programmes for 2022 whether it is being considered generally, Heads of Bills have been drafted or legislation is otherwise proposed. It also includes regulatory developments.
Bills	Bills progressing through the Oireachtas.
Acts Awaiting Commencement	Acts which have been passed but which have not yet commenced.
National Consultations	We have mentioned these where they seem particularly significant.
EU Directives Awaiting Implementation (Transposition).	EU Directives waiting to be implemented (transposed) by the Irish legislature.
EU Regulations	EU Regulations (including, in some cases, Regulations awaiting commencement).
EU Draft and Proposed Legislation	Draft legislation that has been adopted by the Commission and has been assigned a procedure number.
EU Consultations	We have mentioned these where they seem particularly significant.



# Climate, Energy and Natural Resources



## IRISH LEGISLATION PASSED SINCE HORIZON TRACKER JUNE 2022

### Circular Economy and Miscellaneous Provisions Act 2022

Date signed into law: 21 July 2022

The purpose of this act is to provide for the making of a Circular Economy Strategy, giving statutory footing to the government's **Whole-of-Government Circular Economy Strategy** and building on commitments set out in the **Waste Action Plan** to support Ireland's transition from a "take-make-waste" economic model. Under the legislation, the first circular economy strategy must be prepared and submitted no later than six months after s. 7(1) comes into operation. This strategy will include any necessary actions to support the making of a circular economy and may also include targets in relation to increasing the use of re-useable products and materials, increasing levels of repair and re-use of products, and reducing non-recyclable materials. This provision is awaiting commencement. A Circular Economy Fund will also be established under the legislation to provide support for waste reduction and circular economy schemes, and to support the production and sale of more environmentally friendly products. The act also provides that regulations may be made to reduce single-use products including cups, containers, packaging, and plastic bags through the introduction of an environmental levy.

**Latest stage:** A number of sections were commenced on 23 August 2022 by **SI 420/2022**. The majority of the act is still awaiting commencement.

### Planning and Development, Maritime and Valuation (Amendment) Act 2022

Date signed into law: 24 July 2022

This legislation amends the Planning and Development Act 2000 in relation to substitute consent procedures and other matters including environmental impact assessments, and short term letting. In July the scope of the legislation was widened with the introduction of a number of amendments relating to the Maritime Area Planning Act 2021. Under the legislation, a new chapter concerning judicial review of maritime spatial plans ("**MSP**") and designated maritime area plans ("**DMAP**") is inserted, providing that any decisions made by public bodies under this part in relation to MSPs or DMAPs can only be challenged by way of judicial review. The act also provides for a selection competition for the appointment of a chief executive designate of the Maritime Area Regulatory Authority ("**MARA**"), and allows revision of a maritime area consent ("**MAC**") where there is a irreconcilliation between the MAC and the development permission for the maritime usage which is the subject of the MAC.

For more information on planning aspects of the act please

see the Commercial Real Estate section in this Horizon Tracker.

**Latest stage:** A number of provisions have been commenced by **SI 447/2022**, **SI 487/2022** and **SI 523/2022**

## IRISH PROPOSED LEGISLATION

### Just Transition Commission Bill

The purpose of this bill is to establish a statutory Just Transition Commission which will advise the government on practices of integrating just transition principles into climate action policy.

**Latest stage:** Work is underway.

### Marine Protected Area Bill

Introduced in the Autumn Legislative Programme 2022, the purpose of this bill will be to provide for the designation and management of Marine Protected Areas ("**MPAs**") as part of government plans to designate up to 30% of Ireland's maritime area as MPAs by 2030. It will operate in tandem with the Maritime Area Planning Act 2022 referred to below.

**Latest stage:** Heads of Bill in preparation.





## Aarhus Convention Bill

The purpose of this bill is to consolidate and provide for further implementation in Ireland of the [access to justice provisions of the Aarhus Convention](#) on Access to Information, Public Participation in Decision-making and Access to Justice.

**Latest stage:** Heads of Bill in preparation.

## Inland Fisheries (Consolidation) Bill

The purpose of this bill is to modernise and consolidate existing Inland Fisheries legislation.

**Latest stage:** Heads of Bill in preparation.

## Wildlife (Amendment) Bill

The purpose of this bill is to give effect to the proposed reconfiguration of the raised bog Natural Heritage Area Network arising from the 2014 review by the government of the Raised Bog Natural Heritage Area Network and to provide for a review of blanket bog Natural Heritage Areas and place a duty on public bodies to promote the conservation of biodiversity.

**Latest stage:** Work is underway.

## River Shannon Management Agency Bill

To create a statutory management body with responsibilities

and functions to identify, coordinate, monitor and communicate flood risk management actions and activities for the River Shannon catchment area.

**Latest stage:** Heads of Bill in preparation. Priority Legislation in the Autumn Legislative Programme which is a change from the Spring and Summer Legislative Programmes.

## BILLS

### Water Environment (Abstractions and Certain Impoundments) Bill 2022

**Date published:** 28 September 2022

The purpose of this bill is to regulate and establish a national register of water abstractions greater than 25 cubic meters per day in order to ensure compliance with the requirements of the [EU Water Framework Directive](#). The bill will provide for a risk-based approach to the regulation of abstractions. It also proposes that all abstractions of 2,000 cubic metres or more per day will require licensing by the Environmental Protection Agency (“EPA”).

**Latest stage:** Before Seanad Éireann, Third Stage.

### Water Services (Amendment) (No. 2) Bill 2022

**Date published:** 16 August 2022

The purpose of this bill is to provide for the separation of

Irish Water from Ervia, establishing it as the sole national authority for water services to be known as Uisce Éireann. The legislation provides for a new Board and Chief Executive Officer of Uisce Éireann and revised accountability and auditing arrangements. The bill amends a number of acts, including the Gas Act 1976, the Water Services Act 2013, the Water Services (No. 2) Act 2013, the Water Services Act 2017.

**Latest stage:** Completed Dáil Éireann, Third Stage.

## ACTS AWAITING COMMENCEMENT

### Maritime Area Planning Act

**Date signed into law:** 23 December 2021

This act establishes a new marine planning system underpinned by a statutory marine planning policy statement and guided by the National Marine Planning Framework. The legislation has been described as being a key enabler of long term, sustainable maritime area development, including future expansion of Ireland’s offshore renewable energy resources which will be imperative in meeting the country’s 2030 climate targets and transition to clean energy. We have discussed this act in our commentary for the Autumn Horizon Tracker.

**Latest stage:** A number of sections have been [commenced](#).



## Animal Health and Welfare and Forestry (Miscellaneous Provisions) Act 2022

Date signed into law: 4 April 2022

The purpose of this act is to amend the Animal Health and Welfare Act 2013, prohibiting fur farming in Ireland and other related matters.

Latest stage: Awaiting commencement.

## EU DIRECTIVES AWAITING IMPLEMENTATION

### Revised Drinking Water Directive

Date published: 23 December 2020

This directive aims to improve the quality of drinking water and provide greater access and information to citizens in relation to this issue. The proposal for modernising the 20-year-old Drinking Water Directive (98/83/EC) comes as a result of the Refit evaluation, the implementation of the Commission's response to the European Citizens' Initiative 'Right2Water' and as a contribution to meeting the UN Sustainable Development Goals. Ireland has not yet transposed the directive.

Transposition date: 12 January 2023.

## EU DRAFT LEGISLATION

### Proposed Regulation on Deforestation-free Products

Procedure reference: 2021/0366/COD

Date published: 17 November 2021

The purpose of this proposed regulation is to address the issue of deforestation caused by EU product consumption and production. Following on from the Commission Communication 'Stepping up EU Action to Protect and Restore the World's Forests' which highlighted the need for regulatory measures for deforestation-free supply chains and transparency regarding deforestation associated with EU commodity imports, this initiative aims to minimise the consumption of products which come from supply chains associated with deforestation, forest degradation, and forest conversion. This proposal will complement the EU's Sustainable Corporate Governance ("SCG") initiative, with the SCG targeting corporate value chains generally, as well as setting out due diligence obligations. Two directives which apply to corporate entities are discussed in our corporate section, namely the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive. This initiative focuses specifically on deforestation-linked products. While the initiative did not originally target the financial sector or investments, recent amendments adopted by the European Parliament would bring all banking, investment and insurance activities of

financial institutions within the scope of the regulation.

Latest stage: First reading in the European Parliament and Council.

### Proposal for a Regulation on substances that deplete the ozone layer

Procedure reference: 2022/0100/COD

Date published: 5 April 2022

Ozone depleting substances are human-made chemicals which damage the ozone layer and also have high global warming potentials. Following the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer in 1987, positive benefits have been achieved both in relation to reducing the ozone hole and global warming.

Regulation (EC) No 1005/2009 (the "ODS Regulation"), is the primary legislation dealing with ozone depleting substances in the EU. The regulation was submitted for a 'REFIT' evaluation, which suggested a number of improvements, including better alignment with the European Green Deal. This proposal would replace the ODS regulation setting out additional emission reductions to further align with the Green Deal, provide enhanced monitoring of ODS including uncontrolled substance, and improve the efficiency of existing rules to reduce administrative costs and generally improve the coherence with other rules.

Latest stage: First reading in the Council.



## Proposal for a Directive on the Sustainable Products Initiative

Procedure reference: 2022/0095/COD

Date published: 31 March 2022

This initiative, which will revise the Ecodesign Directive and propose additional legislative measures as appropriate, aims to make products placed on the EU market more sustainable. Consumers, the environment and the climate will benefit from products that are more durable, reusable, repairable, recyclable, and energy-efficient. The initiative will also address the presence of harmful chemicals in products such as:

- electronics and ICT equipment;
- textiles;
- furniture; and
- steel, cement and chemicals.

**Latest stage:** Awaiting committee decision.

## Proposal for a Regulation Revising EU Rules on Waste Shipments

Procedure reference: 2021/0367

Date published: 17 November 2021

This proposed regulation will review the EU rules on waste shipments. The purpose of this review is to ensure that EU policy on waste shipments promotes recycling in the EU to support the transition to the circular economy. The review will also explore ways to reduce the export of waste, for example through:

- a better inspection system;
- measures against illegal shipments; and
- measures to avoid potential environment-and-health related adverse effects on the environment and public health caused by shipments of waste to third countries outside the EU.

**Latest stage:** First reading in the Council.

## Proposal for a Directive on the EU Emissions Trading System - Updating the Rules for Aviation

Procedure reference: 2021/0207

Date published: 14 July 2021

This legislation proposes to amend Directive 2003/87/EC. It aims to reduce emissions in the aviation sphere by amending the EU's Emissions Trading System to:

- implement the carbon offsetting and reduction scheme for international aviation (“**CORSIA**”) in a way that is consistent with the EU's 2030 climate objectives; and
- increase the share of allowances auctioned under the system for aircraft operators to further contribute to reducing greenhouse gas emissions.

**Latest stage:** First reading in the European Parliament and Council.



## IRISH PROPOSED LEGISLATION

### **Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Bill**

Introduced in the Autumn Legislative Programme 2022, the purpose of this bill will be to provide for contingency planning and response measures for oil emergencies, and to transfer of certain functions under the Renewable Transport Fuel Obligation Scheme and the Biofuel Levy ([National Oil Reserves Agency Act 2007](#), part 5A) to the Minister for Transport.

**Latest stage:** Heads of Bill in preparation.

### **Gas (Amendment) Bill**

This bill amends the Gas Acts, to facilitate the integration of Ervia into Gas Networks Ireland.

**Latest stage:** Heads of Bill in preparation.

## EU REGULATIONS

### **Council Regulation on an emergency Intervention to address high energy prices.**

**Date published:** 6 October 2022

In response to rising energy prices, EU energy ministers

reached agreement on 30 September 2022 at an extraordinary Council meeting on a **regulation** to introduce common measures across Europe to reduce electricity demand and to collect and redistribute the energy sector's surplus revenues to final customers. As of 6 October 2022, the EU member states have formally adopted the regulation. The measures are temporary and extraordinary in nature and will apply from 1 December 2022 to 31 December 2023, and it is estimated that during this time that they will raise €140 billion. The Council regulation sets a voluntary overall reduction target of 10% of gross electricity consumption and a mandatory reduction target of 5% of the electricity consumption in peak hours. Member states will identify 10% of their peak hours between 1 December 2022 and 31 March 2023 during which they will reduce the demand. Member states will be free to choose the appropriate measures to reduce consumption for both targets in this period. The Council agreed to cap the market revenues at 180 euros / MWh for electricity generators, including intermediaries, that use so-called inframarginal technologies to produce electricity, such as renewables, nuclear and lignite.

**Latest stage:** Applies until 31 December 2023 with the following exceptions:

- Article 4 shall apply from 1 December 2022 to 31 March 2023;
- Articles 5 and 10 shall apply from 1 December 2022

- Articles 6, 7, and 8 shall apply from 1 December 2022 to 30 June 2023
- Article 20(2) shall apply until 15 October 2024



## EU DRAFT LEGISLATION

### Proposal for a Directive amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency

Procedure reference: 2022/0160(COD)

Date published: 18 May 2022

The purpose of this proposed legislation is to reflect the EU's plan to accelerate the green transition towards renewable energy and energy efficiency by amending the existing Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources. In accordance with the REPower EU Communication (discussed in our commentary) this proposal aims to streamline the permit-granting processes applicable to renewable energy, including environmental impact assessments. This proposal would also raise the renewable energy targets under Article 1(2) (a) of the proposal to amend Directive (EU) 2018/2001 to 45% in light of market changes on fossil fuels. The proposal further amends Directive 2010/31/EU on the energy performance of buildings by introducing obligations on Member States to promote solar energy installations for buildings.

Latest stage: First reading in the Council.

### Proposal for a Regulation Establishing a Carbon Border Adjustment Mechanism ("CBAM")

Procedure reference: 2021/0214 (COD)

Date published: 14 July 2021

As part of the 'Fit for 55' Package, CBAM aims to prevent carbon leakage by ensuring equivalent carbon pricing for imports and domestic products. The CBAM will be phased in over time, and will initially apply to importers of iron, steel, cement, fertiliser, aluminium and electricity only. The regulation provides for a transitional phase which imposes reporting obligations without financial adjustments. From 2026 onwards, it is proposed that the CBAM will be fully effective.

Latest stage: First reading in the European Parliament and Council.

### Proposal for a Regulation amending the Effort Sharing Regulation

Procedure reference: 2021/0200 (COD)

Date published: 14 July 2021

The Effort Sharing Regulation (Regulation (EU) 2018/842) sets greenhouse gas emissions reduction targets based on GDP per capita for Member States, and also some

industry specific targets such as for transport, agriculture, buildings and waste. As part of the EU's 'Fit for 55' package, the Commission is proposing strengthening emissions reduction targets.

Latest stage: First reading in the European Parliament and Council.

### Proposal for a Revised Gas Regulation

Procedure reference: 2021/0424 (COD)

Date published: 15 December 2021

Complementary to the EU's 'Fit for 55' package, the Commission has proposed a new regulatory framework which aims to decarbonise gas markets, establish a competitive hydrogen market and reduce methane emissions. As part of this framework, the Commission is proposing to recast Regulation (EU) No 715/2009 (the "Gas Regulation"). The recast Gas Regulation prescribes rules for access to natural gas and hydrogen systems with a view to ensuring the functioning of internal EU gas markets.

Latest stage: First reading in the Council.

### Proposal for a Regulation on the Deployment of Alternative Fuels Infrastructure

Procedure reference: 2021/0223 (COD)

Date published: 14 July 2021



As part of the EU's 'Fit for 55' package which aims to reduce the continent's carbon emissions by 55% by 2030, transport emissions must be cut significantly. Switching to low carbon fuels is seen as a central pillar of this decarbonisation. The revised Alternative Fuels Infrastructure Regulation will require Member States to expand charging capacity and install electric car charging and hydrogen refuelling points at specific distances on major highways.

**Latest stage:** First reading in the Council.

## Proposal for a Regulation Establishing a Social Climate Fund

**Procedure reference:** 2021/0206 (COD)

**Date published:** 14 July 2021

This proposal forms part of the EU's 'Fit for 55' legislative package aimed at reducing greenhouse gas emissions by 55% by the year 2030. The proposal will establish a fund to support the people and enterprises most impacted by the policy.

**Latest stage:** First reading in the European Parliament and Council.

## Proposal for a Directive on reducing CO2 Emissions from Shipping by Encouraging the Use of Low-Carbon Fuels

**Procedure reference:** 2021/0210 (COD)

**Date published:** 14 July 2021

This initiative, known as FuelEU Maritime and part of the European Green Deal, aims to facilitate increased use of sustainable alternative fuels in European shipping and ports in order to reduce CO2 emissions from shipping. It will do this by addressing:

- market barriers that hamper their use; and
- uncertainty about which technical options are market ready.

**Latest stage:** First reading in the Council.

## Proposal for a Regulation Modernising EU Rules on Batteries

**Procedure reference:** 2020/0353 (COD)

**Date published:** 10 December 2020

In line with the European Green Deal and the move to a circular economy, EU law aims to minimise batteries' harmful effects on the environment. The rules cover their full life cycle, from design and production to reuse and recycling. This proposed regulation would update EU rules to ensure that:

- all batteries are produced sustainably (i.e., with low resource consumption and little waste generated) and can be easily recycled; and
- any batteries used in the growing market for electric vehicles are sustainable.

**Latest stage:** First reading in the European Parliament and Council.

# Corporate Law Enforcement and Reporting



## ACTS COMMENCED SINCE HORIZON TRACKER JUNE 2022

### Companies (Corporate Enforcement Authority) Act 2021

Date signed into law: 22 December 2021

The principal purpose of the act was to establish the Office of the Director of Corporate Enforcement as a standalone agency called the “Corporate Enforcement Authority”, with enhanced powers and autonomy. The functions of the CEA are described in our commentary outlining significant developments in the area of corporate enforcement generally.

Of interest is the fact that the CEA has issued an information note for consultation on aspects of the European Union (Preventive Restructuring) Regulations 2022 concerning the addition of Chapter 7 to Part 5 of the Companies Act 2014 which concerns additions to directors’ duties and information on the restructuring options available to companies facing financial difficulties, but which may otherwise have a reasonable prospect of survival. See our [Litigation section](#) on these Regulations.

The act also gave effect to recommendations of the Company Law Review Group in relation to certain anomalies in the Companies Act 2014 concerning corporate governance, shares and share capital.

These other changes in the main include:

- restoration of the use of the share premium account

for various purposes such as writing off the preliminary expenses of the company or the expenses of, or commission paid on, any issue of shares or debentures in the company;

- clarification relating to three-party share for undertaking and share for share transactions including the deletion of the reference in section 91 to the transaction resulting in the company capital being re-organised;
- confirmation that unlimited companies do not require reserves to acquire their own shares;
- clarification of the definition of “distribution” in section 123 by the exclusion from its scope of a reduction of share capital;
- amendment of the mandatory form of proxy for shareholder meetings under section 184;
- prohibition of minors from acting as company secretaries; and
- clarification on the post-merger treatment of merging/dividing companies’ shares acquired by a successor company (for example, in the case of a downstream merger).

Only one section of the act is not yet in force. Once commenced, section 35 will require directors to register their Personal Public Service Numbers (or prescribed identification documentation where none exists) with the Companies Registration Office (“**CRO**”) when incorporating

a new company, being appointed director to an existing company, or filing a company’s annual return. The details are to be used for validation purposes only and will not be publicly available.

**Commencement:** Whole act, other than s. 35, commenced 6 July 2022.

## IRISH PROPOSED LEGISLATION

### **Companies (Administrative, Governance & Insolvency Amendment) Bill**

The bill proposes to give effect to outstanding Programme for Government commitments on the rights of workers as creditors, trading entities splitting operations, and transactional avoidance. The bill will be used as the legislative vehicle to address various recommendations of the Company Law Review Group in the context of insolvency and restructuring and in relation to other matters.

**Latest stage:** Work is underway on the bill.

### **Limited Partnership Bill**

This bill proposes to reform the Limited Partnership Act 1907 which governs the registration of limited partnerships in Ireland.

**Latest stage:** Heads of Bill are in preparation.



## Industrial Development (Miscellaneous Provisions) Bill

This bill will permit IDA Ireland (Ireland's inward investment promotion agency) to establish and participate in corporate partnerships, with the sole purpose of developing critical industrial and commercial property in regional locations.

**Latest stage:** Heads of Bill approved 4 August 2020 and revised Heads of Bill are now in preparation.

## Co-operatives Societies Bill

This bill aims to consolidate and modernise the existing Industrial and Provident Societies legislation and to ensure that an effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland is in place.

**Latest stage:** Heads of Bill are in preparation.

## PRIVATE MEMBERS' BILLS

### Irish Corporate Governance (Gender Balance) Bill 2021

This bill proposes to make provision for the regulation of gender balance on the boards and governing councils of corporate bodies and related matters. As it is not a government-sponsored bill, it is unlikely to progress further. The government indicated its support for the principles underlying the bill but had referred to proposed gender balance measures at EU level. Having been first introduced

by the Commission in 2012, these measures seem to be progressing rapidly towards finalisation - see below for a description of the EU Directive, the text of which has now been approved.

**Latest stage:** Dáil Éireann, Second Stage.

## EU DIRECTIVES AWAITING IMPLEMENTATION

### Directive on Cross-border Conversions, Mergers and Divisions

**Date published:** 12 December 2019

**Implementation date:** 31 January 2023

This directive, which amends Directive (EU) 2017/1132 on cross-border mergers, aims to foster cross-border mobility and:

- contains procedures for cross-border conversions (enabling limited companies to change legal form into a similar legal form of another Member State and to relocate there);
- contains procedures for divisions; and
- amends some existing rules on mergers.

While these new cross-border mobility measures will create new structuring opportunities for companies, they must be balanced against stakeholder interests. The precise detail of transposing measures is not yet available but we expect

implementation by way of regulations made under statutory instrument. In 2020, the Department of Enterprise, Trade and Employment closed its public consultation seeking views on some Member State options within the Directive. It remains to be seen whether Ireland will meet the January 2023 implementation deadline.

## EU DRAFT LEGISLATION

### Proposal for a Directive Amending the Non-Financial Reporting Directive as regards Corporate Sustainability Reporting. ("CSRD")

**Procedure reference:** 2021/0104 (COD)

**Date published:** 21 April 2021

This measure is designed to revise and expand the regime introduced by the EU Non-financial Reporting Directive (Directive 2014/95/EU) ("**NFRD**"). The proposed directive aims to ensure that companies report reliable and comparable sustainability information. Companies in scope will have to report information on a full range of environmental, social and governance issues.

The regime will apply to:

- EU stock exchange listed companies and large companies (meeting two or more of the following criteria: a balance sheet total of €20m, net turnover of €40m, at least 250 employees)



- SMEs with securities admitted to trading on an EU regulated market (other than micro undertakings)
- Non-EU companies with substantial activity in the EU (generating an annual net turnover of €150m in the EU and with at least one subsidiary or branch in the EU).

The European Financial Reporting Advisory Group (“EFRAG”) Project Task Force has published working papers and exposure drafts signalling its preliminary approach towards reporting standards. EFRAG is due to submit its first set of draft reporting standards to the Commission in November 2022.

The new reporting requirements will be phased in over stages as follows:

- From 1 January 2024 (reporting year 2025) for companies already subject to NFRD;
- From 1 January 2025 (reporting year 2026) for companies not currently subject to NFRD;
- From 1 January 2026 (reporting year 2027) for listed SMEs, small and non-complex credit institutions and captive undertakings but SMEs can opt out until 2028; and
- From 1 January 2028 (reporting year 2029) for non-EU companies in scope.

**Latest stage:** First reading in the Council. The European Parliament is expected to formally adopt the directive at

first reading on 9 November 2022. We have discussed this development in our commentary.

## **Proposal for a Corporate Sustainability Due Diligence Directive**

**Procedure reference:** 2022/051 (COD)

**Date published:** 23 February 2022

This proposal establishes a corporate sustainability due diligence duty and aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies in scope must identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment.

The new due diligence rules will, if adopted as proposed, apply to the following companies and sectors:

### **EU companies:**

- Group 1: all EU limited liability companies of substantial size and economic power (with 500+ employees and €150 million+ in net turnover worldwide).
- Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of €40 million+ worldwide. Rules will start to apply 2 years later than for Group 1 companies.

Non-EU companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU.

Group 1 companies would need to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement.

**Latest stage:** Preparatory Stage in European Parliament

## **Proposal for a Directive on Gender Balance on Corporate Boards**

**Date published:** 14 November 2012

On 17 October 2022 the Council adopted the final text of the directive on gender balance on corporate boards which will mandate that by 2026 listed companies should aim to have at least 40% of their non-executive director positions or 33% of their non-executive and executive director positions held by members of the under-represented sex.

**Latest stage:** The politically agreed text reached by the European Parliament and the Council must now be adopted by the European Parliament. Once published in the Official Journal, the Directive will enter into force 20 days after publication and Member States will then need to transpose the new elements of the Directive into national law within two years.



# Competition Developments



# Competition Developments

## IRISH LEGISLATION PASSED SINCE HORIZON TRACKER JUNE 2022

### Competition (Amendment) Act 2022

Date signed into law: 29 June 2022

This act implements ECN+ Directive (EU) 2019/1 and provides for the reform of competition enforcement in Ireland. The ECN+ Directive harmonises the enforcement of EU competition law across the EU and bolsters the enforcement powers of national competition authorities. In Ireland, these include the Competition and Consumer Protection Commission, the Commission for Communications Regulation, the Director of Public Prosecutions, and the courts. The act introduces administrative fining powers for the Competition and Consumer Protection Commission as well as the establishment of a leniency, or 'whistle-blower' programme.

**Latest stage:** Awaiting commencement orders.

## IRISH PROPOSED LEGISLATION

### Agricultural and Food Supply Chain Bill

This bill will establish a new independent statutory authority, provisionally named the Office for Fairness and Transparency in the Agri-Food Supply Chain to enforce the Unfair Trading Practices Directive (Directive (EU) 2019/633).

**Latest stage:** Heads of Bill approved on 22 March 2022. Pre-legislative scrutiny has taken place.

## BILLS

### Screening of Third Country Transactions Bill

Date published: 2 August 2022

The purpose of this bill is to implement Regulation 2019/452 on Foreign Direct Investment Screening. The legislation will allow for certain transactions that might present security or public order risks to the State to be reviewed by the Minister for Enterprise, and allows the State to respond to threats posed by particular types of foreign investments. The bill provides that a transaction must be notified where:

- a third country undertaking, or a person connected with such an undertaking, is a party to the transaction;
- the value of the transaction is no less than €2,000,000;
- the transaction relates to an asset or undertaking in the State, directly or indirectly;
- the transaction relates to the factors set out in Article 4(1) of Regulation 2019/452, such as critical infrastructure including energy, transport, water, health, communications; critical technologies including artificial intelligence, semiconductors, cybersecurity; energy supplies; sensitive data etc.

Under the legislation the Minister will be empowered to require data from investors in order to screen, and take actions in relation to, certain transactions. The legislation will also establish an Investment Screening Advisory Panel to advise the Minister in relation to certain transactions.

**Latest stage:** Completed Dáil Éireann, Second Stage

### Communications Regulation Bill 2022

Date published: 26 September 2022

The purpose of this bill is to give effect to certain provisions of Directive 2018/1972 which established the European Electronic Communications Code. This will provide the Commission of Communications Regulation with a new civil and updated criminal enforcement regime. It will also make changes to security, as it will provide a mechanism for the Minister to specify security measures by regulation, to make guidelines relating to network security and to provide a legislative basis to enforce the Electronic Communications Security Measures. There will also be a number of new consumer protection measures put in place by it.

**Latest stage:** Before Dáil Éireann, Third Stage



# EU Competition Developments

## EU DIRECTIVES AWAITING IMPLEMENTATION

### Directive to Make National Competent Authorities More Effective Enforcers (ECN+)

**Date published:** 11 December 2018

The ECN+ Directive (EU) 2019/1 provides for a wide-ranging reform of EU competition law in order to harmonise its enforcement across the EU and bolster the enforcement powers of national competition authorities. In particular, the ECN+ Directive seeks to ensure adequate provision at the Member State level for civil sanctions for breaches of competition law, investigative powers of national authorities and fully-fledged leniency programmes enabling businesses to come forward regarding potential competition law breaches whilst avoiding or minimising any sanctions imposed.

**Transposition date:** Member States were required to implement this directive by 4 February 2021. Ireland missed the transposition deadline. The Commission issued Ireland with a formal notice for failure to meet the deadline. The Competition (Amendment) Act which is expected to be commenced before year end, will implement the directive.

## EU DRAFT LEGISLATION

### Proposal for a Regulation on foreign subsidies distorting the internal market

**Procedure reference:** 2021/0114/COD

**Date published:** 5 May 2021

This proposal for a Foreign Subsidies Regulation (“**FSR**”) aims to address the distortive effects of foreign subsidies in the EU Single Market, allowing the Commission to investigate financial contributions granted by public authorities of non-EU countries which benefit companies undertaking economic activities in the EU. The regulation will accordingly address distortion caused by foreign subsidies which are not covered by the EU’s system of state aid control, merger control, and antitrust rules.

**Later stage:** In June 2022 the European Parliament and Council **reached an agreement** on the text of the proposal and now awaits formal adoption.



# Taxation



## IRISH LEGISLATION PASSED SINCE HORIZON TRACKER JUNE 2022

### Finance (Covid-19 and Miscellaneous Provisions) Act 2022

Date signed into law: 2 June 2022

This act gives legislative effect to the changes to the COVID support schemes announced by the government, including changes to, and extension of, the Employment Wage Subsidy Scheme, the COVID Restrictions Support Scheme, the tax debt warehousing scheme and the tax treatment of the one-off COVID-19 recognition payment for healthcare workers.

Latest stage: S. 15(1) awaiting commencement..

## IRISH PROPOSED LEGISLATION

### Finance Bill 2022

Ireland published Finance Bill 2022 on 20 October 2022. The bill included a number of amendments previously announced as part of Budget 2023, including:

- Research and Development (“**R&D**”) tax credit: The existing R&D tax credit is amended to ensure that it is a qualifying refundable tax credit for Pillar Two and US foreign tax credit purposes. The amendments are timing changes and do not affect the quantum of credit that a company is entitled to claim. A company will

now have an option to request payment of the credit in a three year fixed payment schedule without offsetting it against other tax liabilities first. Existing caps on the payable element of the credit are also being removed. The new regime is being introduced with effect for accounting periods commencing on or after 1 January 2022. Transitional measures will be in place for one year to assist the transition to the new payment system for companies that are already engaged in R&D activities.

- Knowledge Development Box (“**KDB**”): The KDB will be extended to accounting periods commencing before 1 January 2027 and the effective rate will be increased by ministerial order to 10% (from 6.25%) to align with the Pillar Two ‘subject to tax rule’ once agreement is reached at OECD/G20 level on implementation.

Some other key amendments include:

- A number of technical amendments have been made to the interest limitation rules (introduced in Finance Act 2021) in order to ensure that the rules operate as intended.
- The definition of “transfer pricing guidelines” has been amended to require the transfer pricing rules to be construed in accordance with the 2022 version of the OECD Transfer Pricing Guidelines for chargeable periods commencing on or after 1 January 2023.

- The bill includes an amendment to ensure that capital sums received on intra-group transfers of patent rights are treated in a similar manner to the relief which is available for intra-group transfers of patents. There is also a technical amendment to confirm that the outright sale of a patent or a patent pending should be subject to capital gains tax rather than corporation tax.
- Section 835YA of the Taxes Consolidation Act 1997 (“**TCA**”) which dis-applies certain exemptions for controlled foreign companies (“**CFCs**”) resident in jurisdictions listed in Annex I of the EU list of non-cooperative jurisdictions for tax purposes has been amended to provide that the EU list updated in October 2022 applies to CFCs with accounting periods beginning on or after 1 January 2023.
- The definition of “relevant monetary item” in section 79 TCA is amended to include trade debtors and trading bank accounts such that any foreign exchange movements on these “relevant monetary items” will be treated as part of profits or losses of a company’s trade rather than subject to capital gains tax for corporation tax purposes.
- A number of amendments have been made to the digital gaming tax credit to ensure compliance with state aid requirements. This section is subject to ministerial order.

Latest stage: Dáil Éireann, First Stage.



## Taxation and Certain Other Matters (International Mutual Assistance) Bill

This bill will transpose elements of the OECD Mutual Convention on Administrative Assistance and the EU / Switzerland Anti-Fraud Agreement.

**Latest stage:** Heads of Bill have been approved. Pre-legislative scrutiny has been waived.

## NATIONAL CONSULTATIONS

### Public Consultation on Pillar Two Minimum Tax Rate Implementation

The Department of Finance launched a public consultation in May 2022 seeking views on the implementation of the Pillar Two minimum tax rate proposal in Ireland. Pillar Two relates primarily to the implementation of the global anti-base erosion (“**GloBE**”) rules, which will introduce a global minimum effective tax rate of 15% for in-scope businesses (companies with revenue above EUR 750 million).

As part of the Budget 2023 statement, the Irish Minister for Finance reaffirmed Ireland’s commitment to Pillar Two, and noted that work is ongoing to develop the multiple new elements required to give effect to the proposed minimum effective corporate tax rate.

**Latest stage:** Consultation is being reviewed.

## EU DIRECTIVES AWAITING IMPLEMENTATION

### Directive amending Directive 2011/ 16/ EU on Administrative Co-operation in the Field of Taxation (DAC7)

**Date published:** 22 March 2021

This directive amends the existing rules (Directive 2011/ 16/ EU) on exchange of information and administrative co-operation and extends the EU’s tax transparency rules to digital platform operators. It requires new reporting obligations for digital platform operators in respect of revenues generated by sellers carrying out certain activities on digital platforms and automatic exchange of the information for tax authorities in Member States. It also makes amendments with respect to joint audits from 1 January 2024.

**Transposition date:** The rules for digital platform operators must be implemented by Member States in domestic legislation by 31 December 2022 and will be applicable from 1 January 2023. The first reporting of data will take place by 31 January 2024. Finance Act 2021 transposed the directive into Irish law. However, the relevant section has now been repealed and replaced in its entirety by Finance Bill 2022 to ensure that the DAC7 rules are effectively implemented into Irish law. The effective date of operation of the rules is subject to ministerial order.

### Directive amending Directive 2006/ 112/EC as regards Rates of Value Added Tax

**Date published:** 6 April 2022

Under this directive, the existing EU rules (Directive 2006/ 112/ EC) on setting reduced rates of VAT are amended and Member States are granted more freedom in setting VAT rates (provided that the average weighted rate exceeds 12%) and to what they apply. In addition a list of goods and services has been agreed to which reduced rates cannot apply.

**Transposition date:** 31 December 2024.

### Directive on Introducing Certain Requirements for Payment Service Providers

**Date published:** 2 March 2020

Under this directive (amending Directive 2006/ 112/ EC) payment service providers will be required to keep records in respect of cross-border payments made to payees who receive a relatively high volume of cross-border payments. Payment service providers will make these records available to EU tax authorities. The directive is intended to facilitate tax fraud detection by EU tax authorities.

**Transposition date:** 31 December 2023



### Public Country by Country Reporting: Directive on Disclosure of Income Tax Information by Certain Undertakings and Branches

**Date published:** 1 December 2021.

Under the terms of the Directive on public country-by-country reporting (“**CBCR**”), multinational corporate groups with consolidated group revenue in excess of EUR 750 million for each of the last two consecutive financial years, and which are active in more than one EU jurisdiction, will be required to publicly report certain information, including their employee headcount, revenue (from related and unrelated parties), pre-tax profit, income tax accrued and income tax paid on a country-by-country basis for each Member State.

Companies will also be required to report this information for certain “third countries”, ie, each country that is listed on the EU blacklist or that has been listed for two consecutive years on the EU greylist. Information in respect of all other third countries can be compiled on an aggregated basis and provided as a single line item.

EU branches of undertakings located outside the EU can also trigger a reporting requirement where their parent undertaking satisfies the EUR 750 million revenue threshold. Where the parent of a multinational group is established outside the EU, a reporting obligation will arise

where an EU subsidiary constitutes a “medium” or “large” undertaking, as defined in the EU Accounting Directive 2013/ 34/ EU. Broadly, this means that a multinational group will be required to file a CBCR report where it has an EU subsidiary that exceeds at least two of: a balance sheet of EUR 4 million; net turnover of EUR 8 million; or average number of employees of 50 during a financial year.

The directive provides for a ‘safeguard clause’ whereby certain business-sensitive information can be temporarily omitted from public disclosure. Any such omitted information must be published within five years of its original omission. However, information concerning tax jurisdictions listed on the EU blacklist may not be omitted. The safeguard clause (along with a number of other clauses) will be reviewed as part of a planned wider review of the impact and effectiveness of the directive which it has been agreed will be completed by 22 June 2027.

The information must be made accessible to the public free of charge on the website of the relevant undertaking. The information must be made available for a minimum of five consecutive years. The European Commission intends to provide a common template which must be adopted when making a CBCR report.

The CBCR report must be published within 12 months of the balance sheet date of the relevant financial year. In-scope multinational corporate groups with a 31 December year-end, will need to publish this information on the group’s website in respect of the 2025 financial year (ie, the first reportable financial year for companies with a 31 December year-end) and by December 2026 (ie, the first reporting deadline for companies with a 31 December year-end).

**Transposition date:** This directive was approved and came into force on 21 December 2021. Member States must transpose the directive into national law by 22 June 2023 with reporting requirements applying for all financial years starting on or after 22 June 2024.



## PUBLISHED INITIATIVES

### Published Initiative on Business in Europe: Framework for Income Taxation (BEFIT)

In line with the Commission Communication on Business Taxation for the 21st Century (the “**Commission Communication**”) adopted on 18 May 2021, the Commission launched an initiative on 13 October 2022 to introduce a common set of rules for EU companies to calculate their taxable base while ensuring a more effective allocation of profits between EU countries, based on a formula.

**Latest stage:** The public consultation is open until 5 January 2023. The proposal for a directive is expected to be published in Q3 2023.

### Published Initiative on Withholding Taxes – New EU System to Avoid Double Taxation

The Commission launched an initiative in September 2021 to introduce a common EU-wide system for withholding taxes on dividend or interest payments, including a system for tax authorities to exchange information and co-operate with each other. It is stated that this initiative aims to tackle the burdensome withholding tax relief procedures for cross-border investors in the securities market. The within scope stakeholders of this initiative are primarily cross-border portfolio investors.

**Latest stage:** The public consultation closed in June 2022. The proposal for a directive is expected to be published in Q4 2022.

### Published Initiative on Proposed Amendment to Directive on Administrative Co-operation

The Commission launched an initiative in Q4 2020 regarding the eighth amendment to the Directive on Administrative Co-operation (“**DAC8**”) (Directive 2011/16/EU). The DAC8 proposals seek to strengthen existing rules and expand the exchange of information framework to address tax issues related to cryptocurrency and e-money. The proposals have not yet been published by the Commission.

**Latest stage:** The public consultation period closed in June 2021. The proposals were expected to be published by the end of 2021, however the draft directive has yet to be published.

## EU DRAFT LEGISLATION

### Proposal for a Directive on the level of Taxation for Multinational Groups in the Union

**Procedure reference:** 2021/0433 (CNS)

**Date published:** 22 December 2021

In response to the OECD agreement on a two pillar solution

to address the tax challenges arising from the digitalisation of the economy (the “**OECD Agreement**”), the EU published a draft directive to implement Pillar Two of this agreement, namely the measures to ensure a global minimum level of taxation for multinational groups. The objective of this directive is to impose a minimum effective tax rate of 15% on multinational groups above a certain size threshold.

The Pillar Two rules in the OECD Agreement encompass two sets of rules: (i) the “**GLoBE**” rules (including the ‘income inclusion rule’ and the ‘undertaxed payments rule’); and (ii) the subject to tax rule. This directive proposes to implement only the “**GLoBE**” rules, with the subject to tax rule to be implemented in a later model treaty provision. The EU implementation of the “**GLoBE**” rules extends their scope to purely domestic groups of the requisite scale, to ensure compliance with the fundamental freedoms.

As provided in the OECD Agreement, the directive would only apply to entities located in the EU that meet the annual threshold of at least EUR 750 million of consolidated revenue in at least two of the four preceding years, and certain exclusions set out in the OECD Agreement are carried over into this directive. The directive also extends the application of the ‘income inclusion rule’ to purely domestic groups established in a Member State if they reach the EUR 750 million threshold in line with the EU’s fundamental freedom of establishment.



## TAX | Legislative and Regulatory Developments

**Latest stage:** Under discussion within the Council. Hungary was the only Member State to vote against the directive at the June ECOFIN meeting, despite its initial approval. All Member States must approve the directive for the text to be adopted.

On 9 September, finance ministers from France, Germany, Italy, Spain and the Netherlands issued a joint statement that should unanimity not be reached on the directive in the coming weeks, these governments stand ready to implement the global minimum effective taxation rate in 2023 and by any possible legal means.

Under the compromise text currently under consideration and published in June 2022, Member States are to transpose the provisions of the directive by 31 December 2023 and apply these provisions for accounting years starting on or after 31 December 2023 except the ‘undertaxed payments rule’, which would apply for accounting years starting on or after 31 December 2024.

### **Proposal for a Directive on Pillar One of the OECD Agreement**

**Procedure reference:** TBC

**Date published:** TBC

The Commission has stated that a directive for implementing the provisions in Pillar One of the OECD Agreement, namely the reallocation of taxing rights on multinational enterprises with a global turnover exceeding EUR 20 billion, will be proposed.

Broadly, Pillar One aims to re-allocate profits of the largest and most profitable multinational enterprises to the jurisdictions where the customers and users of those enterprises are located. The proposal also aims to remove and standstill the patchwork of independent national digital services taxes and other similar measures which are being adopted in an ever-increasing number of jurisdictions. In practical terms, Pillar One places multinational enterprises with a global turnover above EUR 20 billion and profitability above 10% in-scope.

It will function by creating a new ‘special purpose’ nexus rule which results in the allocation of what is referred to as ‘Amount A’ to any market jurisdictions in which that multinational enterprise derives at least EUR 1 million in revenue. Extractives and regulated financial services are excluded from the scope of Pillar One.

The threshold for the special purpose nexus rule (which applies to determine whether a jurisdiction qualifies for the Amount A allocation) is lower for smaller jurisdictions with GDP lower than EUR 40 billion. This includes jurisdictions

such as Malta, for example, where the threshold has been set at EUR 250,000. Pillar One will use a revenue-based allocation key which will allocate 25% of the ‘residual profits’ (defined as profit in excess of 10% of revenue) to market jurisdictions which fall within the parameters of the special purpose nexus. A second amount, ‘Amount B’, aims to use the arm’s length principle to standardise remuneration received by related party distributors engaged to perform baseline marketing and distribution activities for those multinational enterprises. The Commission has proposed to allocate 15% of the residual profits, which would be reallocated to Member States under Pillar One, to the EU budget.

The existing proposed directives on Digital Services Taxes (procedure references 2018/0072 (CNS) and 2018/0073 (CNS)) will be withdrawn, as per the Commission’s Communication. Work on the related digital levy proposal was put on hold on 12 July 2021 in anticipation of the OECD Agreement. However, EU lawmakers are pushing for the EU’s own digital levy if Pillar One is not implemented by the end of 2025.

**Latest stage:** The Progress Report on Amount A of Pillar One prepared by the OECD Secretariat was published in July 2022 and sets out a new timeline for Amount A to enter into force in 2024. Therefore publication of this proposed directive is likely to be delayed beyond 2022 into 2023.



### Proposal for a Directive laying down rules to prevent the misuse of shell entities for tax purposes

Procedure reference: 2021/0434 (CNS)

Date published: 22 December 2021

The purpose of this legislation is to prevent the misuse of shell companies for tax purposes, amending Directive 2011/ 16/ EU. The legislation will tackle legal entities of minimal substance which do not perform any economic activities and are used for the purposes of tax avoidance and evasion.

The directive sets out three ‘gateway’ criteria to identify shell entities. Entities that meet all three gateway criteria are required to report on whether they meet the minimum substance requirements through their annual tax returns. If an entity does not meet all of the minimum substance requirements (or does not provide sufficient documentary evidence) it will be classified as a shell entity and will be denied access to tax treaties and denied tax benefits under the Parent-Subsidiary and Interest and Royalties Directives.

Certain entities are excluded from the proposed directive, such as listed companies, regulated financial undertakings, domestic holding entities and entities that have at least five full-time employees exclusively carrying out income-generating activities. An entity can also be exempted if it can prove that there is no tax advantage arising from its use.

**Latest stage:** The Commission proposed this directive in late 2021, and it is currently in discussions within the Council. It is intended that the directive will come into force as of 1 January 2024.

### Proposal for a Directive laying down rules on a debt equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes (“DEBRA”)

Procedure reference: 2022/0154 (CNS)

Date published: 11 May 2022

The proposed directive seeks to introduce two new tax measures: (i) an ‘allowance on equity’ that would provide a tax deduction to taxpayers that increase their equity capital compared to their previous tax year and (ii) a proposal to further refine the existing interest limitation rule. DEBRA is proposed to apply to all taxpayers subject to ‘corporate income tax’ in EU Member States. A number of exclusion are proposed, including exclusions for AIFs, UCITS, AIFMs, credit institutions, insurance undertakings, certain securitisation entities and other taxpayers.

**Latest stage:** The proposal is currently in discussions within the Council. If adopted, the directive should be transposed by Member States by 31 December 2023 and come into effect as of 1 January 2024.

Read more: [Matheson Insight Article on the DEBRA directive.](#)

### Proposal for a Council Directive amending Directive 2006/ 112/ EC as regards the Introduction of the Detailed Technical Measures for the Operation of the Definitive VAT System for the Taxation of Trade

#### between Member States

Procedure reference: 2018/0164 (CNS)

Date published: 25 May 2018

This proposal, if adopted, would significantly change the existing VAT system as it applies to business to business (“**B2B**”) transactions involving cross-border supplies of goods, implementing a destination basis to such supplies. That change would also require changes to the place of supply rules for B2B transactions. In addition, the Mini One Stop Shop system which currently is available to suppliers in respect of certain business to consumer transactions would be extended to apply to B2B transactions. Finally, the proposal would introduce a new concept of ‘certified taxable person’ which could alter the person accountable for VAT on certain supplies.

**Latest stage:** On 12 February 2019, the European Parliament voted in plenary to adopt the proposal with amendments. The Council has yet to adopt the proposal. Discussion on this proposal is on-going at working party level.

The following composite proposals, which are very significant, have been discussed in further detail in the



**Spring Horizon Tracker** 2022. We will continue to provide updates on any changes.

and it is expected that a proposal will be adopted by the Commission in Q3 2023.

### **CCCTB: Proposed Directive on a Common Consolidated Corporate Tax Base and CCTB: Proposed Directive on a Common Corporate Tax Base**

**Procedure reference:** 2016/0336 (CNS) and 2016/0337 (CNS)

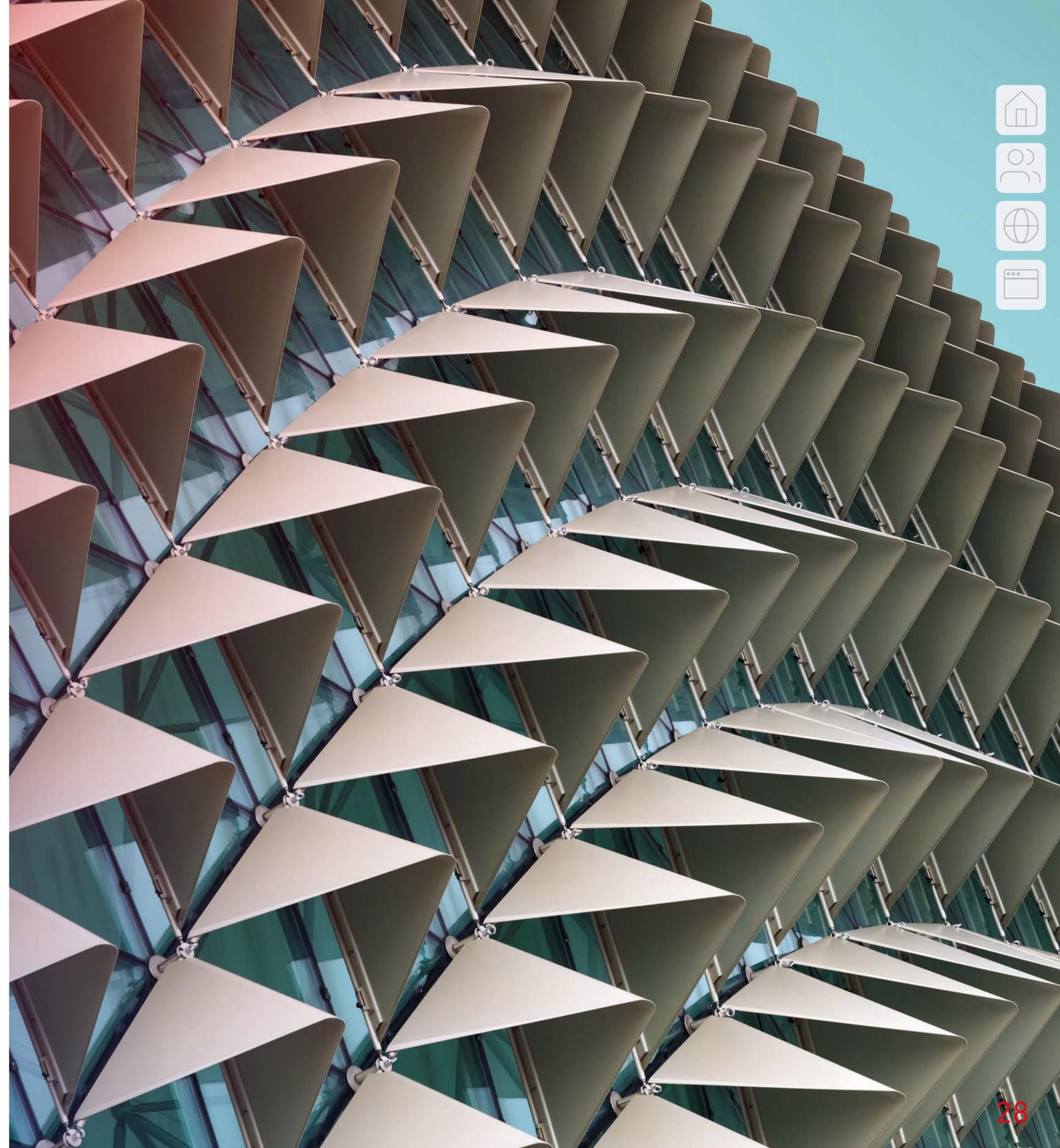
**Date published:** 25 October 2016

As mentioned in the Published Initiative section above, under the BEFIT proposal profits of the EU members of a multinational group will be consolidated into a single tax base, which will then be allocated to Member States using a formula to be taxed at national corporate income tax rates. The proposal will feature a different apportionment formula from the prior proposals (**CCCTB** and **CCTB**) to better reflect global developments, in particular by taking account of digitalisation.

**Latest stage:** The Council has not adopted the CCCTB or CCTB proposals to date and the Commission Communication states these proposals will be withdrawn and replaced by BEFIT. A **public consultation** concerning the BEFIT proposal is now open until 5 January 2023,



# Sustainable Finance



## EU LEGISLATION

### Delegated Regulation Supplementing the SFDR on RTS on Content and Presentation of Sustainability Disclosures

**Date published:** 25 July 2022

On 25 July 2022, Commission Delegated Regulation (EU) 2022/1288 was published in the Official Journal of the EU. The delegated regulation supplements the Sustainable Finance Disclosure Regulation (“SFDR”) (Regulation (EU) 2019/2088) with regard to Regulatory Technical Standards (“RTS”) specifying the details of the content and presentation of the information in relation to the principle of “do no significant harm”. The RTS specifies the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. The delegated regulation includes templates for the provision of information, set out in five annexes as follows:

**Annex 1** Template: principal adverse sustainability impacts statement.

**Annex 2** and **Annex 3** Template: pre-contractual disclosure for Article 8 and Article 9 products.

**Annex 4** and **Annex 5** Template: periodic disclosure for Article 8 and Article 9 products.

**Applies from:** 1 January 2023

### Delegated Regulation amending the Taxonomy Climate Delegated Act to Extend Framework to Certain Economic Activities Involving Gas and Nuclear Energy

**Date published:** 15 July 2022

On 15 July 2022, Commission Delegated Regulation (EU) 2022/1214 – known as the EU Taxonomy Climate Complementary Delegated Act – was published in the Official Journal of the EU. It amends the **EU Taxonomy Climate Delegated Act** (Commission Delegated Regulation (EU) 2021/2139) to set down the technical screening criteria which must be met in order for an economic activity involving gas or nuclear energy to be classified as environmentally sustainable under the EU Taxonomy framework.

**Applies from:** 1 January 2023

### Regulation on the Establishment of a Framework to Facilitate Sustainable Investment – The Taxonomy Regulation

**Date published:** 22 June 2020

This regulation – known as the Taxonomy Regulation (Regulation (EU) 2020/852) – forms part of the package of reforms published by the Commission in 2018 relating to its Sustainable Finance Action Plan. The regulation on the establishment of a framework to facilitate sustainable investment establishes an EU-wide classification system or taxonomy intended to provide businesses and investors with a common language to identify to what degree economic activities can be considered environmentally sustainable. The regulation sets out uniform criteria for determining whether an economic activity is environmentally sustainable.

**Applies from 1 January 2022:** The Taxonomy Regulation applied from 1 January 2022 with respect to activities that substantially contribute to climate change mitigation and adaptation. The regulation will apply with respect to activities that substantially contribute to the other environmental objectives (sustainable use and protection of water and marine resources; transition to a circular economy; pollution prevention and control; protection and restoration of biodiversity and ecosystems) from 1 January 2023. Article 8 of the Taxonomy Regulation requires additional disclosures from companies in scope of the non-





financial reporting framework. Pursuant to the delegated act adopted under Article 8 of the Taxonomy Regulation, qualitative reporting by in-scope undertakings was required from 1 January 2022, with further requirements applicable to non-financial undertakings from 1 January 2023 and to financial undertakings from 1 January 2024.

## Delegated Directive amending MiFID II on Integration of Sustainability Factors into Product Governance Obligations

**Date published:** 2 August 2021

On 2 August 2021, various amending measures amending Level 2 measures under the UCITS Directive, AIFMD, MiFID II, Solvency II and the Insurance Distribution Directive were published in the Official Journal of the EU which will require impacted firms to integrate sustainability risks and factors into their policies and procedures. These measures included Commission Delegated Directive (EU) 2021/1269 amending MiFID II Delegated Directive (EU) 2017/593 relating to the integration of sustainability factors into the product governance obligations under MiFID II.

**Applies from:** 22 November 2022

## EU DRAFT LEGISLATION

### Proposal for a Directive Amending the Non-Financial Reporting Directive as regards Corporate Sustainability Reporting

See [Corporate](#) section.

### Proposal for a Corporate Sustainability Due Diligence Directive

See [Corporate](#) section.

### Proposed Regulation on EU Standards for ‘Green Bonds’

**Procedure reference:** 2021/0191 (COD)

**Date published:** 7 July 2021

This proposed regulation aims to attract more finance for sustainable investment by establishing an EU standard for ‘green bonds’, setting out clearly which assets and projects the money generated by those companies who are issuing bonds on the capital markets can be used for. It builds on a June 2019 report by the Commission’s technical expert group on sustainable finance which recommended clear and comparable criteria for issuing green bonds.

**Latest stage:** On 8 June 2022, the plenary of the European Parliament confirmed the ECON Committee decision to open inter-institutional negotiations.

# Asset Management and Investment Funds



## IRISH PROPOSED LEGISLATION

### Central Bank (Individual Accountability Framework) Bill

See [Financial Services Regulation](#) section.

## CENTRAL BANK GUIDANCE

### Central Bank Guidance on Performance of UCITS and Certain Types of Retail AIFs

On 1 April 2021, the Central Bank published guidance on Performance Fees of UCITS and Certain Types of Retail Investor AIFs (the “**Central Bank Guidance**”), which followed an initial consultation and partially implements the ESMA [guidelines](#) on performance fees published 5 November 2020.

The Central Bank is implementing the ESMA guidelines on a phased basis due to the need to: (a) consult on amending the domestic framework; (b) reflect the transitional periods provided under the ESMA guidelines; and (c) maintain a consistent approach for retail investor funds. There will be a further consultation on amending legislation to incorporate the ESMA guidelines into the [CBI UCITS Regulations](#) and the [AIF Rulebook](#), as the Central Bank considered that it was not possible to implement certain features of the ESMA guidelines with immediate effect from their date of

application. The second Central Bank consultation had been expected to be published in 2022, but it is not now clear when the consultation will be published.

## CENTRAL BANK DEADLINES

### Central Bank Fast Track for SFDR Level 2 Filings

On 4 October 2022, the Central Bank published a [document](#) setting out the final conditions applicable to the fast-track filing of changes to fund documentation required to comply with RTS adopted under the SFDR. The filing deadline is 1 December 2022.

### Registration of Beneficial Ownership of Certain Financial Vehicles

On 1 July 2021, the EU (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) (Amendment) Regulations 2021 (SI No. 321 of 2021) (the “**Amending Regulations**”), amending the EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019, came into effect.

A resubmission of all beneficial ownership details was required by eligible entities in December 2021. The Central Bank has advised that a further resubmission of beneficial ownership information will be requested in 2022. Further

guidance in relation to the process, and the collection and validation of PPS numbers, will be provided in advance of the resubmission window opening. For beneficial owners who do not hold a PPS number, the beneficial owner will be obliged to provide a Declaration as to Verification of Identity, to be verified and witnessed prior to submission to the Central Bank. On 18 August 2022, the Central Bank published a letter clarifying that the collection of PPS numbers for verifying the information delivered to the beneficial ownership register will no longer commence from 13 September 2022 (as previously advised in July this year) and instead will be collected in **Q4 2022**, with a precise date to be communicated to CFVs at a later date. The delay is required to allow the Central Bank to enhance the quality and accuracy of the data collected.

## CENTRAL BANK CONSULTATIONS

### Central Bank Consultation on Property Funds

On 25 November 2021, the Central Bank published a [consultation paper](#) (“**CP145**”) on macroprudential measures for the property fund sector. The publication of CP145 follows recent regulatory focus on the Irish property fund sector, looking at leverage and liquidity mismatch as potential sources of financial vulnerability that could affect the resilience of this form of financing in future periods



of stress. The Central Bank is proposing the introduction of leverage limits on Irish domiciled funds which invest over 50% directly or indirectly in Irish property assets and additional guidance to limit liquidity mismatch. The consultation period closed on **18 February 2022**. No indication is given in the consultation paper as to when the changes will be introduced.

For more information, see our briefing note [Central Bank of Ireland Consultation on Property Funds November 2021](#).

## CENTRAL BANK THEMATIC REVIEWS

### Thematic Review of SFDR Level 1 Compliance

The Central Bank has advised that it will conduct a thematic review of SFDR Level 1 compliance before the end of 2022. The thematic review will primarily rely on in-house data that the Central Bank has already collected but may require the Central Bank to reach out to firms for certain clarifications. The Central Bank intends to complete the review by year end.

## EU LEGISLATION

### Packaged Retail and Insurance-based Investment Products Regulation – Level 2 Amendments

Date published: 20 December 2021

On 20 December 2021, amendments to Commission Delegated Regulation (EU) 2017/653 (“PRIIPs RTS”) in the form of Commission Delegated Regulation (EU) 2021/2268 were published in the Official Journal of the EU. The amendments to the PRIIPS RTS include changes to rules on calculating and presenting forward-looking performance scenarios, calculation and presentation of costs-related information as well as introducing specific rules which must be complied with by any PRIIPS KID published by in-scope UCITS and AIFs. The delegated regulation was amended by Commission Delegated Regulation (EU) 2022/975 to amend the application date from 1 July 2022 to 1 January 2023. This will align with the date upon which the PRIIPs Regulation will apply to UCITS.

Applies from: 1 January 2023.

### Sustainable Finance: Delegated Regulation Supplementing the SFDR setting out Regulatory Technical Standards (“RTS”) on the Content and Presentation of Sustainability Disclosures under the SFDR.

See [Sustainable Finance](#) section.

### Sustainable Finance: Regulation on the Establishment of a Framework to Facilitate Sustainable Investment – The Taxonomy Regulation

See [Sustainable Finance](#) section.

## EU DRAFT LEGISLATION

### Proposal for a Directive amending the AIFMD and the UCITS Directive

Procedure reference: COM(2021)721

Date published: 25 November 2021

On 25 November 2021, the Commission published a legislative [proposal](#) to amend the AIFMD as part of the CMU Legislative Package. The Commission has set out targeted proposals, which would amend both the UCITS and AIFMD frameworks, including the introduction of minimum substance requirements where an EU fund management company delegates functions to a third country entity and an enhanced regulatory supervision framework for third country delegation arrangements. New rules addressing the use of liquidity management tools to ensure supervisory convergence across EU member states are also proposed. The Commission has also suggested increased reporting requirements for both UCITS and AIFs to facilitate monitoring systemic risk.

**Latest stage:** The publication of the proposal by the Commission was the first step in the legislative process and there is likely to be significant debate between the EU institutions on the proposals over the coming months, which may lead to changes to the proposed text. Member states will have 24 months after entry into force of the amending





directive to transpose the requirements into national law.

## Proposed Regulation on Deforestation-free Products

See the [Climate, Energy and Natural Resources](#) section. Recent amendments to this proposal would bring financial institutions within the scope of this regulation, which may impact on investment funds.

## EU CONSULTATIONS

### European Commission Targeted Consultation on the Money Market Fund Regulation

The [Money Market Fund Regulation](#) (EU Regulation 2017/1131 – “**MMFR**”) requires the Commission to submit a report to the co-legislators assessing the adequacy of the MMFR from a prudential and economic point of view. On 12 April 2022, the Commission published its targeted consultation on the functioning of the MMFR. The consultation targets the relevant stakeholders and users of money market funds (“**MMFs**”), in particular the investors and managers of MMFs, seeking feedback on the impact of the MMFR on stakeholders, its different economic aspects and its role in the EU economy. This consultation will be informed by a comprehensive questionnaire that aims to complement the information collected by the other ESAs.

The deadline to respond to the questionnaire was 13 May 2022. The feedback will inform the Commission’s report, which may propose changes to the MMFR. It is not clear as yet when the report will be published.

### ESMA Consultation on Notifications for Cross-Border Marketing and Management of Funds

On 17 May 2022, ESMA published a consultation on the information and templates to be provided and used by firms when they inform regulators of their cross-border marketing and management activities under the UCITS Directive and the AIFMD. The closing date for responses to the consultation was **9 September 2022**. Following the consultation period, draft RTS and implementing technical standards (“**ITS**”) will be finalised and submitted to the Commission.

### ESMA Common Supervisory Action on Valuation

The common supervisory action (“**CSA**”) focusing on the compliance of authorised managers of UCITS and open-ended AIFs with the relevant valuation-related provisions in the UCITS and AIFMD frameworks, in particular the valuation of less liquid assets, is ongoing. The Central Bank has issued a qualitative questionnaire requesting information and relevant supporting documents, together with an FAQ, to a sample of managers.

# Financial Services Regulation



## IRISH LEGISLATION PASSED SINCE THE JUNE HORIZON TRACKER

### Consumer Credit (Amendment) Act 2022

Enacted and awaiting commencement.

### Insurance (Miscellaneous Provisions) Act 2022

Enacted and partially commenced (see below).

## IRISH PROPOSED LEGISLATION

### Health Insurance (Amendment) Bill.

The aim of this bill is to provide for

- revised risk equalisation credits and corresponding stamp duty levies to apply to health insurance policies in 2022,
- the introduction of a High Cost Claims Pool in the Risk Equalisation Scheme, and
- some technical amendments to the Health Insurance Acts 1994-2020.

**Latest stage:** This bill is listed as priority legislation in the Autumn 2022 Legislative Programme. The heads of bill are in preparation.

### Financial Services and Pensions Ombudsman (Amendment) Bill.

To amend the Financial Services and Pensions Ombudsman (“**FSPO**”) Act 2017 to take account of the Supreme Court decision in **Zalewski v An Adjudication Officer & Ors** [2021] IESC 24 regarding the maintenance of standards of fairness in the administration of justice by updating elements where the FSPO could be viewed as administering justice.

**Latest stage:** This bill is listed under all legislation in the Autumn 2022 Legislative Programme. The heads of bill are in preparation.

## BILLS

### Central Bank (Individual Accountability Framework) Bill 2022

**Date published:** 28 July 2022

The bill remains largely similar to the General Scheme published in July 2021 and is presented as a series of amendments to three pieces of Central Bank legislation – namely:

- The Central Bank Act 1942;
- The Central Bank Reform Act 2010; and

- The Central Bank (Supervision and Enforcement) Act 2013.

The four key pillars of the Central Bank’s original proposal remain (details can be found on Matheson LLP’s dedicated [Individual Accountability and SEAR webpage](#)).

The most significant changes from the General Scheme are to the F&P Regime and the Administrative Sanctions Procedure. These changes were necessitated in light of the Supreme Court decision in **Zalewski v An Adjudication Officer & Ors** [2021] IESC 24 regarding the maintenance of standards of fairness in the administration of justice.

**Latest stage:** Before Dáil Éireann, Third Stage

### **Matheson Insights:**

[Matheson Fitness & Probity Handbook](#)

[Matheson Central Bank \(Individual Accountability Framework\) Bill Podcast](#)

[Central Bank \(Individual Accountability Framework\) Bill: The Zalewski Judgement - a catalyst for change](#)

[Consumer Rights Bill 2022-](#) Please refer to the [Data Protection, Privacy and Technology](#) section.

[Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2022](#) – Please see the section on [Other Important Legislation](#).



## ACTS AWAITING COMMENCEMENT

### Health Insurance (Amendment) Act 2021

This act has been described in the [Summer Horizon Tracker](#). We will continue to update you as commencement occurs.

### Insurance (Miscellaneous Provisions) Act 2022

Date signed into Law: 27 June 2022

The act was mentioned and described in the [Summer Horizon Tracker](#). The legislation seeks to address several insurance-related issues that have come to light since the Action Plan for Insurance Reform was published in December 2020, including:

- The practice of insurers deducting government payments from COVID-19-related claims settlements.
- Price Walking.
- Necessary amendments to the Consumer Insurance Contracts Act: and
- Necessary amendments to the Temporary Run-off Regime

**Latest stage:** Commenced by [SI 346/2022](#). Sections 1-6 and 9-11 were commenced on 8 July 2022. Section 7 and Section 8, as it relates to Section 16A in the Consumer Insurance Act 2019 (“**CICA**”), were commenced on 1 October 2022. Section 8 as it relates to the new Section 16B in CICA will commence on 1 January 2023.

### Consumer Insurance Contracts Act 2019

This legislation was described in the [Spring Horizon Tracker](#). We will continue to update you as commencement occurs.

## STATUTORY INSTRUMENTS

### European Union (Insurance and Reinsurance) (Amendment) Regulations 2022

On 10 October 2022, the European Union (Insurance and Reinsurance) (Amendment) Regulations 2022 [S.I. No. 509 of 2022] were signed into law.

These regulations amend the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015) to amend the definition of large risks, the criteria for exclusion of small undertakings and the calculation of Minimum Capital Requirement. They take account of changes required by Article 300 of the Solvency II Directive where amounts expressed in euro in the Solvency II Directive must be revised every five years, by increasing the base amount in euro by the percentage change in the Harmonised Indices of Consumer Prices of all Member States. Member States are required to implement the revised amounts by within 12 months of the publication in the Official Journal of the EU.

**Applies from:** These Regulations came into operation on 19 October 2022.

### Revised Central Bank Investment Firms Regulations

On 23 June 2022, the Central Bank published, in final form, revised Central Bank Investment Firms Regulations containing amendments to the Client Asset Requirements (the “**CAR**”).

The Central Bank has also published a [Guidance Note](#) to accompany the revised CAR.

As set out in the Feedback Statement to the Consultation Paper, revisions to the regulations include broadening the scope and application of the CAR to credit institutions, targeted enhancements to include investment firms and credit institutions holding client assets in the context of conducting wholesale activities as well as other amendments applicable to all investment firms currently in scope of the CAR.

**Applies from:** The Central Bank has granted a transitional period for compliance with the revised regulations. The revised CAR will be applicable to investment firms from 1 July 2023 and credit institutions from 1 Jan 2024.

## CENTRAL BANK INITIATIVES

### Review of the Consumer Protection Code

On 3 October 2022, the Central Bank launched its review of the Consumer Protection Code (the “Review”). The Review is a three phased review being conducted between


















































































































































































































































































































October 2022 and sometime in 2024. On the launch of the Review, the Central Bank published a [Discussion Paper on the review of the Consumer Protection Code](#) (“CPC”), the first phase of the Review.

The Discussion Paper presents a discussion on ten themes: two broad themes of availability and choice and firms acting in consumers’ best interests and a further eight themes for discussion including innovation and disruption; digitalisation; unregulated activities; pricing; informing effectively; vulnerability; financial literacy; and climate matters.

## [Matheson Insights: Central Bank of Ireland Launches Review of the Consumer Protection Code](#)

**Closing date:** Submissions on the questions posed in the Discussion Paper can be made online until 31 March 2023. The feedback received will inform the Central Bank’s decision-making on proposed revisions to the CPC. Those proposed revisions will in turn be the subject of a formal public consultation on proposed changes to the CPC which the Central Bank indicates will be published in Q4 2023

## [Dear CEO Letter on Financial Sanctions](#)

On 20 June 2022, the Central Bank published a [Dear CEO Letter on Financial Sanctions](#) sent to the CEOs of business and professional representative bodies as regards the Commission’s sanctions on Russia and Belarus following Russia’s invasion of Ukraine.

The purpose of this letter is to advise on the information resources that are available to support in understanding the obligations under the sanctions. The Central Bank notes that it has established a dedicated Russian/Ukraine Regulations page on its website.

**Next steps:** The Central Bank is requesting that these organisations ensure that all of their members are made aware of the available information resources and are aware of Central Bank’s key messages with respect to sanctions.

## [Matheson Insight on Enforcement of Sanctions and Criminalisation of Breaches by the European Union.](#)

## [Dear CEO Letter on expectations relating to the risk posed to consumers of having insufficient home insurance cover](#)

On 23 September 2022, the Central Bank [published a Dear CEO letter](#) sent to home insurers on its findings and expectations following a Thematic Review of insufficient coverage in the home insurance market.

**Next Steps:** The Central Bank expects all firms that provide home insurance products to consumers to:

- Clearly communicate the risk of under-insurance to customers, including by writing to all home insurance policyholders, (both direct and intermediated customers) as a standalone communication, explaining the consequences of being under-insured, the reasons why this is currently a heightened risk and how policyholders can better estimate the adequate sums insured value.
- Act honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
- Consider the risks and expectations set out in the letter and its accompanying Appendix, and put in place a clear plan to address the points raised. The plan must include clear and reasonable timelines for implementation of mitigating actions, with appropriate governance and sign-off. Firms should submit plans to the Central Bank by, 28 October 2022; and
- Share the contents of this letter with the Board of Directors, and ensure that the Board of Directors has appropriate oversight of the firm’s plan to address the gaps identified, or the actions required.

## [Central Bank Dear CEO Letter on the withdrawal of retail banks from the Irish market](#)



## [Central Bank Dear CEO letter on MiFID Structured Retail Product Review](#)

## [Consumer Protection \(Regulation of Retail Credit and Credit Servicing Firms\) Act 2022 – Authorisation Requirements and consequential amendments to the Consumer Protection Code 2012, Minimum Competency Code 2017 and Minimum Competency Regulations 2017](#)

These initiatives have been described in the [Summer Horizon Tracker](#). We will continue to update you as changes occur.

## [Central Bank statement on MiFID investment firms authorised to provide MiFID activities 3 and/ or 6](#)

This statement has been described in the [Spring Horizon Tracker](#).

### CENTRAL BANK GUIDANCE

## [Central Bank Cross-Industry Guidance on Outsourcing](#)

On 17 December 2021, the Central Bank published its final cross industry guidance on Outsourcing following its February 2021 Consultation Paper (“CP138”) on its proposed Cross-Industry Guidance on Outsourcing. These guidelines set out the Central Bank’s expectations regarding the management of outsourcing risk with a view to promoting higher standards of operational resilience.

Revised and actual submission dates are detailed below.

## [Matheson Insights: Matheson Outsourcing Toolkit](#)

**Applies from:** The guidance came into effect immediately upon publication. On 10 August 2022, the Central Bank published sectoral guidance notes and templates for the submission of firm’s registers as required by the Central Bank’s Cross-Industry Guidance on Outsourcing for the following sectors (Re)Insurance Undertakings, Less Significant Institutions (“**LSIs**”), Markets Firms or Regulated Financial Service Providers and Payments & E-Money Institutions.

The first reference date for the submission of data for the outsourcing arrangements is 31 December 2021. In scope firms should submit their register with data complete as of 31 December 2021 and only include contracts / written agreements with a start date before that date. Firms were originally requested to submit their first completed register via the Online Reporting System (“**ONR**”) by close of business on 07 October 2022, however, in September 2022 the Central Bank revised the submission dates for all sectors. The new submission dates for each sector were as follows:

- banks (LSIs) and Payments and E-money firms 11th October;

- all Insurance Sector firms 13th October; and
- all Markets Sector firms 19th October 2022.

and have been communicated directly to in-scope firms.

The submission deadline from 2023 onwards will be end-February of each year, with the reference date of 31 December of the previous year. The submission deadline for 2023 will be confirmed by the Central Bank in due course.

## [Central Bank Guidance on the use of Service Companies in the Insurance Sector](#)

## [Central Bank Cross Industry Guidance on Operational Resilience](#)

The above guidelines have been described in the [Spring Horizon Tracker](#).

### CENTRAL BANK CONSULTATIONS

## [CP146 – Mortgage Measures Framework Review](#)

This Consultation has been described in the Spring Tracker. In the interim, changes have occurred in respect of the mortgage measures, see below for more details.

**Date published:** 16 December 2021

**Latest stage:** On 19 October 2022, the Central Bank



published the outcome of the review together with a [feedback statement](#) to the consultation paper. The Central Bank reached the judgement that, as economic costs of the mortgage measures have increased since 2015, targeted changes to the measures were appropriate. The changes to the measures will come into effect on 1 January 2023.

### **CP149 - Update to the Implementation Notice for Competent Authority Options and Discretions in the CRR/CRD**

On 18 July 2022, the Central Bank published a consultation on updates to the Implementation Notice for Competent Authority discretions in the Capital Requirements Regulation (“CRR”) and Capital Requirements Directive (“CRD”).

The Central Bank is proposing to update the November 2021 version of the Implementation Notice regarding Options and Discretions (“O&Ds”) in the CRR and the CRD, in light of a number of recent EU developments.

At a high level, the Central Bank is proposing that recent revisions to the ECB O&D framework would be applied to Less Significant Institutions in full, while O&Ds will continue to be exercised in a harmonised manner with respect to credit institutions and those investment firms that remain under the scope of the Notice.

**Closing date:** The consultation was open for feedback until 18 October 2022.

### **CP150 Guidance for (Re)Insurance Undertakings on Intragroup Transactions & Exposures**

On 4 July 2022, the Central Bank published a consultation paper on Guidance for (Re)Insurance Undertakings on Intragroup Transactions & Exposures (“CP150”). The Central Bank is proposing to introduce guidance for (re) insurance undertakings on intragroup transactions and exposures with the aim of being more transparent about its expectations. The proposed guidance focuses on three key exposures namely:

- intragroup assets;
- intragroup reinsurance; and
- cash pooling/treasury function arrangements as these are the most significant exposures observed by the Central Bank.

**Closing date:** The consultation paper was open for feedback until 23 September 2022.

### **CP151 - Guidance for (Re)insurance Undertakings on Climate Change Risk.**

On 3rd August 2022, the Central Bank published [CP151 - Guidance for \(Re\)insurance Undertakings on Climate Change Risk](#).

The proposed Guidance aims to clarify the Central Bank’s expectations on how (re)insurers address climate change

risks in their business and to assist them in developing their governance and risk management frameworks to do this.

Recognising that individual (re)insurers may be at different stages of maturity in their approach to managing climate change risk; the proposed guidance is based on a set of overarching principles and sets proportionate expectations dependent on the nature, scale and complexity of the (re) insurer.

The Central Bank has initially developed guidance for the (re)insurance sector, given the key role insurance plays in assessing and managing climate change risk as part of its core business activities. The Central Bank will consider adapting the guidance for other sectors in due course.

**Closing date:** The consultation closes on 26 October 2022.



## DEPARTMENT OF FINANCE CONSULTATIONS

### Public Consultation on the Development of a National Resolution Framework for (Re)Insurers

This consultation has been described in the [Summer Horizon Tracker](#). We will continue to update you as changes occur.

## EU DIRECTIVES FULLY IMPLEMENTED SINCE THE SUMMER HORIZON TRACKER

**Directive on the Prudential Supervision of Investment Firms:** On 27 June 2022, the Minister for Finance signed three Statutory Instruments SI 302 of 2022 – [European Union \(Investment Firms\) \(Amendment\) Regulations 2022](#), SI 303 of 2022 – [European Union \(Investment Firms\) \(No. 2\) \(Amendment\) Regulations 2022](#) and SI 304 of 2022 – [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 2\) Regulations 2022](#). to complete the implementation of the IFD and the implementation of Regulation (EU) 2019/2033 (the “**Investment Firms Regulation**” or “**IFR**”) into Irish law.

## EU DIRECTIVES AWAITING IMPLEMENTATION

### Directive Amending the Motor Insurance Directive

The above directives has been described in the [Spring Horizon Tracker](#).

## EU REGULATIONS

### Regulation on European Crowdfunding Service Providers for Business

This regulation (Regulation (EU) 2020/1503) aims to harmonise the minimum requirements for the operation of investment and lending-based crowdfunding platforms in Members States and “**empower investors with the necessary information**” through the creation of a common set of investor protection rules.

The [accompanying directive](#) amends the scope of MIFID II by adding crowdfunding service providers authorised under the proposed regulation to the list of exempted entities to which the scope of the directive does not apply.

#### Matheson Insights:

[Crowdfunding Regulation - Cross Border Opportunities on the Horizon](#)

[Crowdfunding: Central Bank Of Ireland Regime](#)

[Crowdfunding Regulation To Apply From 10 November 2021](#)

Applies from: 10 November 2021. On 24 December 2021, (S.I. No. 702/2021) the [European Union \(Crowdfunding\) Regulations 2021](#) were published appointing the Central Bank as the competent authority for crowdfunding regulation in Ireland. In January 2022, the Central Bank announced

a new regulatory regime in connection with rules on advertising for crowdfunding service providers (“**CSPs**”) in Ireland and a related addendum to the Consumer Protection Code 2012 which came into effect on 13 January 2022.

Transitional arrangements in place under the Crowdfunding Regulation allowed existing CSPs (which provided crowdfunding services in Ireland before the introduction of the Crowdfunding Regulation) to continue to provide crowdfunding services under the previous regime until the earlier of: (i) 10 November 2022; or (ii) the date that they become authorised. On 12 July 2022, further to receipt of technical advice from ESMA supporting the granting of an extension to the transitional period, the Commission adopted a [Delegated Regulation](#) extending the transitional period until 10 November 2023.

In respect of the amendment to MIFID II, [S.I. No. 203/2021](#), the [European Union \(Markets in Financial Instruments\) \(Amendment\) Regulations 2021](#) gives effect to this in Irish Law.

### Regulation on a Framework on the Recovery and Resolution of Central Counterparties

The above regulations have been described in the [Spring Horizon Tracker](#).





## EU INITIATIVES

### Digital Euro Project

In January 2021, the Commission and the ECB, commenced their exploration of the possibility of issuing a digital euro, as a complement to cash and other payment solutions. The project aims to answer key design and technical questions and provide the ECB with the necessary tools to stand ready to issue a digital euro if such a decision is taken.

**Latest stage:** On 14 July 2021, the Governing Council of the ECB launched the investigation phase of a digital euro project. The investigation phase will last 24 months and aims to address key issues regarding design and distribution.

On 29 September 2022, the ECB published a progress report on the investigation phase of the Digital Euro project. This report presents progress made during the investigation phase of the digital euro project and elaborates on the foundational design options.

In the first quarter of 2023, the Commission will propose a regulation to establish the digital euro. In October 2023 the Governing Council will decide whether to start a realisation phase to develop and test the appropriate technical solutions and business arrangements necessary to provide a digital euro. This phase could last up to three years.

### European Commission Action Plan for a Comprehensive Union Policy on AML / CFT

Full details of this initiative are described in the [Spring Horizon Tracker](#). In the interim, two regulations have been proposed implementing elements of the action plan. See below for details of:

- Proposal for a Regulation Establishing the Authority for AML / CFT
- Proposal for a Regulation on information accompanying transfers of funds and certain Crypto-Assets (recast)

### European Commission Targeted Consultation on Supervisory Convergence and the Single Rulebook

#### EU Consumer Agenda

#### European Commission Action Plan on FinTech

The above initiatives have been described in the [Spring Horizon Tracker](#). We will update you as developments take place.

#### EU Banking Package

Full details of this initiative are described in the [Summer Horizon Tracker](#). In the interim, changes have occurred in respect of the [Proposal to amend the Capital Requirements Regulation in the area of resolution \(the “daisy chain” proposal\)](#), see below for more details.

## EU GUIDELINES

### EBA Guidelines for institutions and resolution authorities on improving banks’ resolvability and consults on transferability

These Guidelines are applicable from 1 January 2024. Full details of the Guidelines have been described in the [Spring Horizon Tracker](#).

### EIOPA Guidelines on integrating the customer’s sustainability preferences in the suitability assessment under the IDD

On 20 July 2022, EIOPA published its guidance on integrating the customer’s sustainability preferences in the suitability assessment under the Insurance Distribution Directive (“IDD”) The guidance is based on Commission Delegated Regulation (EU) 2021/1257 on the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products (“**IBIPs**”).

The Guidance includes guidelines on:

- how to help customers better understand the concept of “sustainability preferences” and their investment choices;



- how to collect information on sustainability preferences from customers;
- how to match customer preferences with products, based on product disclosures under the Sustainable Finance Disclosure Regulation (“**SFDR**”);
- what arrangements are necessary to ensure the suitability of an insurance-based investment product; and
- the sustainable finance-related training and competence expected of insurance intermediaries and insurance undertakings who provide advice on IBIPs.

**Latest stage:** The Delegated Regulation became applicable from 2 August 2022.

## **EBA Guidelines on the role of AML/CFT compliance officers.**

In June 2022, the EBA published new Guidelines on the role of AML/CFT compliance officers. These Guidelines create a common understanding across EU Member States, of credit or financial institutions’ AML/CFT governance arrangements. They complement, but do not replace, relevant guidelines by the EBA on wider governance arrangements and suitability checks.

There are three categories of guidelines, they include:

1. Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;
2. Role and responsibilities of the AML/CFT compliance officer; and
3. Organisation of the AML/CFT compliance function at group level.

**Applies from:** The Guidelines will apply from 1 December 2022. Competent authorities have two months from after the publication of the Guidelines on the EBA website to report whether they will comply with the Guidelines. We have been unable to confirm the position of the Central Bank regarding this matter but expect that they have made or will make the relevant confirmations but we will update clients once this information is to hand.

## **EIOPA application guidance on climate scenarios in the ORSA**

On 2nd August 2022, EIOPA published the final version of the application guidance on climate change materiality assessments and climate change scenarios in the Own Risk and Solvency Assessment (“**ORSA**”).

The application guidance:

- provides a detailed and practical guide on how to

- implement sustainable finance ambitions in practice;
- gives insights into where undertakings have the possibility to address climate change risks in an ORSA and
- provides examples using mock non-life and life companies to help undertakings design the steps for the materiality assessment and run climate change scenarios.

## **ESMA final guidelines on MiFID II suitability requirements**

On 23 September 2022, ESMA published its Final Report on Guidelines on certain aspects of the MiFID II suitability requirements following its **public consultation** on the Guidelines.

The main amendments introduced to the MIFID II Delegated Regulation and reflected in the guidelines on the topic of sustainability are:

- Firms will need to help clients understand the concept of sustainability preferences and explain the difference between products with and without sustainability features in a clear manner and avoiding technical language;
- Firms will need to collect information from clients on



their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products;

- Firms must perform a suitability assessments and identify the product(s) that fulfil the client’s sustainability preferences; and
- Firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and of any updates of these preferences.

**Applies from:** The Guidelines will be translated into the official languages of the EU and published on ESMA’s website. The publication of the translations will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the Guidelines. The Guidelines will apply six months after the date of the publication on ESMA’s website in all EU official languages.

## **ESMA and EBA guidelines on common procedures and methodologies for the supervisory review and evaluation process under the Investment Firms Directive**

On 21 July 2022, ESMA and EBA published (“**SREP**”) under the IFD.

The guidelines are based on and aim to harmonise the supervisory practices regarding the supervisory review

and evaluation process of investment firms.

The criteria for the assessment of risks in the joint Guidelines follow the requirements of the IFR and IFD and the procedures and methodologies provided are proportionate to the nature, size and activities of investment firms.

**Applies from:** The guidelines will be translated into the official EU languages and published on the ESMA and EBA websites.

## **EIOPA Guidelines on Contract Boundaries and the Valuation of Technical Provisions**

These guidelines are applicable from 1 January 2023. Full details of the Guidelines have been described in the [Summer Horizon Tracker](#).

### **EU DRAFT LEGISLATION**

## **Proposal for a Regulation on information accompanying transfers of funds and certain Crypto-Assets (recast)**

This legislative proposal is in direct response to the Commission’s Action Plan for a Comprehensive Union Policy on AML / CFT detailed in the [Spring Horizon Tracker](#).

This proposal for a regulation, together with the proposal for a directive, establishes the mechanisms that Member States should put in place to prevent the use of the financial system for money laundering / terrorist financing purposes,

and repeals Directive (EU) 2015/849 and the proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing.

**Latest Stage:** First reading in the European Parliament and Council. On 29 June 2022, the European Parliament and Council reached a provisional agreement on the proposed regulation where they have mandated the EBA to set regulatory expectations on key aspects of the new regime. On 5 October 2022, the Council’s Permanent Representatives Committee approved the text of the proposal and sent it to the chair of the Parliament Committee on Economic and Monetary Affairs (“ECON”). On 10 October 2022, the ECON approved the proposed text.

## **Proposal for a Regulation Establishing the Authority for AML / CFT**

This legislative proposal is in direct response to the Commission’s Action Plan for a Comprehensive Union Policy on AML / CFT detailed in the [Spring Horizon Tracker](#). The legislation will establish the Authority for AML / CFT. The Authority will:

- become a centrepiece of an integrated AML / CFT supervisory system, consisting of the Authority and the national supervisory authorities.
- improve the exchange of information and co-operation



- between financial intelligence units; and
- have powers to draft regulatory and implementing technical standards, guidelines and recommendations within the scope of its tasks, as well as to provide advice and input to the Commission and co-legislators on many aspects of AML / CFT policy.

**Latest Stage:** First reading in the European Parliament and Council. On 29 June 2022, the Council agreed its partial position on the proposal to create a dedicated Anti-money laundering Authority (“**AMLA**”). The Council’s position is partial as it has not yet agreed on the location at which the AMLA will have its seat.

## Proposal for a Regulation on Markets in Crypto-assets

This proposal is also part of the Digital Finance Package, detailed in the [Spring Horizon Tracker](#), which aims to boost innovation while preserving financial stability and protecting investors from risks. The regulation will provide legal clarity and certainty for crypto-asset issuers and providers. The new rules will allow operators authorised in one Member State to provide their services across the EU. Safeguards include capital requirements, custody of assets, a mandatory complaint holder procedure available to investors, and rights of the investor against the issuer. Issuers of significant asset-backed crypto-assets (so-called

global ‘stablecoins’) would be subject to more stringent requirements (eg, in terms of capital, investor rights and supervision).

## **Matheson Insights: MiCA: Europe’s Plan to Regulate Crypto-Assets - What is the direction of travel?**

**Latest stage:** First reading in the European Parliament and Council. On 30 June 2022, the Council and the Parliament reached a provisional agreement on the proposal. On 5 October 2022, the Council’s Permanent Representatives Committee approved the text of the proposal and sent it to the chair of the ECON. On 10 October 2022, the ECON voted to approve the proposed text.

## **Proposal for a Directive Establishing a Framework for the Recovery and Resolution of Insurance and Reinsurance Undertakings**

This proposed directive is in direct response to the Commission’s review of the Solvency II Directive (Directive 2009/138/EC). The aim of the proposed directive is to ensure that insurers and relevant authorities in the EU are better prepared in cases of significant financial distress. Some of the key provisions of the proposed directive include:

- the requirement for pre-emptive recovery plans to be prepared by insurers and insurance groups;

- the establishment of insurance resolution authorities;
- the requirement for resolution plans to be prepared by resolution authorities in respect of certain (re)insurance undertakings; and
- the identification of the resolution tools which can be used by resolution authorities.

**Latest stage:** First reading in the European Parliament and Council. On 2 June 2022, the Parliament’s Economic and Monetary Affairs Committee **published a draft report** on the proposal which sets out a number of suggested amendments to the proposed directive.

## **Proposal for a Directive to amend the Solvency II Directive as regards Proportionality, Quality of Supervision, Reporting, Long-term Guarantee Measures, Macro-prudential Tools, Sustainability Risks, Group and Cross-border Supervision**

This proposed directive is in direct response to the Commission’s review of the Solvency II Directive. The proposal seeks to make several amendments to the Solvency II Directive (Directive 2009/138/EC). Amongst these amendments are the following:

- updating references to other European legislation and removal of obsolete UK specific provisions;
- changes to the proportionality principle, allowing exemptions for smaller and low risk insurers;

- new rules on macroprudential considerations;
- amendments to climate change considerations related to the European Green Deal;
- amendments to reporting requirements including the structure and content of the solvency and financial condition reports;
- amendments to the long term guarantee measures including the method for extrapolation of risk-free interest rate term structures and the volatility adjustment; and
- amendments to the supervision of groups and cross-border insurance businesses.

**Latest stage:** First reading in the European Parliament and Council. On 17 June 2022, the Council agreed its position on amendments to the Solvency II Directive.

## **Proposal for a Regulation on Digital Operational Resilience for the Financial Sector**

This proposal is part of the Digital Finance Package, detailed in the [Spring Horizon Tracker](#), and aims to put in place a detailed and comprehensive framework on digital operational resilience for EU financial entities. In particular, it will enhance and streamline the financial entities' conduct of ICT risk management, establish a thorough testing of ICT systems, increase supervisors' awareness of cyber risks

and ICT-related incidents faced by financial entities, as well as introduce powers for financial supervisors to oversee risks stemming from financial entities' dependency on ICT third-party service providers. The proposal will create a consistent incident reporting mechanism that will help reduce administrative burdens for financial entities, and strengthen supervisory effectiveness.

**Latest stage:** First reading in the European Parliament and Council. On 10 May 2022, the European Parliament and Council presidency and the reached a provisional agreement on the proposal.

## **Proposal to amend the Capital Requirements Regulation in the area of resolution (the “daisy chain” proposal).**

This proposal is part of the EU Banking package detailed above. It aims to amend the Capital Requirements Regulation (“CRR”) in aspects relating to resolution by:

- incorporating a dedicated treatment for the indirect subscription of instruments eligible for internal minimum requirement for own funds and eligible liabilities;
- further aligning the treatment of global systemically important institution groups with a Multiple Point of Entry resolution strategy with the treatment outlined in the FSB's international Total Loss-absorbing Capacity (“**TLAC**”) Term Sheet; and
- clarifying the eligibility of instruments in the context of

the internal TLAC.

**Latest stage:** First reading in the European Parliament and Council. On 4 October, 2022, the Council approved the position of the European Parliament.

## **Proposal for a Directive on Distance Marketing of Consumer Financial Services**

## **Proposal to amend the Capital Requirements Directive Proposal to amend the Capital Requirements Regulation**

These proposals have been described in the [Summer Horizon Tracker](#). We will update you as changes occur.

## **Proposal for a Directive to Prevent the Use of the Financial System for Money Laundering or Terrorist Financing**

## **Proposal for a Regulation on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing**

## **Proposal for a Directive on a regulatory framework for investment firms and market operators**

## **Single Resolution Mechanism: Proposal to Establish a European Deposit Insurance Scheme**

These proposals have been described in our [Spring Horizon Tracker](#). We will update you as changes occur.



# Finance and Capital Markets





## BILLS

### Bretton Woods Agreements (Amendment) Bill

Date published: 14 March 2022

This bill will facilitate Ireland's participation in the International Monetary Fund's New Arrangements to Borrow ("NAB") and enable grant contributions to IMF Trust Funds to deal with pressing global issues such as COVID-19, debt sustainability and vaccines. The NAB supplements IMF resources to forestall or cope with an impairment of the international monetary system. Through the NAB, a number of member countries and institutions stand ready to lend additional resources to the IMF. In January 2021, a reform of the NAB took effect following consents from NAB participants, almost doubling the size of the NAB to SDR 361 billion (US\$521 billion) for the period from 2021 to 2025. With this bill, Ireland prepares take its place as a contributor to the NAB, which is another step in Ireland's growth in stature on the international stage.

Latest stage: Before Seanad Éireann, Fourth Stage

### Air Navigation and Transport Bill 2020

Date published: 4 December 2020

A bill to facilitate reform of safety and economic regulatory oversight of the aviation sector in Ireland by merging

the Safety Regulation side of the Irish Aviation Authority ("IAA") with the Commission for Aviation Regulation ("CAR") to create a standalone aviation regulator. The for-profit air navigation side of the IAA will become a separate commercial agency. It will also amend the regulation of airport charges in Ireland, strengthening regulation, governance and enforcement.

Latest stage: Currently before Seanad Éireann, Third Stage.

## IRISH PROPOSED LEGISLATION

### Loan Guarantee Schemes Miscellaneous Amendments Bill

This bill would give Ministerial powers to create a timebound guarantee scheme for loans to businesses impacted as a result of the invasion of Ukraine and to increase the aggregate liability for contributions committed to the Strategic Banking Corporation of Ireland (SBCI) by relevant Ministers to fund delivery of future SME loan schemes

Latest stage: Heads of Bill in preparation. The bill is listed as Priority Legislation in the Autumn Legislative Programme.

## EU DRAFT LEGISLATION

### Proposal for a Regulation on the Law Applicable to the Third-Party Effects of Assignments of Claims

Procedure reference: 2018/0044 (COD)

Date published: 12 March 2018

This regulation proposes to set down uniform rules on the ownership of claims and securities in cross-border transactions. It seeks to designate which national law will govern the ownership of a claim after it has been assigned on a cross-border basis. It forms part of the legislative package to establish the Capital Markets Union with the aim that legal certainty will promote cross-border investment, access to cheaper credit and market integration.

Latest stage: First reading in European Parliament and Council.

## EU DIRECTIVES

### Directive on the Issue of Covered Bonds and Covered Bond Public Supervision

Date published: 18 December 2019

In March 2018, the Commission adopted a package of measures to deepen the Capital Markets Union aiming to create an enabling framework at EU level to enhance the



use of covered bonds as a stable and cost-effective source of funding for credit institutions. The framework consists of a directive (Directive (EU) 2019/2162) and regulation (Regulation (EU) 2019/2160). This directive specifies the core elements of covered bonds and provides a common definition intended by the Commission as a consistent and sufficiently detailed point of reference for prudential regulation purposes, applicable across financial sectors.

It sets out rules on the requirements for issuing covered bonds; the structural features of covered bonds; covered bond public supervision; rules allowing for the use of the “European Covered Bonds” label and public participation for competent authorities for investor protection.

**Transposition date:** Transposition measures came into effect on 8 July 2022. Ireland transposed the directive by way of the [European Union \(Covered Bonds\) Regulations 2021](#), which came into operation on 8 July 2022.

## EU REGULATIONS

### Regulation on Exposures in the Form of Covered Bonds

**Date published:** 18 December 2019

Alongside the Commission’s directive on the issue of covered bonds and covered bond public supervision, the Commission published this regulation (Regulation (EU)

2019/2160) addressing exposures in the form of covered bonds amending the Capital Requirements Regulation (Regulation (EU) No 575/2013). The regulation and the directive together form the new EU framework for covered bonds. The regulation mainly amends article 129 of the Capital Requirements Regulation, adding requirements on minimum overcollateralisation and substitution assets. The proposal is intended to strengthen the requirements for covered bonds being given preferential capital treatment.

**Applies from:** This regulation applied from 8 July 2022.

Other legislation, regulations, and further developments relevant to Financial Capital Markets are listed below with cross references to other sections in this Tracker.

### Sustainable Finance

Please see [this section](#) for the following relevant instruments.

- Delegated Regulation Supplementing the SFDR on RTS on Content and Presentation of Sustainability Disclosures
- Regulation on the Establishment of a Framework to Facilitate Sustainable Investment – The Taxonomy Regulation
- Delegated Directive amending MiFID II on Integration

of Sustainability Factors into Product Governance Obligations

- Proposed Regulation on EU Standards for ‘Green Bonds’

### Corporate Law- Enforcement and Reporting

Please see [this section](#) for the following Proposed Directive.

- Proposal for a Directive Amending the Non-Financial Reporting Directive as regards Corporate Sustainability Reporting (“**CSRD**”)

### Financial Services Regulation

Please see [this section](#) for the following relevant Acts, Bills, Regulations and Proposals.

- Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022
- Regulation on European Crowdfunding Service Providers for Business
- Proposal for a Regulation on Digital Operational Resilience for the Financial Sector
- Proposal for a Regulation on Markets in Crypto-Assets
- European Commission Action Plan for a Comprehensive Union Policy on AML / CFT
- EU Banking Package

# Finance and Capital Markets | Legislative and Regulatory Developments

## Tax

Please see [this section](#) for the following relevant proposal.

Proposal for a Directive laying down rules to prevent the misuse of shell entities for tax purposes

## Data Protection, Privacy and Technology

Please see [this section](#) for the following bill.

Consumer Rights Bill 2022



# Commercial Real Estate



## IRISH LEGISLATION PASSED SINCE THE SUMMER HORIZON TRACKER

### Planning and Development, Maritime and Valuation (Amendment) Act 2022

Date signed into law: 24 July 2022

This legislation amends Part XA of the Planning and Development Act 2000 for the purpose of streamlining substitute consent procedures under the act. Other amendments to the principle act include provisions in relation to the advertisement of short term letting of properties in rent pressure zones; a new requirement that consultations must be undertaken before making applications in relation to certain land and maritime area developments, with respect to details not confirmed at the time of the application; and amendments to s. 34(12) of act, allowing planning authorities to refuse to consider an application for retention of an unauthorised development where it decides that an environmental impact assessment or appropriate assessment was required, and amendments to s. 37L, relating to quarry substitute consent applications, to extend the section to other types of developments. The legislation also makes a number of changes to the Maritime Area Planning Act 2021 (See [Climate, Energy and Natural Resources section](#)).

**Latest stage:** A number of provisions have been commenced by [SI 447/2022](#) and [SI 487/2022](#). Newly published regulations note that s. 3 is not in operation.

### Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022

Date signed into law: 5 July 2022

This act provides for the establishment of a register to be known as the Construction Industry Register Ireland (Clár Tionscail Tógála na hÉireann) (“**CIRI**”) which will regulate providers of building works. The legislation provides for the establishment of a registration body which will determine the standards and competencies required of building work providers, as well as investigating and adjudicating any complaints. The registration body under the legislation will be appointed as the competent authority for the purposes of the [European Union \(Recognition of Professional Qualifications\) Regulations 2017](#).

**Latest stage:** Majority of the act commenced by [SI 409/2022](#) and [SI 429/2022](#).

## IRISH PROPOSED LEGISLATION

### **Planning and Development Bill**

This bill will review and replace the Planning and Development Act 2000 with a consolidated bill improving the clarity and structure of the current code.

**Latest stage:** Work is underway. Listed as priority legislation in the Autumn Legislative Programme.

### **Property Services Regulation (Amendment) Bill**

This bill will revise the Property Services Regulation Act 2011 in light of EU regulations and European Court of Justice case law on the recognition of professional qualifications and the supply of services in the EU.

**Latest stage:** Heads of Bill in preparation.

### **Housing (Miscellaneous Provisions) Bill**

This bill will amend the existing provisions in respect of social housing assessments, rent schemes and tenant purchase.

**Latest stage:** Work is underway.



# Commercial Real Estate

## Land Value Sharing and Urban Development Zones Bill

This bill will amend the Planning and Development Act 2000 to introduce new provisions to deal with land value sharing and urban development zones reflected in the government's Housing for All Plan.

**Latest stage:** Work is underway, pre-legislative scrutiny to be determined.

## Residential Tenancies Bill

To amend the Residential Tenancies Act 2004 to further enhance tenancy protections, particularly during receivership and to enhance the supports and services available to both tenants and landlords.

**Latest stage:** Heads of Bill in preparation.

## BILLS

### Tailte Éireann Bill

**Date published:** 6 September 2022

This bill provides for the establishment of Tailte Éireann, a single body incorporating Ordnance Survey Ireland, the Valuation Office and the Property Registration Authority.

**Latest stage:** Completed Dáil Éireann, Third Stage.

## ACTS AWAITING COMMENCEMENT

### Affordable Housing Act 2021

**Date signed into law:** 21 July 2021

This act will give effect to the government's affordable housing policy. The act provides for the establishment of a new affordable shared equity scheme and will define 'Cost Rental' as a new form of tenure and place it on a statutory footing.

**Commencement:** Majority of the act commenced, certain provisions are still awaiting commencement.

### Planning and Development (Large Scale Residential Developments) Act 2021

**Date signed into law:** 14 December 2021

This act amends and extends the Planning and Development Acts 2000 to 2021 with respect to planning permission applications for certain large-scale residential developments, replacing the Strategic Housing Development arrangements which expired on 25 February 2022.

**Commencement:** Whole act other than s. 17(6) has been commenced.

### Local Government Rates and other Matters Act 2019

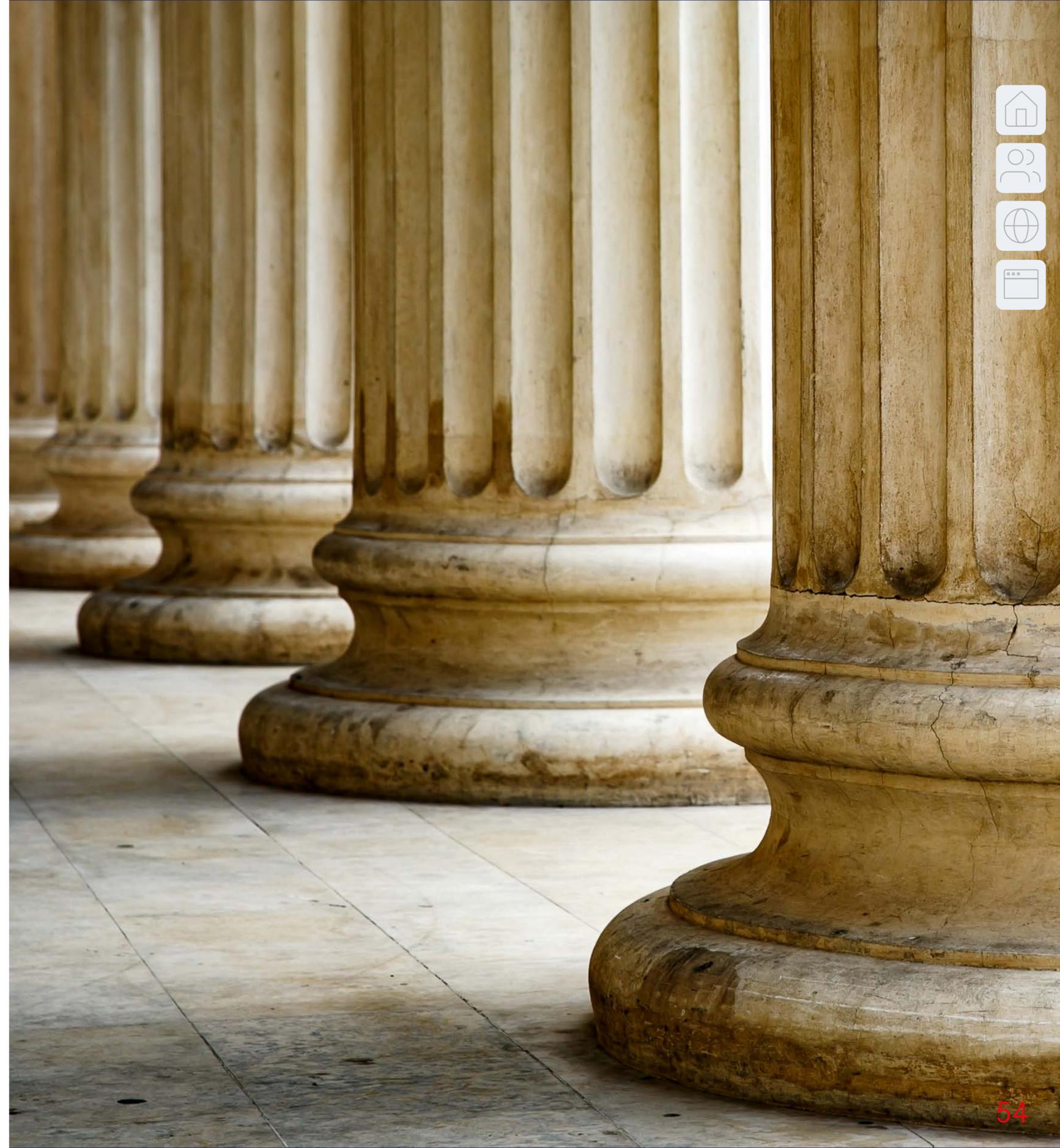
**Date signed into law:** 11 July 2019

This act modernises the law governing commercial rates and enhances the rates collection powers of local authorities. It provides for interest to be applied where rates are unpaid and for the application of minimum charges for vacant commercial premises. Mechanisms are brought in allowing local authorities to introduce targeted rates alleviation schemes.

**Commencement:** Certain technical elements of the legislation were commenced in 2019 and 2022, but the substantive elements of the act are yet to be commenced.



# Litigation



# Litigation

## ACTS COMMENCED SINCE HORIZON TRACKER JUNE 2022

### Companies (Corporate Enforcement Authority)

#### Act 2021

**Date signed into law:** 22 December 2021

The principal purpose of the act is to establish the Corporate Enforcement Authority as a standalone agency, in place of the Office of the Director of Corporate Enforcement, with enhanced resources, powers and autonomy to tackle corporate crime. The act also gives effect to recommendations of the Company Law Review Group (“**CLRG**”) in relation to certain anomalies in the Companies Act 2014 concerning corporate governance, shares and share capital.

For more information see the [Corporate section](#).

**Commencement:** Whole act, other than s. 35, commenced 6 July 2022.

## IRISH LEGISLATION PASSED SINCE THE SUMMER HORIZON TRACKER

### Civil Law (Miscellaneous Provisions) Act 2022

**Date signed into law:** 14 July 2022

The purpose of this omnibus act is to provide legislative

support for Ukrainian beneficiaries of temporary protection in the state, including the recognition of certain driving licenses, the provision of childcare support, amendments to the Immigration Act 2004 to provide better efficiency for the increased number of persons engaging with the immigration system, as well as other related matters. The act also makes special provision in relation to the empanelling of juries at coroners’ inquests relating to the Stardust nightclub, allowing certain provisions of the Coroners Act 1962 and the Jury Act 1976 to be disapplied.

**Latest stage:** Whole act commenced.

## IRISH PROPOSED LEGISLATION

**Central Bank (Individual Accountability Framework) Bill 2022** – please refer to the [Financial Services Regulation section](#)

### Defamation (Amendment) Bill

This bill will update certain aspects of defamation law, based on the government’s Report of the Review of the Defamation Act 2009, published on 1 March 2022. The Report sets out a number of key proposals including:

- Abolishing the use of juries in High Court defamation cases
- Introducing a ‘serious harm’ test in certain circumstances

- Simplifying and clarifying the public interest defence
- Providing the Court with an express power to dismiss defamation claims that have not been progressed by the plaintiff within 2 years of issue
- A recommendation to remove the blanket exclusion of defamation claims from eligibility for civil legal aid
- Providing for an ‘anti-SLAAP’ mechanism
- A revision of sections 28, 30, 33, and 34, to clarify the tests for the making of court orders

**Latest stage:** Heads of Bill in preparation and it is planned to publish the bill in Q4 2022.

### Court Proceedings (Delays) Bill

This bill will provide for statutory compensation for breach of article 6 of the European Convention on Human Rights on the right to a fair trial within a reasonable time.

**Latest stage:** Heads of Bill approved on 20 July 2021, pre-legislative scrutiny waived.

### Garda Síochána (Powers) Bill

This bill proposes to codify powers of search, arrest, detention, and the procedural rights of suspects, including the introduction of a single power of arrest and a new statutory right for an accused to have their lawyer present



# Litigation

at interview. The bill will also provide for powers under a search warrant for members of An Garda Síochána, the Competition and Consumer Protection Commission, or designated officers of the Office of the Director of Corporate Enforcement, including the power to request a person's name and address, the power to request assistance in gaining access to materials, and the power to require a person to give passwords for access to electronic devices.

**Latest stage:** Heads of Bill approved on 14 June 2021, pre-legislative scrutiny has taken place.

## Family Court Bill

This bill will establish a dedicated family court as a separate division within the existing court structures. This will facilitate the simplification of family law proceedings, improved levels of judicial expertise and more focused legal training in family law.

**Latest stage:** General Scheme published in September 2020. Pre-legislative scrutiny waived. Listed as Priority Legislation in the Autumn Legislative Programme.

## Representative Actions for the Protection of the Collective Interests of Consumers Bill 2022

The purpose of this bill is to implement the Representative Actions Directive (Directive 2020/1828), which was first

proposed by the Commission in 2018, and will have the effect of introducing for the first time in Ireland a style of class action litigation by consumers against corporates.

All consumer-facing industries will be affected by the legislation, with sectors such as finance, technology and health at risk of facing increased litigation by consumers acting collectively. The directive entered into force on 24 December 2020 and Member States have 24 months to transpose it into their national laws and an additional six months to start applying it in practice meaning that Member States have until 25 June 2023 to apply the changes in this area of law to comply with the Directive.

**Latest stage:** The General Scheme of the Bill was published on 22 March 2022. Pre-legislative scrutiny is ongoing. The bill is listed as Priority Legislation in the Autumn Legislative Programme.

## Review of the Administration of Civil Justice Bill

This proposed bill arose from the Review of the Administration of Civil Justice Report, published in December 2020 by a review group chaired by the then President of the High Court, Mr Justice Peter Kelly. The report made wide ranging recommendations in relation to improving access to civil justice in Ireland which are expected to be implemented in stages. It is proposed that this bill will provide for the codification of Judicial

Review and for amendments relating to court procedures. On 27 May 2022 the Department of Justice published an Implementation Plan on Civil Justice Efficiencies and Reform Measures. This includes a number of Workstreams which include two separate Legislation Projects envisaging the passing of a Civil Reform Act No. 1 and a Civil Reform Act No. 2. The plan is for the first Civil Reform Act to be passed in H1 2023.

**Latest stage:** This bill was noted as “underway” in the Summer Legislation Programme, it does not appear in the Autumn Legislative Programme and seems to have been replaced with a new approach as described above.

## Gambling Regulation Bill

This proposed bill will provide for a modern approach to the licencing of gambling activities and will establish a gambling regulator.

**Latest stage:** Heads of Bill approved on 19 October 2021, pre-legislative scrutiny has taken place. The bill is listed as Priority Legislation in the Autumn Legislative Programme.

**Read more:** [Matheson Insight Article The Gambling Regulatory Authority: Raising the Stakes](#)

**Financial Services and Pensions Ombudsman (Amendment) Bill** – Please refer to the [Financial Services Finance and Capital Markets section](#)



## BILLS

### Courts and Civil Law (Miscellaneous Provisions) Bill 2022

**Date published:** 13 September 2022

The purpose of this bill is to enact provisions relating to electronic courts services, courts administration and other civil law reform measures including licensing, land and conveyancing, international protection, civil legal aid and legal services regulation.

**Latest stage:** Before Dáil Éireann, Third Stage.

### Regulation of Lobbying (Amendment) Bill 2022

**Date published:** 22 September 2022

The purpose of this bill is to amend the Regulation of Lobbying Act 2015. The bill proposes to:

- Extend the definition of lobbying to bring business representative bodies, defined in the scheme as a body which exists primarily to advocate on behalf of its members, and coalitions of business interests formed to advocate as a group on an issue of mutual interest, within the scope of the Act regardless of the number of employees
- Provide for an additional excepted communication under s. 5(5), in relation to communications made by a

political party to its members who are designated public officials which are made in their capacity as members of the party

- Provide for civil and administrative sanctions for s. 22 breaches, including fines of up to €25,000 and/or a prohibition from lobbying for up to 2 years

**Latest stage:** Completed Dáil Éireann, Second Stage.

### Personal Injuries Resolution Board Bill 2022

**Date published:** 2 August 2022

The purpose of this bill is to enhance and reform the Personal Injuries Assessment Board Act 2003-2019 to increase the number of personal injury claims settled through PIAB without recourse to litigation. It follows on a public consultation in relation to PIAB reform undertaken in March 2021. Key points to note from the proposed bill are:

- Mediation will be offered by PIAB to resolve claims
- Claims of a wholly psychological nature will remain in PIAB
- Additional time will be allowed to assess claims before proceeding to litigation where the injury is still resolving
- There will be increased transparency and public information

- Additional measures to tackle fraud are included such as seeking proof of identity and disclosure to An Garda Síochana
- The courts will have greater discretion in relation to costs awards

**Latest stage:** Completed Dáil Éireann, Second Stage.

### Judicial Appointments Commission Bill 2022

**Date published:** 8 April 2022

This bill will provide for the establishment of the Judicial Appointments Commission, chaired by the Chief Justice, to replace the Judicial Appointments Advisory Board and to reform the procedures and requirements for the appointment of Judges.

**Latest stage:** Currently before Seanad Éireann, Third Stage.

## ACTS AWAITING COMMENCEMENT

### Counterfeiting Act 2021

**Date signed into law:** 5 July 2021

This act transposes outstanding elements of Directive 2014/62/EU on the protection of the euro and other currencies against counterfeiting by criminals and replaces Council Framework Decision 2000/383/JHA.

**Latest stage:** S. 29 awaiting commencement



# Litigation

## Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

Date signed into law: 22 July 2020

This act provides for, among other things, remote hearings and the use of electronic means of communication in civil proceedings and the making of statements of truth; the holding of meetings of unincorporated bodies by remote means; conducting hearings under enactments by remote means; and the execution of certain documents in counterpart.

**Commencement:** S. 32, on execution of documents by counterpart is the only section not yet commenced.

### EU REGULATIONS

## Regulation on Co-operation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters

Date published: 2 December 2020

The purpose of this regulation (Regulation 2020/1783) is to amend Council Regulation (EC) No 1206/2001 on cooperation between courts of Member States in the taking of evidence in civil or commercial matters. It introduces mandatory electronic transmission of requests and communications pursuant to the regulation. It also

seeks to ensure more frequent, faster use of direct taking of evidence by way of video conference.

**Applies from:** 1 July 2022 with the exception of Article 31(3), which applied from 23 March 2022, and Article 7, which shall apply from the first day of the month following the period of 3 years after the date of entry into force of the implementing acts referred to in Article 25. **Commission Implementing Regulation (EU) 2022/422**, which sets out the requirements for implementation of the decentralised (e-Codex) IT system as envisaged by Article 25, came into force on 4 April 2022.

## Regulation on the Service of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service of Documents)

Date published: 2 December 2020

Regulation (EU) 2020/1784 provides for the electronic communication and exchange between sending and receiving authorities through a decentralised IT system made up of national IT systems.

**Applies from:** 1 July 2022 with the exception of Articles 5, 8 and 10 (dealing with the establishment of the new IT system and transmission and receipt of documents within it) shall apply from the first day of the month following the period of three years after the date of entry into force of the

implementing acts referred to in Article 25. **Commission Implementing Regulation (EU) 2022/423**, which sets out the requirements for implementation of the decentralised IT system as envisaged by Article 25, came into force on 4 April 2022.

## Regulation on a Computerised System for the Cross-border Electronic Exchange of Data in the Area of Judicial Cooperation in Civil and Criminal Matters (e-CODEX system)

Date published: 1 June 2022

This Regulation provides a legal framework for the establishment of the e-CODEX system, for the purpose of cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters. The e-CODEX system will provide for secure, reliable and direct cross-border electronic exchange of case-related data, improving access to justice and transparency by allowing the exchange of documents and evidence in digital form.

**Latest stage:** Signed 30 May 2022. In force 21 June 2022



## STATUTORY INSTRUMENTS

### European Union (Preventive Restructuring) Regulations 2022

Published in July 2022, these regulations (SI No. 380/2022) transpose the requirements of [Directive \(EU\) 2019/1023](#) on restructuring frameworks (“**PRD**”) not already provided for in Irish law. The PRD sets out minimum requirements for preventive restructuring frameworks across the EU, streamlining insolvency and restructuring processes. Under these regulations Parts 5, 10 and 11 of the Companies Act 2014 are amended and a new Part 5A is inserted. Changes include providing for directors’ common law duty to creditors in the period approaching insolvency on a statutory basis, procedural changes to the cross-class cram-down process, and establishing an Early Warning System to allow companies to act to prevent insolvencies.

**Latest stage:** The Regulations came into effect on 27 July 2022.

## IRISH PROPOSED LEGISLATION

### Personal Insolvency (Amendment) (No. 2) Bill

The bill has not been published, but the bill is intended to update aspects of personal insolvency legislation, following a statutory review of the Personal Insolvency Acts.

**Latest stage:** Heads of Bill in preparation.

### Protection of Employees (Employers’ Insolvency) (Amendment) Bill

See **Employment** section

### Companies (Administrative, Governance & Insolvency Amendment) Bill

See **Corporate** section

## EU REGULATIONS

### Confirmation of the participation of Ireland in Regulation 2021/2260 of the European Parliament and Council Replacing Annexes A and B to Regulation EU 2015/848 on insolvency proceedings (EIR Recast)

**Date published:** 31 August 2022

Although [Regulation \(EU\) 2021/2260](#) has a statement in Recital 3 indicating that Ireland had not been included in the Regulation under Protocol 21, it has indicated its intention to accept and be bound by Regulation (EU) 2021/2260. The European Commission has confirmed that participation in Commission Decision (EU) 2022/1437.

**Applies from:** Entered into force on 1 September 2022



# Data Protection, Privacy and Technology



## IRISH LEGISLATION PASSED SINCE HORIZON TRACKER JUNE 2022

### Communications (Retention of Data) (Amendment) Act 2022

Date signed into law: 21 July 2022

This act amends the Communications (Retention of Data) Act 2011. It is intended to address the impact of recent EU case law, including that relating to the Graham Dwyer murder conviction. The CJEU delivered a **judgment** in the Dwyer case in April 2022, confirming that Irish law 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 Amendment 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 Amendment Act is only intended to be a temporary fix to allow more time for overhaul of the 2011 Act. The government has announced that it will bring forward a set of wider reforms to clarify and consolidate the law on data retention. Heads of a new Bill entitled the “Communications (Data, Retention and Disclosure) Bill” are in preparation.

**Latest stage:** Whole act awaiting commencement.

## IRISH PROPOSED LEGISLATION

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

This bill will consolidate and replace the current Communications (Retention of Data) Act 2011.

**Latest stage:** Heads of Bill in preparation.

### Cyber Security Bill

This bill will establish the National Cyber Security Centre of Ireland (“**NCSC**”) on a statutory basis and provide for related matters including clarity around its mandate and role.

**Latest stage:** Preparatory work is underway.

### Cybercrime Bill

This 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.

**Latest stage:** Preparatory work is underway.

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

This bill proposes to amend various pieces of legislation in respect of electronic communications.

**Latest stage:** Heads of bill in preparation.

## BILLS

### Consumer Rights Bill

Date published: 22 April 2022

This **bill** aims to consolidate and update existing consumer protection laws that regulate consumer contracts, as well as introducing new and enhanced consumer protection measures, particularly in the area of digital goods and services. 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



# Data Protection, Privacy and Technology

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.

**Latest stage:** Before Seanad Éireann, Fourth Stage

## Online Safety and Media Regulation Bill

**Date published:** 25 January 2022

This **bill** provides for the establishment of a Media Commission, the dissolution of the Broadcasting Authority of Ireland, the introduction of a regulatory framework for online safety to tackle the spread and amplification of harmful online content, updates to the regulation of audiovisual media services and the implementation of the revised **Audiovisual Media Services Directive**.

**Latest stage:** Before Dáil Éireann, Third Stage.

## **Communications Regulation Bill 2022**

See **Competition** section.

## STATUTORY INSTRUMENTS

### European Union (Electronic Communications Code) Regulations 2022 (S.I. 444/2022)

Alongside the **Communications Regulation Bill 2022**, which is **currently progressing through Dáil Éireann**, these regulations give effect to **Directive (EU) 2018/1972** establishing the European Electronic Communications Code (the “**EECC**”). The EECC addresses developments in the electronic communications sector, particularly the emergence of Over the Top (“**OTT**”) service providers, as well as updating a number of key areas to ensure that the EU’s regulatory framework is suitable for the digital age. Under these regulations, the Commission for Communications Regulation is appointed as the national regulatory authority to oversee and enforce the rules.

**Latest stage:** These regulations have yet to be commenced.

## EU REGULATIONS

### Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act)

**Date published:** 3 June 2022

The purpose of this regulation is to establish a framework to facilitate general and sector-specific data-sharing (including

data of public bodies, private companies and citizens). The regulation provides for:

- A reuse regime for certain categories of public sector data
- A framework for data intermediation services which aims to establish commercial relationships for the purposes of data sharing between data subjects, data holders and data users
- Contribution to data altruism and the creation of common safeguards to increase trust in recognised data altruism organisations

**Applies from:** Applies from 24 September 2023.

## Regulation on Digital Markets Act

**Date published:** 12 October 2022

The regulation on contestable and fair markets in the digital sector (**Digital Markets Act**) is part of the European Digital Strategy, “Shaping Europe’s Digital Future”, announced in December 2020 which aims to upgrade the rules governing digital services in Europe. This regulation will create harmonised rules defining and prohibiting certain unfair practices by “gatekeeper” platforms (providers of core platform services) and introduces a new competition tool to deal with structural competition problems across markets which cannot be tackled or addressed using existing competition rules.



# Data Protection, Privacy and Technology

The measures include new powers for the Commission to conduct market investigations.

**Latest stage:** Published in the EU Official Journal on 12 October 2022, thereby starting a 6 month transition period before the DMA becomes enforceable (i.e. Spring 2023).

## Proposed Regulation on a Single Market for Digital Services (Digital Services Act)

**Procedure reference:** 2020/0361(COD)

**Date published:** 15 December 2020

This act is one of two legislative initiatives announced by the Commission as part of the European Digital Strategy, “Shaping Europe’s Digital Future”, announced in December 2020, which aims to upgrade the rules governing digital services in Europe. It is intended to update the eCommerce Directive and regulate the provision of digital services by: (i) online intermediaries; (ii) hosting services; (iii) online platforms; and (iv) very large online platforms (“**VLOPs**”) i.e., platforms that reach more than 10% of 450 million consumers in Europe filling the gaps left by sector-specific laws such as the Audiovisual Media Services Directive.

**Latest stage:** The Digital Services Act was adopted by the Council on 4 October 2022. It awaits formal signature by the presidents of European Parliament and Council and will

then be published in the EU Official Journal.

## EU DRAFT LEGISLATION

### ePrivacy Regulation

**Procedure reference:** 2017/0003 (COD)

**Date published:** 10 January 2017

This proposal forms part of the EU Digital Single Market Strategy. The proposed regulation has been amended on a number of occasions. An update to the 2002 Marketing ePrivacy Directive 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 the 2002 ePrivacy Directive and will complement the GDPR.

**Latest stage:** First reading in the Council.

### AI Liability Directive

**Procedure reference:** 2022/0303/COD

**Date published:** 28 September 2022

The purpose of this proposal is to address shortcomings in liability rules where artificial intelligence (“**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.

**Latest stage:** First reading in the Council.

### Proposed Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)

**Procedure reference:** 2021/0106 (COD)

**Date published:** 21 April 2021

In proposing a regulatory framework on AI, the Commission has identified the following specific objectives:



# Data Protection, Privacy and Technology

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

While acknowledging that AI is a fast-evolving and strategic technology with tremendous opportunities, the Commission believes that some uses of AI pose specific significant risks to the application of various EU rules designed to protect fundamental rights, ensure safety and attribute liability.

**Latest stage:** First reading in the Council.

## **Data Act: Proposal for a Regulation on harmonised rules on fair access to and use of data**

**Procedure reference:** 2022/0047/COD

**Date published:** 23 February 2022

The purpose of this act will be to ensure fairness in the allocation of value from data among actors in the data

economy, fostering access to and use of data by consumers and businesses.

**Latest stage:** First reading in the Council.

## **NIS2: Proposal for a Directive on measures for a high common level of cybersecurity across the Union**

**Procedure reference:** 2020/0359/COD

**Date published:** 16 December 2020

This proposed revision to the Network and Information Security 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. Once adopted, it will replace the current NIS Directive.

**Latest stage:** On 13 May 2022, provisional agreement was reached by the Council and the European Parliament.

## **EU Cyber Resilience Act**

**Procedure reference:** 2022/0272/COD

**Date published:** 15 September 2022

The proposal for a regulation on cybersecurity requirements

for products with digital elements, known as the Cyber Resilience Act, aims to bolster cybersecurity rules to ensure more secure hardware and software products.

**Latest stage:** Published on 15 September 2022.

## **DORA (Digital Operational Resilience Act)**

**Procedure reference:** 2020/0266/COD

**Data published:** 24 September 2020

DORA is designed to consolidate and upgrade Information and Communications Technology (“**ICT**”) risk requirements throughout the financial sector to ensure that all participants of the financial system are subject to a common set of standards to mitigate ICT risks for their operations. DORA aims to ensure that all participants in the financial system have the necessary safeguards in place to mitigate cyber-attacks and other risks. It will also introduce an oversight framework for critical ICT third party providers, including cloud service providers.

**Latest Stage:** Awaiting approval by the European Parliament and Council before proceeding to formal adoption process. It will come into force 24 months after publication in the EU Official Journal.



# Employment



## IRISH LEGISLATION PASSED SINCE HORIZON TRACKER JUNE 2022

### Protected Disclosures (Amendment) Act

**Date signed into law:** 21 July 2022

The purpose of this act is to transpose the EU's **Whistleblower Protection Directive**, amending the Protected Disclosures Act 2014. The directive sets out protections for whistleblowers revealing breaches of EU law in a wide range of areas including public procurement, financial services, money laundering, product and transport safety, nuclear safety, public health, consumer and data protection. The directive ensures that all forms of retaliation against whistleblowers by their employers are prohibited, introducing safeguards to prevent the whistleblower from being suspended, demoted and intimidated or facing other forms of retaliation. It obliges legal entities with over 50 workers, in both the private and the public sectors, to implement specific internal reporting channels to ensure that the whistleblower's identity is kept confidential.

**Latest stage:** The act was **commenced** in October and will come into operation on 1 January 2023.

### Sick Leave Act

**Date signed into law:** 20 July 2022

The purpose of this act is to provide for a statutory sick pay

scheme for all employees. Under the legislation employees will be entitled to up to three statutory sick leave days, with an entitlement to sick leave pay in respect of each day. The scheme will be applied on a phased basis with the number of sick leave days increasing to ten over the course of the next four years. The legislation sets out that the number of sick leave days may be varied by the Minister, but not reduced to less than three days, based on factors such as the economy, labour market and the views of trade unions and relevant bodies.

**Latest stage:** The act was signed into law on 20 July 2022. The government has recently confirmed that entitlement to sick pay will commence on 1 January 2023. Regulations are also awaited to provide further guidance to employers.

## IRISH PROPOSED LEGISLATION

### **Right to Request Remote Work Bill**

A bill to introduce the right to request remote work. The purpose of the bill is to provide employees with a statutory right to make, or to have made on their behalf, a request for Remote Working.

**Latest stage:** Heads of bill approved on 25th January 2022, pre-legislative scrutiny ongoing. Listed as Priority Legislation in the Autumn Legislative Programme 2022.

### **Transposition of Directive (EU) 2019/1152 on Transparent and Predictable Working Conditions**

The purpose of this bill is to transpose **Directive 2019/1152** on transparent and predictable working conditions in the EU. It aims at improving working conditions by promoting more transparent and predictable employment while ensuring labour market adaptability. The directive provides for a number of measures including a limit to be placed on the length of probationary periods, the right for workers with very unpredictable working schedules to have reasonable notice of when work will take place, the right to request to be transferred to another role with more predictable and secure working conditions where available, and the right to receive cost-free training that the employer has a duty to provide. This directive further bans exclusivity clauses and limits incompatibility clauses. The Employment (Miscellaneous Provisions) Act 2018 provides for many aspects of the directive, including the restriction on zero hours contracts and the requirement to provide more precise information on employee working hours. However, the directive includes measures and protection which go beyond that contained in the 2018 act, and accordingly the directive will require primary legislation to give it full effect.

**Latest stage:** Heads of Bill in preparation. The Department of Enterprise, Trade and Employment carried out a public consultation on the transposition of the directive in



# Employment

September 2021. On 21 September 2022, the European Commission sent a letter of formal notice to 19 member states, including Ireland, since they have not communicated full transposition of the directive into national law by the deadline of 1 August 2022.

## **Protection of Employees (Employers' Insolvency) (Amendment) Bill**

This bill aims to introduce reforms to enhance the protection for and rights of employees in the context of collective redundancies following the insolvency of their employer within the Protection of Employment Act 1977

**Latest stage:** Heads of Bill in preparation.

## PRIVATE MEMBER BILLS

### **Living Wage Bill**

**Date published:** 5 May 2022

This bill broadly aims to amend the law relating to the determination, declaration and review of the national minimum hourly rate of pay for employees so as to arrive at and thereafter preserve an hourly rate that represents a living income.

**Latest stage:** This bill is currently before Dáil Éireann, Third Stage.

## BILLS

### **Work Life Balance and Miscellaneous Provisions Bill**

**Date published:** 5 October 2022

This bill aims to increase the participation of women in the labour market and the take up of family related leave and flexible working arrangements. It also provides opportunities for workers to be granted leave to care for relatives who need support.

**Latest stage:** Completed Dáil Éireann, Second Stage.

### **Employment Permits Bill**

**Date published:** 4 October 2022

This bill proposes to consolidate the Employment Permits Acts and make amendments to modernise the employment permits system and increase its responsiveness. The key proposed changes include the introduction of a seasonal employment permit and a Special Circumstances Employment Permit, the introduction of changes to streamline the requirements to make the grant process more efficient and the provision of additional conditions in respect of granting an employment permit, such as training or accommodation support.

**Latest stage:** This bill has completed Dáil Éireann, Second Stage.

## STATUTORY INSTRUMENTS

### **Employment Equality Act 1998 (Section 20A) (Gender Pay Gap Information) Regulations 2022**

In July 2021, the **Gender Pay Gap Information Act** was signed into law. The legislation provides a statutory basis for GPG reporting in Ireland, requiring that certain employers publish their employees' remuneration information in order to show whether there are any differences in pay referable to gender. Where any such gender pay gaps exist, employers are required to publish statements setting out the reasons for these gaps and what, if any, measures have been taken or proposed to reduce or eliminate them. These regulations set out the reporting requirements under the legislation, and currently apply to employers with 250 or more employees. Relevant employers will be required to publish their reports no later than six months from June 2022.

**Latest stage:** These regulations came into effect on 31 May 2022. There is also an official but not binding Government Guidance Note and FAQs.

**Read more:** [Matheson Insight Article Gender Pay Gap Reporting – Top 10 FAQs.](#)



# Employment

## ACTS COMMENCED SINCE JUNE HORIZON TRACKER 2022

### Redundancy Payments (Amendment) Act 2022

Date signed into law: 31 March 2022

The purpose of the bill is to amend the Redundancy Payments Act 1967 and to provide for an additional payment from the Social Insurance Fund on the redundancy of persons laid off for a period of time due to Covid-19 restrictions whose redundancy lump sum is reduced because of the lay-off period.

**Commencement:** The majority of the act was commenced on 19 April 2022, with s. 4 coming into operation on 6 July with the commencement of s. 11 of the Companies (Corporate Enforcement Authority) Act 2021.

## ACTS AWAITING COMMENCEMENT

### Regulated Professions (Health & Social Care) (Amendment) Act 2020

Date signed into law: 14 October 2020

This act amends the Medical Practitioners Act 2007, the Dental Act 1985, the Health and Social Care Professions Act 2005, the Pharmacy Act 2007, the Nurses and Midwives Act 2011 and the Health Acts 1953 and 2004. It will transpose into Irish law Directive 2013/55/EU, which provides for a system for the recognition of professional qualifications

and experience across the EU. Other amendments include: introducing appeals against minor sanctions, amending the system of registration for medical practitioners and amendments in relation to the action that is to be taken where an individual is prohibited or restricted from practicing in another country.

**Commencement:** A number of provisions await commencement.

## EU DRAFT LEGISLATION

### Proposal for a Directive on Minimum Wages in the EU

Procedure reference: 2020/0310 (COD)

Date published: 28 October 2020

This proposal seeks to ensure that workers across the EU earn adequate wages, in line with the United Nations 2030 Agenda for Sustainable Development and its Sustainable Development Goals.

**Latest stage:** First reading in the European Parliament and Council.

### Proposal for a Directive on the Gender Pay Gap - Transparency on Pay for Men and Women

Procedure reference: 2021/0050 (COD)

Date published: 4 March 2021

The Commission has for some time made it clear that it would assess the position on pay transparency. President von der Leyen committed in her political guidelines to introduce binding pay transparency measures. The Commission states that this initiative will:

- introduce binding pay transparency measures;
- make pay systems more transparent;
- improve public understanding of the relevant legal concepts; and
- strengthen enforcement mechanisms.

**Latest stage:** Following the agreement between the member states, the Council can enter into negotiations with the European Parliament in order to agree on a final text.



# Other Legislative and Regulatory Developments



## Other Important Legislative and Regulatory Developments | Healthcare

### BILLS

#### **Assisted Decision-Making (Capacity) (Amendment)**

##### **Bill 2022**

**Date published:** 30 May 2022

The purpose of this legislation is to amend the Assisted Decision-Making (Capacity) Act 2015 and provide for the act's commencement, as well as to give further effect to the Convention on the Rights of Persons with Disabilities (2006). The 2015, when commenced, will replace the current Wards of Court system in Ireland with a graduated supported decision-making framework.

**Latest stage:** Currently before Seanad Éireann, Fourth Stage.

#### **Regulated Professions (Health and Social Care) (Amendment) Bill 2022**

**Date published:** 16 August 2022

This bill makes a number of amendments to the Health and Social Care Professionals Act 2005, the Medical Practitioners Act 2007, and the Regulated Professions (Health and Social Care) (Amendment) Act 2020 . The technical amendments address issues relating to the Medical Council's complaints investigation process, as well as allowing holders of UK medical degrees to access medical intern training posts in Ireland, and other matters.

**Latest stage:** Before Dáil Éireann, Third Stage

### IRISH PROPOSED LEGISLATION

#### **Health (Amendment) (Licencing of Professional Home Support Providers) Bill**

To enhance home support service through the licensing of both public and private providers.

**Latest stage:** Heads of Bill in preparation.

#### **Human Tissue (Transplantation, Post-Mortem, Anatomical Examination and Public Display) Bill**

The purpose of this bill is to implement the recommendations of the Madden Report on Post-Mortem Practices and Procedures by regulating the removal, retention, storage, use and disposal of human tissue from deceased persons. It will also provide general conditions for the removal, donation and use of organs and tissues from deceased and living persons for the purposes of transplantation. The bill will also provide an opt-out system of consent for organ donation.

**Latest stage:** Heads of Bill approved on 1 May 2019, pre-legislative scrutiny waived. The bill is listed as Priority Legislation in the Autumn Legislative Programme.

#### **National Research Ethics Committees Bill**

This bill provides for the creation of a National Research Ethics Committee model in Ireland that will encompass all human health research including clinical trials of medicinal products.

**Latest stage:** Heads of Bill approved on 25 July 2019. Committee agreed to waive pre-legislative scrutiny.



# Glossary

<b>AIF</b>	Alternative investment fund
<b>AIFM</b>	Alternative investment Fund manager
<b>AIFMD</b>	Alternative Investment Fund Managers Directive - Directive 2011/61/EU
<b>AML</b>	Anti-money laundering
<b>ASP</b>	Administrative sanctions programme
<b>Autumn Legislative Programme</b>	Irish Government's Legislative Programme for Autumn 2022
<b>BEFIT</b>	Business in Europe: Framework for Income Taxation
<b>CEA</b>	Corporate Enforcement Authority
<b>CLRG</b>	Company Law Review Group
<b>Council</b>	Council of the European Union
<b>CRO</b>	Companies Registration Authority
<b>CSDR</b>	Central Securities Depository Regulation – Regulation (EU) 909/2014
<b>Dáil Éireann</b>	The lower house and principal chamber of the Oireachtas, the Irish legislature
<b>DETE</b>	Department of Enterprise, Trade and Employment
<b>EBA</b>	European Banking Authority
<b>ECB</b>	European Central Bank
<b>EEA</b>	European Economic Area
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EMIR</b>	European Market Infrastructure Regulation – EU Regulation No 648/2012
<b>EPA</b>	Environmental Protection Agency
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>EuSEF</b>	European Social Entrepreneurship Fund

<b>GDPR</b>	General Data Protection Regulation
<b>Member State</b>	A member state of the European Union
<b>MAC</b>	Maritime Area Consent
<b>MARA</b>	Maritime Area Regulatory Authority
<b>MiCA</b>	Markets in Crypto-assets Regulation
<b>MiFID II</b>	Second Markets in Financial Instruments Directive – Directive 2014/65/EU
<b>MiFIR</b>	Markets in Financial Instruments Regulation – Regulation (EU) 600/2014
<b>MLD5</b>	Fifth Money Laundering Directive – Directive 2018/843/EU
<b>MLD6</b>	Sixth Money Laundering Directive - Directive 2018/1673/EU
<b>MPAs</b>	Maritime Protected Areas
<b>NCA</b>	National Competent Authority
<b>NCSC</b>	National Cyber Security Centre of Ireland
<b>NFRD</b>	Non Financial Reporting Directive
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>Oireachtas</b>	The Irish legislature, combining the lower house, Dail and the upper house, Seanad.
<b>RFSP</b>	Regulated Financial Service Provider
<b>RTS</b>	Regulatory Technical Standards
<b>Seanad Éireann</b>	The upper house of the Oireachtas, the Irish legislature
<b>SFDR</b>	Sustainable Finance Disclosure Regulation
<b>SFTR</b>	Securities Financing Transactions Regulation
<b>UK</b>	United Kingdom
<b>UCITS Directive</b>	Directive on Undertakings for Collective Investment in Transferable Securities - Directive 2009/65/EC



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