HORIZON TRACKER

Legal and Regulatory Developments Spring 2022





Our Approach to Horizon Scanning



Keeping up to date with new and proposed legislation and regulation is an ongoing challenge for businesses.

To support and assist our clients in staying informed and determining the practical implications of proposed and upcoming legal and regulatory developments, the Matheson PSL Faculty created Horizon Tracker monitors and analyses these developments, at both a domestic and EU level.

In Spring 2022 we have adopted a theme-based approach which is reflective of the legislative and regulatory agenda domestically.

Additional legislative and regulatory developments relevant to our practise areas and to the general overall legal landscape and context for our clients are also considered in a final section entitled Other Important Legislative and Regulatory Developments available <u>here</u>. These include developments in insolvency law, legislation relevant to healthcare, <u>selected</u> consumer and competition matters, and general justice and litigation initiatives.

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

Key Themes



Climate, Sustainability and the Environment



Investing in Ireland (including tax developments and developments in the corporate law and corporate governance sphere)



Financial Services (including Asset Management, Finance and Capital Markets and Financial Services Risk and Regulatory developments)



Commercial Real Estate



Solution Protection, Privacy and Technology



Employment





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The Legislative Programme for Spring 2022

Key Themes

Climate, Sustainability and the Environment

Investing in Ireland

└→ Tax developments

└→ Corporate Law and Governance developments

Financial Services

- Asset Management and Investment Funds
- └→ Finance and Capital Markets
- → Financial Services, Risk and Regulatory

Commercial Real Estate

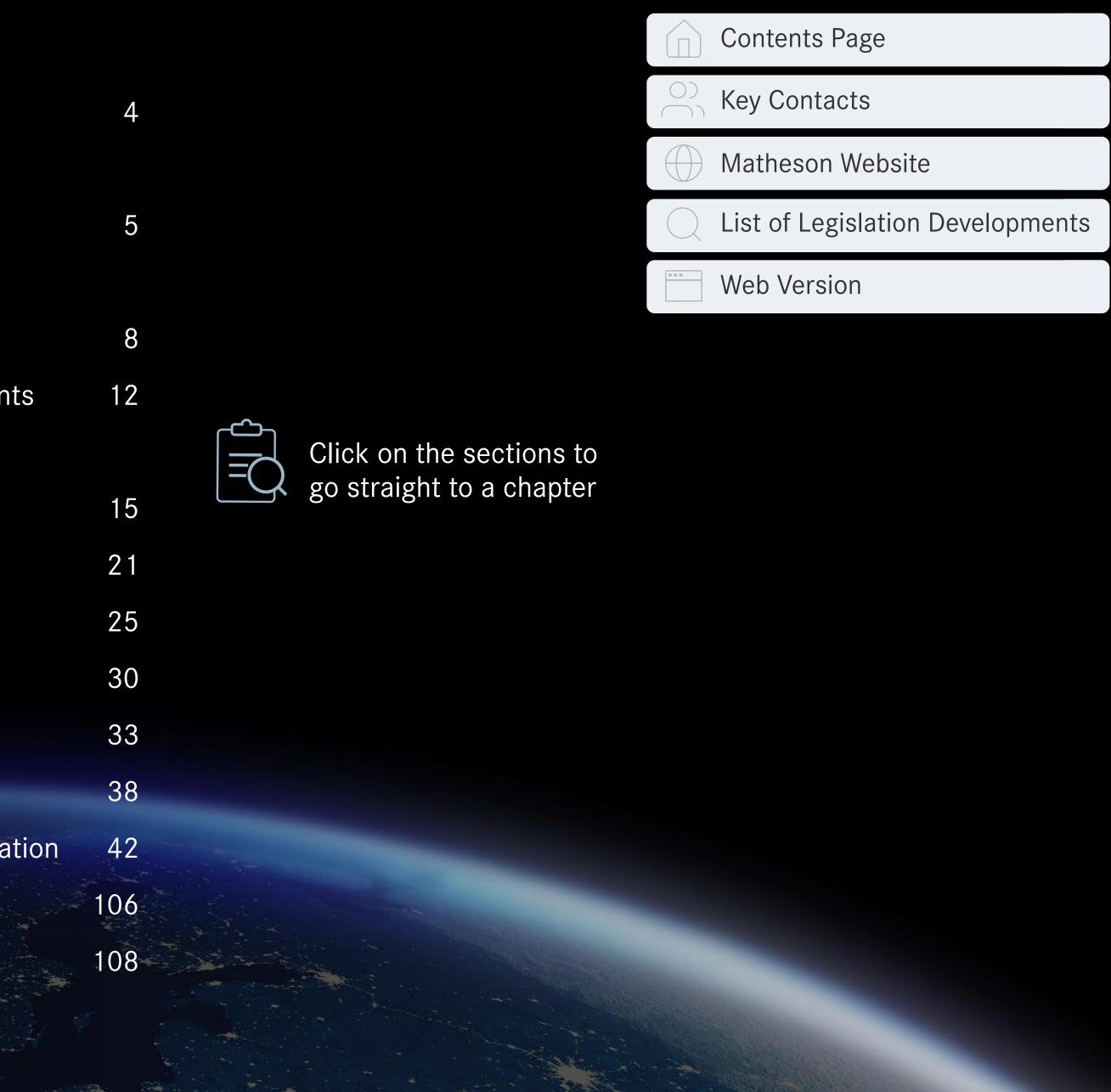
Data Protection, Privacy and Technology

Employment

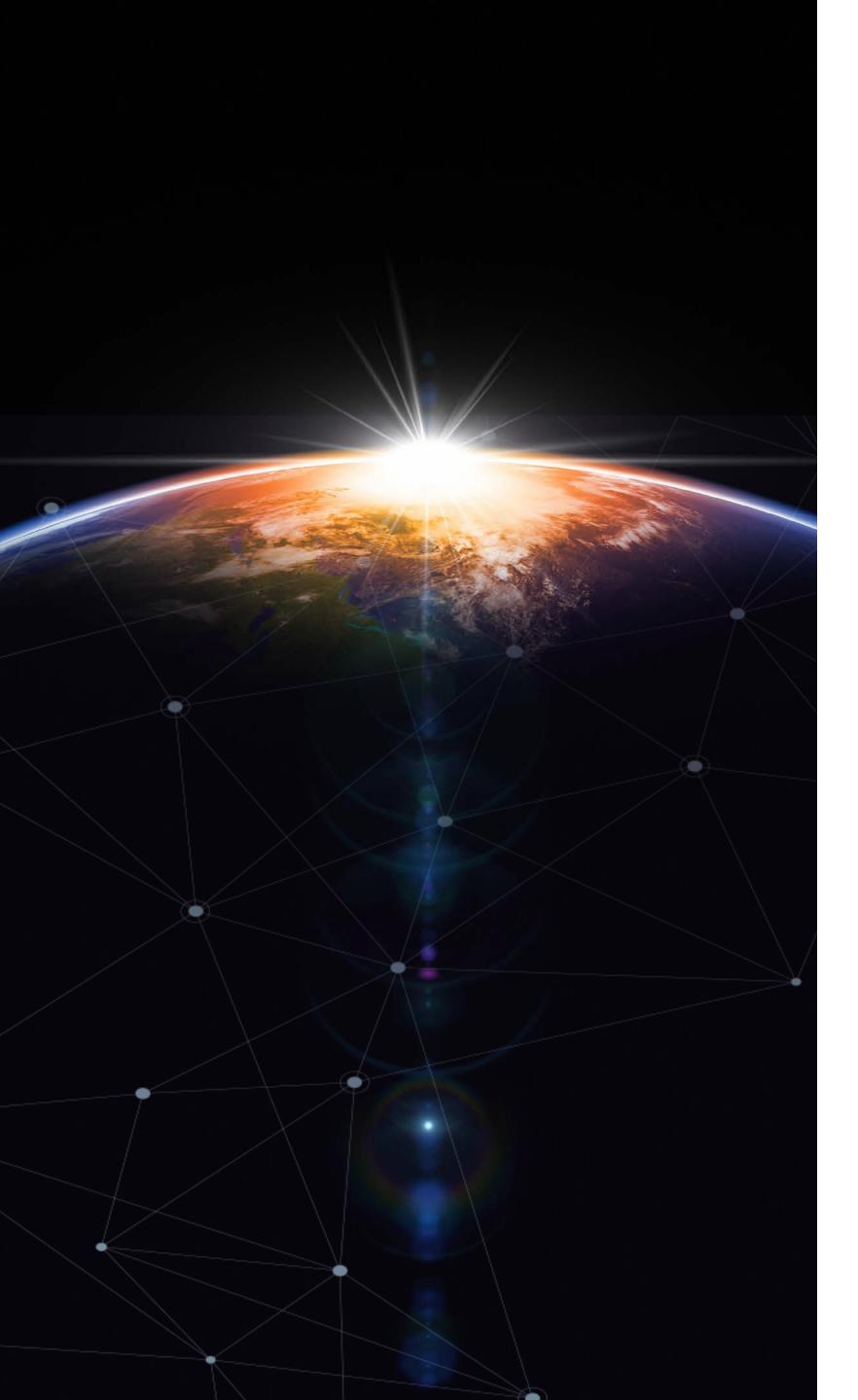
Full List of Upcoming, Planned and Proposed Legislation

Key Contacts

Glossary







Welcome to the Spring 2022 edition of The Matheson Horizon Tracker.

This Spring, the legislative programme continues with a number of initiatives commenced in October 2021, with some notable additions. As we move out of the COVID 19 pandemic, there is a domestic focus on employment legislation including the Right to Request Remote Working Bill, increased focus on leave entitlements supporting Sick Leave and supporting caring obligations, and on legislation addressing work shortages connected to the pandemic, such as the Employment Permits (Consolidation and Amendment) Bill. International Women's Day on 8 March 2022 saw the Government announce the measures to implement the Gender Pay Gap Information Act 2021 reporting obligations, which will affect all employers with over 250 employees. These obligations are described within our Employment group's commentary.

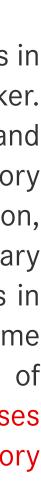
Apart from the immediacy of addressing particular aspects of life post pandemic, climate change is a key driver of the legislative and regulatory landscape The government's Climate Action Plan 2021 is driving initiatives in the current legislative programme including the Circular Economy Bill and environmental law related matters including issuing commencement orders for the Maritime Area Planning Act 2021 which will enable long term, sustainable planning of the maritime area affecting, among other matters, Ireland's offshore renewable energy resourcing. Moving on to the

alternative energy space we describe and monitor the development of a number of EU Regulations.

Of specific relevance to many of our clients are changes in the tax area which are considered in this Horizon Tracker. In relation to financial services, investment funds and capital markets we consider the full range of regulatory proposals both domestically and at EU level. In addition, the Horizon Tracker now includes dedicated commentary on employment law developments as well as advances in data protection and technology regulation. At the same time we have maintained the traditional key strength of the Matheson Horizon Tracker, namely brief synopses of imminent and proposed legislative and regulatory developments, domestically and at EU level.

Finally, as we share this Horizon Tracker edition, we are conscious of the ongoing situation in Ukraine. Matheson are taking steps on a pro-bono basis to assist the Irish Refugee Council and the Public Interest Law Alliance with the humanitarian consequences of this crisis. Specific practice areas have briefed and updated clients where compliance with sanctions is required, and we will continue to do so where necessary.









Climate, Sustainability and the Environment

In this section on Climate, Sustainability and the Environment, we cover initiatives in relation to Energy, Environmental law and regulation. The thematic emphasis is that most of these legislative and regulatory initiatives are clearly driven by policy concerns surrounding climate change and sustainability.

The Irish government published its <u>Climate Action Plan in 2021</u>. A priority goal is a 51% reduction in overall greenhouse gas emissions by 2030 and a stated ambition of reaching net-zero emissions by "no later than 2050". This ambition is of course reflective of the EU's 'Fit for 55' legislative package aimed at reducing greenhouse gas emissions by 55% by the year 2030. Hence the emphasis in our <u>Energy section</u> on legislative initiatives relating to regulation of fossil fuels and to supports for alternative fuel generation. Examples include the Revised Gas Regulation which will recast the original Regulation of 2009, the revised Alternative Fuels Directive revising and amending the original Directive in 2019. A second broadly described goal in the Climate Action Plan is to put Ireland on a "more sustainable path" with the aim of creating a cleaner, greener economy and society.

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Preparing for 2030 – key changes to achieve climate commitments

Ireland is ready to play its part. We have enacted legislation to put a legally binding target of reducing our emissions by 2030 to 51% below 2018 levels. We will reach climate neutrality by 2050."

Taoiseach Michael Martin, COP 26, Glasgow,2 November 2021

In the <u>Environment</u> section we see legislative initiatives focussed on waste recycling, regulation of waste industries together with specific legislation regarding protection of the Environment.

The Climate Action Plan describes these initiatives generally as an opportunity to create jobs and business in sectors operating to support alternative fuel generation, recycling, and home renovation and retrofitting. In this context we have included proposals for Irish legislation but given the importance of EU initiatives we have particularly highlighted proposals for EU legislation, whether these are proposed Regulations or Directives.

However, in many cases you will find that existing EU legislation is being revised and amended with some intensity and details are provided below. Similarly in relation to provisions designed to address climate change, developments are driven by the EU at quite a fast pace with many of these proposals arising under the EU's policy agenda. The Irish government will, of course, have to respond to these initiatives appropriately through the transposition of Directives and implementation of Regulations.

Legal and Regulatory Developments

Click here for Summaries of Domestic and European Legislative and Regulatory Developments affecting the Energy and Environmental Sectors



Addressing sources of energy, whether it is fossil fuels like gas or the support of alternative and renewable energy resources, is a key action point in the space of climate action and preservation of the environment more generally.

Climate neutrality and ESG goals continue to inform proposed EU legislation in the energy sector. The recently enacted European Climate Law and the commitment to reduce net emissions in the EU by at least 55% by 2030 compared to 1990 levels have led to the substantial "Fit for 55" legislative package. Separately, the European Commission is proposing a new regulatory framework to decarbonise gas markets and establish a competitive hydrogen market to compete with natural gas. While not yet in force, these important EU legislative proposals could have transformative effects on the energy and renewables sector in Ireland and should be closely monitored. From a domestic perspective, there have been some significant developments in the onshore and offshore energy sectors, including the Marine Area Planning Act 2021. We have highlighted the key issues in this update.



Also included in this section are specific legislative initiatives in relation to the environment which can range from the Circular Economy Bill to legislation focusing on preservation such as the Inland Fisheries Bill. Of increasing importance in the Environmental Law space is the issue of fair procedure and access to justice for activists, hence the initiative concerning the Aarhus Convention Bill.

Matheson will continue to keep you informed of the broader policy picture and related initiatives. To this end we continue to develop our Environmental, Social and Governance ("**ESG**") Advisory Group which was established in 2021.

The EU is a driving force in the climate action space, with many pieces of legislation and initiatives focussed on waste management, quality of water issues and finally reuse and recycling initiatives.

At the same time Matheson will continue to keep you informed of the broader policy picture and related initiatives. To this end we continue to develop our Environmental, Social and Governance ("ESG") Advisory Group which was established in 2021.

Through enhancing and differentiating our ESG offering by bringing our depth and range of expertise into one combined advisory group, we believe that this will enable us to provide an even stronger service proposition in supporting the challenges and opportunities which our clients face across all three pillars – environmental, social and governance – as they respond to the accelerated pace of change in domestic and international legislation, industry standards and practices, and the expectations of both investors and regulators in relation to ESG."

Michael Jackson March 2021.

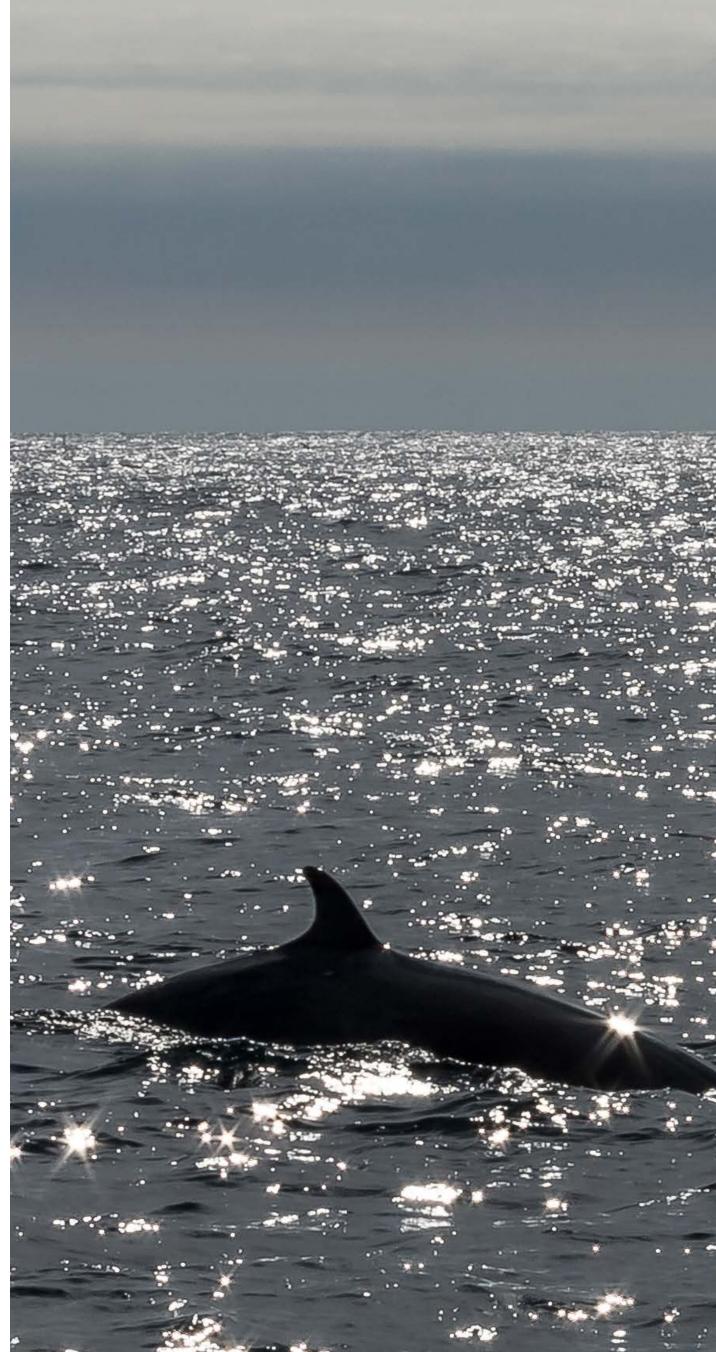
Find Out More -

Matheson Insight | Energy and Infrastructure Update

Matheson Insight | Offshore Energy and Onshore Generation Update Matheson Insight | Sustainable Finance: The

Matheson Insight | Sustainable Finance Green Isle Flexes its Green Credentials Climate, Sustainability and the Environment

Michael Jackson, Managing Partner, Matheson,





Investing in Ireland Tax

The international tax landscape is continuing to face extensive changes on a global level as further measures aimed at enhancing fair and transparent taxation are introduced.

The source of these changes is a combination of measures agreed at an OECD, EU and domestic level.

Notwithstanding significant developments in the global tax landscape, continuing to attract FDI remains a fundamental cornerstone of Irish tax policy and legislation. Ireland is taking steps to ensure that Ireland's corporation tax regime will remain competitive, fair and sustainable. A review of Ireland's R&D tax credit is expected in the coming year and the Irish government has established a Commission on Taxation and Welfare to conduct a comprehensive review of the Irish tax and welfare systems. This review extends to simplifying the Irish tax system and considering potential amendments to the personal tax regime to continue to attract mobile workers.

It is clear that 2022 and onwards into 2023 will be a transformative period in the international tax landscape as key new measures, such as the global minimum effective tax rate of 15% are implemented into Irish domestic legislation. We expect to see many of these changes introduced in this year's Finance Bill to be published in October 2022.



2022: A whirlwind of change as the path to global tax reform begins

I am confident that Ireland will remain competitive into the future, and we will remain an attractive location and 'best in class' when multi-nationals look to investment locations."

Statement by Finance Minister Donohoe on the decision for Ireland to enter the OECD International Tax agreement (Published on 7 October 2021)

Update on the OECD's two pillar approach

The landmark agreement reached by the international community in October 2021 will result in a major reform of the international tax system to address tax challenges arising from the digitalisation of the economy. This will be achieved with the adoption of the OECD's Pillar One and Pillar Two proposals.

- year under this mechanism.

Legal and Regulatory Developments

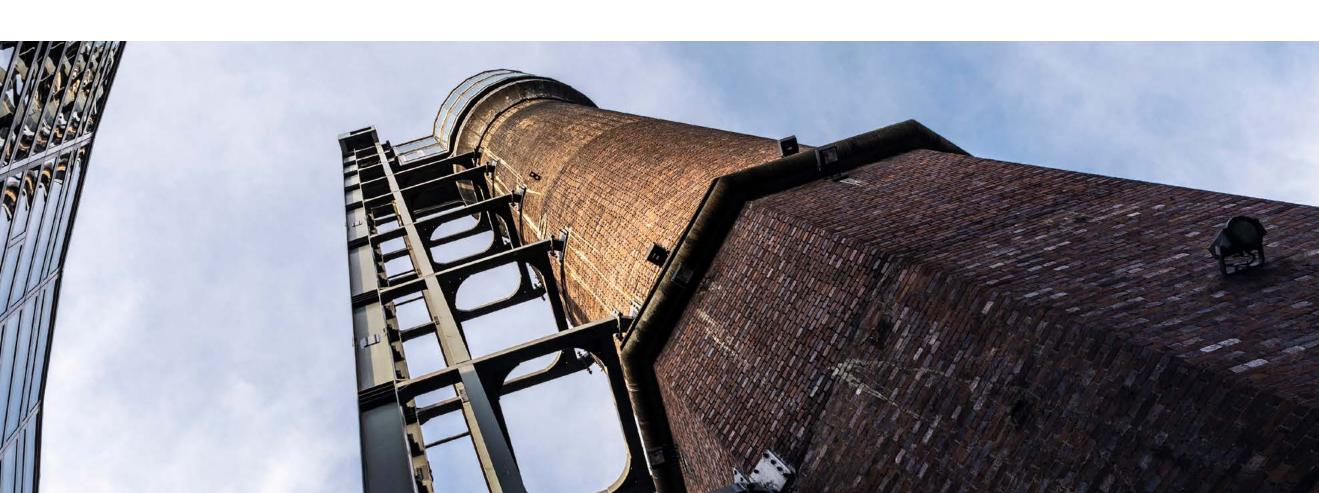
Click here for Summaries of Domestic and European Legislative and Regulatory Developments affecting Irish Businesses and Companies Setting up in Ireland Pillar One will introduce a new formulaic mechanism for allocating profits among multinational groups. It is expected that taxing rights on more than EUR 100 billion of profits will be reallocated to market jurisdictions each

Pillar Two introduces a global minimum corporate tax rate set at 15%. The new minimum effective tax rate will apply to companies with revenue above EUR 750 million and it is expected to generate around EUR 130 billion in additional global tax revenues annually.

The OECD is moving ahead with an ambitious timeframe for this project, with effective implementation of the proposals targeted for 2023. Model rules in respect of both Pillars have been published by the OECD and public consultations are continuing. Therefore, we expect to see these rules being shaped and refined throughout 2022, with the final proposals implemented into Irish domestic legislation by 2023. Importantly, Ireland's headline 12.5% corporation tax rate will remain in force for businesses in Ireland with revenues

below EUR 750 million. This will mean that there will be no increase in the corporate tax rate for over one hundred and sixty thousand businesses operating in Ireland.

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The EU's Tax Agenda

In parallel with the OECD's work plan, many new EU measures will also be implemented in 2022 and subsequent years aligning with the European Commission Tax Action Plan published in 2020. A common EU approach is emerging in certain areas such as transparency, information sharing and common rules on targeting tax advantages arising from mismatches between different regimes. Some key EU tax proposals include:

- ATAD III: In December 2021, the European Commission presented ATAD III, or the draft Directive known as the "unshell" proposal, to ensure that entities in the EU that have no or minimal economic activity are denied the benefit of certain tax advantages. If adopted, this Directive is proposed to come into effect on 1 January 2024.
- Public country-by-country reporting: Tax authorities within the EU have been exchanging a wide range of tax data since 2016. Under a new EU public countryby-country reporting Directive to be transposed by June 2023, much of this information will now be shared publicly by in-scope entities for financial years from June 2024.

platforms.

There are also a number of other EU tax proposals in the pipeline, including BEFIT, a new framework for income taxation for businesses in Europe, which aims to replace the previous proposals for a CCCTB by building on the approval of formulary apportionment in the global tax agreement. In addition, rules to incentivise investment in companies by way of equity rather than debt are also being proposed under the EU's "DEBRA" initiative.

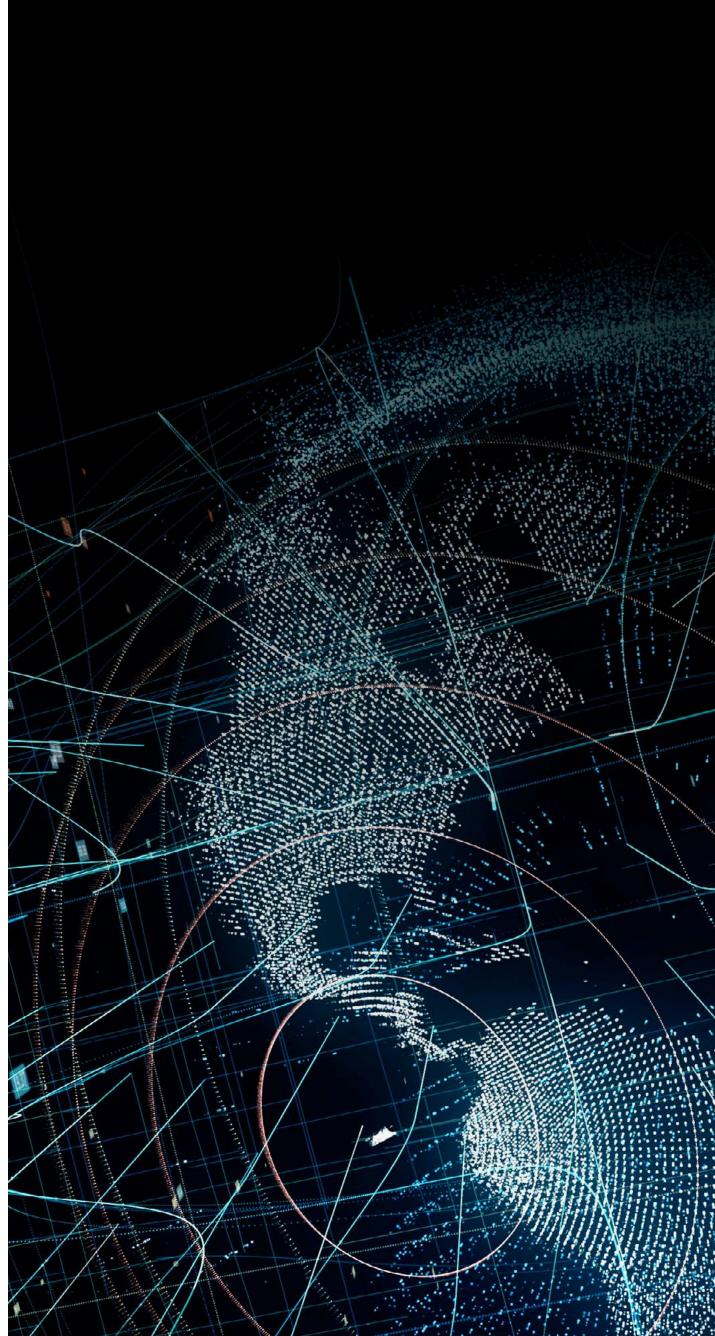


Matheson Insights | EU Directive on public country-by-country reporting

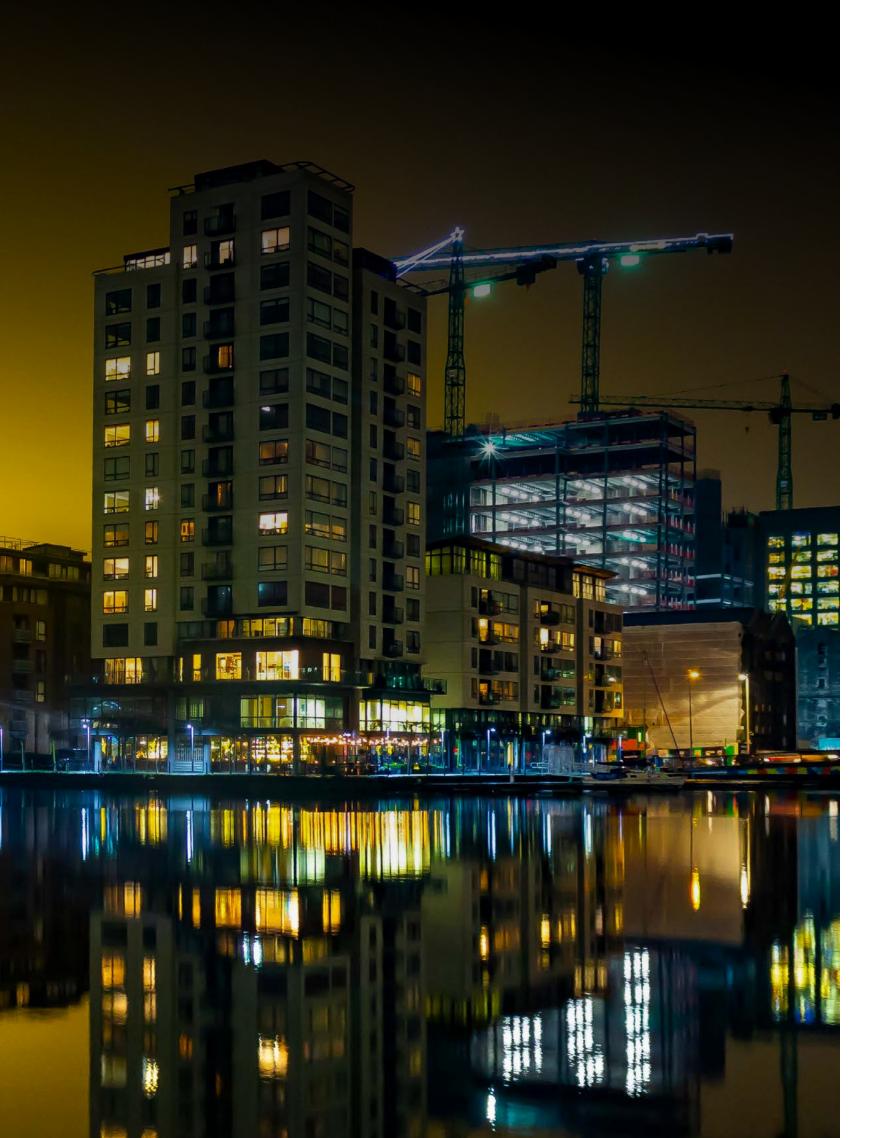
DAC 7: The latest iteration of the EU information sharing directives is DAC 7, which will extend the scope of the existing information exchange in 2023 to digital platforms that will be required to collect and report information on income realised by sellers on such digital

Matheson Insights | Doing Business In... 2021

Matheson Webinar | Investing in Ireland Part 1 – Tax Developments: OECD, EU and Domestic tax proposals 17 February 2022







Ireland remains a willing participant in the ongoing process of global tax reform and fully supports most of these proposals.

The move to a global minimum effective tax rate is a step towards greater tax certainty, which is widely welcomed by multinational taxpayers in Ireland. Importantly, the 12.5% headline corporation tax rate will remain in force for companies below the Pillar Two revenue threshold of EUR 750 million revenue. Ireland also intends to ensure that the use of R&D tax credits can continue to support innovation and growth in compliance with the OECD framework.

Aside from Ireland's competitive tax regime, there are a myriad of reasons why Ireland is an attractive FDI location, including our highly skilled workforce, membership of the EU, vasttreaty network and multitude of non-tax government incentives. A recent OECD report found that Ireland was the second most open economy to trade in in the OECD. This is also reflected in statements by the industry body the IDA which confirmed that in 2020, Ireland actually increased its market share of FDI into Europe in the face of global declines in FDI flows. Overall, it is clear that the FDI pipeline looks to remain strong throughout 2022 and onwards.



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Some and Corporate Governance

COVID-19 dominated the boardroom agenda for the past two years but, for companies and their boards, the focus now begins to shift towards the busy legislative slate ahead.

Domestically, themes such as investment screening, the establishment of the Corporate Enforcement Authority, an overhaul of the competition enforcement regime and the modernisation of laws governing certain corporate vehicles are expected to feature prominently.

Some emergency company law measures designed to facilitate the continuation of business during the pandemic will make their way permanently onto the statute books. EU commitments under the European Green Deal will begin to be felt in the boardroom. Irish companies will be keeping a close eye on developments in the ESG area. The Proposal for a Corporate Sustainability Reporting Directive (referred to as the CSRD) would oblige companies in scope to report against common EU sustainability reporting standards. This will see a large number of companies being brought within the sustainability reporting regime for the first time. The related Proposal for a Corporate Sustainability Due Diligence Directive seeks to introduce a sustainability due diligence duty for large companies to address adverse human rights and environmental impacts. Early planning on the part of companies and their directors is key.

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Good Governance in Today's World? The Focus on Boards and their Accountability Sharpens

For finance to play its full part in the sustainable transition, we need complete, comparable and reliable sustainability information from companies. The CSRD will strengthen sustainability reporting rules for companies, meeting the information needs of market participants and other stakeholders."

Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union Foreign direct investment ("**FDI**") remains a pillar of the Irish economy. An FDI screening regime is now firmly on the horizon, having been categorised as priority legislation in successive legislative agendas in recent times.

The recent introduction of an equivalent UK investment screening regime generated much attention. The fact that pre-legislative scrutiny has been waived may ease the passage of the (as yet unpublished) Investment Screening Bill but we can still expect policy debate in this area over the coming months.

The COVID-19 pandemic only served to intensify calls for investment screening in the period since the EU Investment Screening Regulation 2019/452 became operational in October 2020. The precise parameters of the proposed Irish regime and its interaction with existing merger clearance procedures will only become apparent upon publication.

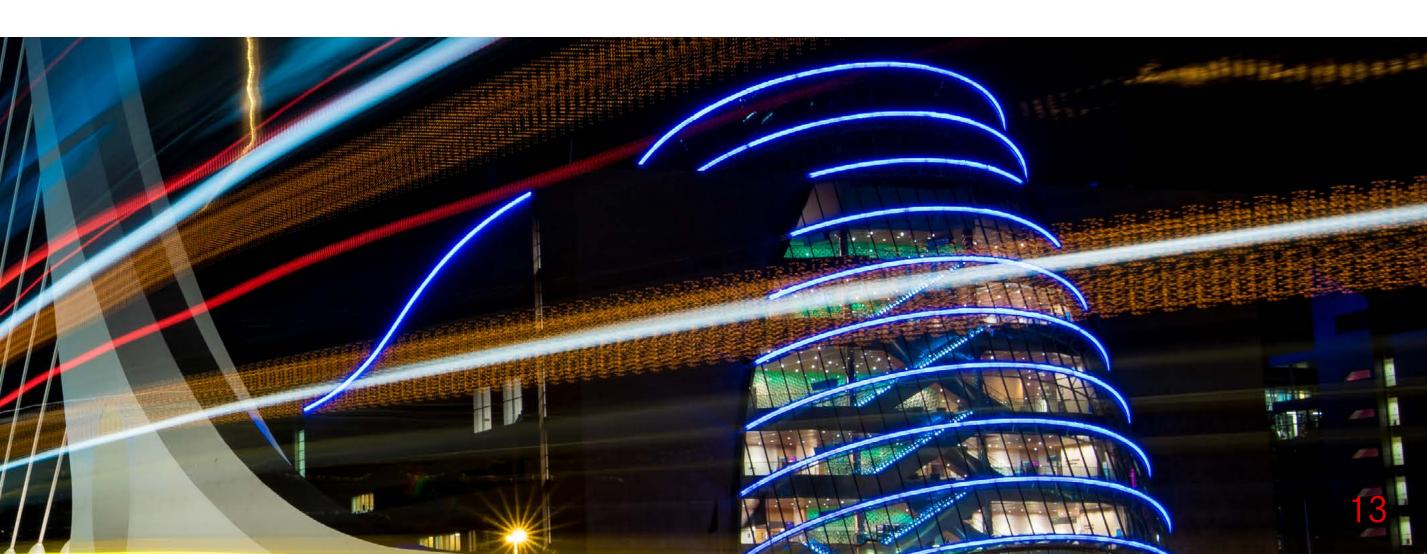
Legal and Regulatory Developments

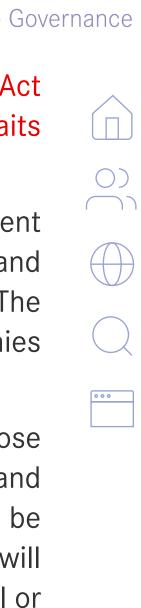
Click here for Summaries of Domestic and European Legislative and Regulatory Developments affecting Irish Businesses and Companies Setting up in Ireland The Companies (Corporate Enforcement Authority) Act 2021 became law on 22 December 2021 but awaits commencement.

Its key aim is to establish the Corporate Enforcement Authority as a statutory agency with the autonomy and resources to respond effectively to white collar crime. The act also 'fixes' certain anomalies found in the Companies Act 2014.

While welcome, these amendments fall short of those recommended by the Company Law Review Group and other company law experts. Further legislation will be required to address these anomalies but whether this will be within the Companies (Miscellaneous Provisions) Bill or elsewhere remains to be determined.

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Good Governance in Today's World? The Focus on Boards and their Accountability Sharpens

On the EU front, the European Green Deal remains centre stage and the European Commission has set its sights on enhanced sustainability reporting for corporates.

The proposed Corporate Sustainability Reporting Directive ("**CSRD**") would oblige companies to report against common EU sustainability reporting standards. Some 11,000 EU companies are already covered by the CSRD's predecessor, the Non-financial Reporting Directive 2014 (NFRD) which was transposed into Irish law in 2017.

"NFRD" reporting requirements apply to large "public interest entities" with more than 500 employees. The CSRD will apply to all large EU companies and EU stock exchange-listed companies (except listed microcompanies) bringing approximately 49,000 companies in scope of a more ambitious sustainability reporting regime.

Companies are likely to start reporting to the new standards in 2024, based on FY2023 information, with SMEs being given additional time. Now is the time for boards to plan for these significant changes coming down the tracks. Good governance, pro-active management, transparency and effective leadership all involve everincreasing demands on directors in an environment where the focus on boards from, amongst others, the company itself and its shareholders, regulators, auditors and employees continues to sharpen. Effective boards will strive to ensure that companies are not just well-managed but also well-led in a manner which ensures compliance with this increasing focus on accountability while at the same time protecting the company, its business and its creditors.'

Pat English, Partner and Head of the International Business Group, Matheson



Matheson Insight | Investment Screening, Latest Irish Developments Matheson Insight | Corporate Enforcement Authority Act Is Now Published Matheson Insight | CSRD – Sustainability Reporting for Corporates





Financial Services Asset Management and Investment Funds

The growth of the investment funds industry continues to attract increasing regulatory focus arising from concerns relating to the potential impact on financial stability.

Leverage and liquidity are likely to continue to feature on the regulatory agenda over the coming months, with the Central Bank consultation on property funds representing one step towards increased macro-prudential regulation. Financial stability related concerns also informed the Central Bank's focus on operational resilience and outsourcing, leading to the publication of its detailed cross-industry guidance in late 2021. Compliance with these guidelines will be a significant project for all regulated financial service providers in 2022.

Funds and their managers will focus on completing the mandatory disclosure templates under the <u>Sustainable Finance Disclosure Regulation</u> ("**SFDR**") and the <u>Taxonomy Regulation</u> and engaging with the Central Bank on its planned thematic inspection in relation to SFDR Taxonomy Regulation compliance. UCITS will be required to adapt to the PRIIPs KID requirements and there may be further developments relating to performance fees of UCITS and retail AIFs. We will continue to monitor the progress of the Commission's proposed reforms of the AIFMD through the EU legislative process (read more about the proposed reforms <u>here</u>).

READ MORE ON THESE DEVELOPMEN



Sustainable Finance and Investment Funds

The implementation of all of [these] requirements, and fostering greener securities markets more generally, will be a key area of focus for the Central Bank into 2022."

Derville Rowland, Central Bank of Ireland, November 2021²

² Derville Rowland, Speech to the Managed Funds Association Global Summit 9 November 2021

A lot more to do

Following a busy end to 2021 driven by compliance with the Taxonomy Regulation Level 1 requirements, there will be further key developments and deadlines in the coming months under the EU's sustainable finance agenda.

Level 2 Requirements

It is expected that the final regulatory technical standards ("**RTS**") under both the SFDR and the Taxonomy Regulation will be published in Q1 2022, providing the necessary detail and mandatory templates for fund managers to comply with their pre-contractual, periodic reporting and principal adverse impacts disclosure obligations. In November 2021, the Central Bank indicated that filings to comply with the RTS could be made at any point after 31 March 2022 and no later than 27 May 2022. Following the Central Bank statement, the application date for the RTS was delayed further from 1 July 2022 to 1 January 2023, so it may be the case that this filing deadline will be changed.



Click here for Summaries of Domestic and European Legislative and Regulatory Developments affecting Asset Management and Investment Funds

Thematic Review and Spot Checks

The Central Bank has confirmed its intention to carry out a thematic review later in 2022 of the implementation of the SFDR and the Taxonomy Regulation by fund management companies.

In the first half of this year, the Central Bank will undertake a spot-check of a sample of offering documents submitted as part of the fast-track filing to meet the 1 January 2022 Taxonomy Regulation deadline. These spot checks will include consideration of SFDR categorisations, sustainability risk disclosures and Taxonomy alignment disclosures.

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Sustainable Finance and Investment Funds

The CSRD

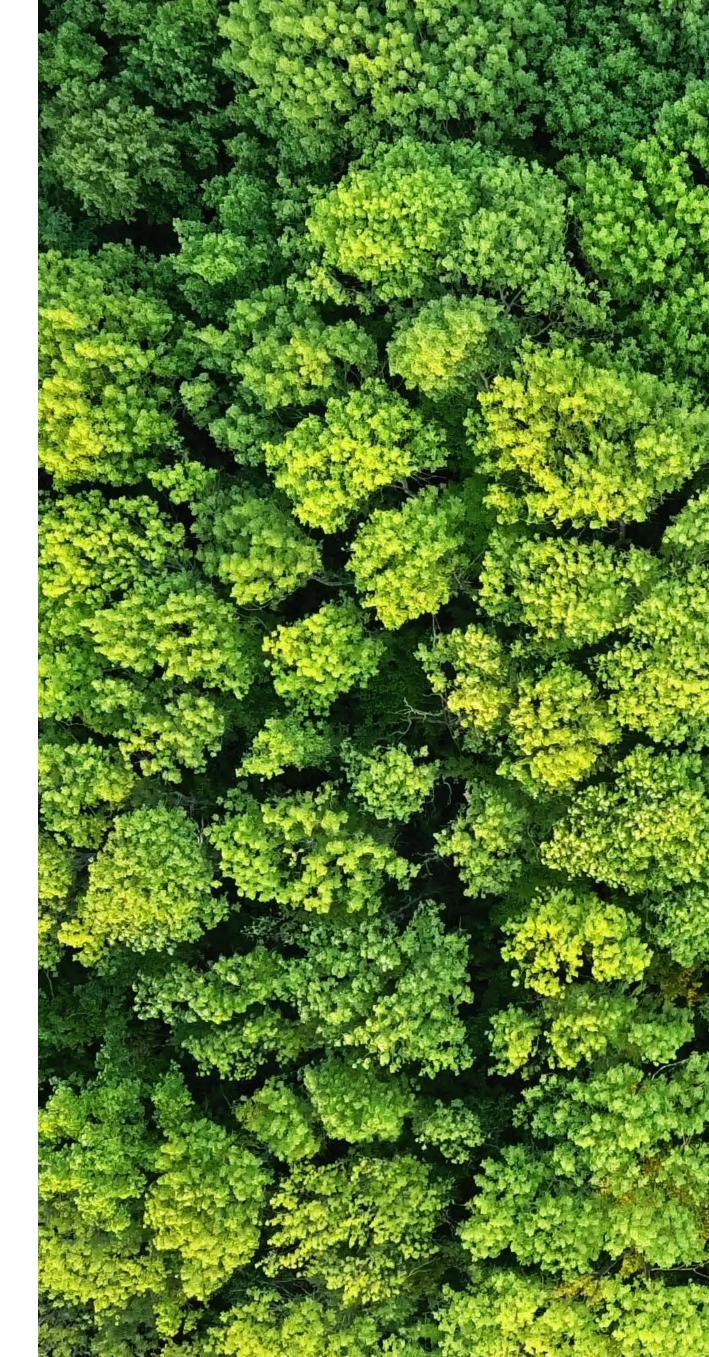
The progress of the Corporate Sustainability Reporting Directive ("CSRD") through the EU legislative process will be closely monitored by fund managers. The CSRD will revise, and ultimately replace, the Non-Financial Reporting Directive, extending sustainability reporting requirements to a far wider category of EU companies. These extended reporting obligations will assist fund managers in complying with their sustainability disclosure obligations, where funds under management invest in companies within the scope of the CSRD.

Minimum Sustainability Criteria

Under its Renewed Strategy for Sustainable Finance, the Commission is to consider the introduction of minimum sustainability criteria for Article 8 SFDR products. In November 2021, the Central Bank indicated its strong support for this initiative, which it believes is necessary to mitigate potential greenwashing risks. On 11 February 2022, ESMA published its Sustainable Finance Roadmap, in which it indicates its intent to contribute to the Commission's planned work on minimum sustainability criteria, or a combination of criteria, for Article 8 SFDR products.

Find Out More

Matheson Insights | Sustainable Finance Website Matheson Insights | Ireland and Sustainable Finance: The Green Isle Flexes its Green Credentials, February 2022 Matheson Webinar | The SFDR, EU Taxonomy and Investment Funds – Next Steps, October 2021 CBI Update | Central Bank of Ireland Confirms Fast Track Process for Taxonomy Filings November 2021 CBI Update | Central Bank Dear CEO Letter on Climate and Other ESG Issues November 2021 ESMA Update | European Supervisory Authorities Publish Final Report on Taxonomy-related **Disclosures October 2021**







Preparing for PRIIPs

The application of the requirement to prepare a Key Information Document ("KID") under the Packaged Retail and Insurance-based Investment Products ("PRIIPs") **Regulation to UCITS marketed to EEA retail investors** has been delayed numerous times and will now apply from 1 January 2023.

UCITS managers must now prepare for the transition to the PRIIPS KID over the course of 2022. There are a number of significant differences between the UCITS Key Investor Information Document and the PRIIPs KID, which will necessitate the gathering of more data to meet the KID content and presentation requirements. These include the presentation of forward looking performance scenarios, different costs methodologies and more detailed costs disclosures.

Find Out More

MathesonInsights | Extension of PRIIPs Exemption for UCITS, December 2021

More Change for Money Market Funds?

The Commission is required to review the Money Market Funds Regulation ("MMFR") by 21 July 2022. In March 2021, ESMA launched a consultation on reforms to the MMFR, intended to assess the impact of the March 2020 market disruption on money market funds ("MMFs"). In addition to the feedback provided by ESMA, which is expected to be published shortly, the Commission's review will also be informed by the European Systemic Risk Board ("ESRB") policy recommendation aimed at increasing the resilience of money market funds, published on 25 January 2022, as well as the Financial Stability Board and the International Organisation of Securities Commissions work in this area.

The Commission has indicated that it is likely to complete its review by the 21 July 2022 deadline and the Council and European Parliament will then consider the Commission's reform proposals.

Valuation in the Regulatory Spotlight

On 20 January 2022, ESMA launched a common supervisory action ("CSA") focusing on compliance of authorised UCITS and open-ended alternative investment funds ("AIFs") with the valuation-related provisions in the UCITS and AIFMD frameworks, in particular in relation to the valuation of less liquid assets.

One core objective of the CSA is the consistent and effective supervision of valuation methodologies, policies and procedures of supervised entities to ensure that less liquid assets are valued fairly during both normal and stressed market conditions, in line with applicable rules. The Central Bank will engage with fund managers during 2022, likely through industry questionnaires, desk-based reviews and potentially on-site inspections for a sub-set of fund managers.

Regulatory Focus on Costs and Fees to Continue

Following the CSA on costs and fees of UCITS in 2021, the Central Bank indicated in November 2021 that it would publish findings in relation to the CSA "in due course". The CSA aimed to assess the compliance of supervised entities with the relevant cost-related provisions in the UCITS framework and the obligation to not charge undue costs to investors. Fund managers can expect further engagement with the Central Bank on this topic focused on implementing the CSA findings.

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Risk Outlook for Securities Markets

[T]here is often a noticeable imbalance in the relationship between the management company, investment manager and investment advisor; one that is frequently found in failing investment funds."

Securities Market Risk Outlook Report 2022, Central Bank of Ireland³

³ Securities Market Risk Outlook Report 2022, Central Bank of Ireland

Getting Governance Right

In its Securities Markets Risk Outlook Report, the Central Bank has indicated that it will continue to focus on governance, following its thematic review of fund management company effectiveness in 2020 and the requirement for fund management companies to put action plans in place to address the findings of that review by the end of Q1 2021.

The Central Bank expects fund management companies to consider and address how resources and operational capacity will need to change to take account of any increase in the nature, scale and complexity of funds under management. In the specific context of the conversion of many self-managed funds to externally managed funds, the Central Bank requires third party fund management companies to critically assess the impact of proposed new business in order to ensure that they are appropriately resourced to service any additional business.

The Central Bank has also expressed concerns relating to the role of investment advisors appointed to a fund and situations where investment advisors may exercise more control and influence than is appropriate.

Legal and Regulatory Developments

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The Central Bank expects fund management companies to provide a detailed rationale for the appointment of an investment advisor and a clear description of the role the entity will fulfil. Reports from investment managers on portfolio management should include any interaction with investment advisors during the period in question.

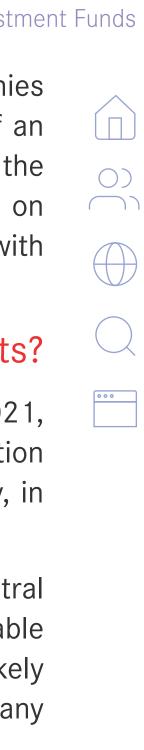
Will crypto assets become eligible investments?

In updates to its UCITS Q&A and AIFMD Q&A in 2021, the Central Bank outlined its current position in relation to investments by UCITS or AIFs, directly or indirectly, in crypto assets.

In the Securities Markets Risk Outlook Report, the Central Bank acknowledges that, while such assets may be suitable for wholesale or professional investors, it is highly unlikely to approve a UCITS or retail investor AIF proposing any exposure (direct or indirect) to crypto-assets.

This takes into account the specific risks attached to cryptoassets and the possibility that appropriate risk assessment could be difficult for a retail investor without a high degree of expertise.

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The nature and characteristics of these assets vary considerably, however crypto-assets are likely to be highly risky and speculative."

Securities Market Risk Outlook Report 2022, Central Bank of Ireland³

continued In the case of a QIAIF seeking to gain exposure to crypto-assets, the relevant QIAIF will be required to make a submission to the Central Bank outlining how the risks associated with such exposures could be managed effectively by the AIFM. The Central Bank will keep its approach to crypto-assets under review and will continue to be informed by European regulatory discussions on the topic. There will be further consideration of the Commission's proposed Markets in Crypto Assets Regulation ("MiCA") during 2022. This regulation is intended to create uniform rules for crypto-assets and related activities and services throughout the EU.



Legal and Regulatory **Developments**

Click here for Summaries of Domestic and European Legislative and Regulatory Developments affecting the Asset Management and Investment Funds Sector





Financial Services Finance and Capital Markets Developments

Although Covid-19 is by no means a thing of the past, there are good reasons to hope that 2022 will allow us to return, in a sense, to "business as usual".

We expect that legislators and regulators will re-focus their attention on the European Commission's flagship Capital Markets Union ("CMU") project, the package of amendments to the Capital Requirements Directive and Regulation, the ongoing reviews of the Securitisation Regulation, Prospectus Regulation and MiFID, as well as on key trends such as the rise of ESG investing and the digitalisation of finance.

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Securitisation Regulation Under Review

In order to scale-up the securitisation market in the EU, the Commission will review the current regulatory framework for securitisation to enhance banks' credit provision to EU companies, in particular SMEs."

EC Communication on the Capital Markets Union Action Plan

The European Commission ("EC") launched a consultation on the Securitisation Regulation in July 2021 on various topics:

- transfer (SRT) process;
- limited value to investors;
- disclosure of information; and

The publication of the EC's report, and the progress of any associated proposals to amend the Securitisation Regulation, will be closely followed by the European securitisation industry. Based on the discussions to date, any proposed amendments are likely to be largely welcomed by the industry.

Legal and Regulatory Developments

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addressing "capital non-neutrality" (ie, the application of significantly higher capital requirements to securitised assets than to equivalent non-securitised assets);

streamlining and harmonising the significant risk

improving the liquidity treatment of securitisations by aligning their treatment (for the purposes of banks' liquidity coverage ratio) with that of covered bonds;

making disclosure requirements more targeted, by amending the disclosure templates to remove disclosure requirements which are considered duplicative or of

environmental performance and sustainability.

The finalisation of the Basel III requirements will affect the capitaltreatmentofsecuritisationsthroughthestandardised approach and will also affect securitisations under the internal ratings-based approach (IRBA), under which risk weights will increase. This will need to be factored into the discussion about the general review of the securitisation framework.

Sustainable Securitisation is on its way

The EBA Report on developing a specific sustainable securitisation framework for the purpose of integrating sustainability-related transparency requirements into the Securitisation Regulation and the forthcoming EC Sustainability Report on the creation of such a framework will be closely followed by the securitisation industry.

To date, we have seen substantial interest from investors and managers in ESG securitisations, particularly in the area of CLOs.

READ MORE →



continued, Many managers have agreed to provide investors with transparency around the ESG characteristics of their portfolios on a voluntary basis. 2022 may be the year we see the emergence of a formal regulatory framework for such disclosures.

Article 45a of the Securitisation Regulation specifically states that the EBA Report should, where relevant, mirror or draw upon certain key provisions of the Sustainable Finance Disclosures Regulation ("SFDR"). Consistency between the sustainable securitisation framework and SFDR would be welcomed by market participants, who are already looking to SFDR as a source of standards for sustainability disclosure in some ESG securitisations.

EU Banking Package: Sustainability to the Forefront

In October 2021, the European Commission adopted a package (the "Banking Package") of legislative proposals involving revision of the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD IV).

Among other things, the Banking Package aims to contribute to sustainability and the transition to climate neutrality.

Strengthening the resilience of the banking sector in relation to managing environmental, social and governance ("**ESG**") risks is an important component of the Commission's Sustainable Finance Strategy.

The Banking Package proposal will require banks to systematically identify, disclose and manage ESG risks as part of their risk management. Disclosure rules will be proportionate to size, so that smaller banks will not be unduly burdened.

The proposal provides specifically for:

- banks;
- reviews; and
- exposed to ESG risks.

Find Out More

Investments and

Matheson Insight | Ireland and Sustainable Finance Sustainable Finance: Regulation on Disclosures Relating to Sustainable Sustainability Risks

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

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

Financial Services | Finance and Capital Market Developments

regular climate stress testing by both supervisors and

assessment of ESG risks as part of regular supervisory

all banks to disclose the degree to which they are

Matheson Insight | The EU Banking Package

By incorporating ESG risk assessments, banks will *be better prepared and protected to weather future* challenges such as climate risks."

McGuinness, EU Commissioner Mairead responsible for Financial services, financial stability and Capital Markets Union.



100%

90%

80

70%

Book-Entry Securities: The Day Approaches

From 1 January 2023, newly issued transferable securities that are admitted to trading or traded on a trading venue will be required to be represented in book-entry form, either as immobilisation or subsequent to a direct issuance in dematerialised form.

From 1 January 2025, this requirement will apply to all in-scope transferable securities in issue on that date. While the requirements will not apply until 2023 at the earliest, issuers who may be affected will need to consider the impact of the requirements on their issuance processes.



Upcoming Legislation

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MiFID: Transparency

As part of the ongoing wider review of MiFID II, the European Securities Markets Authority ("ESMA") launched a consultation in September 2021 on the rules around transparency, focusing on technical issues relating to posttrade data, including the basis for any future consolidated tape.

This is part of a general approach to improving the information provided to investors and encouraging them to use the information in making their investment decisions.

The European Commission will likely introduce proposals for amendments in 2022, particularly following the Wirecard case.

These will focus on:

- EU;
- level;
- across the EU.

enhancing cooperation between authorities across the

enhancing coordination and governance on a national

strengthening the independence of the NCAs; and strengthening harmonised supervision of information

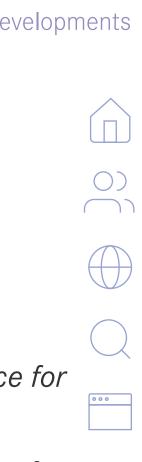
Clearing: A Big Challenge

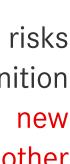
"I am very clear that June 2025 is the end of equivalence for UK clearing houses".

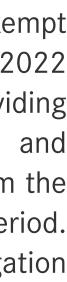
Mairead McGuinness, EU Commissioner responsible for Financial Services, Financial Stability and Capital Markets Union.

In order to avoid any short-term financial stability risks arising from Brexit and the consequent non-recognition of UK clearing houses, the Commission adopted a new equivalence decision granting access to UK CCPs for another three years, until 30 June 2025.

Pension scheme arrangements (PSAs) have been exempt from mandatory clearing since 2012. On 25 January 2022 ESMA sent a letter to the European Commission, providing its views on the clearing obligation for PSAs and recommending the end of the current exemption from the clearing obligation with a one-year implementation period. ESMA recommends starting to apply the clearing obligation to PSAs from 19 June 2023.











Financial Services Risk and Regulatory

Supervisory expectations of regulated financial services firms have steadily been increasing over the past decade or more. In the wake of COVID-19, we are evidencing a renewed emphasis on these expectations with consumer protection related concerns underpinning many of the requirements.

These expectations are communicated in several different ways including:

- speeches delivered by senior members of the Central Bank;
- industry specific communications such as "Dear CEO Letters";
- engagement with Government to put specific changes on a legislative footing; and
- issuing regulatory guidance on key areas of focus.

In this section, we review a selection of the most recent pronouncements from the Central Bank and Government Legislative proposals that will impact across the sector, as well as a number of industry specific requirements.

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The expectation is for firms to begin to design their Operational Resilience Frameworks in line with this cross industry guidance and to begin dialogue at board level around the current level of operational resilience maturity in their firm".

Central Bank of Ireland Feedback Statement on **Operational Resilience**⁴

⁴ Central Bank of Ireland, Feedback Statement on CP140 Cross Industry Guidance on Operational Resilience

Operational Resilience: A Key Regulatory Focus

The continued fall out from COVID-19 has resulted in resiliency, now and into the future, being placed high on the agenda of both businesses and regulators and the financial services sector has been no exception.

At an Irish regulatory level, we have seen operational resilience feature in several outputs of the Central Bank including its 2021 regulatory priorities, its Consumer Outlook Report for 2021, and several speeches made by its senior members. This culminated in the publication of the Central Bank's Cross Industry Guidance on Operational Resilience on 1 December 2021.

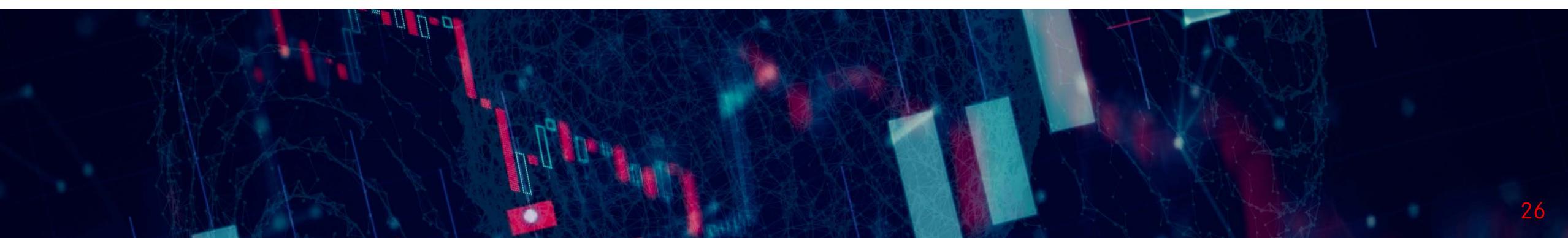
The Guidance sets out the Central Bank's expectations of firms in terms of implementing an effective operational resilience framework.

The 15 Guidelines are framed around three pillars of operational resilience:

1. Identify and Prepare;

6=

- 2. Respond and Adapt; and
- 3. Recover and Learn.

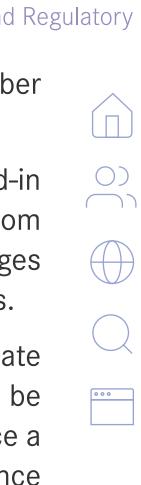


Firms are expected to apply the Guidance by 1 December 2023, at the latest.

While this timetable provides firms with a good lead-in time, compliance will require participation and input from various functions within firms before substantial changes are made to documentation, processes and procedures.

Consequently, firms would be well advised to allocate resources to this, without delay. Firms should also be cognisant of the plans at a European level to put in place a comprehensive framework on digital operational resilience (DORA).

- 🕞 Find Out More —
Matheson Insights Cross Industry Guidance on Operational Resilience – Final Guidelines Issued
Matheson Insights 10 Steps to Ensuring Operational Resilience
Matheson Webinar Operational Resilience, 18 January, 2022
Matheson Webinar Operational Resilience, 18 May, 2021







Individual Accountability Framework and SEAR – Status Update

Since the publication of the Central Bank's Report on the Behaviour and Culture in Irish Retail Banks in July 2018, the financial services industry has awaited the formalisation of the Central Bank's proposal for an Individual Accountability Framework ("**IAF**") and the Senior Executive Accountability Regime ("**SEAR**") (a key component of the IAF).

Some three and a half years on, the publication of the final text of The Central Bank (Individual Accountability Framework) Bill is still awaited, although classified as priority legislation in the government's Spring Legislative Programme. We understand however, that the Joint Committee on Finance, Public Expenditure and Reform and An Taoiseach, which conducted pre-legislative scrutiny ("**PLS**") of the General Scheme of the Bill on 3 and 10 November 2021, is in the process of finalising its report on the outcomes of the PLS. It is anticipated that the text of the Bill will follow shortly thereafter.

Regarding the timing once published, the Minister for Finance's comments during the PLS are helpful. He stated that he hoped the legislation would be "operational in the early part of 2023.... because I anticipate it will take time to get the legislation through the Oireachtas effectively and deal with the matters".

Central Bank publishes Dear CEO Letter on Climate and ESG Issues

On 3 November 2021, the Central Bank published a Dear CEO letter ("**Letter**") on climate and Environmental, Social, and Governance ("**ESG**") issues.

The Letter describes the Central Bank's expectations of regulated financial service providers ("**RFSPs**") and includes five specific areas of focus for RFSPs. While we have heard a lot from the Central Bank in recent times in relation to the importance of climate and broader ESG matters, this is the first official communication to RFSPs from the Central Bank. It delivers a clear message that this is an area of priority for the Central Bank and RFSPs should be minded of this.

The Letter makes it clear that the Central Bank's supervisory approach to this topic is informed by regulatory developments at EU level, the work of its peers and its broader supervisory objectives. Consequently, having an awareness of the direction of travel at a European level is also important for RFSPs. The letter explicitly states that these expectations will apply in a proportionate manner aligned with the nature, scale and complexity of RFSPs, something which will be welcomed, in particular, by smaller RFSPs.



The Letter details that the expectations are not binding on RFSPs.

However, it is worth noting that this statement is made in the context of the expectations not replacing or overriding any legal, regulatory or supervisory requirements applicable to RFSPs.

Consequently, RFSPs would be advised to consider their current practices as against the identified areas of focus and begin to make proportionate changes.

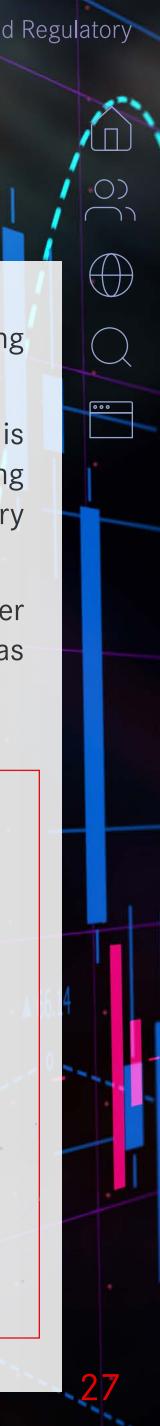
Find Out More

Matheson Insights | Individual Accountability Framework and SEAR: Observations from Pre-Legislative Scrutiny

Matheson Insights | SEAR: One Step Closer

Matheson Insights | The Central Bank establishes an Inquiry into a person formerly concerned in the management of a Regulated Financial Services Provider

Central Bank of Ireland | Central Bank Dear CEO Letter on its supervisory expectations relating to climate and sustainability issues



Crowdfunding Regulation Timeline

13 December, 2021

Publication of the European Union (Crowdfunding) Regulations 2021 [S.I. No. 702 of 2021] ("Crowdfunding Regulations") giving effect to the EU Crowdfunding Regulation (Regulation (EU) 2020/1503) in Ireland and designating the Central Bank as the competent authority responsible for the authorisation and supervision of crowdfunding service providers in Ireland.

Finalisation of the Crowdfunding Regulatory Regime

The component parts of the regulatory regime pertaining to the business of crowdfunding in Ireland are now in place. For many Crowdfunding Service Providers ("CSP"), a decision to become authorised under this regime will be their first move into the regulatory environment. With this in mind, careful consideration of the legislative and regulatory developments (see box) is needed.

The Central Bank has high standards in terms of governance arrangements, policies, procedures and processes which must be in place for all entities seeking an authorisation from it.

While existing unregulated CSPs will no doubt be comfortable with their operating processes we expect that it is the extra expectations of the regulator which will inevitably take longer and cost more than anticipated to address.



5 January, 2022

Central Bank publishes its Guidance Note on Completing an Application Form for Authorisation as a Crowdfunding Service Provider which provides guidance in relation to the authorisation process and Central Bank's requirements for establishing a CSP in Ireland. Of particular note are the Central Bank's expectations of CSP's post authorisation.

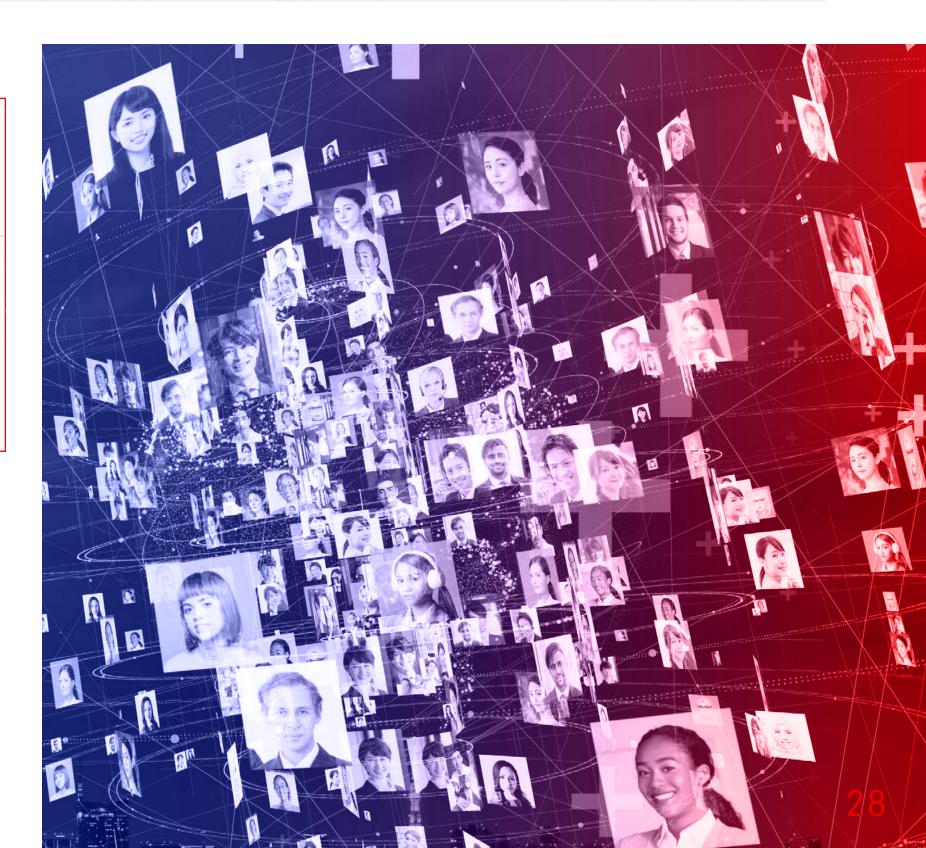
13 January, 2022

Central Bank publishes its feedback statement to its April 2021 consultation on Crowdfunding Marketing Requirements - CP141, along with an Addendum to the Consumer Protection Code 2021, extending rules on advertising for CSPs to ensure enhanced protection for investors in addition to ensuring that they are informed as to potential risks.

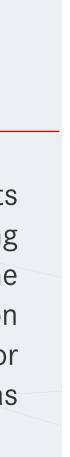
Matheson Insights | Crowdfunding: Central Bank

Matheson Insights | Crowdfunding Regulation To

Matheson Insights | Crowdfunding Regulation -Cross Border Opportunities on the Horizon











Upcoming Legislation

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General Scheme of the Insurance (Miscellaneous Provisions) Bill

On 20 October 2021, the government published the General Scheme of the Insurance (Miscellaneous Provisions) Bill ("**Insurance Bill**") and subsequently listed the Insurance Bill as priority legislation in its' Spring Legislative Programme.

As the name suggests, the proposed legislation seeks to address a number of pertinent issues in the area of insurance, which align with the government's promises in the area of insurance reform.

The proposed changes range from enhancements to data collection by the National Claims Information Database, proposals in respect of the practice of "price walking", amendments to the Consumer Insurance Contracts Act 2019 ("**CICA**") and changes to the temporary run off regime ("**TRR**") established under the Brexit Omnibus legislation.

In particular, the proposals relating to the CICA and the TRR are welcome developments for the Insurance sector. The proposed amendments to the CICA will resolve certain

technical issues that were identified post-enactment. While the TRR related amendments will ensure that third country reinsurers currently providing reinsurance cover in Ireland pursuant to the "Reinsurance Exemption" and entities in liquidation can legally run-off their existing business within the TRR framework.

During the Insurance Bill's PLS by the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on 16 December 2021, the Minister of State in the Department of Finance, Deputy Sean Fleming explained that he was hopeful that the government would be in a position to publish the Bill early in the New Year. As at the time of writing, it has not yet been published.

Find Out More

Government of Ireland | Joint Committee on Finance, Public Expenditure and Reform and Taoiseach to begin pre-legislative scrutiny of Insurance (Miscellaneous Provisions) Bill 2021

Government of Ireland | General Scheme of the Insurance (Miscellaneous Provisions) Bill









Commercial Real Estate

Housing will continue to dominate the Irish legislative agenda for commercial real estate as the government implements their policies set out in the September 2021 Housing for All plan.

Further residential tenancies legislation will enhance tenancy protections.

Planning legislation will undergo significant change with numerous imminent pieces of legislation as well as a longer term complete overhaul of the planning code.

Administrative changes for commercial real estate are in the pipeline with the amalgamation of the Property Registration Authority, Ordnance Survey Ireland and the Valuation Office in one body Táilte Éireann which may lead to enhanced efficiencies in the conveyancing process.

The introduction of e-conveyancing, which has long been discussed, took a step forward in February 2022 with the introduction of regulations confirming e-signatures are acceptable for documents relating to registered land.

Upcoming Legislation

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Through this policy the Government is demonstrating its commitment to build the required amount of housing, of different tenures, to a high standard, and in the right location, for people of all circumstances".

An Taoiseach Micheál Martin speaking at the launch of the Government Housing for All plan on 2 September 2021.

The government continues to implement the Housing for All plan.

The majority of the Affordable Housing Act 2021 and the Land Development Agency Act 2021 have been commenced with certain provisions still awaiting commencement.

A new planning procedure will apply for planning permission for Large Scale Residential Developments, replacing the previous Strategic Housing Development arrangements as set out in the recently enacted Planning and Development (Amendment) (Large-Scale Residential Development) Act 2021 and associated Regulations.

The Housing and Residential Tenancies Bill will strengthen the statutory framework for the enforcement of the overcrowding provisions in the Housing Act 1966 and will amend the Residential Tenancies Act 2004 to further enhance tenancy protections particularly during receivership.

The Housing (Miscellaneous Provisions) Bill will amend the existing provisions in respect of social housing assessments, rent schemes and tenant purchase.

Upcoming Legislation

Click here for Summaries of Domestic and European Legislative Developments affecting the Commercial Real Estate Sector

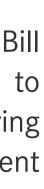


The Land Value Sharing and Urban Development Bill will amend the Planning and Development Act 2000 to introduce new provisions to deal with land value sharing and urban development zones as set out in the government Housing for All plan.

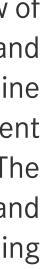
Planning legislation set for complete overhaul

In September 2021 the government announced a review of Irish planning laws overseen by the Attorney General and a working group of planning professionals to streamline and simplify the planning process. The government hopes to complete the review by September 2022. The Spring Legislative Programme refers to the Planning and Development Bill which will review and replace the Planning and Development Act 2000.

In the shorter term the Planning and Development (Judicial Review) Bill will reform the judicial review provisions in the Planning and Development Act 2000 and the Planning and Development (Substitute Consent) Bill will streamline the substitute consent provisions.







Administrative Changes on the Horizon

A new body called Táilte Éireann is to be established by the amalgamation of the Property Registration Authority, Ordnance Survey Ireland and the Valuation Office. This will hopefully lead to enhanced efficiencies in the conveyancing process. The general scheme of the Táilte Éireann Bill has been published and the bill is listed as priority legislation in the Spring Legislative programme.

The Regulation of Providers of Building Works Bill 2022 will place the Construction Industry Register Ireland ("CIRI") on a statutory footing and will provide in law for the registration of builders, contractors and specialist subcontractors.

The Property Services Regulation (Amendment) 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.

The Property Registration Authority ("PRA") welcomed the introduction of the Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022 which applies the specified provisions of the Electronic Commerce Act 2000 to the law governing how an interest in registered land may be created, acquired,

disposed of or registered. While the PRA is not yet in a position to accept electronic signatures, they say this legislation will enable them to explore the potential for the development of a paperless system of registration.

The Valuation Office, Property Registration Authority and Ordnance Survey Ireland together manage a comprehensive set of property and spatial data. Combining all three in Tailte Éireann will optimise the benefits of land information for the continuing economic and social development of Ireland."

Emma Reeves, principal officer in the Department of Housing, Local Government and Heritage, Joint Committee on Housing, Local Government and Heritage debate, 16 September 2021.



Contection, Privacy and Technology

Last year was another busy year in the data protection, privacy and technology sector. Over the course of the last 12 months, we have seen a number of important data protection developments at EU and national level, including:

- the European Commission's adoption of the highly anticipated Standard Contractual Clauses ("SCCs") for international data transfers;
- Guidelines by the Data Protection Commission ("**DPC**") on data processing in the workplace in the context of preventing the spread of COVID-19; and
- a record GDPR fine imposed for a company's failure to provide the necessary transparency information in a privacy notice.

The European Data Protection Board ("EDPB") have also published a number of helpful guidelines, which provide some welcome clarity on a number of issues including, what constitutes a "transfer" of data under the GDPR; recommendations on measures to supplement transfer tools; the concepts of controller and processor; the scope of the right of access under Article 15 of the GDPR, and data breach notification.

READ MORE →



33

The standard set out in the decision goes significantly beyond that of most privacy notices."

Davinia Brennan, Partner, Technology and Innovation Group, Matheson, on the record fine imposed on a technology company by the DPC in 2021.

A number of important pieces of legislation are also coming down the track at EU and national level, which demonstrate that the GDPR does not resolve all data issues.

On the EU front, as part of its Digital Single Market strategy, the European Commission has proposed the Digital Services Act, Digital Markets Act, Artificial Intelligence Act, Data Act, and Data Governance Act. The proposals aim to facilitate the further use and sharing of data between more public and private parties inside the data economy, to support the use of specific technologies such as Big Data and Articfial Intelligence ("AI"), and to regulate online platforms and gatekeepers.

The ePrivacy Regulation, and the NIS2 Directive are also amongst the legislative developments that we will be monitoring closely. This digital framework will be coupled with the GDPR and will grow alongside it, affecting privacy and data protection in unprecedented ways.

The Irish government has also recently published the long anticipated Online Safety and Media Regulation Bill 2022, after three years of engagement with stakeholders, including members of the public, companies, NGOs, and other government organisations. The Bill has been described as marking "a watershed moment as we move from self-regulation to an era of accountability in online safety".

Upcoming Legislation

Click here for Summaries of Domestic and European Legislative Developments affecting the Data Protection, Privacy and Technology sector



In addition, the government has announced the imminent publication of the Consumer Rights Bill, which has been hailed as representing "the biggest overhaul of consumer rights law in 40 years".

What key data protection compliance challenges lie ahead in 2022?

New SCCs for International Transfers were adopted by the European Commission in June 2021. The SCCs require companies to remove the old SCCs and insert the new SCCs into all legacy contracts by 27 December 2022.

In addition, prior to executing the new SCCs, companies will have to carry out and document a transfer impact assessment, and consider whether supplementary measures need to be adopted in order to ensure the transferred data is afforded an adequate level of data protection. This will be a burdensome exercise for many companies, particularly those transferring massive amounts of data globally.

A new data transfer tool, in the form of a further set of SCCs, is expected in 2022. The European Commission intends to develop these SCCs to facilitate transfers of data to importers that are already subject to the GDPR by virtue of Article 3(2) of the GDPR.

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continued

The EDPB has stated that this further set of SCCs are needed due to the fact that less protection is required when transferring data to an importer that is already subject to the GDPR, and in order not to duplicate its direct GDPR obligations.

The DPC imposed a record €225 million fine on a technology company last year for failure to discharge its transparency obligations under the GDPR, in regard to the content of its privacy notice. The decision, which is subject to appeal before the Irish Courts and an annulment action before the European Court of Justice, has implications for all organisations.

It sets out the DPC's high expectations in respect of the information that must be provided in privacy notices, and how it should be presented. The standard set out in the decision arguably goes beyond that of most privacy notices. We will likely see further regulatory scrutiny and debate about the required content of organisations' privacy notices in the year ahead.

The largest category of complaints from data subjects to the DPC continues to concern data subject access requests ("**DSARs**"). In its Annual Report for 2021, the DPC has

warned that it intends to increase enforcement in this area and target non-responses and inadequate responses from controllers in respect to DSARs in the year ahead.

The EDPB recently published draft guidelines on DSARs, which discuss the scope of the right of access under Article 15 of the GDPR; how to provide access; general issues controllers should consider when assessing a DSAR; along with restrictions to the right of access. Interestingly, in the EDPB's view, no proportionality test applies when considering the right of access against the efforts the controller has to take to comply with a DSAR. The draft guidelines also state that "the fact that it would take the controller a vast amount of time and effort to provide the information or the copy to the data subject will not on its own render a request 'excessive'", and will not permit the controller to refuse to act on the request pursuant to Article 12(5) of the GDPR.

Data Protection, Privacy and Technology



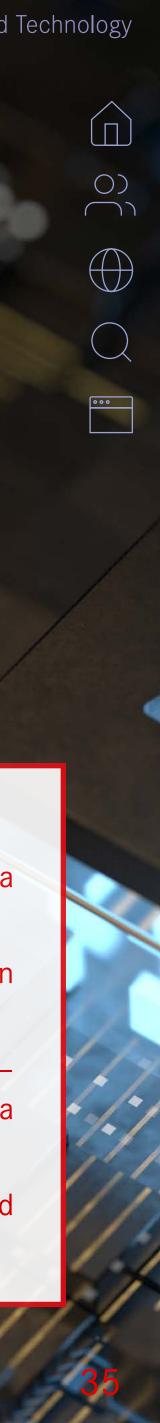
Find Out More

Matheson Insights | Online Safety and Media Regulation Bill Published

Matheson Insights | Top 5 Data protection Compliance Challenges for 2022

Matheson Insights | New Data Transfer Tool – Further complexity ahead for international data transfers?

Matheson Insights | Data Protection, Privacy and Cyber Security Bulletin, Edition 2



From the Consumer Rights Bill to the A.I. Act, what's on the Irish and EU's digital agenda?

The Consumer Rights Bill 2022 will transpose EU Directives 770/2019 and 771/2019, on consumer contracts for the supply of digital content and digital services, and for the sale of goods, respectively.

It will also update and consolidate the statutory provisions on consumer rights and remedies in relation to contracts for the supply of non-digital services, unfair contract terms, and information and cancellation rights. The bill is due to be published shortly by the Irish government.

The Online Safety and Media Regulation Bill 2022 will establish a new regulator, a multi-person Media Commission, to which an Online Safety Commissioner will be appointed. The Media Commission will replace the Broadcasting Authority of Ireland. It will be responsible for overseeing updated regulations for broadcasting and video on-demand services, and the new regulatory framework for online safety created by the Bill.

The bill will also transpose the revised Audiovisual Media Services Directive into Irish law. The bill was published on 12 January 2022, and will now make its way through all stages in the Oireachtas.

The Digital Services Act ("DSA") focuses on creating a safer digital space in which the fundamental rights of all users of digital services are protected. Among the core concerns tackled by the DSA are the trade and exchange of illegal goods, online services and content, and algorithmic systems amplifying the spread of disinformation. The European Parliament passed its position on the Digital Services Act on 20 January, allowing for negotiations with EU countries to start.

The Digital Markets Act ("DMA") aims to establish a level playing field both in the European Single market and globally. It will create harmonised rules defining and prohibiting certain unfair practices by "gatekeeper" platforms (providers of core platform services). The European Commission will have new powers to carry out market investigations, and update the obligations for gatekeepers when necessary.

The European Parliament debated its position on the Digital Markets Act on 14 December 2021 and adopted it the following day. Negotiations with the EU governments started in January 2022.

The Artificial Intelligence ("AI") Act aims to address the development and adoption of safe AI across the EU while respecting the fundamental rights of EU citizens. Like the GDPR, the "AI" Act takes a risk-based approach.



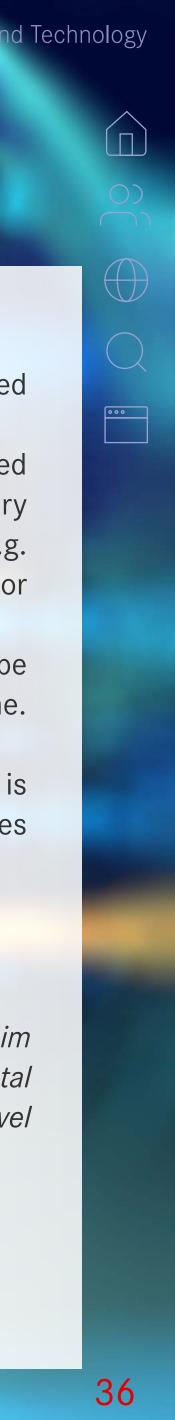
It categorises all AI into:

- 1. unacceptable risk activities which are prohibited (e.g. social scoring)
- 2. high-risk activities which are only permitted to compliance with mandatory subject requirements and a conformity assessment (e.g. Al systems used for recruitment purposes or evaluating creditworthiness); and
- 3. limited risk (e.g. chatbots) where users must be informed that they are interacting with a machine.

Minimal risk (e.g. spam filters) – where free use of AI is allowed. The proposed AI Act is still at the early stages of the European legislative process.

The Digital Services Act and Digital Markets Act aim to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses."

European Commission



direct_mod.use_y = True mirror_mod.use_z = False elif _operation == "MIRROR_Z": mirror_mod.use_x = False mirror_mod.use_y = False mirror_mod.use_z = True

#selection at the end -add back the desel
mirror_ob.select= 1
modifier_ob.select=10 10 1 0
bpy.context.scene.objects.active = modifier_co
print("Selected" + str(modifier_ob)) #1modifi

Upcoming Legislation

mirror_ob.select = 0

<u>Click here for Summaries of Domestic and European</u> Legislative Developments affecting the Data Protection, Privacy and Technology sector **The Data Act** covers both personal and non-personal data. It will govern who can use and access what data for which purposes across all economic sectors in the EU. The act aims to unlock the value of data generated, for example, by connected objects in Europe, one of the key areas for innovation in the coming decade. It will clarify who can create value from such data and under what conditions.

The Data Governance Act ("**DGA**") also applies to both personal and non-personal data. It establishes a framework to facilitate general and sector-specific data-sharing (including data of public bodies, private companies and citizens). The DGA is designed to break down barriers to data sharing. There are four pillars to the DGA:

(i) the re-use of sensitive public sector data;

 $G_{\overline{1}}$

(ii) establishing a framework for new data intermediaries;

(iii) corporate and individual data altruism; and

(iii) fostering coordination and interoperability through the European Data Innovation Board.

The e-Privacy Regulation is still being negotiated at EU level. When it comes into force, it will, in particular, have an impact on organisations' electronic marketing practices and use of cookies.

The revised Network and Information Security Directive ("**NIS2**") will strengthen the security requirements, address the security of supply chains, streamline reporting obligations, and introduce stricter enforcement requirements, including harmonised sanctions across the EU to address the growing threats posed by digitalisation and the surge in cyber-attacks.

The proposed expansion of the NIS2 scope will effectively oblige more entities and sectors to comply with cybersecurity requirements.





Employment

Ireland's employment law landscape lately has been primarily driven by the need to assist employers and employees steer a course through the pandemic.

Novel measures including wage supports and subsidies, the curtailment of the ability to seek redundancy during periods of lay-off and regularly updated Work Safely Protocols aimed to facilitate an efficient return to the physical workplace in line with public health guidance.

Following the January publication of the Transitional Protocol, coupled with the relaxation of the requirement for staff to work from home unless absolutely essential, the employment law outlook for 2022 is set to focus on the theme of "balance" and the implementation of measures, such as the right to disconnect and request remote working, to support the new hybrid/remote working environment envisaged by the Government's Making Remote Work Strategy.

Other significant developments on the horizon include regulations to implement the Gender Pay Gap Information Act 2021; important updates to employee leave as well as changes to Ireland's whistleblowing regime.

READ MORE \rightarrow

Upcoming Legislation

<u>Click here</u> for Summaries of Domestic and European Legislative Developments affecting Employment Law





The end of the office? How to roll out hybrid working arrangements a top priority

This new law will give employers and workers legal clarity on remote working, which became the default for many during the pandemic"

(25 January 2022 referring to the Right to Request Remote Working Bill 2021) Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar TD

The General Scheme of the Right to Request Remote Working Bill was published in January but is undergoing pre-legislative scrutiny before enactment.

Significantly, it does not confer an automatic entitlement to work remotely. Rather this draft legislation outlines the technical procedure to be taken when making and assessing a request to work remotely.

On balance, as currently drafted, employers are afforded broad discretion to refuse such requests on the basis of subjective business concerns. A non-exhaustive list of thirteen such grounds of refusal is included in the draft. However, it is anticipated that the extent to which such reasons will be immune from scrutiny may be called into question given the reality that many employees have been successfully working remotely during the pandemic.

As currently drafted there is no facility under which an employee can interrogate the merits of a refusal to such a request. There is no scope for an employer's assessment and final decision to be challenged or overturned by the Workplace Relations Commission (the "WRC"). Rather the WRC may only direct compliance with the employer's procedural obligations e.g. to respond to such a request within 12 weeks of its submission.

Given that the majority of employees are now seeking some form of remote or hybrid working as the norm rather than

Upcoming Legislation

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the exception, employers must be mindful of the need to balance business needs with employee requests to ensure the recruitment and retention of staff. It is expected that a forthcoming Code of Practice will provide greater guidance to employers when assessing remote working requests.

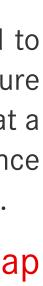
Mind the gap: mandatory gender pay gap reporting is here

After a number of false starts, the long awaited Gender Pay Gap Information Act was enacted in July 2021. However, regulations to provide more granular detail on the precise content and effect of these mandatory reporting obligations remains outstanding. We expect these regulations to be published in the first half of 2022.

In March 2022 the Minister for Children, Equality, Disability, Integration and Youth announced that these regulations will issue "in the coming weeks". The Minister has advised in scope employers that they will be required to designate a specified "snapshot" date in Jun 2022 and report the requisite pay and bonus information by December 2022.

Briefly, employers with 250+ employees will be required to publish details of their employees' pay and bonus to illustrate their gender pay hap. This threshold is expected to reduce to 150+ employees within 2 years of the regulations and reduce to 50+ employees within the first 3 years.

READ MORE →



Employment







continued, In scope employers will also be required to publish a narrative alongside their figures detailing, in the employer's opinion, the reasons for such differences and the measures the employer is taking to eliminate or reduce the gap. This statement will be useful to properly contextualise the existence of the gap and clearly set out the employer's roadmap to narrow that gap.

Although there is no provision within the Act for fines or compensation in connection with an employer's disregard of the reporting obligations, the scope for adverse publicity and the potential impact on an employer's ability to recruit and retain key talent will be key drivers to support compliance. Further, as this will be an ongoing requirement, the first year's figures will serve as a yardstick against which an employer. Now that the government has given the outstanding regulations the "green light", prudent employers are advised to take the above steps to prepare, in particular against the backdrop of the short lead-in time for the first year of reporting.

Statutory sick pay entitlements on the horizon for the first time in Ireland

Unlike most of our European counterparts, there is currently no legal entitlement to sick pay under Irish law and it is for an employer to decide on the level of sick pay (if any) it provides to its staff. However, the draft Sick Leave Bill published in November 2021 proposes to provide an entitlement to a minimum period of paid sick leave for all employees commencing with three days per year once the employee has completed 13 weeks' service.

The draft Bill is currently undergoing pre-legislative scrutiny but it is anticipated that this entitlement will increase to five days payable in 2023, seven days payable in 2024 and up to 10 days payable by 2025. Significantly, it is proposed that the rate of sick pay will be capped so that an employer will only be obliged to pay up to 70% of wages, subject to a cap of $\leq 110/day$.

Further enhancements to Family Leave on the Way

The Family Leave and Miscellaneous Provisions Act 2021, which came into force in April 2021, increased employees' entitlement to parent's leave from two to five weeks' nontransferable leave in respect of babies born or children adopted after 1 November 2019 to be taken in the first two years after the birth or adoptive placement. Further, adoptive parents will have greater flexibility to decide which parent will avail of adoptive leave and benefit, with paternity leave and benefit available to the parent not availing of adoptive leave.

READ MORE \rightarrow

I believe this reform is part of the pandemic dividend, the more inclusive economy and fairer society we are going to build once the pandemic is over."

Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar (June 2021)

Find Out More

Government of Ireland | Gender Pay Gap Information Act 2021

Matheson Insight | Green Light for Gender Pay Gap Reporting This Year

Matheson Insights | Matheson Insight: What Drives the Gender Pay Gap? Lessons from the Uber Study

Government of Ireland | General Scheme of Sick Leave Bill 2021

Government of Ireland | Report on Pre-Legislative Scrutiny of the General Scheme of the Sick Leave Bill 2021 (dated 9 February 2022)

Government of Ireland | Family Leave and Miscellaneous Provisions Act 2021

Government of Ireland | Minister McGrath publishes Protected Disclosures (Amendment) Bill - 9 February 2022

Courts Service of Ireland | Baranya v Rosderra Irish Meats Group Ltd [2021] IESC 77



[A] number of high profile cases show that we can never be complacent about protecting those who are reporting wrongdoing by both public and private sector organisations."

Minister for Public Expenditure and Reform **Michael McGrath TD**



Upcoming Legislation

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However, it was announced in Budget 2022, that parent's leave would increase from five to seven weeks for each parent, with such changes due to take effect from July 2022. This would then bring Ireland in line with the requirements of the EU's Work Life Balance Directive which requires all Member States to implement two months paid, non-transferable parent's leave by August 2022. We are however awaiting legislation before those changes will come into effect.

It is also noteworthy that publication of the Maternity Protection (Amendment) Bill is anticipated. This Bill proposes to extend the period during which breastfeeding breaks can be taken from 26 weeks to two years.

Significant Updates to Ireland's Whistleblower Regime

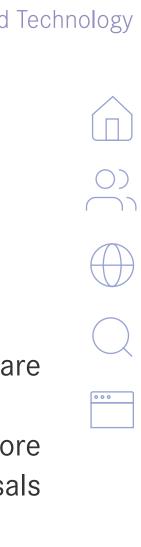
The Protected Disclosures (Amendment) Bill 2022 was published in February and is set to finally transpose the EU's Whistleblower Protection Directive by amending the Protected Disclosures Act of 2014, albeit the transposition date has now long since passed.

At a high level, the bill will establish formal channels and procedures for employees to make protected disclosures in organisations with 50 or more employees.

The bill will also:

- widen the scope of the categories of workers that are protected under the regime;
- expand the definition of penalisation to cover more covert acts, such as negative performance appraisals or withholding promotions;
- expand the breaches that employees may make protected disclosures in respect of; and
- create additional offences under the regime.

The bill generally follows the general scheme that was published by the government last Summer, however, the government has deviated from this to further clarify that interpersonal grievances solely affecting an employee will not be considered a protected disclosure, following the high profile decision of the Supreme Court in Baranya v Rosderra Irish Meats Group Ltd. While stopping short of limiting protected disclosures to those made in the public interest, as suggested by the Supreme Court, this amendment is a welcome development and will ensure that individual grievances are dealt with through appropriate internal company procedures.



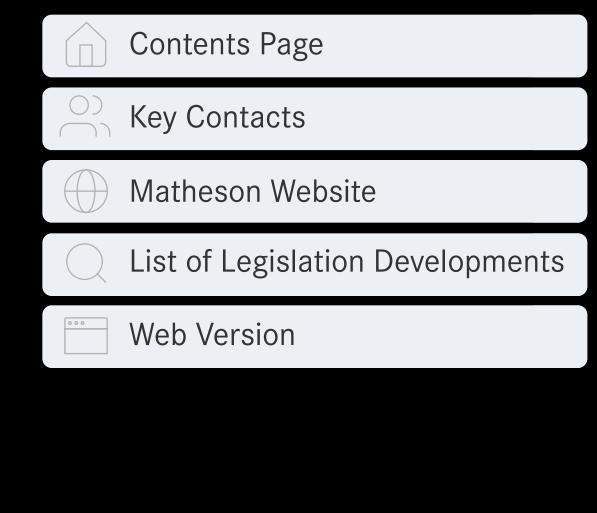




Legislative and Regulatory Developments

Climate, Sustainability and the Environment Investing in Ireland | Tax developments Investing in Ireland | Corporate Law and Governa Financial Services | Asset Management and Inves Financial Services | Sustainable Finance Financial Services | Finance and Capital Markets Financial Services | Risk and Regulatory Commercial Real Estate Data Protection and Privacy Employment Other Important Legislative and Regulatory Develo

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Climate, Sustainability and the Environment

Energy Legislative and **Regulatory Developments**





IRISH PROPOSED LEGISLATION

Gas (Amendment) Bill

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

Latest Stage: Draft heads of Bill in preparation.

EU DRAFT LEGISLATION

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

Procedure Reference: Date Published:

2021/0214 (COD) 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: Date Published:

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: Date Published:

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

2021/0200 (COD) 14 July 2021

2021/0424 (COD) 15 December 2021

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 European Parliament and Council.

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

2021/0223 (COD) Procedure reference:

Date published:

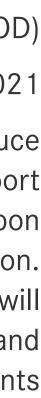
14 July 2021

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 European Parliament and Council.









EU DIRECTIVES

Proposal for a Directive amending the Renewable Energy Directive

Procedure Reference: Date Published: 2021/0218 (COD) 14 July 2021

This amendment, proposed as part of the EU's 'Fit for 55' package, will be the second amendment to the Renewable Energy Directive (Directive 2009/28/EC), having previously been revised in 2018.

An increase is proposed to the EU's overall target of production of energy from renewable sources from 32% to 40%, by 2030. Targets are also imposed on specific sectors such as industry and transport.

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

Proposal for a Revised Energy Efficiency Directive

Procedure Reference: Date Published:

As part of the EU's 'Fit for 55' package, the Commission is proposing to recast Directive 2012/27/EU (the **"Energy Efficiency Directive**") by repealing and replacing it to include new provisions, as well as existing amendments. The recast Energy Efficiency Directive sets more ambitious energy efficiency targets and obligations for Member States, including almost doubling the energy saving obligations imposed on Member States.

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

Proposal for a Revised Gas Directive

Procedure Reference: Date Published:

As part of the proposed regulatory framework to EU markets Commission decarbonise gas the also proposing to Directive recast İS 2009/73/EC (the "Gas Directive"). The recast Gas Directive will establish common rules for the transmission, distribution, supply and storage of natural gas and hydrogen, and extend the rules applicable to the organisation and functioning of the natural gas market to hydrogen.

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

2021/0203(COD) 14 July 2021

2021/0425 (COD) 15 December 2021





IRISH PROPOSED LEGISLATION

Circular Economy Bill

The purpose of this bill is to create a legislative basis for certain actions under the Government's Waste Action Plan for a Circular Economy, which was a feature of the new Programme for Government. The bill will underpin national measures to promote the development of the circular economy.

Latest Stage: Heads of Bill approved on 15th June 2021, pre-legislative scrutiny has taken place. The bill is listed as Priority Legislation in the Spring Legislative Programme.

Aarhus Convention Bill

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

Latest Stage: Work is underway.

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. The bill is listed under All Other Legislation in the Spring Legislative Programme.

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. The bill is listed under Priority Legislation in the Spring Legislative Programme.

BILLS

Sea Fisheries (Miscellaneous Provisions) Bill

Date Published: 7 September 2021 The purpose of the bill is to provide for the EU's points system for serious fishery infringements of the Common Fisheries Policy as required by Council Regulation 1224/2009, to amend typographical errors in the Sea-Fisheries and Maritime Jurisdiction Act 2006 and introduce other miscellaneous and technical amendments.

Latest Stage: Completed Seanad Eireann, 5th Stage







Animal Health and Welfare and Forestry (Miscellaneous Provisions) Bill 2021

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

Latest stage: Currently before Seanad Eireann, Third Stage, 8 February 2022

Water Environment (Abstractions) Bill

The purpose of the 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 EPA.

Latest Stage: Heads of bill were approved 29 September 2020. Pre-legislativescrutinyhastakenplace. The billislisted as Priority Legislation in the Spring LegislativeProgramme.

Water Services Separation Bill

The purpose of the bill is to provide for the separation of Irish Water from the Ervia Group and related matters.

Latest Stage: Heads of Bill approved on 20th April 2021, pre-legislative scrutiny has taken place.

ACTS

Maritime Area Planning Act

Date Published:

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.

Latest Stage: Awaiting Commencement Orders

23 December 2021

EU DRAFT LEGISLATION

Proposal	for	а	Regulation	Establishing	а	Soc
Climate F	und					

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 Regulation on Achieving a Toxic Free Environment by Revising the REACH Regulation

Date Published:

4 May 2021

As part of zero pollution ambitions set out in the European Green Deal, the chemicals strategy for sustainability announces actions to better protect people and the environment against hazardous chemicals and to encourage innovation to develop safe and sustainable alternatives.

To achieve these goals it will be necessary to revise the rules governing the registration, evaluation, authorisation and restriction of chemicals in the EU.

Latest stage: Public consultation open until 15 April 2022. Commission adoption planned for Q4 2022.

Proposal for a Regulation for the Revision of EU Legislation on Hazard Classification, Labelling and **Packaging of Chemicals**

Date Published:

4 May 2021

For the implementation of the European Green Deal, the chemicals strategy for sustainability sets out a number of actions that require a targeted revision of the Regulation on the classification, labelling and packaging of chemical substances and mixtures.

An impact assessment of various revision options will be carried out and the Commission will then present legislative proposals for a revision of both the enacting terms of and the annexes to that Regulation.

Latest Stage: Commission adoption planned for Q2 2022.

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

Procedure Reference: Date Published:

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
- ready.

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

2021/0210 (COD) 14 July 2021

uncertainty about which technical options are market-

Proposal for a Directive on Reducing Packaging Waste

Date Published:

11 June 2020

This initiative proposes to review the requirements on packaging and packaging waste in the EU with the aim of reflecting the objectives of the new Circular Economy Action Plan. This review will include assessing how to:

improve packaging design to promote reuse and recycling;

- increase recycled content in packaging;
- tackle excessive packaging; and
- reduce packaging waste.

Latest Stage: Commission adoption planned for Q1 2022



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Proposal for a Regulation Modernising EU Rules on Batteries

Procedure Reference: Date Published:

2020/0353 (COD) 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:

- 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.

Proposal for a Regulation Revising EU Rules on Waste Shipments

Date Published:

11 March 2020

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-healthrelated 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 European Parliament and Council.

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

Date Published:

- 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.

Council.

3 July 2020

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:

Latest Stage: First reading in the European Parliament and

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 same. 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

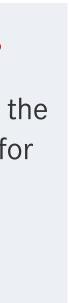
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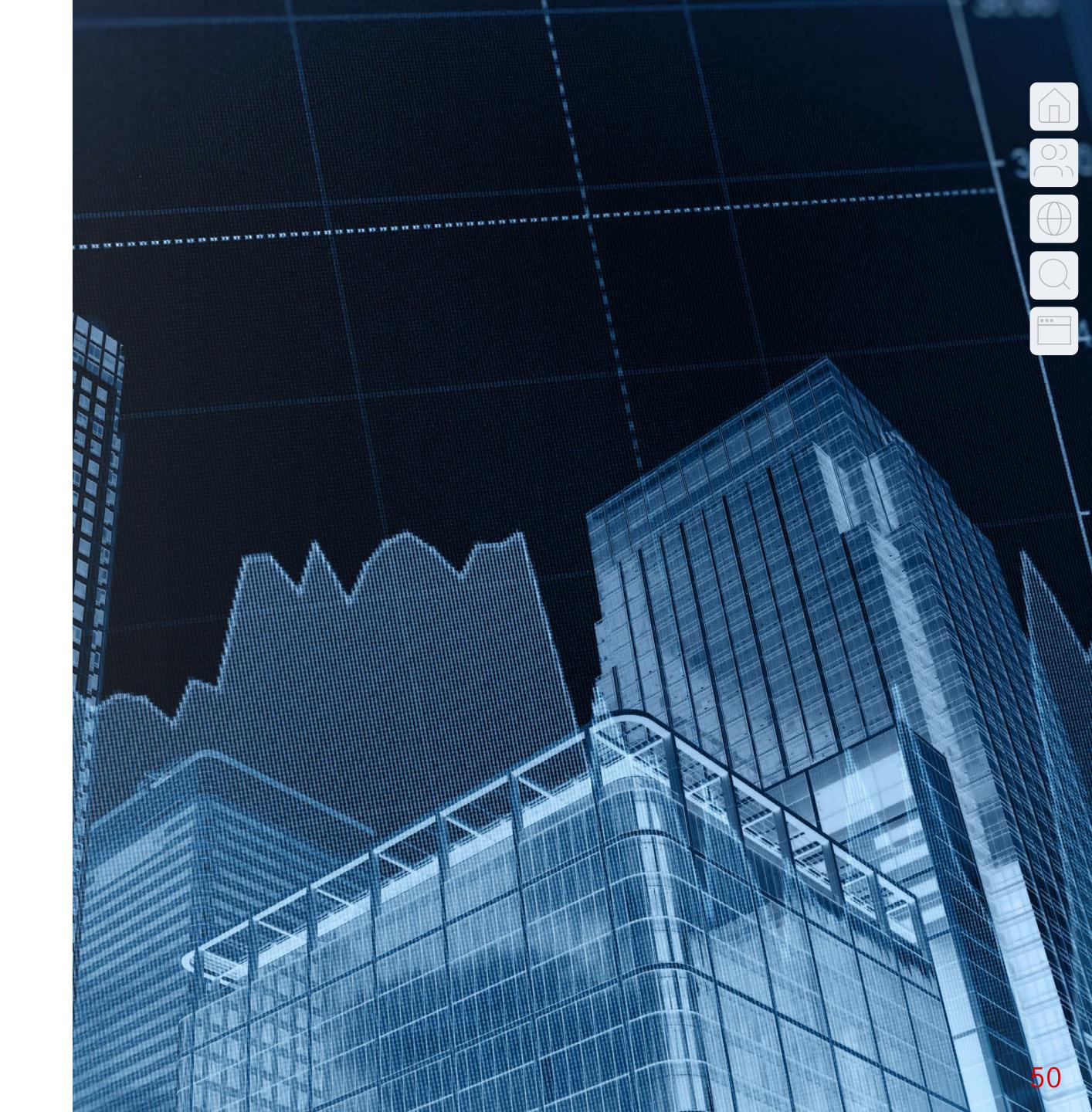
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IRISH PROPOSED LEGISLATION

Finance (COVID-19 Miscellaneous Provisions) Bill 2022

This bill was published on 4 March 2022 and will give 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 oneoff COVID-19 recognition payment for healthcare workers.

Latest stage: Second Stage, Dáil Éireann

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. Prelegislative scrutiny has been waived.

IRISH CONSULTATIONS

Consultation on a Territorial System of Taxation

The Department of Finance launched a public consultation on a potential move to a territorial system of taxation in December 2021. The public consultation seeks views from stakeholders on a move away from Ireland's current foreign

tax credit system for double taxation relief to an exemption method. The consultation delivers on the commitment made in The Update to Ireland's Corporation Tax Roadmap, published in January 2021, to consider moving to a territorial regime.

Latest stage: The consultation closed on 7 March 2022.

Consultation on the Transposition of Directive (EU) 2021/2101

In December 2021, the Department of Enterprise, Trade and Employment launched a public consultation on the transposition of Directive (EU) 2021/2101 on public country-by-country reporting into Irish legislation. This directive is to be transposed into Irish legislation by 22 June 2023.

Latest stage: The consultation closed on 18 February 2022.

EU INITIATIVES

EU initiative on VAT in a digital age

The EU Commission has launched a public consultation on the current EU VAT rules. The public consultation seeks views from relevant stakeholders on whether the current EU VAT rules are sufficiently adapted to the digital age and on how digital technology can be used both to help Member

States fight VAT fraud and to benefit businesses.

In particular, the consultation seeks views on: (i) VAT reporting obligations and e-invoicing; (ii) the VAT treatment of the platform economy; and (iii) the use of a single EU VAT registration. The consultation period runs to 15 April 2022.

Latest stage: The consultation period closes on 15 April 2022. The proposal for a directive is expected to be published in Q3 2022.

VAT rules for financial and insurance services - review

The Commission's public consultation on VAT rules for financial and insurance services closed in May 2021. The Commission notes that current VAT rules for financial and insurance services are criticised for being complex, difficult to apply and have not kept pace with the development of new services in the sector. The Commission's impact assessment states the initiative aims to address a lack of VAT neutrality along with tackling legal uncertainty and regulatory complexity.

Latest stage: The proposal for a directive was expected in Q4 2021 but has not yet been published.







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 stakeholders within scope of this initiative are primarily cross-border portfolio investors. A public consultation is to be launched following the current feedback period.

Latest stage: Feedback closed on 26 October 2021 and a public consultation is planned for Q1 2022, however the draft directive has yet to be published

Published Initiative on Debt-Equity Bias Reduction Allowance

The Commission launched an initiative in June 2021 on a proposal for a directive concerning the implementation of a debt-equity bias reduction allowance ("DEBRA"). The initiative aims to encourage companies to finance their investment through equity contributions rather than debt financing. The objectives pursued by this initiative may be achieved by: (i) disallowing the deductibility of interest payments; or (ii) creating an allowance for equity by enabling the tax deductibility of notional interest for equity.

Latest stage: Public consultation period closed 7 October 2021. The proposal for a directive was expected to be published in Q1 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 June 2021. The proposals were expected to be published by the end of 2021, however the draft directive has yet to be published.

Published Initiative on Digital Levy

The Commission launched an initiative in January 2021 on a proposal for a directive to introduce an EU digital levy. Following the public consultation period in Q1, work on the proposed directive was put on hold in July 2021 pending the agreement by the OECD/G20 Inclusive Framework (the "Inclusive Framework") on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy (the "Two-Pillar Solution"). The Inclusive Framework agreed a statement on the Two-Pillar Solution in October 2021 (the "OECD Agreement"), including an agreement to repeal digital services taxes.

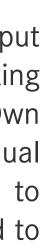
In December 2021, the Commission announced it will put forward a legislative proposal on the reallocation of taxing rights in 2022 (Pillar One) and a proposal to amend the Own Resources Decision so that 15% of the share of the residual profits from multinationals that would be re-allocated to EU Member States under Pillar One would be allocated to the EU budget.

Latest stage: This initiative is unlikely to proceed. An EU Directive on Pillar One is expected to be published in 2022 and will be an EU own resource. Also in line with the OECD statement, digital service taxes are to be repealed.

Procedure reference:	2021/0433 (CN
Date published:	22 December 20

EU DRAFT LEGISLATION Level of Taxation for Multinational Groups in the Union NS))21 In response to the recent 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: the Global Anti-Base Erosion i.e. "GLoBE" rules (including the 'income inclusion rule' and the 'undertaxed payments rule'), and 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.

Latest stage: Under discussion within the Council. It is hoped that agreement to the proposed directive will be reached by June 2022 at the latest. The aim is for the directive to apply from 1 January 2023.

Proposal for a Directive on Pillar One of the OECD Agreement

Procedure reference:	Not Yet Allocated
Date published:	Not Yet Published

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 introduced in 2022.

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 on Business Taxation for the 21st Century (the "Commission Communication") adopted on 18 May 2021. Work on the related digital levy proposal was put on hold on 12 July 2021 in anticipation of the OECD Agreement, and a further statement on this is expected in 2022. The proposal to direct a portion of Pillar One reallocated residual profits to the EU budget may signal the end of the digital levy.

Latest Stage: The Commission has stated that multilateral convention through which Amount A is implemented is expected to be ready and open for signature by mid-2022 and should enter into effect in 2023. The Commission also stated that work on Amount B should be completed by the end of 2022.







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

Procedure reference: Date published:

2021/0434/CNS 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 incomegenerating 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 targeted that the directive will come into force as of 1 January 2024.

CCCTB: Proposed Directive on a Common Consolidated Corporate Tax Base

Procedure reference: Date published:

The Common Consolidated Corporate Tax Base ("CCCTB") has been on the EU agenda for some time. It was first launched in 2011 but, without sufficient support from Member States, ultimately failed.

The Commission Communication outlines a proposal for a new framework for income taxation for businesses in Europe, the Business in Europe: Framework for Income Taxation ("BEFIT"). 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. It is noted that the proposal will feature a different apportionment formula from the CCCTB proposal to better reflect global developments, in particular by taking account of digitalisation. A proposed framework for BEFIT will be published by 2023.

2016/0336 (CNS) 25 October 2016

Latest stage: On 15 March 2018, the European Parliament voted in plenary to adopt the proposal with amendments. The Council has not adopted the proposal to date and the Commission Communication states this proposal will be withdrawn and replaced by BEFIT.

CCTB: Proposed Directive on a Common Corporate Tax Base

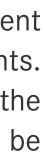
Procedure reference:	2016/0337 (CN
Date published:	25 October 20

Under the terms of this draft directive, Member States would align their corporate tax rules for determining the taxable profits of all companies that are members of multinational corporate groups with consolidated group revenue in excess of EUR 750 million.

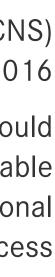
The Commission Communication states this proposal will be withdrawn and replaced by BEFIT. A proposed framework for BEFIT will be published by 2023.

Latest stage: On 15 March 2018, the European Parliament voted in plenary to adopt the proposal with amendments. The Council has not adopted the proposal to date and the Commission Communication notes this proposal will be withdrawn and replaced by BEFIT.

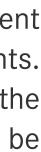














Proposal for a Council Directive amending Directive 2006/112/EC as regards Rates of Value Added Tax

Procedure reference: Date published:

2018/0005 (CNS) 18 January 2018

Under this proposal, the existing EU rules (Directive 2006/112/EC) on setting reduced rates of VAT will be amended and Member States will be 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 will be agreed to which reduced rates cannot apply.

Latest stage: On 3 October 2018, the European Parliament voted in plenary to adopt the proposal with amendments. The Council has yet to adopt the proposal. The proposal is being examined at working party level and assessment is still ongoing. On 9 December 2021, formal re-consultation of Parliament and an amended legislative proposal for reconsultation was published. The Parliament must consider this by March 2022.

Member States

Procedure reference: Date published:

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.

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**

2018/0164 (CNS) 25 May 2018

EU DIRECTIVES

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 the extent of 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 new 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. The Finance Act 2021 transposed the directive into Irish law. It is expected that the Finance Bill 2022 will include further amendments in respect of DAC7.





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.

31 December 2023 Transposition date:

ATAD and ATAD II: Anti-Tax Avoidance Directive

Date published:

ATAD: 19 June 2016, ATAD II: 7 June 2017

The Anti-Tax Avoidance Directive ("ATAD"), as amended by the Anti-Tax Avoidance Directive II ("ATAD II"), is an attempt by the EU to ensure consistent implementation of certain recommendations made under the OECD's Base Erosion and Profit Shifting ("BEPS") project while ATAD II, among other things, neutralises tax mismatches (eg, deduction of a payment without inclusion by the recipient) that arise as a result of the hybrid nature of an entity or instrument. Under ATAD and ATAD II, the following changes have been, or will be, made to Irish corporate tax law:

- beginning on or after 1 January 2019;
- implemented by 1 January 2019;
- taxpayer from Ireland;
- revenues"; and

controlled foreign companies rules were introduced into Irish law for the first time for accounting periods

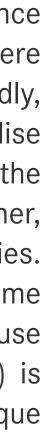
a general anti-avoidance rule is provided under Irish law and is regarded as sufficient implementation of the EU general anti-abuse rule which was required to be

an exit tax was introduced for business migrations from Ireland occurring on or after 10 October 2018. The charge applies at a 12.5% rate on the migration of tax residence of a corporate taxpayer from Ireland or on migration of the business or assets of a corporate

interest limitation rule was implemented under the Finance Act 2021 pursuant to which restrictions are imposed on the level of tax deductions that are available for interest payments made by corporate taxpayers. The rule provides that where an entity has exceeding borrowing costs of more than EUR 3,000,000 it may only deduct its 'exceeding borrowing costs' up to an amount equal to 30 per cent of its earnings before interest, tax, depreciation and amortisation ("EBITDA"). For these purposes, "exceeding borrowing costs" mean the amount by which an entity's borrowing costs exceed "interest revenues and other equivalent taxable

an anti-hybrid rules were introduced under the Finance Act 2019 while the reverse anti-hybrid rules were implemented under the Finance Act 2021. Broadly, the anti-hybrid rules are designed to neutralise arrangements where amounts are deductible from the income of one entity but are not taxable for another, or the same amounts are deductible for two entities. The reverse hybrid rules are designed to tax income in Ireland that would otherwise go untaxed because the relevant Irish entity (eg, an Irish partnership) is regarded as tax transparent in Ireland, but tax opaque in the territory of a participator.

Transposition date: Various transposition dates from 31 December 2018 to 1 January 2024. The Finance Act 2021 transposed the interest limitation rule and reverse anti-hybrid rules into Irish law for accounting periods commencing on or after 1 January 2022.







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

Date published:

1 December 2021

The EU has now published the recently approved **Directive** on public country-by-country reporting ("CBCR").

Under the terms of this directive, 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 in particular) 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, therefore, 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) by December 2026 (ie, the first reporting deadline for companies with a 31 December year-end).

The government has launched a public consultation on the implementation of the directive into Irish law; the deadline for submissions was 18 February 2022.

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.

Read more: Matheson Insight Article on the CBCR directive









EU REGULATIONS

Regulation	Amending	the	Regulation	on
Strengthening	Administr	ative	Co-operation	in
Order to Comb	oat VAT Fraud			

Date published:

2 March 2020

This regulation (Council Regulation (EU) 2020/283) is designed to complement Council Directive 2020/284 with respect to payment service providers. It sets out that the Commission will develop a new central electronic system of payment information which will host information provided by payment service providers.

Applies from:

1 January 2024





Investing in Ireland | Corporate Law and Corporate Governance Developments



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IRISH PROPOSED LEGISLATION

Investment Screening Bill

Regulation 2019/452 on Foreign Direct Investment Screening introduced, from 20 October 2020, an information-sharing framework between Member States and the Commission concerning foreign (non-EU) direct investment deemed capable of affecting security or public order.

The precise scope of an Irish investment screening regime remains to be seen although the Spring Legislative Programme referred to plans to develop an investment screening mechanism "which will empower the Minister to respond to threats to Ireland's security and public order posed by particular types of foreign investment, and to prevent or *mitigate such threats*". A dedicated investment screening unit has been established in DETE.

Latest Stage: The bill has yet to be published. Heads were approved on 27 July 2020 and pre-legislative scrutiny has been waived. The bill is listed as Priority Legislation in the Spring Legislative Programme.

Companies (Miscellaneous Provisions) Bill

This bill proposes to make various new amendments to the Companies Act 2014 and is expected to address certain issues identified by the Company Law Review Group. The bill is listed under All Other Legislation in the Spring Legislative Programme.

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 enable IDA Ireland (Ireland's inward investment promotion agency) to partner with the Ireland Strategic Investment Fund ("ISIF") to commercially develop office buildings on IDA-owned lands in regional areas and will also make certain amendments to the National Standards Authority of Ireland Act 1996.

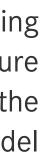
Latest stage: Heads of bill approved 4 August 2020 and revised heads of bill are now in preparation.

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.







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ACTS

Companies (Corporate Enforcement Authority) Act 2021

Date published:

22 December 2021

The principal purpose of the act is 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 act will also give 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.

Share capital changes include:

- restoration of the use of the share premium account for various purposes;
- clarification relating to three-party share for undertaking and share for share transactions;
- confirmation that unlimited companies do not require reserves to acquire their own shares; 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).

Commencement: The act has not yet been commenced. Commencement orders required.

EU DRAFT LEGISLATION

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

Procedure reference: Date published:

This proposal forms part of a package of measures announced by the European Commission to encourage the flow of money into sustainable activities across the EU. The measure is designed to revise and enhance the regime introduced by the EU NFRD (Directive 2014/95/ EU). 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 extend to all large companies, whether listed or not and regardless of employee numbers. Adoption of the directive will involve amendments to the EU Accounting Directive, Audit Regulation Directive and Transparency Directive. Meanwhile, the European Financial Reporting Advisory Group will begin drafting a set of sustainability reporting standards which it aims to publish by mid-2022. Policy deliberations are currently taking place at EU level to determine the likely timing for implementation. Companies may be required to start reporting to the new standards in 2024, based on FY2023 information, with SMEs being given additional time.

Latest stage: First reading in the European Council.

2021/0104 (COD) 21 April 2021 **Proposal for a Directive to Upgrade Digital Company** Law

Procedure reference: Not yet allocated Date published: 4 June 2021

The Commission recognises that the COVID-19 pandemic showed the importance of digital tools and processes in EU company law, including the Business Registers Interconnection System.

This initiative aims to:

- improve transparency on EU companies by making more information available on a cross-border basis;
- enable the cross-border use of trustworthy company data; and
- further modernise EU company law rules to make them fit for the digital age.

Latest stage: Commission adoption planned for Q1 2023.













Investing in Ireland | Corporate Law and Corporate Governance Developments

Proposal for a Directive on Sustainable Corporate Governance

Procedure reference: Date published:

2022/051 (COD) 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 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.

Small and medium enterprises are not directly in the scope of this proposal.

This proposal applies to the company's own operations, its subsidiaries and value chains (direct and indirect established business relationships).

Companies must integrate due diligence into policies; identify actual or potential adverse human rights and environmental impacts; prevent or mitigate potential impacts; bring to an end or minimise actual impacts; establish and maintain a complaints procedure; monitor the effectiveness of the due diligence policy and measures; and publicly communicate on due diligence.

Companies in scope will must take appropriate measures ('obligation of means'), in light of the severity and likelihood of different impacts, the measures available to the company in the specific circumstances, and the need to set priorities

National administrative authorities appointed by Member States will be responsible for supervising these new rules and may impose fines in case of non-compliance.

In addition, victims will have the opportunity to take legal action for damages that could have been avoided with appropriate due diligence measures.

Group 1 companies 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.

The proposal also introduces directors' duties to set up and oversee the implementation of due diligence and to integrate it into the corporate strategy. In addition, when fulfilling their duty to act in the best interest of the company, directors must take into account the human rights, climate change and environmental consequences of their decisions. Where companies' directors enjoy variable remuneration, they will be incentivised to contribute to combating climate change by reference to the corporate plan.

Latest Stage: Preparatory Stage in European Parliament

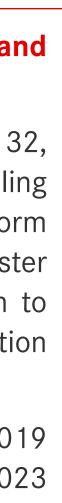
Directive on Cross-border Conversions, Mergers and Divisions

This directive, which amends Directive (EU) 2017/1132, provides procedures for cross-border conversions (enabling companies to change legal form into a similar legal form of another Member State), divisions and mergers to foster cross-border mobility and afford adequate protection to company stakeholders. The DETE expects the transposition deadline to be met.

Date published:	12 December 20
Transposition date:	31 January 20



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Financial Services | Asset Management and Investment Funds



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) to reflect the transitional periods provided under the ESMA guidelines; and (c) to 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 is expected to be published this year.

CENTRAL BANK ENGAGEMENT

Liquidity Risk Management

During 2021, the Central Bank issued two letters to fund management companies in relation to liquidity risk management, requiring action plans outlining any necessary steps to be approved by the end of 2021. (Read more about the Central Bank's May 2021 letter here.)

In November 2021, the Central Bank confirmed that work in the area of liquidity will continue into 2022, "with regulators" progressing further initiatives in this regard". The Central Bank is likely to assess the adequacy of the action plans put in place in response to its letters issued during 2021. ESMA has also indicated in its 2022 work programme that "market risk monitoring and analysis will continue to focus on liquidity ... in investment funds."

CENTRAL BANK DEADLINES

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. The Amending Regulations required Certain Financial Vehicles ("CFVs"), being ICAVs and unit trusts to carry out the following actions:

- CFVs existing prior to commencement of the Amending Regulations must submit the PPS number of each beneficial owner of the entity to the Central Bank within six months of commencement of the Amending Regulations, by 31 December 2021;

CFVs existing on or after the commencement of the Amending Regulations must submit the PPS number of each beneficial owner of the entity to the Central Bank within six months of the entity coming into existence. 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, to include beneficial owner PPS numbers from Q2 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.





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's view is that, in the absence of policy interventions, the property funds sector could respond to future adverse shocks through sales of property assets over a short period of time, potentially amplifying adverse shocks to the commercial real estate market and the wider economy.

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.

PROPOSED STATUTORY INSTRUMENTS

Central Bank Plans to Transpose AIF Rulebook

The Central Bank is planning to transpose its AIF Rulebook into a statutory instrument, similar to the approach adopted in relation to the Central Bank's UCITS requirements. It had been expected that draft Central Bank AIF Regulations might be published by the end of 2019, but this initiative has been delayed. It is anticipated that the new Central Bank AIF Regulations will be subject to a three month consultation period.

EU REGULATORY INITIATIVES

ESMA Common Supervisory Action on Valuation

On 20 January 2022, ESMA announced its intent to launch a CSA with NCAs 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.

EU DRAFT LEGISLATION

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

Procedure reference: Date published:

COM(2021)721 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 is the first step in the legislative process and there is likely to be significant debate between the EU lawmaking institutions on the proposals over the coming 12 to 18 months, which may lead to changes to the proposed text.

The French Presidency of the Council of the EU has expressed a commitment to progress this file during its term (which runs until the end of June 2022). Member states will have 24 months after entry into force of the amending directive to transpose the requirements into national law.





Financial Services | Asset Management and Investment Funds

EU REGULATIONS

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.

Applies from: 1 July 2022. However, the Commission has indicated that amendments to the RTS will be published in the Official Journal of the EU by April 2022, which will amend the application date to 31 December 2022.





Financial Services | Sustainable Finance



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EU REGULATIONS

Regulation on Disclosures Sustainable Finance: Relating to Sustainable Investments and Sustainability Risks

Date published:

9 December 2019

This regulation (Regulation (EU) 2019/2088 - known as the Sustainable Finance Disclosure Regulation or SFDR) forms part of the package of reforms published by the Commission in 2018 relating to its Sustainable Finance Action Plan. It applies to financial market participants (as defined in the SFDR), insurance intermediaries providing insurance advice on insurance-based investment products and financial advisors. The regulation requires financial market participants to disclose how they take sustainability risks into account in their investment decision-making and advisory processes.

Delayed Implementation

The majority of the provisions of the SFDR apply from 10 March 2021. However, a number of RTS are mandated under the SFDR and the publication of these RTS was delayed to such an extent that it is now expected that the RTS will apply from 1 January 2023. Following the publication of a final report on the draft SFDR RTS in February 2021 and a final report on the draft Taxonomy Regulation RTS in October 2021, it is expected that the RTS, forming a single rulebook for disclosures under both the SFDR and the Taxonomy Regulation, will be published in the Official Journal of the EU in Q1 2022.

Applies from: The majority of the provisions of the regulation have applied since 10 March 2021, however article 4(6) and (7), article 8(3), article 9(5), article 10(2), article 11(4), and article 13(2) applied from 29 December 2019 (relating to the adoption of delegated acts under the regulation) and article 11(1) to (3) (relating to disclosures in periodic reports) apply from 1 January 2022. The RTS to be adopted under the regulation are expected to apply from January 2023.

Sustainable Finance: Regulation on the Establishment of a Framework to Facilitate Sustainable Investment -**The Taxonomy Regulation**

Date published:

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

22 June 2020

sustainable. The regulation sets out uniform criteria for determiningwhetheraneconomicactivity is environmentally sustainable.

Applies from: The Taxonomy Regulation will apply, with respect to activities that substantially contribute to climate change mitigation and adaptation, from 1 January 2022. 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 is 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.





Financial Services | Sustainable Finance

EU REGULATIONS

Sustainable Finance: Delegated Acts amending UCITS Directive, AIFMD, MiFID II, Solvency II and Insurance **Distribution Directive**

On 2 August 2021, various amending measures 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.

Commission Delegated Directive (EU) 2021/1270 amending the UCITS Delegated Directive (EU) 2010/43

Commission Delegated Regulation (EU) 2021/1255 amending the AIFMD Delegated Regulation (EU) 231/2013

Commission Delegated Directive (EU) 2021/1269 amending MiFID II Delegated Directive (EU) 2017/593

Commission Delegated Regulation (EU) 2021 / 1253 amending MiFID II Delegated Regulation 2017/565

Commission Delegated Regulation (EU) 2021 / 1256 amending Solvency II Delegated Regulation (EU) 2015/35

Commission Delegated Regulation (EU) 2021 / 1257 amending Insurance Distribution Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359

The level 2 measures incorporate sustainability issues and considerations into the EU financial services regulatory framework, including the UCITS Directive, AIFMD, MiFID II, the Solvency II Directive (Directive 2009/138/EC) and the Insurance Distribution Directive (Directive (EU) 2016/97).

The delegated acts will apply from August 2022, with the exception of the delegated regulation relating to the integration of sustainability factors into the product governance obligations under MiFID II, which will apply from 22 November 2022.

MiFID II

Product Governance

Investment firms manufacturing and distributing financial instruments will be required to consider sustainability factors in the product approval process of each financial instrument and in the other product governance and oversight arrangements for each financial instrument that is intended to be distributed to clients seeking financial instruments with a sustainability-related profile. A general statement that a financial instrument has a sustainabilityrelated profile will not be sufficient.

ESMA is expected to published revised guidelines on the target-market issues in Q1 2022.

Organisational Requirements

Investment firms providing financial advice and portfolio management will need to carry out a mandatory assessment of sustainability preferences of clients. Investment firms should take these sustainability preferences into account in the selection process of financial products.

Investment firms will also be required to prepare client reports that explain how the recommendation meets a

client's investment objectives, risk profile, capacity for loss bearing and sustainability preferences. The amendments also require investment firms to take into account sustainability risks when complying with the organisational requirements and to integrate sustainability risk into risk management policies.

On 27 January 2022, ESMA published a consultation on revised draft MiFID II suitability guidelines. The consultation closes on 27 April 2022.

UCITS Directive and AIFMD

The amendments to level 2 measures under the UCITS Directive and the AIFMD will require management companies to integrate sustainability risks in the investment decisionmaking process.

The key elements of the amendments are set out below.

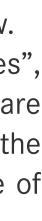
- Definitions of "sustainability preferences", "sustainability risks" w and "sustainability factors" are introduced into the level 2 measures, as well as the concept of "material adverse impact" on the value of investments.
- Management companies must assess all relevant sustainability risks when conducting due diligence on investments.
- Management companies must identify conflicts of interest which arise as a result of the integration of sustainability risks in processes, systems and controls.



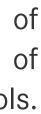














Financial Services | Sustainable Finance

Continued

- Assessment and management of exposure to sustainability risk must be incorporated into the risk management policy and procedures of the management company.
- Sustainability risks must be taken into account in the organisational structure of the management company.
- Management companies must retain the necessary resources and expertise required for the integration of sustainability risks.
- Larger management companies, (ie, those with an average of more than 500 employees) and those who choose voluntarily to comply with the principal adverse impact reporting obligation under the SFDR, must take into account principal adverse impact of investments on sustainability factors.

Solvency II

The delegated regulation amends the Solvency II Delegated Regulation by requiring insurers to reflect sustainability risks in their risk management processes, by requiring remuneration policies to be consistent with the integration of sustainability risks, and by requiring that sustainability risks are taken into account in the implementation of the prudent person principle.

Insurance Distribution Directive

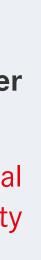
The amendments to the Insurance Distribution Directive level 2 measures integrate sustainability factors in suitability assessments and integrate sustainability risks into the product oversight and governance requirements and into the rules on conflicts of interest.

\bigcirc **RELATED LEGISLATION**

Click the links below for information on further related legislative and regulatory developments

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







Financial Services | Finance and Capital Markets Developments



Financial Services | Finance and Capital Markets Developments

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 supplement 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: Completed Dail Éireann, First 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 forprofit 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: Third Stage, Seanad Éireann

EU PROPOSED LEGISLATION

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

Procedure reference: Date published:

The proposal amends Regulation (EU) 806/2014 (Single Resolution Mechanism) in order to establish a European Deposit Insurance Scheme ("EDIS"). This proposes the establishment of EDIS as the third pillar of the Banking Union to include a reinsurance scheme for participating national deposit guarantee schemes in a first period of three years, a co-insurance scheme for participating national deposit guarantee schemes in a second period of four years, and full insurance for participating national deposit guarantee schemes in the steady state. In order to avail of EDIS, funds must be built up in line with a precise funding path and comply with EU requirements.

Latest stage: First reading in European Parliament and

2015/0270 (COD) 24 November 2015 Council. At the 25 June 2021 Euro Summit, leaders reiterated their full commitment to the completion of the Banking Union and invited the Eurogroup in inclusive format to 'agree without delay on a stepwise and time-bound work plan'.

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

Procedure reference:	2018/0044 (CC
Date published:	12 March 20

OD) 018 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 designate 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: Council approved its general approach on 7 June 2021.







Financial Services | Finance and Capital Markets Developments

Proposed Regulation on EU Standards for 'Green Bonds'

Procedure reference: Date published:

2021/0191 (COD) 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: Committee published its draft opinion on the proposal on 14 January 2022.

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 will come into effect on 8 July 2022.

EU REGULATIONS

Regulation on Exposures in the Form of Covered Bonds

Date published:

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: 8 July 2022

18 December 2019

Click the links below for information on further related legislative and regulatory developments

Sustainable Finance: Regulation on Disclosures Relating to Sustainable Investments and Sustainability Risks

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

Sustainable Finance: Delegated Acts amending UCITS Directive, AIFMD, MiFID II, Solvency II and Insurance **Distribution Directive**

Consumer Rights Bill

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

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

Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021

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

Published Initiative on Tax Avoidance - Fighting the Use of Shell Entities and Arrangements for Tax Purposes









IRISH PROPOSED LEGISLATION

Review of Differential Pricing in the Private Car and Home Insurance Markets

In November 2019, the Central Bank wrote to the insurance sector outlining the potential risk to consumers arising from the practice of differential pricing and informing firms of its intention to conduct a multi-phase review of differential pricing in the private car and home insurance markets. The review feeds into the Central Bank's overall review of the Consumer Protection Code 2012.

In July 2021 the Central Bank issued its final report and made the following proposals for implementation within the sector.

Read More: Better outcomes for consumers at the centre of the Central Bank of Ireland's Final Report on the Differential Pricing Review

Latest stage: The Central Bank's public consultation on the final report ("**CP143**") closed on 22 October 2021. The Central Bank intends to finalise the proposed measures in early 2022 with the measures applying to insurance providers from 1 July 2022.

As set out below, the upcoming Insurance (Miscellaneous Provisions) Bill will require the Central Bank to submit a report to the Minister for Finance within an 18-month timeframe setting out the steps (if any) it has taken to regulate the practice of price walking, and its views on whether further action is required.

Central Bank Notice of Intention - Amendments to the list of Pre-Approval Controlled Functions

On 23 September 2021 the Central Bank published a Notice of Intention to amend the list of pre-approval controlled functions ("**PCFs**").

Read More: Central Bar PCF Roles

Closing date: The proposal closed for feedback on 20 October 2021. Awaiting publication of Amending Regulations.

Central Bank Dear CEO letter to MiFID authorised firms and credit institutions offering MiFID investment Services

On 1 December 2021, the Central Bank published a Dear CEO letter outlining the findings of a review of investment firms' compliance with the suitability requirements under MiFID II. The review was conducted as part of a Common Supervisory Action coordinated by ESMA.

The review identified evidence of positive practices, particularly where firms took a personalised and comprehensive approach to suitability assessments for their clients. However, it also identified instances where further action is required by firms.

Latest stage: The Central Bank is requiring all Irish authorised MiFID firms and credit institutions, who provide portfolio management and advisory services to retail clients, to conduct a review of their individual sales practices and

Read More: Central Bank of Ireland Notice of Intention re

suitability arrangements. This review must be documented and must include details of actions taken to address findings in the ESMA public statement and this letter. This review should be completed, and an action plan discussed and approved by the board of each firm, by end of Q1 2022.

Central Bank Dear CEO Letter on its supervisory expectations for payment and e-money institutions

On 9 December 2021 the Central Bank published a Dear CEO letter on its supervisory expectations for Payment and Electronic Money ("E-Money") Firms.

The Central Bank has highlighted the following priority areas: (1) governance and risk management, (2) conduct and culture, (3) safeguarding, (4) business model and financial resilience, (5) operation resilience, (6) financial crime and (7) resolution and wind-up.

Latest stage: The Central Bank expects firms and their boards, having due regard to the contents of this letter, to complete a comprehensive assessment the firm's compliance with the firm's safeguarding obligations under Regulation 17 of the European Union (Payment Services) Regulations 2018 and Regulation 29-31 of the European Communities (Electronic Money) Regulations 2011 (as amended) and the conditions of its authorisation.

A Board approved attestation confirming the completion







and conclusion of this assessment must be provided to the Central Bank by 31 March 2022. If any issues are identified as part of this review, a Board approved remediation plan must be put in place which ensures timely resolution of the issues.

Central Bank statement on MiFID investment firms authorised to provide MiFID activities 3 and/ or 6

On 26 January 2022, the Central Bank published a Statement for MiFID investment firms authorised to provide the MiFID investment services of dealing on own account or underwriting of financial instruments on a firm commitment basis following the EBA's publication of a package of two final draft regulatory technical standards relating to the reclassification of MiFID investment firms as credit institutions

Latest stage: In line with the Opinion published by the EBA MiFID investment firms that anticipate meeting the threshold triggering the requirement to seek re-authorisation as a credit institution are expected to:

- Engage with the Central Bank regarding their reauthorisation within 3 months of the date of entry into force of the Delegated Act; and
- Submit an application for re-authorisation as a credit institution within 6 months of the date of entry into force of the Delegated Act.

CENTRAL BANK GUIDELINES

Regulations for Pre-emptive Recovery Planning for (Re) Insurers

On 25 June 2020, the Central Bank published a consultation paper CP131 "Regulations for pre-emptive recovery planning for (re)insurers". Following the consultation, in April 2021, the Central Bank published its feedback statement and the responses received to CP131. In tandem with the release of the feedback statement, the (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021 (S.I. Number 184 of 2021) were commenced. These regulations require insurers to establish and maintain pre-emptive recovery plans.

The aims of these regulations are to:

- promote awareness and allow firms to prepare for a range of possible adverse situations;
- enable firms to consider and evaluate the most appropriate and effective mitigation without the resulting pressures of actual severe stress; and
- enable firms to take more effective, comprehensive and thoughtful measures to ensure their timely implementation if required.

Applies from: The deadline for preparation of a recovery

plan under the regulations is 31 March 2022 (or within 12 months of authorisation where the (re)insurer is newly authorised on or after the date on which the regulations come into operation (19 April 2021)).

Central Bank Final Guidance on the use of Service Companies in the Insurance Sector

On 31 January 2022, the Central Bank published its final Guidance on the use of Service Companies in the Insurance Sector following its August 2021 consultation paper ("CP144") of the same name.

The Guidance sets out the Central Bank's expectations of (re)insurance entities which choose to enter arrangements with separate legal entities for the provision of extensive staffing or hybrid arrangements (which involve a combination of the provision of staff and other outsourced activities).

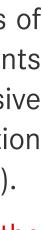
Read more: Central Bank issues its Final Guidance on the use of Service Companies in the Insurance Sector

Applies from: The Central Bank expects firms to review the Guidance ensure that any staffing arrangements falling into the relevant categories align with the expectations set out in the Guidance; and update and augment any existing arrangements, if necessary. This work must be completed within 12 months of the publication of the Guidance (31 January 2023).











Central Bank Cross-Industry Guidance on Outsourcing

Date published:

17 December 2021

On 17 December 2021, the Central Bank published its final cross industry guidance on Outsourcing (the "Guidelines") following its February 2021 Consultation Paper ("CP138") on its proposed Cross-Industry Guidance on Outsourcing. This consultation followed on from the publication of Discussion Paper 9 'Outsourcing – Findings and Issues for Discussion'1 in November 2018.

The Guidelines set out the Central Bank's expectations regarding the management of outsourcing risk with a view to promoting higher standards of operational resilience.

Closing Date: The guidance came into effect immediately upon publication (17 December 2021).

The Guidelines require the Central Bank to be notified of planned critical or important outsourcing arrangements, or material changes to existing arrangements. Notification templates (appropriate to each sector and aligned with the requirements of the EBA Guidelines) will be published on the Central Bank website in Q1 2022 with the exception of the template for banks, which will be published by the SSM and is expected during 2022.

With regard to the submission of outsourcing registers to the Central Bank, a spreadsheet template for the outsourcing register will be made available for all firms to download from the Central Bank website during Q1 2022.

The Central Bank intends that all firms with a PRISM Impact Rating is of Medium Low or above will submit their outsourcing register via a new Online Return on an annual basis with the first submission planned for Q2 2022. Low Impact firms may also be asked to submit their outsourcing register on a case by case basis by their supervisor.

Central Bank Cross Industry Guidance on Operational

16 December 2021 **Resilience** On 16 December 2021, the Central Bank published CP146 On 1 December 2021, the Central Bank published its a consultation on the Mortgage Measures Framework. The cross industry guidance on Operational Resilience (the aim of the review is to ensure the continued appropriateness "Guidelines"), together with a feedback statement of the measures, which were introduced in 2015, placing ("Feedback Statement") setting out the Central Bank's limits on the proportion of new residential mortgage lending views on the responses received following its engagement that could take place at high loan-to-value (LTV) and loan-to with industry bodies and regulated entities, on consultation income (LTI) ratios into the future, given broader changes in paper ("CP140") which contained draft guidelines on the housing and mortgage markets and the wider economy Operational Resilience (the "Draft Guidelines"). The since their introduction. Guidelines communicate to industry how to prepare for, respond to, recover and learn from an operational disruption Closing Date: The consultation closes on 21 April 2022. The that affects the delivery of critical or important business framework review has been progressing over the course of services. 2021 and is due to conclude in the second half of 2022.

Resilience Issued

10 Steps to ensuring Operational Resilience

Applies from: Firms should be able to demonstrate that they have applied the Guidelines within an appropriate timeframe. The Central Bank noted that an 'appropriate

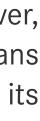
Read More: Final Cross Industry Guidance on Operational

timeframe' will depend on a range of factors, however, firms should be in a position to evidence actions/plans to apply the Guidance at the latest within two years of its being issued (i.e. 1 December 2023).

CENTRAL BANK CONSULTATIONS

CP146 – Mortgage Measures Framework Review

Date published:







DEPARTMENT OF FINANCE CONSULTATIONS

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

Date published:

1 September 2021

On 1 September 2021, the Department of Finance in collaboration with the Central Bank launched a public consultation on the development and scope of a possible domestic resolution framework for insurers.

The prudential framework for the regulation and supervision of most Irish licensed insurers is primarily set out in the European Union (Insurance and Reinsurance) Regulations 2015 (the "2015 Regulations") which transpose the Solvency II Directive (Directive 2009/138/EC). These requirements reduce the likelihood of insurers failing, however, they do not intend to eliminate this risk completely nor do they provide a resolution toolkit for managing the failure of insurers.

The resolution of insurers is not currently harmonised at an EU level and is managed through national legislative frameworks. In Ireland, the legislative tools available to deal with an insurer that is failing or has failed were largely introduced before the EU prudential framework was established, and therefore are not designed with the prudential framework in mind.

Latest stage: The consultation closed on 30 November 2021. See below Proposal for a Directive Establishing a Framework for the Recovery and Resolution of Insurance and Reinsurance Undertakings. It is envisaged that any national resolution framework in Ireland would align with the core principles of resolution being discussed at EU level.

IRISH PROPOSED LEGISLATION

Central Bank (Individual Accountability Framework) Bill

This bill aims to support the advancement of an improved culture in the Irish financial system through greater accountability in the regulated sector. The bill introduces an Individual Accountability Framework (including the Senior Executive Accountability Regime – the SEAR) which aims to increase accountability amongst senior executives through common and enforceable conduct standards and an enhanced enforcement process against individuals.

Read more: SEAR One Step Closer

from Pre-Legislative Scrutiny

This **bill** is intended to ensure that any person or firm Latest stage: General Scheme published on 27 July 2021. which provides credit, hire purchase, personal contract This bill is listed as Priority Legislation in the Spring Legislatve plans, consumer hire agreements to relevant persons will Programme. Pre-legislative scrutiny of the General Scheme be required to be authorised as a "retail credit firm" by of the Bill took place in November 2021 with the Oireachtas the Central Bank unless they are already subject to such Committee's report on same due in Q1 2022. It is anticipated Central Bank authorisation. that the bill will be published by Q1 2022.

Insurance (Miscellaneous Provisions) Bill

This **bill** is listed as priority legislation in the Spring Legislative Programme. The Bill seeks to address several insurance-

Individual Accountability Framework and SEAR: Observations

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: The General Scheme of the Bill was published on 20 October 2021. The Bill underwent prelegislative scrutiny on 16 December 2021 and is listed as priority legislation in the Spring Legislative Programme.

Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021

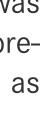
Read more: New regulation in respect of consumer finance products – Issues for existing and future finance providers, servicers, and other market participants

Latest stage: Currently before Dáil Éireann, Fourth Stage, completed 23 February 2022



















ACTS

Health Insurance Amendment Act 2021

This act amends the Health Insurance Act 1994 to specify the amount of premium to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons from 1 April 2022; to make certain other amendments of that Act, including making provision for how certain high cost claims under health insurance contracts are to be treated for risk equalisation purposes; to make a consequential amendment to the Stamp Duties Consolidation Act 1999; and related matters.

Commencement: Section 8 commenced on 1 January 2022. Awaiting commencement of remaining sections.

Consumer Insurance Contracts Act 2019

This Act amends consumer contracts law including preand post- contractual duties of both the consumer and the insurer; remedies for misrepresentation; standard form of insurance contracts; specified 'cooling off' periods; and provides for the rights of third parties. It broadly adopts the recommendations of the Law Reform Commission in its 2015 proposals for reform of consumer insurance contracts. The act's definition of a "consumer" includes individuals and small businesses with a turnover of less than €3 million.

Commencement: Awaiting commencement of section 18(4).

EU Consumer Agenda

In its 2020 work programme, the Commission announced financial service providers. On 7 February 2022, published that it would publish a new consumer policy strategy for a joint report in response to the Commission's request for the period until 2024 to replace the 2014-2020 consumer technical advice. agenda. In November 2020, the Commission launched the New Consumer Agenda which presents a vision for EU In respect of the four strands of the Digital Finance Package, consumer policy from 2020 to 2025 focusing on five key see below for more details on the Digital Euro Project, the priority areas Including: (1) the green transition; (2) digital Proposal for a Regulation on Markets in Crypto-assets and the transformation; (3) effective enforcement of consumer rights; Proposal for a Regulation on Digital Operational Resilience for the Financial Sector. (4) safeguarding the needs of certain consumer groups; and (5) international co-operation.

Latest stage: The Commission adopted the New EU Consumer Agenda on 13 November 2020 and will drive the initiatives announced in same over the coming years.

European Commission Action Plan on FinTech

The Commission in its 2020 work programme announced its intention to launch a new action plan on FinTech. On 24 September 2020, following public consultations and its digital finance outreach, the Commission adopted a Digital Finance Package, including (1) a digital finance strategy; (2) a retail payments strategy for the EU; (3) a proposed regulation on crypto-assets; and (4) a proposed regulation on digital resilience.

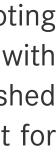
Latest stage: On 2 February 2021 the Commission sent a request for technical advice on digital finance to the ESAs, seeking further advice on, among others, the scope of supervisory parameters and prudential risks related to nonbank lending and clients funds' protection, alongside noting the increasing co-operation of technology companies with

Digital Euro Project

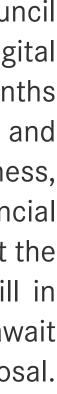
In January 2021, the Commission and the ECB, commenced their exploration of the possibility of issuing a digital euro, as a complement to cash and other payment solutions. The project aims to answer key design and technical questions and provide the ECB with the necessary tools to stand ready to issue 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 9 February 2022, Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union announced that the Commission's intention to introduce a Digital Euro bill in 2023 at a fintech conference by Afore Consulting. We await official confirmation from the Commission on this proposal. **79**











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

Date published:

7 May 2020

The Commission has adopted an action plan for a comprehensive EU policy on preventing money laundering and terrorism financing. The action plan is built on six pillars.

Latest stage: On 20 July 2021, the Commission published a package of legislative proposals, addressing a number of the six pillars included in the action plan. These proposals include:

- Regulation to establish an EU AML Authority;
- Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
- Sixth Directive on AML; and
- Revision of Regulation on transfers of funds to trace transfers of crypto-assets (2015/847/EU).

These proposals are now before the Parliament and the Council for discussion. The AML authority is expected to be operational in 2024 and will start the work of direct supervision once the directive has been transposed.

European Commission Targeted Consultation on Supervisory Convergence and the Single Rulebook

Date published:

On 12 March 2021, the Commission launched a targeted consultation to assess the functioning of the ESAs. The aim of the consultation is to take stock of supervisory practices among national supervisors, supervisory convergence and how the EU's single rulebook works in practice. It seeks targeted views on certain aspects related to the 2019 ESAs review, such as amendments of existing tools (eg, peer reviews), conferred new tasks (e.g., establishing common Union strategic supervisory priorities) or governance changes.

The results of this consultation will feed into a report reviewing the ESAs, which is required under the ESAs founding regulations, and was also outlined in the September 2020 CMU Action Plan.

Closing date: The consultation closed on 21 May 2021.

On 17 January 2022, the Commission published a summary of the responses received to the consultation. These responses will feed into the Commission's preparation of the Report required by the CMU Action Plan. (Initial date for receipt of this report was Q4 2021).

12 March 2021

EIOPA report on the application of the Insurance **Distribution Directive**

On 6 January 2022, EIOPA published its first report on the application of the Insurance Distribution Directive ("IDD").

Amongst others, this report examines:

- any changes in the insurance intermediaries' market structure;
- any changes in the patterns of cross-border activity;
- the improvement of quality of advice and selling methods and the impact of the IDD on insurance intermediaries which are small and medium-sized enterprises; and
- whether competent authorities are sufficiently empowered and have adequate resources to carry out their tasks.

EIOPA plans to prepare another report on the application of IDD in two years' time to enable the Commission to review the IDD.





EU INITIATIVES

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

On 13 January 2022, the EBA published its final Guidelines for institutions and resolution authorities on improving banks' resolvability and also launched its consultation paper on Guidelines for institutions and resolution authorities on transferability of parts of or a whole bank in the context of resolution to complement the resolvability assessment for transfer strategies.

The guidelines for institutions and resolution authorities on improving banks' resolvability set out the requirements to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructure, funding and liquidity in resolution, bail-in execution, business reorganisation and communication.

The draft transferability Guidelines under consultation aim at assessing the feasibility and credibility of transfer strategies and encompass requirements relating to the implementation of transfer tools when considered as the preferred or alternative strategies for institutions.

Latest stage: The consultation on the draft transferability guidelines closes on 15 April 2022. Institutions and authorities should comply with the guidelines for institutions and resolution authorities on improving banks' resolvability by 1 January 2024.

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

Procedure reference: Date published:

This proposal is part of the Digital Finance Package, detailed above, 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 ICTrelated 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.

Proposal for a Regulation on Markets in Crypto-assets

Procedure reference: Date published:

This proposal is also part of the Digital Finance Package, detailed above, which aims to boost innovation while preserving financial stability and protecting investors from risks.

COM/2020/595 24 September 2020

2020/0265 (COD) 24 September 2020 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 assetbacked crypto-assets (so-called global 'stablecoins') would be subject to more stringent requirements (eg, in terms of capital, investor rights and supervision).

Read more: MiCA: Europe's Plan to Regulate Crypto-Assets - What is the direction of travel?

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

Proposal for a Regulation on EU Standards for 'Green Bonds'

Procedure reference:	2021/0191 (CO
Date published:	7 July 202

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 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 issue green bonds.

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

















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

Procedure reference: 2021/0250 (COD) 20 July 2021 Date published:

This legislative proposal is in direct response to the Commission's Action Plan for a Comprehensive Union Policy on AML / CFT detailed above.

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

Proposal for a Directive on Consumer Credits

Procedure reference:	2021/0171 (COD)
Date published	30 June 2021

Consumer credit agreements (where credit is granted to an individual) include unsecured loans, credit cards and hire purchase. The EU rules on consumer credit strengthen consumers' rights and help them make informed decisions.

This initiative reviews those rules, with a focus on issues such as scope, information given to consumers and creditworthiness assessment. It will also examine the impact of COVID-19 on the credit market and consumers, including vulnerable consumers.

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

Proposal for a Regulation on Instant Payments

Procedure reference: Date published:

The 2020 Retail Payments Strategy highlighted the need for an EU-wide instant payments scheme. In order to determine the best way forward on this, the Commission launched an inception impact assessment. This initiative will assess the need to foster pan-European market initiatives based on instant payments through legislative, non-legislative or other policy options.

Latest stage: Consultation closed on 23 June 2021, On 9 February 2022, Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union announced the Commission's intention to adopt and submit the proposal to the Parliament and Council in Q2 2022.

This consultation supplements the Commission's March 2021 targeted consultation on technical issues relating to this initiative.

Not yet allocated 10 March 2021

Proposal for a Regulation Establishing the Authority for AML / CFT

2021/0240 (COD) Procedure reference: Date published: 20 July 2021

This legislative proposal is in direct response to the Commission's Action Plan for a Comprehensive Union Policy on AML / CFT detailed above. 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.













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

Procedure reference: Date published:

2021/0239 (COD) 20 July 2021

This legislative proposal is in direct response to the Commission's Action Plan for a Comprehensive Union Policy on AML / CFT detailed above. This proposal together with a proposal for a directive and a proposal for a recast of Regulation (EU) 2015/847, fulfils the objective of establishing an EU single rulebook.

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

Proposal for a Regulation on information accompanying transfers of funds and certain crypto-assets (recast)

Procedure reference: Date published:

2021/0422 (COD) 20 July 2021

This legislative proposal is in direct response to the Commission's Action Plan for a Comprehensive Union Policy on AML / CFT detailed above. This proposal for a regulation, together with the proposal for a directive establishing the mechanisms that Member States should put in place to prevent the use of the financial system for money laundering / terrorist financing purposes, and repealing 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, fulfils the objective of establishing an EU single rulebook.

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

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

Procedure reference: Date published:

This **Proposal** for a Directive aims to amend Directive 2014/65/EU ("**MiFID II**") and is one of a series of measures that implement the CMU. It aims to empower investors, in particular smaller and retail investors, by enabling them to access market data necessary to invest in shares or bonds more easily and by making EU market infrastructures more robust.

This initiative is complement to the proposal to amend Regulation (EU) 600/2014 ("MiFIR").

Latest stage: This proposal has been adopted by the Commission and will be open for feedback until 22 March 2022. All feedback received will be summarised by the Commission and presented to the Parliament and

2021/0384 (COD) 25 November 2021

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

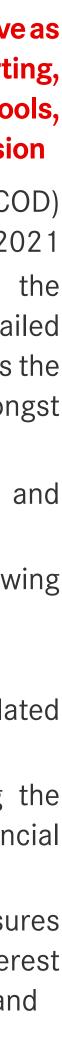
Procedure reference: 2021/0295(COD) Date published: 22 September 2021

This proposed directive is in direct response to the Commission's review of the Solvency II Directive, as detailed above. The proposal seeks to make several amendments 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 crossborder insurance businesses.

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









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

Procedure reference: 2021/0296(COD) 22 September 2021 Date published:

This proposed directive is in direct response to the Commission's review of the Solvency II Directive (Directive 2009/138/EC), as detailed above. The aim of the Insurance Recovery and Resolution 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.

EU DIRECTIVES

Directive on the Prudential Supervision of Investment Firms

Date published:

This directive (Directive (EU) 2019/2034) amends the Capital Requirements Directive IV and MiFID II. It introduces rules relating to the initial capital of investment firms; supervisory powers and tools for the prudential supervision of investment firms by competent authorities; and publication requirements for competent authorities in the field of prudential supervision of investment firms.

Directive and Investment Firm Regulation

Transposition date: This directive was to be transposed by 26 June 2021, apart from measures pertaining to point (5) of article 64 which was required be applied from 26 March 2020.

The Irish legislation transposing the majority of the directive, S.I. No. 355/2021 - European Union (Investment Firms) Regulations 2021, came into effect on 21 September 2021.

The only provision that remains to be transposed into Irish law is Article 62(6) which relates to the requirement for Member States to impose an obligation on certain large systemic investment firms (ie, Class 1 Firms) to re-authorise as credit institutions.

5 December 2019

Read more: Updates relating to the Investment Firms

The Department of Finance has stated that it will conclude this work, as soon as possible, to establish in legislation a reauthorisation process for those investment firms required to re-authorise as credit institutions.

Directive Amending the Motor Insurance Directive

Date published:

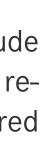
24 November 2021

This directive (Directive (EU) 2021/2118) amends Directive 2009/103/EC (known as the Motor Insurance Directive). It seeks to improve confidence in the single market for motor insurance by increasing legal certainty connected with cross-border selling of motor insurance and reducing risk caused by the potential insolvency of a motor vehicle insurer.

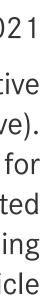
Transposition dates: Member states are required to transpose and apply this directive by 23 December 2023.

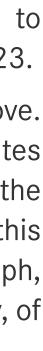
There is however, a permitted derogation from the above. The derogation states that "by 23 June 2023 Member States shall adopt the measures necessary to comply with the amendments set out in Article 1, points (8) and (18), of this Directive as regards Article 10a(13), second subparagraph, and Article 25a(13), second subparagraph, respectively, of Directive 2009/103/EC.

When Member States adopt the measures referred to in this paragraph, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.











EU REGULATIONS

Regulation on European Crowdfunding Service Providers for Business

Date published:

20 October 2020

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.

Read more: 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 allow 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.

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**

Date published:

28 November 2016

The regulation (Regulation (EU) 2021/23) amends the regulation establishing ESMA, EMIR and the SFTR to provide for the orderly recovery of Central Counterparties ("CCPs") in scenarios of financial distress by way of "robust and comprehensive" recovery plans.

Applies from: The regulation entered into force on 11 February 2021 and applies from 12 August 2022 with the exception of:

- Article 87(2) which has applied since 11 February 2021; Articles 9(1), 9(2), 9(3), 9(4), 9(6), 9(7), 9(9), 9(10), 9(12), 9(13), 9(16), 9(17), 9(18), 9(19), 10(1), 10(2), 10(3), 10(8), 10(9), 10(10), 10(11), 10(12) and 11 which shall apply from 12 February 2022;
- Articles 9(14) and 20 which shall apply from 12 February 2023





Commercial Real Estate



Commercial Real Estate

IRISH PROPOSED LEGISLATION

Tailte Éireann Bill

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: General Scheme published in January 2021 and PLS has taken place. Listed as Priority Legislation in the Spring 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: Draft heads of bill are being prepared.

Housing and Residential Tenancies Bill

This bill will strengthen the statutory framework for the enforcement of the overcrowding provisions in the Housing Act 1966 and will amend the Residential Tenancies Act 2004 to further enhance tenancy protections particularly during receivership and to address deposits.

Latest Stage: Draft heads of bill are being prepared.

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

Planning and Development (Substitute Consent) Bill

This bill will amend the Planning and Development Act 2000 to streamline the substitute consent provisions.

Latest Stage: Heads of bill were approved on 9 June 2021 and pre-legislative scrutiny has taken place. The bill is listed as Priority Legislation in the Spring Legislative Programme.

Planning and Development (Judicial Review) Bill

This bill will provide for the reform of the judicial review provisions in the Planning and Development Act 2000.

Latest Stage: Heads of Bill approved on 30th October 2019, PLS to be determined

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 Housing for All Plan.

Latest Stage: Work is underway

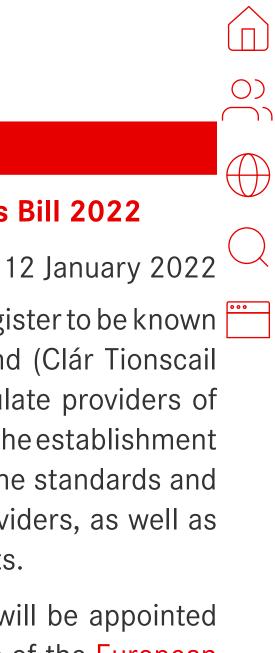
BILLS

Regulation of Providers of Building Works Bill 2022 Date Published: 12 January

This bill 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 will provide 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: Currently before Dáil Éireann, Third Stage.





Commercial Real Estate

ACTS

Affordable Housing Act 2021

Date Published:

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 Published: 14 December 2021

This Act amends and extends the Planning and Development Acts 2000 to 2021 with respect to planning permission applicationsforcertainlarge-scaleresidential developments, replacing the Strategic Housing Development arrangements which expired on 25 February 2022.

Commencement: The majority of the Act other than s. 17(6) has been commenced.

Land Development Agency Act 2021

Date published:

This act will establish the Land Development Agency on a primary legislative footing. The Land Development Agency will be established as a Designated Activity Company ("DAC") to develop and regenerate relevant public land for the delivery of housing.

Commencement: A number of sections still awaiting commencement

Local Government Rates and other Matters Act 2019

Date published:

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 but the substantive elements of the act are yet to be commenced.

21 July 2021

11 July 2019

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IRISH PROPOSED LEGISLATION

Right to Request Remote Work Bill

A **bill** to introduce the right to request remote work

Latest stage: Draft Heads of Bill published on 25 January 2022. Listed as priority legislation in the Spring Legislative Programme.

Transposition of EU Directive 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. Under the Directive workers in the EU have a right to more complete information on the essential aspects of the work, a limit to the length of probationary periods at the beginning of the job, to know in a reasonable period in advance when work will take place, for workers with very unpredictable working schedules, as in the case if on-demand work, receive a written reply to a request to transfer to another more secure job, and receive cost-free any mandatory training that the employer has a duty to provide. The directive further bans exclusivity clauses and limits incompatibility clauses.

Latest stage: Work is underway

Work-Life Balance Bill

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: The bill is listed as Priority Legislation in the Spring Legislation Programme.

Sick Leave Bill

To introduce a statutory sick pay scheme for Ireland.

Latest stage: Heads of Bill approved on 4th November 2021, pre-legislative scrutiny has taken place

Living Wage Bill

To provide for the Programme for Government commitment to progress to a living wage Latest stage: Work is underway

Protection of Employment (Collective Redundancies) (Amendment) Bill

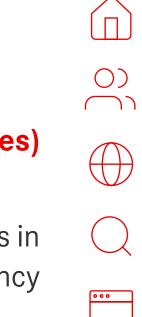
To introduce reforms to enhance the rights of employees in the context of collective redundancies following insolvency within the Protection of Employment Act 1977

Latest stage: Work is underway

Employment Permits (Consolidation and Amendment) Bill

This bill proposes to bring Ireland's migration policy in line with the findings of the Review of Economic Migration Policy which was conducted in 2018. Key changes include consolidating migration policy to make it clearer, increasing agility and responsiveness in Ireland's economic migration application system, introducing new seasonal employment permits, introducing a Special Circumstances Employment Permit and streamlining the process for Trusted Partner applications.

Latest stage: Listed as priority legislation in the Spring Legislative Programme. Pre-legislative scrutiny has taken place.





BILLS

Protected Disclosures (Amendment) Bill

Date published:

9 February 2022

The purpose of this bill 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: Currently before Dáil Éireann, Third Stage, 17 February 2022

Redundancy Payments (Amendment) Bill 2022

Date published:

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.

Latest stage: Currently before Seanad Éireann, Third Stage.

ACTS

Gender Pay Gap Information Act 2021

Date published:

This act amends the Employment Equality Act 1998 by introducing regulations requiring employers above a certain headcount to publish information relating to the remuneration of their employees by reference to the gender. It is designed to highlight differences in remuneration amongst employees of different gender and to disclose employers' "gender pay gap". It also requires such employers to publish statements setting out the reasons for such differences and the measures (if any) taken, or proposed to be taken, by those employers to eliminate or reduce such differences; to make a consequential

21 January 2022

13 July 2021

amendment to the Irish Human Rights and Equality Commission Act 2014; and to provide for related matters.

Commencement: Awaiting commencement orders.

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

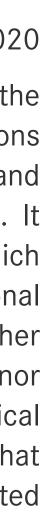
Date published:

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 commencement





await



EU PROPOSED LEGISLATION

Proposal for a Directive on Minimum Wages in the EU

Procedure reference: Date published:

2020/0310 (COD) 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: Date published:

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:

- make pay systems more transparent;
- concepts; and
- strengthen enforcement mechanisms.

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

2021/0050 (COD) 4 March 2021

introduce binding pay transparency measures;

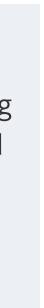
improve public understanding of the relevant legal

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Data Protection, Privacy and Technology









Data Protection, Privacy and Technology

IRISH PROPOSED LEGISLATION

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: Work is underway.

Communications (Data, Retention and Disclosure) Bill

This Bill will revise and replace the Communications (Retention of Data) Act 2011. The Heads of Bill were published in October 2017, following publication of Mr Justice Murray's Report reviewing the 'Law on the Retention of and Access to Communications Data', which found that many features of the 2011 Act are precluded by EU law.

In Dwyer v Commissioner of An Garda Siochána [2019] IEHC 48, the High Court made a declaration that section 6(1) (a) of the 2011 Act is inconsistent with EU law, In February 2020, the Supreme Court referred the case to the Court

of Justice of the European Union (CJEU). The Advocate General released an opinion on the case in November 2021, finding that Irish law is inconsistent with EU law, insofar it allows traffic and location data to be retained on a general and indiscriminate basis for two years, for the purpose of disclosure to Garda for the prevention/investigation of a serious offence.

The new Bill will likely take into account the outcome of the decision of the CJEU.

Latest stage: Heads of bill were approved on 10 February 2015 and 3 October 2017. Pre-legislative scrutiny has taken place.

BILLS

Consumer Rights Bill

The purpose of this legislation is to give effect to EU Directive 770/2019 on consumer contracts for the supply of digital content and digital services, EU Directive 771/2019 on consumer contracts for the sale of goods, and the main provisions of Directive (EU) 2019/2161 on better enforcement of EU consumer protection law.

- and distance contracts;

The Directive on Contracts for the Sale of Goods seeks to harmonise aspects of contracts concerning the sale of goods, including the sale of goods through online

The Directive on Better Enforcement of EU Consumer

Protection Law makes a number of "targeted' amendments to the Consumer Rights Directive; the Unfair Terms Directive and the Price Indication Directive, strengthening consumer rights; and

The Directive on Digital Content and Digital Services applies to aspects of the supply of digital content and digital services which have not previously been harmonised at EU level in order to clarify and improve the contractual rights of consumers in cross-border transactions.

Latest Stage: The bill is listed as Priority Legislation in the Spring Legislative Programme. The Heads of Bill approved on 20th April 2021, pre-legislative scrutiny has taken place.

Online Safety and Media Regulation Bill

Date published:

25 January 2022 This general scheme proposes to provide 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: Completed Seanad Éireann, Second Stage, 22 February 2022







Data Protection, Privacy and Technology

EU PROPOSED LEGISLATION

ePrivacy

Procedure reference: Date published:

2017/0003 (COD) 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 particularise and complement the GDPR. For example, in contrast to the GDPR, many ePrivacy provisions will apply to both natural and legal persons.

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

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

Procedure reference: Date published:

In proposing a regulatory framework on artificial intelligence ("AI"), the Commission has identified the following specific objectives:

to ensure that AI systems placed and used on the EU market are safe and respect existing law on fundamental rights and EU values;

- innovation in Al;
- 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 European Parliament and Council.

2021/0106 (COD) 21 April 2021

to ensure legal certainty to facilitate investment and

to enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems; and

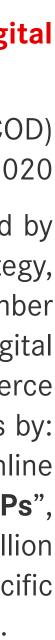
to facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent

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

Procedure reference:	2020/0361(CC
Date published:	15 December 20

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", ie, 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: First reading in the European Parliament and Council. The European Parliament made amendments to the proposal on 20 January 2022.









Data Protection, Privacy and Technology

EU PROPOSED LEGISLATION

Proposed Regulation on Digital Markets Act

Procedure reference: Date published:

2020/0374(COD) 15 December 2020

The proposed 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. The proposed measure will create harmonised rules defining and prohibiting certain unfair practices by "gatekeeper" platforms (providers of core platform services) and introduce a new competition tool to deal with structural competition problems across markets which cannot be tackled or addressed using existing competition rules. The measures include new powers for the Commission to conduct market investigations.

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

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

Procedure reference: Date published:

2022/0047/COD 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 European Parliament and Council of the EU

Proposal for a Regulation on Data Governance

Procedure reference: Date published:

The purpose of this proposed Regulation is to establish a framework to facilitate general and sector-specific datasharing (including data of public bodies, private companies and citizens).

Latest stage: First reading European Parliament and Council of the EU

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

Procedure reference: Date published:

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.

Latest stage: First reading European Parliament and Council of the EU

2020/0340/COD 25 November 2020

2020/0359/COD 16 December 2020

EU DIRECTIVES

Directive on Audiovisual Media Services

Date published:

14 November 2018.

This directive updates Directive 2010/13/EU (the original Directive on Audiovisual Media Services) to reflect a new approach to audiovisual media, both traditional broadcast and on-demand services, as part of the Digital Single Market Strategy adopted by the Commission in 2015. The directive seeks to reflect market and technological changes and generally focuses on provisions applicable to all market players, including in relation to accessibility, major events, promotion and distribution of European works, the protection of minors and advertising rules.

The directive applies to a broad range of services such as broadcasters, social media, video and content sharing sites and sets out measures with a view to shaping technological developments and creating a level playing field for emerging audiovisual media, preserving cultural diversity, and safeguarding children, media pluralism and measures against racial and religious hatred. The Online Safety and Media Regulation Bill (above) will provide for the implementation of this directive into Irish law.

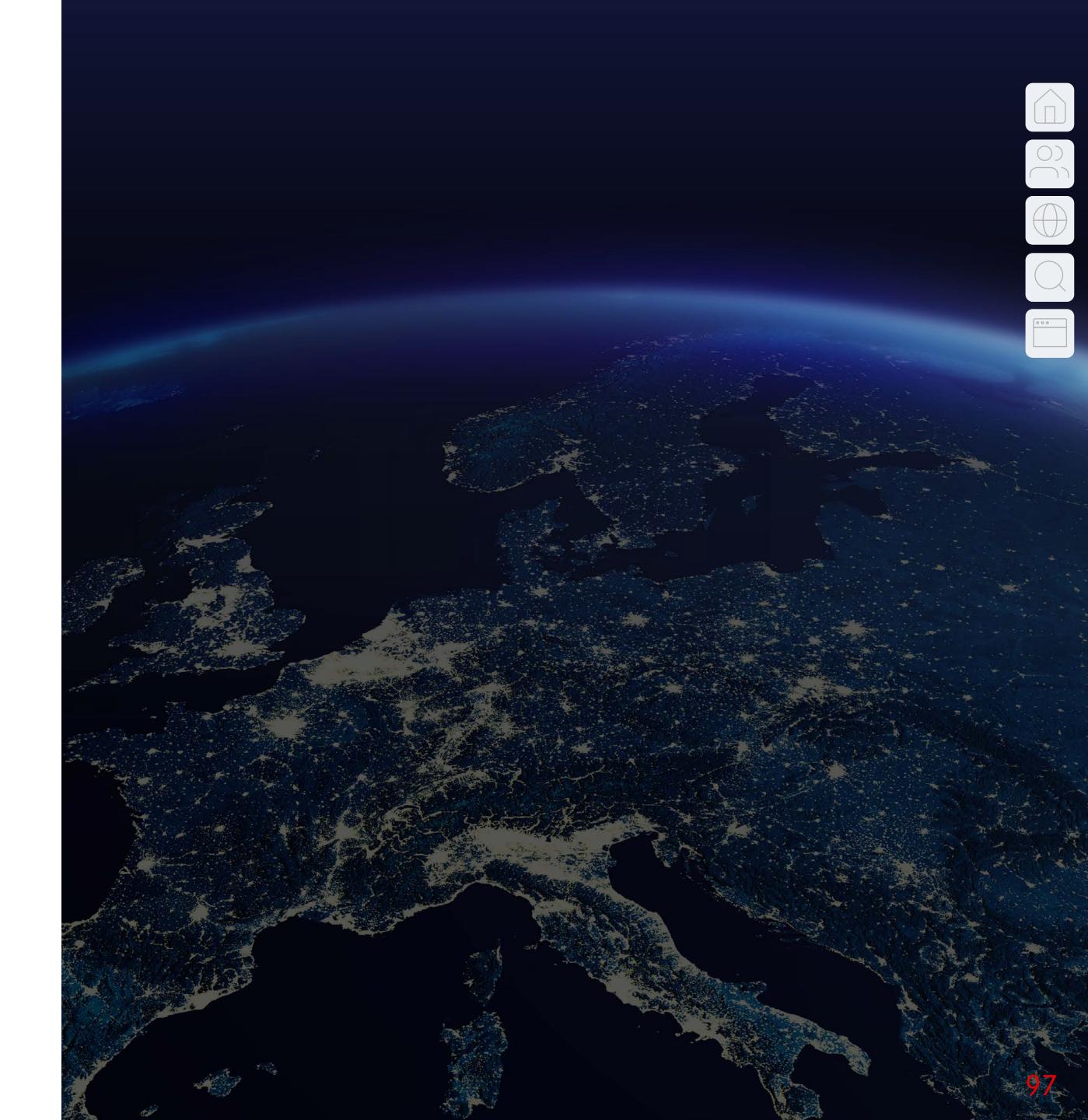
Transposition date: 19 September 2020.







Other Important Legislative and Regulatory Developments



Other Important Legislative and Regulatory Developments

Insolvency

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

EU REGULATIONS

Regulation of the European Parliament and Council Replacing Annexes A and B to Regulation EU 2015/848 on insolvency proceedings.

This has been adopted with a statement in Article 3 indicating that whilst Ireland had not been included in the Regulation under Protocol 21 it has indicated its intention to opt into the Regulation.

Applies from: 9 January 2022

Competition

BILLS

Competition (Amendment) Bill

This **bill** will transpose the ECN+ directive and provides for the reform of competition enforcement in Ireland.

Latest stage: Currently before Dáil Éireann, Third Stage, 9 February 2022

EU DIRECTIVES

Directive to Make NCAs More Effective Enforcers (ECN+)

Date published:

This directive aims to ensure that, when applying the same legal basis, that is, the EU antitrust rules, national competition authorities have the appropriate enforcement tools in order to bring about a genuine common competition enforcement area. To that end, the directive provides for minimum guarantees and standards to empower national competition authorities to reach their full potential. The recently published Competition (Amendment) Bill will transpose this legislation

Transposition date: 4 February 2021. The Competition (Amendment) Bill 2022 will transpose this Directive.

14 January 2019

Consumer Law

IRISH PROPOSED LEGISLATION

Gambling Regulation Bill

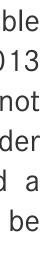
This is a **bill** to reform the regulation of gambling activities and to provide for the establishment of an independent gambling regulator.

It has yet to be published but is expected to closely resemble the general scheme of the earlier Gambling Control Bill 2013 (the "2013 Bill"), and additionally identify new issues not represented in the 2013 Bill. A working group to consider the establishment of a gambling regulator delivered a report to the government in 2019 and this bill will likely be modelled on that report.

Latest stage: Heads approved on 19th October 2021, pre-legislative scrutiny is underway. The bill is listed under Priority Legislation in the Spring Legislative Programme.











Other Important Legislative and Regulatory Developments | Consumer Law

Consumer Law

EU PROPOSED LEGISLATION

Proposed Directive Adapting Civil Liability Rules for the Digital Age and Artificial Intelligence

Date published:

30 June 2021

Investment in, and societal acceptance of, emerging technologies require legal certainty and trust. Current rules on products ensure that producers compensate consumers for damage caused by defective products. It may be necessary to adapt this framework to the developments linked to the transition towards a circular and digital economy.

In addition, the new challenges with Artificial Intelligence in the context of liability for damages caused by new and refurbished products will be addressed.

Latest stage: Public consultation closed 10 January 2022. Commission adoption planned for Q3 2022

Proposal for a Regulation to Review and Extend the **EU's Roaming Charges Rules**

Procedure reference: Date published:

2021/0045(COD) 25 February 2021

In June 2017, EU legislation ended roaming charges for users of mobile devices in the EU and Iceland, Liechtenstein and Norway.

However, market conditions do not yet appear to guarantee that this scheme can continue without regulatory intervention, so the rules need to be extended beyond their current expiry date of 30 June 2022. This initiative will extend the rules (the "Roaming Regulation") and examine options for ensuring the scheme continues to run effectively.

Latest stage: First reading in the European Council

Proposal for a Directive to Strengthen the Role of **Consumers in the Green Transition**

Date published:

Helping consumers play their part in achieving a more sustainable economy ('green' transition) is a key goal of EU consumer policy revision.

This initiative mainly aims to:

- options;
- prevent overstated shortened lifespan; and
- labels.

Latest stage: Commission adoption was planned for Q2 2021, but is still awaited

23 June 2020

ensure that consumers obtain reliable and useful information on products eg, on their lifespan and repair

environmental information ('greenwashing') and sale of products with a covertly

set minimum requirements for sustainability logos and





Other Important Legislative and Regulatory Developments | Consumer Law

EU DIRECTIVES

Directive on Representative Actions for the Protection of the Collective Interests of Consumers

Date published:

4 December 2020

In November 2020, the European Parliament formally adopted the Representative Actions Directive, which was first proposed by the Commission in 2018, which 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 introduce changes in this area of law to comply with the Directive.

Transposition date: Transposition measures must be published by 25 December 2022 and applied by 25 June 2023

Directive on the Accessibility Requirements for Products and Services

Date published:

This directive aims to harmonise accessibility requirements for certain products and services so that the EU internal market operates smoothly, by eliminating and preventing any free-movement barriers that may exist because of divergent national legislation. It aims to bring benefits to businesses, people with disabilities, and the elderly. Applying accessibility requirements will clarify the existing accessibility obligation in EU law, particularly in public procurement and structural funds.

Transposition date: Transposition measures must be published by 28 November 2021 and applied by 28 May 2022

7 June 2019

ACT

Consumer Insurance Contracts Act 2019

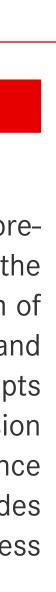
This act amends consumer contracts law including preand post- contractual duties of both the consumer and the insurer; remedies for misrepresentation; standard form of insurance contracts; specified 'cooling off' periods; and provides for the rights of third parties. It broadly adopts the recommendations of the Law Reform Commission in its 2015 proposals for reform of consumer insurance contracts. The act's definition of a "consumer" includes individuals and small businesses with a turnover of less than €3 million.

Commencement: S. 18(4) requires commencement

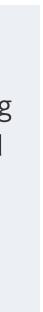
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Other Important Legislative and Regulatory Developments | Agribusiness, Food, Beverage and Healthcare

Agribusiness, Food and Beverage

IRISH PROPOSED LEGISLATION

Agriculture and Food Supply Chain (Market **Transparency**) Bill

The purpose of this bill will be to establish a National Food Ombudsman which will enforce Directive (EU) 2019/633 (the Unfair Trading Practices "UTP" Directive) which relates to unfair trading practices in the agricultural and food supply chain. The Ombudsman will undertake analysis and report on price and market data.

Latest stage: Preparatory work is underway, listed as priority legislation in the Spring Legislative Programme

Sale of Alcohol Bill

This **bill** will codify the law relating to the sale and consumption of alcohol. It will repeal the Licensing Acts 1833 to 2011, as well as the Registration of Clubs Acts 1904 to 2008, and replace them with provisions more suited to modern conditions.

The bill is intended to modernise and streamline licensing law in order to make it more understandable and userfriendly for the licensed trade, the courts and members of the public.

Latest stage: Revised heads of bill being prepared.

EU PROPOSED LEGISLATION

Proposal for a Regulation to Review the General Product Safety Directive

Procedure reference: Date published:

The General Product Safety Directive (Directive 2001/95/ EC) protects consumers by ensuring that only safe goods are sold on the EU market. It is almost twenty years old and no longer reflects developments on markets, products and market surveillance.

This initiative revises the current rules to:

- respond to issues related to new technologies and online sales;
- ensure better enforcement of the rules and more efficient and even market surveillance;
- simplify the standardisation process; and
- improve the recall of dangerous products in the hands of consumers.

The DETE sought opinions from Irish stakeholders on the proposal by means of public consultation, which closed on 24 September 2021

Latest stage: First reading at European Parliament and Council

2021/0170(COD) 30 June 2021

Heathcare

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 in preparation. The bill is listed under All Other Legislation in the Spring Legislative Programme.

Assisted Human Reproduction Bill

This **bill** seeks to establish the Assisted Human Reproduction Regulatory Authority; outlines the conditions relating to the donation of gametes and embryos for use in assisted human reproduction ("AHR") treatment by others and/or for use in research; permit posthumous assisted reproduction ("PAR"), outlines the specific conditions under which surrogacy in Ireland will be permitted, including a requirement for all surrogacy agreements to be pre-authorised by the AHR Regulatory Authority.

The scheme also sets out a court-based mechanism through which the parentage of a child born through surrogacy may be transferred from the surrogate (and her husband, if applicable) to the intending parent(s). The scheme specifies the conditions under which research involving embryos, embryonic stem cells and induced pluripotent stem cells may be permitted, subject to obtaining a licence from the AHR Regulatory Authority.

Latest stage: Published 10th March 2022. Completed Dáil Éireann, First Stage.











Other Important Legislative and Regulatory Developments | Healthcare

(Transplantation, Post-Mortem, Tissue Human **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, prelegislative scrutiny waived. The bill is listed as Priority Legislation in the Spring 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. The bill is listed under All Other Legislation in the Spring Legislative Programme.

EU PROPOSED LEGISLATION

Regulation (EU) No 536/2014 sets out the legal framework for clinical trials to ensure that trial participants are protected. Under Articles 42 and 43 of the Regulation, the European Medicines Agency is required to forward any information relating to suspected unexpected serious adverse reactions to investigational medicinal products reported by trial sponsors to the Member States concerned. This implementing regulation sets out the rules and procedures for the Member States to cooperate in their safety assessments of clinical trials.

Latest stage: Applies from 31 January 2022

Regulation on health technology assessment and amending Directive 2011/24/EU

This **Regulation** establishes a support framework and procedures for co-operation on Health Technology Assessment (HTA) at EU level and common rules for the clinical assessment of health technologies.

Latest stage: Applies from 12 January 2025

Implementing Regulation as regards setting up the rules and procedures for the cooperation of the member states in safety assessment of clinical trials

Regulations on Medical Devices and In-Vitro Diagnostic Devices

Regulation 2017/745 on Medical Devices ("MDR") and Regulation 2017/746 on In-Vitro Diagnostic Devices ("IVDR") entered into force in May 2017 following publication in the Official Journal of the European Union. The regulations have a staggered transitional period with some aspects becoming legally binding after six months of entry into force.

Latest stage: The MDR was due to become fully applicable on 26 May 2020 after a three-year transition period. However, due to the global outbreak of COVID-19, full application of the MDR was postponed and is fully applicable from 26 May 2021. The IVDR will be fully applicable on 26 May 2022.

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Other Important Legislative and Regulatory Developments | Justice and Litigation

Justice and Litigation

IRISH PROPOSED LEGISLATION

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
- Introducinga'seriousharm'testincertaincircumstances
- 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 in preparation.

European Convention on Human Rights (Compensation for Delays in Court Proceedings) 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 20th July 2021, pre-legislative scrutiny waived

Regulation of Lobbying (Amendment) Bill

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

- employees
- of the party

Latest stage: The General Scheme of the Bill was published on 16 February 2022 and is listed as Priority Legislation in the Spring Legislative Programme.

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.

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

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

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: Heads of bill were approved on 14 June 2021. The date for pre-legislative scrutiny is still to be determined.

Courts and Civil Law (Miscellaneous Provisions) Bill

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: Heads approved on 9 January 2020 and 1 June 2021, pre-legislative scrutiny has taken place. The bill is listed as Priority Legislative in the Spring Legislative Programme.

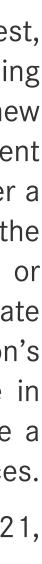
Garda Siochána (Powers) Bill

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 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 14th June 2021, PLS ongoing









Other Important Legislative and Regulatory Developments | Justice and Litigation

ACTS

Counterfeiting Act 2021

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

Latest stage: S. 29 awaiting commencement

Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

Date published:

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: Signed by the President of Ireland on 6 August 2020. Section 32, on execution of documents by counterpart is the only section not yet commenced.

Justice and Litigation

EU PROPOSED LEGISLATION

Proposed Regulation on Use of Digital Technology for Modernising Judicial Co-operation Between EU Countries

Date published:

This initiative aims to make judicial co-operation in crossborder cases throughout the EU more efficient and more resilient to crises, such as the COVID-19 pandemic.

It will make it mandatory for the authorities involved in each country to use digital technology, instead of paper, to communicate.

It will improve access to justice by ensuring that individuals, businesses and legal practitioners involved in cases can communicate digitally with the competent authorities in the other countries.

Latest stage: First Reading European Parliament and Council.

8 January 2021

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 the regulation (Regulation (EU) 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. Recently, the Commission published an initiative regarding the implementing rules for the establishment of a decentralised IT system for data exchange under the Regulation.

Applies from: 1 July 2022, but Article 31(3) shall apply from 23 March 2022, and Article 7 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.







Other Important Legislative and Regulatory Developments | Justice and Litigation

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

Date published:

2 December 2020

The regulation (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. Recently, the Commission published an initiative regarding the implementing rules establishing a decentralised IT system for service of documents per Article 25 of the Regulation.

Applies from: 1 July 2022, but Articles 5, 8 and 10 shall apply from the first day of the month following the period of three years after the date of entry into force

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Glossary

Alternative investment fund	Dáil Éireann	The lower ho Oireachtas, t
Alternative investment Fund manager	EDPB	European Da
Alternative Investment Fund Managers Directive - Directive 2011/61/EU	DETE	Department Employment
Anti-money laundering	EBA	European Ba
Anti-Tax Avoidance Directive	ECB	European Ce
Central Clearing Counterparty	EEA	European Ec
Common Consolidated Corporate Tax Base	EIOPA	European Ins Authority
Central Bank of Ireland	EMIR	European Ma Regulation N
Capital Markets Union	ESMA	European Se
Company Law Review Group	ESG	Environment
European Commission	EU	European Un
Council of the EU	EUR	Euro
Central Securities Depositary	EuSEF	European So
Corporate Sustainability Reporting Directive	FDI	Foreign Dired
Central Securities Depositary Regulation – Regulation (EU) 909/2014	GDPR	General Data
Data Protection Commission	IDA	Industrial De
	Alternative investment Fund manager Alternative Investment Fund Managers Directive - Directive 2011/61/EU Anti-money laundering Anti-Tax Avoidance Directive Central Clearing Counterparty Common Consolidated Corporate Tax Base Central Bank of Ireland Capital Markets Union Company Law Review Group European Commission Council of the EU Corporate Sustainability Reporting Directive Central Securities Depositary Regulation - Regulation (EU) 909/2014	Alternative investment Fund managerEDPBAlternative Investment Fund Managers Directive 2011/61/EUDETEAnti-money launderingEBAAnti-money launderingECBAnti-Tax Avoidance DirectiveECBCentral Clearing CounterpartyELOPACommon Consolidated Corporate Tax BaseEIOPAContral Bank of IrelandEMIRCapital Markets UnionESGCompany Law Review GroupEUCouncil of the EUEURCouncil of the EUEURCorporate Sustainability Reporting DirectiveFDICentral Securities Depositary Regulation - Regulation (EU) 909/2014GDPR

r house and principal chamber of the as, the Irish legislature	Member State	A member state of the European Union	
n Data Protection Board	MiFID II	Second Markets in Financial Instruments Directi – Directive 2014/65/EU	
ent of Enterprise, Trade and ient	MiFIR	IR Markets in Financial Instruments Regulation – Regulation (EU) 600/2014	
n Banking Authority	MLD5	Fifth Money Laundering Directive – Directive 2018/843/EU	
n Central Bank	MLD6	Sixth Money Laundering Directive - Directive 2018/1673/EU	
n Economic Area	NCA	National Competent Authority	
n Insurance and Occupational Pensions	NFRD	Non Financial Reporting Directive	
n Market Infrastructure Regulation – EU on No 648/2012	OECD	Organisation for Economic Co-operation and Development	
n Securities and Markets Authority	Oireachtas	The Irish legislature, combining the lower house, Dail and the upper house, Seanad.	
nental and Sustainable Governance	SFDR	Sustainable Finance Disclosure Regulation	
n Union	Seanad Éireann	The upper house of the Oireachtas, the Irish legislature	
	SFTR	Securities Financing Transactions Regulation	
n Social Entrepreneurship Fund	Spring Legislative Programme	Irish Government's Legislative Programme for Spring 2022	
Direct Investment	UCITS Directive	Directive on Undertakings for Collective Investm in Transferable Securities - Directive 2009/65/8	
Data Protection Regulation	UK	United Kingdom	

I Development Authority





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