



## Construction & Engineering

### PUBLIC WORKS CONTRACTS – UPDATED GUIDANCE ON PRICE VARIATION CLAUSES

Following the amendments made on [7 January 2022](#) to address the risk of price inflation to construction materials in public works contracts, the Office of Government Procurement has published an updated version of [GN 1.5.2 Public Works Contracts: Price Variation Clauses](#) (which deals with the contractual entitlements associated with the price variation clauses in the public works contracts forms PW-CF1 – PW-CF5).

### NEC PUBLICATIONS

NEC published guidance on [managing inflation risk](#) in NEC4 and the effect on compensation events.

NEC also published briefings [comparing risk allocation](#) in the NEC Engineering & Construction Contract with FIDIC Yellow Book and looking at risk allocation when [inconsistencies](#) arise between the scope and other documents forming part of the contract.

### SUSTAINABILITY

**Energy Performance of Buildings** || [European Union \(Energy Performance of Buildings\) Regulations 2022](#) were made for the purpose of giving effect to Articles 14 (Inspection of Heating Systems) and 15 (Inspection of air-conditioning systems) of [Directive 2010/31/EU](#) as amended by Directive (EU) 2018/844.

**Contracts** || The Chancery Lane Project launched a [Built Environment Resource Hub](#) bringing together TCLP resources useful for property, construction, planning and environment practitioners. It features a “built environment lifecycle clause map”, which provides a representation of a development project and identifies relevant TCLP clauses for each stage. You can hear more by joining the TCLP event announced [here](#) which includes an update on Irish green lease clauses from our Real Estate Group. For more information, please see our Real Estate section, below.

**Water** || The Irish Green Building Council published a new [guide](#) for the construction industry on how to best conserve water.



## Energy & Climate

### UN

#### Recognition of clean, healthy & sustainable environment as a human right

The UN General Assembly passed [Resolution No. 76/300](#) recognising the human right to a clean, healthy and sustainable environment; noting that the right to a clean, healthy and sustainable environment is related to other rights and existing international law; affirming that the promotion of the human right to a clean, healthy and sustainable environment requires full implementation of the multilateral environmental agreements under the principles of international environmental law; and calling upon States, international organisations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all. Last year the UN Human Rights Council passed a similar resolution.

The resolution is not legally binding on UN Member States but its advocates point to the success of previous similar resolutions (for example in relation to drinking water) in prompting countries to increase constitutional protections, as well as examples of successfully pleading international human rights law before domestic courts to spur Government action (such as in [Urgenda](#)). || [Press Release](#)

### EU

**Market Intervention** || President of the Commission, Ursula von der Leyen, [announced](#): "The skyrocketing electricity prices are now exposing, for different reasons, the limitations of our current electricity market design. ... we, the Commission, are now working on an emergency intervention and a structural reform of the electricity market..." The FT reports the President as later stating: "We need an emergency instrument which would be triggered very quickly, in weeks perhaps". (This would involve decoupling the electricity market from the gas market and it is reported this could be approved at an emergency energy council on 9

September 2022. This seems partly aimed at addressing the situation whereby a Member State subsidising input fuels (such as [Spain](#)) impacts the price of electricity in the neighbouring State.) This first stage would be followed by a "deep and structural reform of the energy market, by beginning of next year". || Press Reports: [Financial Times](#), [Irish Times](#), [Politico](#)

**New Gas Legislative Package** || The Oireachtas Joint Committee on Environment & Climate Action published its [opinion](#) on the proposals for a recast Regulation & new Directive on the internal market in renewable and natural gas and hydrogen, and methane reductions in the energy sector (which we looked at in January). The Committee makes recommendations which can be described as seeking more ambitious proposals.

**Renewable Gas** || The Commission published a [report](#) on the challenges and policy options for integrating renewable gas at distribution level focusing on (i) DSO tasks, (ii) energy communities, and (iii) consumer participation.

**Gas Demand Reduction** || The Council [adopted](#) the Commission's recent [proposal](#) for a new Regulation on Coordinated Demand Reduction Measures for Gas and a European Gas Demand Reduction Plan. It aims to reduce gas use in Europe by 15% between 1 August 2022 and 31 March 2023. Member States agreed they will consider prioritising measures that do not affect protected customers such as households and essential services like healthcare and defence. Possible measures are said to include reducing gas consumed in the electricity sector.

**Metering and Consumption Data** || The Commission seeks feedback on a [draft Implementing Regulation](#) under the IME Regulation (EU) 2019/944 which concerns interoperability requirements and non-discriminatory and transparent procedures for access to metering and consumption data. || **Closing date: 26 August 2022.**

**National Energy & Climate Action Plans** || As the Commission prepares guidance for the next updates of NECPs in 2024, it is holding [workshops](#) for stakeholders, open for registration until **2 September 2022.**

**Statistics on People & Households** || The Commission seeks feedback on an amendment to the framework for collecting EU statistics to include a new subject on [energy & environment](#). || **Closing date: 8 September 2022.**

**Rural Energy Communities** || Technical Assistance is being made available for rural [energy communities](#) as defined in the Clean Energy Package. More information is available through an [event](#) open for registration until **2 September 2022.**

**Awareness** || [European Sustainable Energy Week](#) runs from 26-30 September 2022.

### INTERNAL MARKETS

**Network Development Plans** || ENTSO-E published the NDP 2030 & 2040 and TYNDP 2022 for [consultation](#). There will be a webinar on 6 September 2022. || **Closing date: 16 September 2022.**

**Bidding Zone Review** || ACER reached a [decision](#) on alternative electricity bidding zone configurations (none of which are in respect of Ireland). TSOs have 12 months to conduct the bidding zone review and recommend whether to keep or amend the existing bidding zones.

**Guideline on Demand Response** || ENTSO-E and the EU DSO entity published [comments](#) on ACER's draft guideline on demand response.

**Comparison Tools** || CEER published [guidelines](#) for good practice on future-proof comparison tools for the energy sector.

**Winter Outlook** || ACER welcomed ENTSO-E's efforts to expand seasonal assessments and made [recommendations](#) including that coordination among ENTSOs is key, and that there are further scenarios that could be considered to assist policymakers.



**INVESTMENT**

**Horizon Scanner** || Our Finance colleagues’ monthly horizon scanner is available [here](#), and the ESG section is [here](#). (Archived editions are [here](#).)

**Energy Efficiency** || The Commission co-authored a [report](#) on benefits that financial institutions should consider in relation to energy efficiency investments.

**DOMESTIC DEVELOPMENTS - OFFSHORE**

**Offshore Renewable Energy Development Plan II** || DECC is progressing work under the [ORED P II](#) which involves assessment of the maritime area covering all of Ireland’s Exclusive Economic Zone (EEZ). The plan will consider advances in technology to assess ORE potential in Irish waters and map areas most suitable for ORE. DECC has indicated the intent to publish and consult on the draft plan and supporting environmental reports in the second half of 2022.

**Delivery Taskforce** || DECC established an Offshore Wind [Delivery Taskforce](#) comprising officials from several Government Departments and other stakeholders.

**MAC Regulations** || [Maritime Area Consent \(Application Fee\) Regulations 2022](#) were made. The fee for applying for a MAC is €25,000.

**Marine Protected Areas** || The Government approved the General Scheme of a [Bill](#) to enable the designation and management of MPA, stating that “the legislation will provide for the identification, designation, regulation, management, enforcement and review of MPAs, ensuring that they form a coherent, connected, representative and climate-resilient network. This legislation will make key provisions for public and stakeholder participation and engagement in relation to the MPA process. It will also make provisions for implementation and enforcement structures and will be designed to work in parallel with the Maritime Area Planning Act 2021 and existing legal protection measures under the Wildlife Acts and the EU Birds and Habitats Directives.”

**Marine Strategy Framework Directive** || Ireland published an [update](#) to its Marine Strategy: Assessment (Article 8), determination of Good Environmental Stats (Article 9) and Environmental Targets (Article 10).

**Petroleum Exploration and Production** || The Government updated its [policy statement](#) to set out current policy and legislation and provide clarity to stakeholders on future authorisations that may be granted.

**DOMESTIC DEVELOPMENTS**

**New Renewable Targets & Sectoral Emissions Ceilings** || The Government announced it would allocate “additional resources for solar (more than doubling the target to 5,500 MW), off-shore wind (moving from a target of 5,000 MW to 7,000 MW), green hydrogen (an additional 2,000 MW), agro-forestry and anaerobic digestion (up to 5.7 TWh of biomethane)”.

The announcement was made as the [emissions reductions](#) to be achieved in each sector (by 2030 compared to 2018) were published. These are set within the framework of the Carbon Budget Programme made under the Climate Action and Low Carbon Development Acts 2015 and 2021. They are published [here](#), as follows:

Sector	Reduction	2018 *	2030 ceiling *
Electricity	75%	10.5 MtCO <sub>2</sub> eq	3 MtCO <sub>2</sub> eq
Transport	50%	12 MtCO <sub>2</sub> eq	6 MtCO <sub>2</sub> eq
Buildings (Commercial and Public)	45%	2 MtCO <sub>2</sub> eq	1 MtCO <sub>2</sub> eq
Buildings (Residential)	40%	7 MtCO <sub>2</sub> eq	4 MtCO <sub>2</sub> eq
Industry	35%	7 MtCO <sub>2</sub> eq	4 MtCO <sub>2</sub> eq
Agriculture	25%	23 MtCO <sub>2</sub> eq	17.25 MtCO <sub>2</sub> eq
Other**	50%	2 MtCO <sub>2</sub> eq	1 MtCO <sub>2</sub> eq

\* = Figures for MtCO<sub>2</sub>eq for 2018 and 2030 have been rounded. This may lead to some discrepancies.

\*\* = F-gases, Petroleum Refining and Waste



In terms of how the ceilings are implemented, the legal obligation under the Acts is that each Minister, in so far as practicable, must: (a) perform their functions in a manner consistent with the carbon budget, and (b) in the performance of their functions comply with the sector emissions ceiling for the sector for which they have responsibility. The relevant Ministers are required to attend the Oireachtas Committee on Climate Action to give an account of progress and the Committee may in reply make recommendations, to which the Minister must respond.

**Climate Action Plan** || The Government is [calling for expert evidence by 20 September 2022](#) for the next Climate Action Plan, to be published later this year. || Given that the Climate Action Plan envisages the public sector leading by example in reducing emissions, the Government published a [Public Sector Climate Action Mandate](#) to require it to carry out actions set out. A separate mandate (under NewERA) applies for [commercial semi-state bodies](#), namely the [Climate Action Framework for the Commercial Semi-State Sector](#). || The Government published information on the most recent meeting of the [National Climate Stakeholder Forum](#) which brought together a large number of stakeholders to discuss several areas including offshore renewables and sustainable mobility – a report is to follow.

**Small-Scale Generation Support Scheme** || DECC is [consulting](#) on a support scheme for Small-Scale Generation (SSG) to support renewable electricity generation technologies with an electricity output greater than 50kW. It is intended to fill the gap between the Micro-generation Support Scheme (MSS) and RESS and also to provide an easier route to market for community projects. || **Closing date: 29 September 2022.**

**Hydrogen** || Hydrogen Mobility Ireland published a paper, [Policy to Enable Green Hydrogen in Ireland](#), along with a report on the Benefits of Hydrogen in Ireland. It proposes targets including 15MW of clean hydrogen production capacity by 2026 and 250MW by 2030. It suggests that a dedicated hydrogen support scheme is

needed, as well as initial capex support for vehicles and harmonisation of standards.

**Energy Poverty** || DECC is carrying out an energy poverty strategy review. This [consultation](#) poses questions on progress in implementing the [Strategy](#) to Combat Energy Poverty. || **Closing date: 5 September 2022.**

**Carbon Observation System** || The Government [joined](#) the EU integrated Carbon Observation System – European Research Infrastructure Consortium (ICOS- ERIC or ICOS) to improve management of GHG budgets. The EPA is designated as the ICOS National Focal Point.

**Data Centres** || DETE published a [New Statement](#) on the Role of Data Centres in Ireland's Enterprise Strategy. It notes that data centres "are not a separate or optional economic infrastructure" but that in the short to medium term "not all demand for data centre development can be accommodated" and it sets out principles that the Government indicate should apply for sustainable data centre development. || [Press Release](#)

## CRITICAL INFRASTRUCTURE

**Energy Transition** || EirGrid published an update on its [Scheduling & Dispatch Project](#). Bilateral consultation is ongoing and wider industry workshops are to begin in September.

**Redispatch** || The [Annual Renewable Constraint and Curtailment Report](#) has been published.

**TYNDP (CRU/2022/75)** || The CRU & EirGrid published the Ten Year Transmission Development Plan and consultation report.

## CRU BUSINESS

**Electricity Network Tariffs (CRU/2022/81)** || The CRU proposed new use of system tariffs to apply from October 2022 to cover the cost of new emergency generation. Given the short consultation period we summarised the proposals and commented on the validity of their legal basis in a briefing [here](#). || **Closing date: 1 September 2022.**

**PSO (CRU/2022/77)** || The CRU published the decision paper for the 2022/23 PSO levy noting it is a negative figure. It is setting the PSO to zero with the intention of implementing an enduring mechanism for making payments to customers as soon as possible.

**Customers** || The CRU published a new process for approval of Supplier Codes of Practice, Customer Charters and Domestic Terms & Conditions of Supply ([CRU/2022/80](#)); the Change of Supplier Update ([CRU/22/78](#)); and the Complaints quarterly report ([CRU/2022/79](#)).

**Smart Meters (CRU/2022/65)** || The CRU extended the deadline for responses to the consultation on the Smart Meter Data Access Code to **21 September 2022.**

## SEMC BUSINESS

### Capacity Market

**CRM Performance (SEM-22-054)** || The Minister for Environment, Climate & Communications in 2021 requested the CRU to review the Capacity Remuneration Mechanism. The CRU commissioned EY to carry out a review which included an assessment of any improvements that could be made to ensure sufficient procurement of capacity. **Recommendations include:** improving the process for identifying capacity deficit and procuring a contingency for projects that fail to deliver; investing to address regional constraints; requiring consents as part of prequalification; extending lead times for projects to get built; strengthening reliability option incentives; and providing greater incentives for DSUs to participate in the energy market. The CRU now requests views on the EY report by **21 October 2022**. [EirGrid](#) has stated that the current CRM is not fit for purpose.

**2023/24 T-1 Auction (SEM-22-058)** || The RAs published the Exceptions Applications and Opt-out Notification Process for this auction.

**2026/27 T-4 Auction (SEM-22-044)** || The RAs published Capacity Auction Parameters and Annual Run Hour Plant De-Rating Factors for this auction.



**Code Modification (De-rated Capacity) (SEM-22-051 and SEM-22-055)** || The SEMC is consulting on proposed modification [CMC 11 22](#) which introduces a downward adjustment to de-rated capacity for Candidate Units with a limit on their annual run hours, initially to apply only to New Capacity. (The rationale is that the current Capacity Market de-rating process does not distinguish between a project that can run continuously and one that has restricted running.) || **Closing date: 25 August 2022.**

**Code Modification (Delays to Substantial Completion) (SEM-22-042) (SEM-22-50)** || The SEMC published the timetable and consultation paper on proposed modification [CMC 10 22](#) which would introduce a new remedial action in the event of third party delays. This would extend the long-stop date and maximum duration for capacity payments for New Capacity in instances where its Substantial Completion is delayed as a result of failure by a third party (such as planning authorities and other statutory undertakers) in carrying out their required activities. || **Closing date: 20 September 2022.**

#### Other topics

**Imbalance Price (SEM-22-061)** || The SEMC is consulting on a change to the Price Average Reference ("PAR") Quantity to be used in calculation of the Imbalance Price. PAR tagging is the last tagging process and determines what actions are not Net Imbalance Volume ("NIV") Tagged. The SEMC proposes to increase the value of the PAR quantity from 10MWh to 100MWh so it is equal to the NIV. The SEMC states that this will help to mitigate volatility in the Imbalance Market and may reduce a forecasted increase in Imperfections Charges in the coming year. || **Closing date: 9 September 2022.**

**Revenue & Parameters for 2023** || The SEMC published the SEMO Revenue Requirement and K-Factor for 2022/2023 ([SEM-22-046](#)). || The SEMC is also consulting on operational parameters for 2023, relating to Required Credit Cover and Imbalance Settlement

([SEM-22-049](#)), and on scheduling and dispatch parameters ([SEM-22-053](#)). **The closing date is 14 September 2022.**

**Monthly Monitoring (SEM-22-043)** || June monitoring shows average prices in the DAM were €181.84/MWh, a 91% increase as against the previous year. Liquidity is concentrated in the DAM where over 85.21% of ex-ante volumes are traded.

**Directed Contracts (SEM-22-059)** || The RAs are postponing consultation and implementing amendments outlined in [SEM-22-017](#) to the forthcoming DC Round 20.

#### GB MARKET REFORM

The Department for Business, Energy & Industrial Strategy is [consulting](#) on a review of electricity market arrangements until **10 October 2022**. The consultation is a first step in proposed market reform and looks at options for delivering, for example, a net zero wholesale market, mass low carbon power, flexibility, capacity adequacy, and operability.





## Environment & Planning

### RECENT JUDGMENTS

#### Industrial Emissions Licence

The High Court has [upheld](#) the grant of a revised Industrial Emissions Licence by the EPA to Irish Cement.

#### High Court [refers](#) seven questions relating to standing of environmental NGOs in judicial reviews to the CJEU

The High Court has referred the following questions to the CJEU.

1. Does art. 11(1)(a) of directive 2011/92/EU read in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC have the effect that where an environmental NGO meets the test for standing set out in that provision, the NGO concerned is to be regarded as having sufficient capacity to seek a judicial remedy notwithstanding a general rule in the domestic law of a member state which precludes unincorporated associations from bringing legal proceedings?
2. If art. 11(1)(a) of directive 2011/92/EU read in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect in circumstances where the domestic law of the member state concerned provides that an NGO that meets the test for standing conferred by art. 1(2)(e) of the directive is thereby conferred with capacity to seek a judicial remedy?
3. If art. 11(1)(a) of directive 2011/92/EU read in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the

Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect in circumstances where the domestic law of the member state concerned and/or procedures adopted by the competent authority of the member state concerned have enabled an environmental NGO which would not otherwise have legal capacity in domestic law to nonetheless participate in the administrative phase of the development consent process?

4. If art. 11(1)(a) of EIA directive 2011/92/EU read in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect set out in the first question in general circumstances, does it have that effect where the conditions set by the law of the member state concerned in order to enable an NGO to qualify for the purpose of art. 1(2)(e) are such that it the required period of existence of an NGO in order to so qualify is longer than the statutory period for determination of an application for development consent, thus having the consequence that an unincorporated NGO formed in response to a particular planning application would normally never qualify for the purposes of the legislation implementing art. 1(2)(e).
5. Does art. 11(1)(a) of EIA directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC have the effect that a discretion created by a provision of national procedural law of a member state to allow the substitution of an individual applicant or applicants who are members of an unincorporated association in lieu of the unincorporated association itself must be exercised in such a way as to give full effect to the right of access to an effective judicial

remedy such that that substitution could not be precluded by reason only of a rule of domestic law regarding limitation of time for the bringing of the action concerned.

6. If art. 11(1)(a) of EIA directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect referred to in the fifth question in general circumstances, does it have that effect particularly in the light of the principle of effectiveness in circumstances where the action was brought by the original applicant within the time fixed by domestic law and where the grounds of challenge on which the right of access to a judicial remedy was sought by the substituted applicant remained unchanged.
7. If art. 11(1)(a) of EIA directive 2011/92/EU read in the light of the principles of legal certainty and/or effectiveness and/or in conjunction with Article 47 of the Charter of Fundamental Rights and/or art. 9(2) to (4) of the Aarhus Convention as approved on behalf of the European Community by Council decision 2005/370/EC does not have the effect referred to in the fifth question in general circumstances, does it have that effect if the domestic law of the member state concerned regarding the application of limitation periods in such situations is unclear and/or contradictory such that an applicant does not enjoy legal certainty prior to bringing proceedings as to whether such substitution is permissible.



## DECISIONS OF THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

**The Office of the Commissioner for Environmental Information** has [overturned](#) a decision of the Department of Agriculture, Food and the Marine to refuse access to “records relating to the development of a procedure by the Forest Service for addressing any issues regarding the construction of potentially unsanctioned Forest Roads”. The Department had initially refused access to the records on the basis that the material sought did not meet the definition of “environmental information” under the AIE Regulations. The Department subsequently accepted that the information did constitute “environmental information” and instead sought to refuse the request on the basis that it concerned material in the course of completion and was legally privileged.

The Commissioner found that the Department had failed to weigh the public interest served by disclosure against the interest served by refusal as required by the AIE Regulations when refusing access to information. The Commissioner also found that the Department failed to give sufficient reasons for its decision.

## LEGISLATION

The [Water Services \(Amendment\) \(No.2\) Bill 2022](#) passed the first stage in Dáil Éireann on 16 August 2022. This Bill is aimed at re-organising various aspects of Irish Water including changing its name to ‘Uisce Éireann’, providing for accountability by Uisce Éireann to a Committee of Dáil Éireann and the removal of Ervia’s functions relating to Uisce Éireann, among other things.

The [Circular Economy and Miscellaneous Provisions Act 2022 \(Commencement of Certain Provisions\) Order 2022](#) came into effect on 23 August 2022. It commences Part 1 other than section 5. Part 1 contains the definitions and allows for regulations to be made under the Act. Part 6 is also commenced. It amends section 87 of the EPA Act 1992 as amended which deals with processing of applications for new or revised licences.

The [European Union \(Environmental Impact Assessment\) \(Environmental Protection Agency Act 1992\) \(Amendment\) Regulations 2022](#) came into effect on 24 August 2022 and make a minor amendment to section 87(1B) of the EPA Act 1992 as amended which deals with applications for new or revised licences.

The [Environmental Protection Agency \(Integrated Pollution Control\) \(Licensing\) \(Amendment\) Regulations 2022](#) came into operation on 25 August 2022. They make a couple of minor amendments to the Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013 to account for section 181(2A) of the Planning and Development Act 2000 as amended.

The [Environmental Protection Agency \(Industrial Emissions\) \(Licensing\) \(Amendment\) Regulations 2022](#) came into operation on 25 August 2022. They make a couple of minor amendments to the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 to account for section 181(2A) of the Planning and Development Act 2000 as amended.

## DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

The **Department of Housing, Local Government and Heritage** has [welcomed](#) government approval for the development of a general scheme of a Bill to enable the designation and management of Marine Protected Areas in Ireland’s maritime territory.

The **Department of the Environment, Climate and Communications** is [seeking](#) submissions and evidence-based views from expert stakeholders, academic institutions, researchers, and analysts in the climate, energy, environment and industry sectors to support and inform the preparation of the Climate Action Plan 2023. Submissions close on 20 September 2022.

The **Department of the Environment, Climate and Communications** has [published](#) its Annual Report for 2021.

The **Environmental Protection Agency** has [published](#) a report on Enhancing Integration of Disaster Risk and Climate Change Adaptation into Irish Emergency Planning. The project identifies how existing approaches to disaster risk reduction, disaster risk management (DRM) and climate change adaptation (CCA) in Ireland are juxtaposed and concludes that identifying ways to promote coordination and align incentives, priorities and planning processes will facilitate a more holistic and comprehensive approach to disaster risk management at all levels of government.

The **Environmental Protection Agency (EPA)** has [published](#) its provisional greenhouse gas emissions for Ireland for 2021. The figures show an increase in emissions of 4.7 per cent in 2021 compared to 2020 - when COVID-19 restrictions had led to a significant lowering of emissions. In total in 2021, 61.53 million tonnes of carbon dioxide equivalent (Mt CO<sub>2</sub>eq) were emitted, with emissions 1.1 per cent above 2019 pre-COVID restriction levels. The increase is mostly due to a significant increase in emissions from the Energy Industries sector due to a tripling of coal and oil use in electricity generation in 2021, with increases also seen in the agriculture and transport sectors.

The **Minister for Housing, Local Government and Heritage** [welcomed](#) the government’s decision to approve a multi-annual grant-funding package of €186.3 million of infrastructure investment for the Clonburris Strategic Development Zone (SDZ) Enabling Infrastructure Project in South Dublin. The Urban Regeneration and Development Fund (URDF) is providing investment for the necessary infrastructure to develop a new town, Clonburris, located between Lucan, Clondalkin and Liffey Valley. The funding will enable over 8,700 homes to be built on the SDZ site, providing housing for an estimated 23,000 people.



## Employment

### EMPLOYMENT REGULATION ORDER FOR SECURITY INDUSTRY - NEW MINIMUM RATES OF PAY

The Minister of State for Business, Employment and Retail, Damien English TD, has accepted a proposal for an Employment Regulation Order (“**ERO**”) for the Security Industry. The Order was due to commence on Monday, 29 August 2022, providing a new minimum rate of pay of €12.50 per hour. The Order also provides for a second increase to minimum €12.90 per hour from the 1 February 2023. This ERO replaces the ERO that was signed in 2017 for the sector. Since 1 June 2019, the minimum rate of pay has been €11.65.

The Order provides that an unsocial hours’ premium will be paid for hours worked between 21:00 hours and 07:00 hours, provided the worker works at least 3 hours in that period. This is a minimum payment of €8.40 per shift. The proposals set out that a worker who has not attained the age of 18 years shall be remunerated at an hourly rate of pay that is not less than 70 per cent of the rate specified; in the case of a worker having entered into employment before attaining the age of 18 years and continuing in employment on attaining that age, in his or her first year after having attained the age of 18 years, 80 per cent of the rate specified; and in his or her second year after having attained that age, 90 per cent of the rate specified.

A stay has now been put on the order coming into effect pending the hearing of a judicial review challenge taken by three security companies. || [Press Report](#)

### NEW STATUTORY DUTIES FOR DIRECTORS

The European Union (Preventive Restructuring) Regulations 2022 amended the Companies Act 2014 to impose statutory duties on directors to have regard to the interests of creditors, where a director is aware that a company is, or is likely to be, unable to pay its debts, or becomes aware of its insolvency. Further information is available in our briefing [here](#).





## Public Procurement

### EU

**eForms** || The Commission is [consulting](#) on a proposed amendment to the Implementing Regulation on standard forms used for publication of notices in public procurement. The intent is to gather (where relevant) additional information to enable reporting on low- and zero-emission vehicles and other alternative fuels vehicles, in order to facilitate monitoring activities under TED and reporting obligations of Members States. ||

**Closing date: 14 September 2022.**

**Grant of Exemption** || The Commission [granted](#) an exemption from the Utilities Directive for a procedure in Denmark for procurement of the generation and wholesale of electricity from conventional sources and offshore wind farms. The Commission considered that the activities being procured have direct exposure to competition, with the electricity and wholesale market in Denmark being largely integrated into a wider, transnational market (as demonstrated by good interconnection with neighbouring countries and strong convergence of electricity prices in Denmark with the prices in neighbouring countries) and the Internal Market in Electricity Directive 2019/944 having been transposed in Denmark.

### EU CASE LAW – EXCLUSION OF BIDDER PERMITTED IN LINE WITH TENDER RULES

Judgment issued in a case referenced in the March briefing. In *Roma Multiservizi & Rekeep v the city of Rome* ([C-332/20](#)) the defendant issued a call for tenders seeking to appoint a partner to form a company with mixed public and private capital ('a semi-public company') and then to award it a contract to manage the 'integrated school service', valued at nearly €277.5 million. According to the tender documents, the defendant was to own 51% of the shares in the company, with the remaining 49% to be acquired by its partner, which was to bear the entire operational risk.

One tender was submitted by a consortium comprising Roma Multiservizi & Rekeep. The consortium company

was to be 90% owned by Roma Multiservizi, which is 51% owned by a company owned by the city of Rome. The consortium was excluded from the procedure on the ground that the city of Rome, in practice, would have owned 73.5% of the semi-public company, which would exceed the limit of 51% in the call for tenders and bring the share of risk capital owned by private operators below 49%.

The referring Court asked whether procurement legislation must be interpreted as meaning that a contracting authority may not exclude an economic operator from a procedure in these circumstances. The Court ruled that Article 58 of Directive 2014/24/EU (and Article 38 of Directive 2014/23/EU) must be interpreted as meaning that a contracting authority may exclude an economic operator in these circumstances.

### EU CASE LAW – ABILITY TO MEET SELECTION CRITERIA

In *Caruter Srl v SRR Messina Provincia SCpA* ([C-642/20](#)), the Court confirmed that it is not compatible with Directive 2014/24 to require that, for a consortium to qualify for participation in a procurement process, the consortium lead member must demonstrate it meets the relevant selection criteria on its own and be in a position to perform the majority of the contract.

### EU CASE LAW – IN-HOUSE AWARDS

In *Comune de Lerici v Provincia di La Spezia* ([C-719/20](#)), a long-term waste management contract had been awarded to a limited company owned by several municipalities which meant it was categorised as an "in-house" award. Years later, the company had to restructure under an agreement with creditors. It published a call for tenders for a partner to merge with, the result of which was that the municipality of Lerici no longer held shares or issued joint control over the entity performing the contract. The Court considered that, in these circumstances, there had been a substantial modification to the original contract and that the conditions for the in-house exemption were no longer available. Even though

the entity performing the contract was selected to acquire the original company by way of a competitive process, a new competition for the contract was required.

### UK CASELAW – NON-MEMBER OF FRAMEWORK AGREEMENT SUCCESSFULLY CHALLENGES AWARD

In *Consultant Connect Limited v NHS Bath, NHS Gloucestershire, and NHS Bristol* ([\[2022\] EWHC 2037](#)), NHSX, responsible for procurement of electronic / technology, issued a PIN for Clinical Communication Tools services which it published on the OJEU, following which NHS England ("NHSE") published technical standards and a specification.

A formal contract notice was then published in the OJEU, referring to a framework agreement for NHS organisations. NHSX and NHSE issued ITTs. NHSX published the framework terms and held a webinar, providing identities of likely suppliers on the framework, including Cinapsis which was formally admitted to the framework. Emails that followed indicated that NHS Gloucestershire were content with reappointing Cinapsis but had some idea that a process had to be gone through to give other suppliers the chance to be appointed.

At the same time, a joint procurement involving the three defendant NHS groups was developing. NHS Gloucestershire indicated that NHS Bristol and NHS Bath wanted to join the framework but that NHS Bath had an incumbent which might have to be given the option to respond (the claimant, Consultant Connect).

Therefore arrangements were made for Cinapsis and another company on the framework, along with Consultants Connect, to provide a product demonstration (which was attended by all three of them). NHS Bath scored the companies' products against undisclosed criteria and gave Cinapsis the highest score. A further scoring process took place after the demonstration. The defendants decided to award the contract to Cinapsis under the framework agreement (which Consultant Connect was not part of). They ran a mini-competition inviting only Cinapsis to bid and, following direct negotiations, awarded the contract to Cinapsis.



Consultant Connect was told its contract would not be extended and that a contract had been awarded to Cinapsis.

The Court found that use of the process breached the principles of equal treatment and transparency and the required procedures under the Public Contracts Regulations. The structure of the Regulations did not rule out claims by a non-member of the relevant framework if the facts showed that the contract award breached a relevant duty owed to the non-member and the non-member suffered (or risked suffering) loss as a result. Usually, a non-member would not be able to satisfy the causation of loss test in regulation 91(1) of the Regulations.

Therefore it was necessary for the Court to consider in detail how the procurement was carried out to determine whether the claimant's non-membership of the framework was fatal to the claim. The Court cited numerous flaws with the way in which the contract had been advertised (and the defendants' submissions on how this restricted award to Consultant Connects); the way the call-off was conducted, and the way bidders had been scored in relation to the demonstration meeting which, the Court said, was not permissible market-testing but part of a procurement process. Further, the Court identified NHS staff who had conflicts of interest. The Court was satisfied that the defendants' breaches of duty were made out and that Consultant Connects had suffered loss and damage.

The Court awarded damages and shortened the contract to 14 months. The Court also, (possibly for the first time), required the defendants to pay civil penalties to the Minister for Cabinet Office.



## Real Estate

### COMMERCIAL LANDLORD AND TENANT: GREEN LEASES

For the past 18 months, the Arthur Cox LLP real estate group, working with colleagues in other law firms and sustainability professionals, has been spearheading the development of green clauses for Irish real estate contracts under the umbrella of [The Chancery Lane Project \(TCLP\)](#), a global collaboration of lawyers and sustainability professionals working pro bono to rewire contracts to combat the climate crisis.

The suite of green lease clauses produced by the Irish TCLP real estate working group are designed to promote better environmental performance and energy efficiency of buildings and can be incorporated into occupational leases depending on the nature of the building, its age and condition, the practicalities of obtaining and/or maintaining a green building certification, whether green/environmentally friendly systems and services have already been installed and the parties' appetite for including green clauses.

The working group is working towards publication of the green lease clauses this autumn. Our real estate lawyers are delighted to be leading this project and look forward to presenting the green lease clauses to our clients and other professionals in the coming months.

As mentioned under Construction above, TCLP recently launched a [Built Environment Resource Hub](#) bringing together TCLP resources useful for property, construction, planning and environment practitioners. You can hear more by joining the TCLP event announced [here](#) which includes an update on Irish green lease clauses from our Real Estate Group.

### COMMERCIAL LANDLORD AND TENANT: INTERPRETATION OF RESTRICTIVE COVENANT IN A LEASE

In *Dunnes Stores ULC v Camgill Property a Se Ltd* [2022] IEHC 342 the anchor tenant in a retail park sought to enforce the restrictive covenant in the leases of one of the other units, which the landlord had undertaken to include

in other units' leases. The covenant prohibited operation of a supermarket, etc. and also the sale of 'any food, food products or groceries'.

The issue of construction was essentially whether 'groceries' included items other than food items. The defendant's sub-tenant traded as a discount variety goods retailer whose goods included not only listed food and food products but also as 'groceries' detergents, washing powders, cleaning products, shower gels, cosmetics, toothbrushes and toothpaste, kitchen towels and rolls. After days hearing expert evidence by both commercial lawyers and retail experts Sanfey J ruled that, given the use of 'or' in it, the covenant extended to non-food items. In doing so, Sanfey J applied principles of construction, in particular those laid down by the Supreme Court in *Law Society v Motor Insurance Bureau of Ireland* [2017] IESC 31. These include:

- Interpretation of a contract should be based on the agreement as a whole.
- A commercial contract should be construed in a manner which accords with commercial or business sense.
- A contract or lease should be interpreted objectively in accordance with what a reasonable person would take as its meaning, taking into account all the reasonable background knowledge the parties had at the time of execution of the contract or lease.
- Rules of construction like the *contra proferentem* rule (which provides that where there is doubt about the meaning of a contract, the words will be construed against the person who put them forward) are guide rules only and should be used to override what is otherwise clear about the provisions of the contract or lease in question.

In this case, the expert evidence clearly established that the anchor tenant wanted such restrictive covenants in order to promote exclusivity for its trading as an anchor tenant. The disjunctive 'or' clearly intended to differentiate between food and food products on the one

hand and 'groceries' on the other hand. Furthermore, although there was no clear and precise meaning of the word 'groceries' the expert evidence clearly indicated that it included non-food items such as 'non-durable consumable household items' which are frequently purchased nowadays in a variety of retail outlets. In view of these findings, Sanfey J gave the parties fourteen days in which to agree appropriate orders to be made.

This case reinforces that, to minimise the potential for future disputes, contracts should be clearly drafted and consideration should be given to setting out the precise meaning of important contractual terms.

### PROPERTY TAX: RESIDENTIAL ZONED LAND TAX

Revenue has published a new Tax and Duty Manual [Part 22A-01-01](#) – Guidance on the Residential Zoned Land Tax.

The Residential Zoned Land Tax (**RZLT**) (which replaces the vacant site levy introduced under the Urban Regeneration & Housing Act 2015):

- is an annual self-assessed tax;
- is calculated at 3% of the market value of land within its scope; and
- applies to land that, on or after 1 January 2022, is zoned as being suitable for residential development and is serviced, with certain exclusions.

It does not apply to existing residential properties; however, owners of residential properties with yards and gardens greater than 0.4047 hectares will need to register for, but not pay, RZLT.

The legislation requires each local authority to prepare and publish a map identifying land within the scope of the tax. These maps will be updated annually for changes in the zoning and servicing status of land.



An owner of land which was zoned as suitable for residential development and serviced on 1 January 2022, and on which development has not commenced before 1 February 2024, will be liable to file a return and pay RZLT due in respect of such land on or before 23 May 2024.

Where the land is zoned as suitable for residential development and/or serviced after 1 January 2022, tax will be first due in the third year after it comes within scope. The tax will continue to be payable each year in respect of the land unless a deferral of the tax applies or the land ceases to be liable to the tax.

In cases of non-compliance, including undervaluation of the land in scope and late filing of returns, interest, penalties and surcharges will apply.

**COMMERCIAL RATES: EXTENSION OF VALUATION PERIOD**

The [Planning and Development, Maritime and Valuation \(Amendment\) Act 2022](#) has amended [Section 14\(1\) of the Residential Tenancies and Valuation Act 2020](#) by extending the period within which a valuation list in relation to a rating authority shall be published to 31 December 2026.

**RESIDENTIAL LANDLORD AND TENANT: REGULATION OF SHORT-TERM LETTING**

The [Planning and Development, Maritime and Valuation \(Amendment\) Act 2022](#) has introduced reform in the short-term rental market and aims to bring more homes back into the long-term rental market in rent pressure zones (**RPZs**).

For an initial period of six months from 1 September 2022 (which can be extended by the Minister (subject to approval by Dáil Éireann and Seanad Éireann) where he or she is satisfied that it is necessary to address an acute shortage of long-term rental accommodation in RPZs), online platforms are not permitted to advertise properties in RPZs which do not have the requisite planning permission or which are not exempted development. Non-compliance will be an offence for both the property owners concerned and the online platforms.

Currently under the [Planning and Development Act 2000 \(Exempted Development\) \(No. 2\) Regulations 2019](#), planning permission for change of use to tourism/short-term letting must be obtained for the letting of non-principal private residences.

During the initial six month period mentioned above, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and Fáilte Ireland will work on establishing a new registration system requiring short-term and holiday-lets to register with Fáilte Ireland with a view to ensuring that houses are used to best effect in areas of housing need as committed to under the Government’s [Housing for All plan](#) (see action 20.4). The Department of Tourism is also scoping out the legislative provisions required to underpin the new registration system with a view to the necessary provisions being enacted this year and the new Fáilte Ireland short-term letting registration system being operational from January 2023.

Read the Department of Housing’s press release [here](#).

**RESIDENTIAL LANDLORD AND TENANT: TERMINATION NOTICES, NOTICE PERIODS AND OBTAINING TENANTS’ CONTACT DETAILS**

The [Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022](#) has introduced changes to residential landlord and tenant law for landlords serving residential tenancy termination notices. The key changes are:

- landlords must send a copy of any termination notice to the RTB at the same time as service of the notice on the tenant, otherwise the notice is invalid (landlords are already required to send any 28-day rent arrears warning notices to the RTB as well as to tenants);
- landlords must send a copy of any termination notice to the RTB at the same time as service on the tenant, otherwise the notice is invalid (landlords are already required to send any 28-day rent arrears warning notices to the RTB as well as to tenants);

landlords must make every reasonable effort (with the RTB’s assistance) to obtain the contact details of their

- previous tenant(s), where a landlord had ended the tenancy previously and is required to re-let the property to the tenant(s); and
- increases in the notice periods that landlords are required to provide tenants when ending tenancies that are seven years old or less (there has been no change to the notice periods for tenancies greater than seven years old) – see table below.

Tenancy Duration	Notice Period
Less than 6 months	90 days
Not less than 6 months but less than one year	152 days
Not less than 1 year but less than 7 years	180 days
Not less than 7 years but less than 8 years	196 days
Not less than 8 years	224 days

Read more [here](#).

**HOUSING: AMENDMENTS TO THE AFFORDABLE HOUSING ACT 2021**

Part 10 of the [Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022](#) has amended the [Affordable Housing Act 2021](#) in relation to registration in the Registry of Deeds and Land Registry of the deeds and agreements which secure the affordable dwelling contribution made by a housing authority or the equity share in a dwelling of a special purpose vehicle (**SPV**). The 2022 Act also deals with the power of sale of an SPV and the order in which moneys arising from a sale must be applied (a housing authority’s power of sale is already dealt with in the 2021 Act).



### Protection of the equity share by registration with the Property Registration Authority

Under Section 41 of the 2021 Act, the Minister for Housing, Local Government and Heritage may contribute funds to an SPV to enable the SPV purchase an equity share in dwellings to assist eligible applicants to purchase such dwellings in accordance with an agreement to be made between the Minister and the SPV. The SPV and the homeowner then enter into a deed or agreement which secures the equity share of the SPV.

Where a housing authority makes an affordable dwelling contribution, an affordable dwelling purchase arrangement is made between the housing authority and the eligible applicant prior to or contemporaneously with the purchase of an affordable dwelling. This arrangement/deed records the affordable dwelling contribution (expressed as a sum) and the affordable dwelling equity (expressed as a percentage), and deals with other matters including redemption payments, sale of the dwelling, valuation mechanism etc.

The 2022 Act confirms that the deed or agreement which secures the SPV's equity share and an affordable dwelling purchase arrangement can be registered in the Registry of Deeds as an act of the homeowner and also that an inhibition may be registered on any Land Registry folio in which the dwelling is registered. An inhibition prevents the registration of any disposition by, or transmission from, the registered owner (i.e. the eligible applicant) without the consent of the relevant housing authority or the SPV.

The 2022 Act removes the right for a housing authority to register an affordable dwelling purchase arrangement as a burden on any folio in which the affordable dwelling is registered. Similarly, it appears that deeds and agreements which secure the equity share of an SPV are not registerable as burdens. Registration in the Registry of Deeds and registration of an inhibition on the relevant Land Registry folio appear to be the only options to protect the equity share contributed by a housing authority or SPV.

Notwithstanding that registration as a burden on the relevant folio is not an option, both Acts refer to the sale

of a dwelling by a housing authority or SPV operating to convey the dwelling to the purchaser freed from all estates, interests etc. in respect of which the equity share has priority and subject to all estates, interests etc. which have priority over the equity share. It is not clear how priority can be determined if affordable dwelling purchase arrangements and deeds securing the equity share of an SPV cannot be registered as burdens on the relevant folios.

### SPV power of sale

The 2022 Act confirms that, where the deed or agreement between the SPV and the homeowner contains a power of sale, a sale by the SPV will operate to convey the dwelling concerned to the purchaser: (i) freed from all estates, interests and rights in respect of which the equity share has priority; and (ii) unless discharged by the SPV, subject to all estates, interests and rights which have priority over the equity share. A transfer of the dwelling by the SPV vests: (i) the entire estate or interest of the homeowner and the SPV in the dwelling in the purchaser freed and discharged from the equity share; and (ii) any fixtures included in the dwelling and the sale in the purchaser.

When the power of sale becomes exercisable, the SPV can require any mortgagee whose mortgage ranks in priority to the equity share to confirm the amount secured on its mortgage. The SPV can then exercise the power of sale (notwithstanding any priority of such mortgage) but the sale proceeds must first be used to discharge any prior mortgage. The sale proceeds must then be used to discharge the SPV's sale costs and expenses and finally, to discharge the equity share and any costs and expenses incurred by the SPV in recovering possession of the dwelling.

### HOUSING: Q2 PROGRESS REPORT – HOUSING FOR ALL

The Government has published a [progress report](#) on the implementation of Housing for All, including:

- progress on the Croí Cónaithe (Towns) Fund which supports bringing vacant and underused buildings back into residential use;

- commencement of the [First Home Shared Equity Scheme](#), an affordability measure to support first-time buyers in purchasing newly built homes;
- amendment of the Nursing Home Support Scheme Act 2009 to remove disincentives against the rental of vacant properties by participants in the Fair Deal scheme;
- progress on planning applications submitted by the LDA and the development of social and affordable homes in Shanganagh, Shankill, Co. Dublin;
- progress on the delivery of cost rental homes;
- progress on strengthened regulatory controls in relation to short-term letting of non-principal private residences in rent pressure zones to take effect from 1 September;
- progress on the Affordable Purchase Scheme;
- publication of new statutory national planning guidelines:
  - for the preparation of local authority development plans;
  - to assist with the identification and mapping of lands in scope for the new Residential Zoned Land Tax (see below for further details);
- launch of a digital Housing Delivery Tracker for local authorities;
- progress on construction-related initiatives;
- progress on recruitment of construction professionals and promotion of construction careers;
- progress on funding/lending initiatives; and
- progress on the Rural Regeneration and Development Fund.

Read more [here](#).





## State Aid

### STATE AID: COMMISSION APPROVES €142 MILLION POLISH SCHEME TO SUPPORT COMPANIES IN THE CONTEXT OF RUSSIA'S INVASION OF UKRAINE

The European Commission has approved a €140 million (PLN 670 million) Polish scheme to support companies in the context of Russia's invasion of Ukraine. The scheme was approved under the State aid Temporary Crisis Framework adopted by the Commission on 23 March 2022 and amended on 20 July 2022. Under the scheme, the aid will take the form of direct grants and loans. The scheme will be open to companies of all sizes affected by the crisis and active in all sectors, except the financial sector. The Commission found that the Polish scheme is in line with the conditions set out in the Temporary Crisis Framework. In particular, the aid will not exceed: (i) €62,000 per company active in the primary production of agricultural products, (ii) €75,000 per company active in the fishery and aquaculture sectors, and (iii) €500,000 per company active in all other sectors. In addition, the aid will be granted no later than 31 December 2022. The non-confidential version of the decision will be made available under the case number SA.103175 in the State aid register on the Commission's competition website once any confidentiality issues have been resolved.

### STATE AID: COMMISSION APPROVES €10 MILLION CZECH SCHEME TO SUPPORT COMPANIES IN THE CONTEXT OF RUSSIA'S INVASION OF UKRAINE

The European Commission has approved a €10 million scheme to support companies in the context of Russia's invasion of Ukraine. The scheme was approved under the State aid Temporary Crisis Framework, adopted by the Commission on 23 March 2022 and amended on 20 July 2022, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognising that the EU economy is experiencing a serious disturbance. The scheme aims at supporting SMEs active

in manufacturing of food products and beverages that are affected by the current geopolitical crisis and the related sanctions. Under the scheme, the eligible beneficiaries will be entitled to receive limited amounts of aid in the form of direct grants. The Commission found that the Czech scheme is in line with the conditions set out in the Temporary Crisis Framework. In particular, the aid (i) will not exceed €500,000 per company; and (ii) will be granted no later than 31 December 2022. The Commission concluded that the Czech scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Crisis Framework. The non-confidential version of the decision will be made available under case number SA.103616 in the State aid register on the Commission's competition website once any confidentiality issues have been resolved.

### STATE AID: COMMISSION APPROVES GERMAN, FINNISH, DUTCH AND ESTONIAN SCHEMES TO COMPENSATE ENERGY-INTENSIVE COMPANIES FOR INDIRECT EMISSION COSTS

The European Commission has approved, under EU State aid rules, Finnish, German, Dutch and Estonian schemes to partially compensate energy-intensive companies for higher electricity prices resulting from the impact of carbon prices on electricity generation costs (so-called 'indirect emission costs'), incurred between 2021 and 2025, under the EU Emission Trading System ('ETS'). The measures will benefit companies active in sectors at risk of carbon leakage listed in Annex I to ETS State aid Guidelines. Those sectors face significant electricity costs and are particularly exposed to international competition. The compensation will be granted to eligible companies through a partial refund of the indirect emission costs incurred in the previous year, with the final payment to be made in 2026 [here](#).

### STATE AID: COMMISSION APPROVES €149 MILLION ROMANIAN SCHEME UNDER RECOVERY AND RESILIENCE FACILITY TO SUPPORT RENEWABLE HYDROGEN PRODUCTION

The European Commission has approved, under EU State aid rules, a €149 million Romanian scheme made available through the Recovery and Resilience Facility ('RRF') to support the production of renewable hydrogen. The measure aims to contribute to the development of renewable hydrogen in line with the objectives of the EU Hydrogen Strategy and the EU Green Deal. The scheme will also contribute to the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and fast forward the green transition. The scheme is aimed at supporting the construction of new installations for the production of renewable hydrogen, to achieve by 31 December 2025 renewable hydrogen production capacities of at least 100 MW in electrolysis installations producing at least 10,000 tonnes of hydrogen per year. See the full press release [here](#).

### STATE AID: COMMISSION APPROVES ITALIAN SCHEME UNDER RECOVERY AND RESILIENCE FACILITY TO SUPPORT BIOMETHANE PRODUCTION

The European Commission has approved, under EU State aid rules, an Italian scheme made available through the Recovery and Resilience Facility ('RRF') to support the construction and the operation of new or converted biomethane production plants. The measure is part of Italy's strategy to reduce greenhouse gas emissions and to increase its share of renewable energy. The scheme will also contribute to the objectives of the REPowerEU Plan to reduce dependence on Russian fossil fuels and fast forward the green transition. The scheme will support the production of sustainable biomethane to be injected into the national gas grid for use in the transport and heating sectors. See the full press release [here](#).



### **STATE AID: COMMISSION CLEARS FINANCING OF POST DANMARK'S UNIVERSAL SERVICE OBLIGATION**

The European Commission has approved, under EU State aid rules, Denmark's compensation to Post Danmark for its universal postal service obligation in 2020. Executive Vice-President Margrethe Vestager, in charge of competition policy, said: "In today's digital world, ordinary mail continues to be replaced by digital communications. This puts a strain on the activities of postal operators, which continue to offer a service that is important for citizens. Today's decision confirms that the compensation in favour of Post Danmark for the provision of universal postal services is in line with EU State aid rules. Post Danmark will be able to continue to provide this fundamental service across Denmark at uniform prices for consumers and companies, without unduly distorting competition." In March 2021, Denmark notified the Commission of its plan to compensate Post Danmark for a maximum amount of approximately €30 million (DKK 225 million) for discharging its universal postal service obligation in 2020. The notification followed a complaint filed with the Commission by a Danish association, representing companies active in the road transport and logistics sectors, alleging that the compensation to Post Danmark constitutes incompatible State aid. The Commission concluded that, while the USO compensation constitutes State aid, it complies with the provisions of the SGEI Framework. See full press release [here](#).

### **STATE AID: COMMISSION APPROVES €110 MILLION AUSTRIAN SCHEME TO SUPPORT AGRICULTURAL PRODUCERS IN CONTEXT OF RUSSIA'S INVASION OF UKRAINE**

The European Commission has approved a €110 million Austrian scheme to support primary agricultural producers in the context of Russia's invasion of Ukraine. The scheme was approved under the State aid Temporary Crisis Framework, adopted by the Commission on 23 March 2022 and amended on 20 July 2022, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), recognising that the EU economy is experiencing a serious disturbance. Under this scheme, the eligible beneficiaries will be entitled to receive limited amounts of aid in the form of direct grants. The aid amount per beneficiary will be calculated on the basis of the number of hectares of agricultural land. The Commission concluded that the Austrian scheme is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Crisis Framework. See the full press release [here](#).



## Telecoms

### **VODAFONE TO REFUND OVER €2 MILLION IN POST CANCELLATION CHARGES AND OTHER RETAINED CREDITS**

Following an inquiry from ComReg, Vodafone has committed to refunding over €2 million to customers arising from charges rendered to users beyond the cancellation of their contracts, otherwise known as Post Cancellation Charges (“PCPs”). Section 45 of the Communications Regulation Act 2002 prohibits undertakings from charging consumers PCPs or retaining credits on inactive accounts. The full briefing can be found [here](#).

### **COMREG PUBLISHES UPDATE IN RELATION TO EU ROAMING RULES**

ComReg has published a summary of the new EU roaming rules relating to mobile phone users, which came into force through EU Regulation 2022/612. Additional measures have been introduced with a view to increasing transparency for roaming customers, preventing customers from incurring unexpected costs and providing alternative arrangements for roaming customers travelling in the United Kingdom. The full briefing can be found [here](#).

### **REPORT ISSUED ON THE POTENTIAL ISSUE OF SHORT-TERM SPECTRUM RIGHTS OF USE IN THE 700 MHZ AND 2.1 GHZ BANDS FROM OCTOBER 2022**

Due to ongoing litigation relating to the assignment of rights of use for spectrum in the 700 MHz, 2.1 GHz, 2.3 GHz and 2.6 GHz bands, ComReg has published a report on interim licensing measures that may be implemented to avoid significant disruption to consumers. ComReg has proposed putting in place a short-term licensing framework for 700 MHz and 2.1 MHz frequencies from 2 October 2022. The full report can be found [here](#).

### **VIRGIN MEDIA ANNOUNCES NEW NETWORK DEAL WITH FIBRE COMPANY SIRO**

Virgin Media has announced a network deal with SIRO whereby Virgin Media will offer a full range of services to over 450,000 currently enabled SIRO premises throughout Ireland. See the full briefing [here](#).