ARTHUR COX

Infrastructure, Construction, Energy

SEPTEMBER-OCTOBER 2022

Construction & Engineering

Legislation

The Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022 has now been commenced in its entirety.

Budget 2023

The Government announced a Defective Concrete Products Levy on concrete blocks, pouring concrete and certain other concrete products. It expects this to raise €80m annually and to be applied from 3 April 2023 at a rate of 10%.

Sustainability

The Chancery Lane Project (TCLP) has launched a Built Environment Resource Hub on its website bringing together TCLP resources - climate conscious contract mechanisms - on planning and environment, property and construction.

Company Law Update

Directors' Duties

In the latest episode in our "Company Law: Back to Basics" podcast series, Tom Courtney and Suzanne Kearney discuss directors' duties. They cover some recent developments including the new statutory duties to have regard to the interests of creditors, introduced by the European Union (Preventive Restructuring) Regulations 2022.

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Energy & Climate

SIGNIFICANT REGULATORY DEVELOPMENTS

The SEM Committee is consulting on EirGrid's proposed new **Firm Access Policy**, the development of which will impact compensation for redispatch of generators.

Over the last month the Commission for Regulation of Utilities consulted on a proposal to apply **new use of systems' tariffs to extra-large energy users** and (during peak hours) to all customers, as a demand response tool. A recent decision indicates this approach will not be pursued albeit that there will be rebalancing of charges away from domestic customers towards LEUs.

We look in more detail at these developments under the CRU and SEMC headings of this section, below.

EU

Market Intervention

Energy Ministers agreed approaches to intervene in markets to curb high energy prices and a proposed Council Regulation was published. Further announcement are anticipated by our briefings to date are here:

- EU Emergency Energy Measures – Considerations in Ireland
- European Commission publishes further details of Energy Market Interventions

Day 3 of the ENTSO-E annual conference will include an update from the Commission on ongoing plans on market design reform.

In Ireland, Budget 2023 included a statement that Ireland aims to be part of the EU-wide response to high energy prices, failing which the Government will consider its own measures.

Offshore

Energy Ministers of the nine North Seas Energy Cooperation (NSEC) countries and the Commission agreed in a Joint Statement to reach at least 260MW of offshore wind by 2050 in the NSEC Region (which is 85% of the EU-wide ambition). Information on the governance structure of this group is here. The Ministers agree that the NSEC will act as facilitating body for the task of the North Seas Offshore Grids priority offshore corridor in under the TEN-E Regulation. They note the further work to be done in putting cooperation arrangements in place with the UK.

ENTSO-E notes that the new TEN-E Regulation requires Member States, the Commission, and TSOs to collaborate on the development of Offshore Network Development Plans. ENTSO-E and the Commission jointly developed guidance to support Member States in delivering the input information needed by ENTSO-E for the infrastructure planning task.

Update on Fit for 55 & REPowerEU

The Parliament provided its position on the proposed revision of the **Renewable Energy Directive** and its position on the proposed revision of the **Energy Efficiency Directive**.

The position on the RED incorporates the REPowerEU RES-E target of at least 45% in 2030. There will also be new targets for renewable power uptake in transport, buildings, district heating & cooling and industry.

The REPowerEU concept of "**renewables go-to areas**" is not incorporated but an amendment is adopted requiring by one year after the entry into force of the revised Directive, the Commission to "revise guidelines to Member States on permitting practices to accelerate and simplify the process for new and repowered projects. Those guidelines shall include recommendations on how to implement and apply the rules on administrative procedures set out in Articles 15 and 17 together with their application to renewable heating, cooling and power and renewable cogeneration and a set of key performance indicators (KPIs) to enable a transparent assessment and monitoring of both progress and effectiveness. To that end, the Commission shall carry out appropriate consultations, including with relevant stakeholders. Such guidance shall also include information on digital and human resources of permitting authorities, effective single contact points, spatial planning, military and civil aviation constraints, court proceedings and civil resolution and mediation cases as well as adjustment and retrofitting of laws on mining, geological works as well as ensuring adequate technical capacity to perform those tasks. Member States shall present an assessment of their permitting process and the measures for improvement to be taken in line with the guidelines in the updated integrated national energy and climate plan …. In the case of a lack of progress, the Commission may take additional measures to support Member States in their implementation assisting them in reforming and streamlining their permitting procedures".

Proposed efficiency targets are higher than REPowerEU: 40% (final) and 42.5% (primary) energy consumption reductions in 2030 compared to 2007.

Informal trialogue negotiations on final texts now take place. || Press Release

The Council published an overview of the three main institutions' positions on the proposed amendments to the **EU ETS Directive** and **Market Stability Reserve Decision**.

When announcing the REPowerEU package, the Commission proposed amendments to the Regulation establishing the **Recovery and Resilience Facility** in order to address the additional funding the REPowerEU proposals would require. The proposed amendments provide for dedicated REPowerEU chapters in Member States' recovery and resilience plans. The Presidency compromise text has been published and the proposal will be considered further by the Parliament.

The **Court of Auditors** issued its Opinion on the REPowerEU proposals. It considers that the additional investment needed for REPowerEU – and more particularly, for phasing out fossil fuel imports from Russia by 2027 – would amount to €210 billion, much of which will be outside the Commission's control.

Hydrogen || State aid clearance was given for a second PCI status project which comprises a group of hydrogen initiatives some of which involve the construction of large-scale infrastructure for production, storage and transport of renewable and low-carbon hydrogen, and others which develop technologies to reduce emissions in industries such as cement, steel and glass sectors.

Prosumers || The European Environment Agency published a report on the role of energy prosumers and on case studies where consumers are already producing renewable energy.

NECPs || The Commission published the rules for compilation of National Energy & Climate Plans by Member States.

Gas Storage || The Commission published a short corrigendum to the Gas Regulation made in June (requiring minimum storage levels).

Adaptation || The Commission prepared country-specific toolkits for cities and regions on adaptation to climate change.

CASELAW: DEROGATIONS FOR INTERCONNECTORS / STANDARD OF REVIEW OF ACER DECISIONS

An Opinion (by AG Campos Sánchez-Bordona) has been published on an appeal from the General Court. The background was that ACER refused to exempt / provide a temporary derogation for the construction of the Acquind Interconnector between the UK and France from obligations under the IME Directive (on unbundling, third-party access, and regulatory approval of Ts&Cs) and Regulation 714/2009 on Cross-Border Exchanges of Electricity (on use of revenue). Article 17 of Regulation 714/2019 provides for grant of temporary exemptions for new interconnectors provided certain conditions are met. ACER decided one of the conditions was not met (the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted). ACER also said that, because the project had PCI status (which it later lost), Acquind could have requested the application of Article 12 of the TEN-E Regulation, which provides for the possibility of cross-border cost allocation, but had not done so.

The decision to refuse the exemption was upheld by ACER's Board of Appeal. The Board of Appeal's decision was then annulled by the General Court. Both parties appeal the General Court's decision.

The AG considers that ACER's analysis, as confirmed by the Board of Appeal, was appropriate and that the General Court's interpretation of the legislative framework was incorrect and should be set aside. The AG's Opinion is that the General Court incorrectly put the two different schemes of law under the TEN-E Regulation and Regulation 714/2009 on a par. Promotors of an electricity interconnector classified as a PCI must, in order to secure financial viability status for their project, submit to the general scheme provided for in the TEN-E Regulation, particularly Article 12. If they do not obtain support through cross-border cost allocation, promotors can, if appropriate, demonstrate that the level of financial risk attached to their project is such as to justify the grant of an exemption under Article 17 of Regulation 714/2009. However, promotors cannot opt for the exceptional exemption scheme directly. The exemption scheme entails a temporary derogation from the general principles governing the use of revenues, unbundling, and third-party access, which are key features of the liberalised market. The scheme of support under the TEN-E Regulation is specifically designed to avoid exemptions for promotors of such works that would restrict competition in the EU electricity market - only when financial viability status cannot be achieved through this TEN-E financial support scheme does it make sense to grant, on an exceptional basis, the exemption provided for in Article 17 of Regulation 714/2009.

However, the AG supports the General Court's decision to annual the Board of Appeal's decision. He considers that the Board of Appeal incorrectly limited its review to assessing whether ACER made manifest errors.

The appeal will now go to the Court of Justice.

INTERNAL MARKETS

Maximum Price || ACER is consulting on the automatic adjustment mechanism to the maximum clearing prices for the single day-ahead coupling and single intraday coupling markets. Given high prices this year the trigger for increasing maximum clearing prices was reached. ACER now invites views on the amendments to this adjustment mechanism, based on proposals that have been put forward by the NEMOs. || **Closing date: 9 October 2022**.

Grid Connection Network Codes || ACER is consulting as it updates the two grid connection codes – the Network Code on Requirements for Grid Connection of Generators and the Network Code on Demand Connection. Aims include adaptation to take account of new trends such as increasing levels of electrical charging points and distributed energy resources. || **Closing date: 21 November 2022**.

INVESTMENT

Corporate Bonds || The ECB published details on how it aims to decarbonise the corporate bond holdings in its monetary portfolios. It will start publishing climate-related information on its corporate bond holdings in 2023.

Public Sector Loan Facility || The EIB and Commission signed an agreement on a Public Sector Loan Facility, part of the Just Transition Mechanism. This comprises €1.5bn grants from the Commission (see recent call for proposals) and €10bn of EIB loans. It is intended that this mobilises €18-20bn of investments over the next seven years. Public sector entities in just transition regions are invited to submit their proposals on the Funding and Tenders portal and there is advisory support from the InvestEU Advisory Hub.

EU Cohesion Policy || €1.4 billion has been allocated to Ireland for 2021-2027 to assist, among other things, green transition.

DOMESTIC DEVELOPMENTS

Legislative Programme || The Autumn Legislative Programme indicates that heads of Bill (general schemes) are under preparation for the following (the first of which is marked as priority legislation):

- Oil Emergency Contingency and Transfer of Renewable Transport Fuels Functions Bill: To provide for oil emergency contingency planning and response measures and to affect the transfer of certain functions relating to the Renewable Transport Fuel Obligation Scheme and the Biofuel Levy under Part 5A of the National Oil Reserves Agency Act 2007 (as amended) from the Minister to the Minister for Transport and related necessary legislative amendments.
- Gas (Amendment) Bill: To provide for the integration of Ervia into Gas Networks Ireland.
- Marine Protected Area Bill: To provide for the designation and effective management of Marine Protected Areas in the Irish Maritime area.

WEI Offshore Conference || The National Ports Study was launched. Belfast Harbour's D1 facility is the only existing facility that can accommodate staging and marshalling of fixed-bottom projects of the scale anticipated, but several ports have development plans. It was suggested that Irish ports should coordinate to provide complementary rather than competing services, and that investment needs to be matched by Government subvention. It was also noted that use of UK ports (unless they are free ports) may trigger import tariffs. || Challenges discussed included the time taken to obtain licences to carry out surveys; the need to progress legislation on marine protected areas; the need for pre-application engagement to begin to prepare planning permission applications; the risk associated with bidding in ORESS without planning permission; the work required to establish MARA (board members' appointment process is underway); the need to progress Grid Connection Assessments and to obtain clarity around the final asset transfer process to EirGrid; lack of certainty around levels of redispatch and compensation for redispatch; the need to progress policy / law on hybrid grid connections; and global supply chain pressures (including availability of ports), as well as demand for skilled personnel for both public and private stakeholders. || Some of the progress that was welcomed was the establishment of the Government's Offshore Wind Delivery Taskforce and the passing of the Planning and Development, Maritime and Valuation (Amendment) Act 2022, which was summarised in the Environment & Planning section of the July briefing.

Small Generators || New Regulations were made to simplify the consenting process for small generators in line with CRU decision CRU/2022/55 and the RED (EU) 2018/2001 which requires that authorisation process for generators is proportionate to their size and impact. There is now automatic provision of authorisation to construct and licence to generate for a generating site with installed capacity of:

- greater than 1MW but not exceeding 10MW – requires notification to CRU, or
- not exceeding 1MW – does not require notification to CRU.

Standard terms are set out in Electricity Regulation Act 1999 (Section 16(3A)) Order 2022 (SI459/2022) and Electricity Regulation Act 1999 (Section 14(1A)) Order 2022 (SI460/2022).

Security of Supply || Minister Ryan made a statement on energy security and appeared before the Joint Committee on Environment & Climate Action. An independent review is being conducted into the circumstances that have required emergency measures to secure electricity supply. It was also announced that gas and electricity training exercises were being held involving main stakeholders. Measures to reduce energy use in the public sector as part of a wider Reduce your Use efficiency campaign. The Government is also consulting until **28 October 2022** on security of supply and risk mitigation measures and it has established an Energy Security Emergency Group involving several stakeholders.

Solar PV Grants || DECC announced funding here.

Annual Transition Statement || As required under the Climate Action & Low Carbon Development Acts, the Government published the Annual Transition Statement. It is intended to capture mitigation & adaptation policies, current & projected emissions, and compliance with EU & international law. It contains updates on several sectors including electricity generation and built environment.

Emissions || The SEAI reported that emissions rose by 5.4% in 2021. The overall renewable energy share was 13.6% in 2021, unchanged from the previous year.

CRU BUSINESS

Use of System Tariffs 2022/23

The CRU published the decisions on GNI Allowed Revenues and Tariffs for T&D (CRU/2022/82); Electricity Network Tariffs – National Energy Security Framework Response Proposals (CRU/2022/91); Electricity Distribution Network Allowed Revenues / DUoS Tariffs & DLAFs (CRU/2022/89); and Electricity Transmission Network Allowed Revenues and D-TUoS tariffs (2021-25) (CRU/2022/090).

The second of these (CRU/2022/91) includes a decision on the proposal to implement **new use of systems tariffs for extra-large energy users** (and a new peak hours tariff for all customers) as a demand response measure. We looked at the proposal here.

The CRU has decided not to implement the proposal, stating:

- it will not be implementing the Block, System Stress or Decarbonisation tariffs at this point in time. The €100 million proposed to be allocated to the new tariffs will now be recovered across all customer groups, and
- peak pricing will be implemented across a number of small and large-scale consumer segments, resulting in a 10% increase in network charges during the peak period of 5pm-7pm to be offset by a corresponding decrease during off-peak periods, designed to act as an incentive to suppliers to promote appropriate off-peak products and services to customers. The CRU states it is implementing a number of demand response measures including ESBN's Beat the Peak scheme and further "reward mechanisms to drive customer engagement around alert events".

Large Energy Users: The CRU states that, in 2009, the Government issued a decision to re-balance network tariffs by €50m per annum with domestic consumers taking on an increase share of network charges in order to support LEUs (PR3 Decision (CRU/10/198)). This is now being unwound. This seems to signal a significant increase for LEUs. CRU/2022/89 states at page 14:

> *Based on the DSO's customer impact analysis, the percentage change in the DUoS tariffs for 2022/23 can be broken down as follows; for domestic customers there is expected to be a 2.3% reduction on tariff rates, largely as a result of the LEU rebalancing, whereas there is a 101.9% increase for LEU's, also predominantly because of the rebalancing decision. For all other customers, it is expected that there will be an 11.7% increase, which is largely in line with the 10.7% AUP increase the CRU calculated.*

Page 54 of CRU/2022/91 records some consultation responses including that "the CRU decision to unwind a Ministerial direction on network rebalancing mechanisms regarding Large Energy Users (without a supporting cost analysis or competitiveness assessment) is presented, tangentially, to industry stakeholders for the first time in this public consultation, as an already made and implementable decision". Another respondent argued this move is "contra to the actual cost of delivering power to these sites and that the CRU should not be creating a tariffing regime that results in LEUs subsidising non-LEUs".

The CRU states it "will need to reflect on the requirements of the proposed [EU] regulation which lean more towards compensation for flexible demand rather than additional costs/penalties for inflexible demand". This is more reflective of EU law under which demand side response is defined as a "change of electricity load by final customers from their normal consumption patterns in response to market signals, including in response to time-variable electricity prices or incentive payments, or the acceptance of a customer's bid to sell demand reduction or increase at a price in an organised market as defined in certain provisions in EU law". That said, demand response is intended to facilitate responses to market prices rather than use of system. It is also worth bearing in mind that the intent to fund emergency generation through use of system charges does not seem consistent with the powers provided under the Electricity Regulation Act 1999 as we discussed previously here.

Smart Meter Data Access Code (CRU/2022/65) || The CRU previously announced it was extending the deadline for responses to the Code to 21 September. It also announced that following this consultation it will publish a further draft of the Code and consult further with stakeholders.

Additional Customer Protection (CRU/2022/85) || The CRU published a decision on household electricity and gas customers which includes measures developed by the CRU in the context of current high prices and the National Energy Security Framework. The measures are in addition to the Suppliers' Handbook and are mainly aimed at protecting vulnerable customers from debt.

Safety || The CRU published the Report on Energy Safety 2021 to the Minister **(CRU/2022/83)**. Following a procurement process it also appointed the Safety Supervisory Body to operate the Safe Electric and Registered Gas Installers safety regulatory schemes – SGS Ireland Ltd **(CRU/2022/89)**.

ESB (CRU/2022/92) || The CRU required that ESB take remedial action to prevent a re-occurrence of a contravention to its licence in that it failed to submit cost-reflective commercial offer data for two generation units across a number of trading periods in August 2020 leading to overpayment which ESB has agreed to refund which will be used to reduce the imperfections charge next year.

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SEMC BUSINESS

Firm Access (SEM-22-068) || The SEMC is consulting on EirGrid's proposed new Firm Access Methodology. This is an important consultation given that Firm Access is a market measure relating to financial settlement in the SEM and a condition for compensation for downward dispatch under Article 13(7) of the IME Regulation. The Firm Access Methodology is based on the following high level concepts:

- **Time bound firm access dates**: EirGrid has proposed an approach where generators are guaranteed to receive Firm Access on the date associated with a Scheduled Firm Access Quantity (FAQ) offer. Dates by which firm access should be given will initially be based on the timeline for delivery of planned reinforcements, but not directly linked to the final completion of those reinforcements. This differs from the current approach where generators receive the firm access quantity when ATRs are completed. The RAs note that this approach provides more certainty for project developers / investors.
- **Allocation of firm access through annual reviews**: EirGrid will carry out an annual review of connected and committed non-firm generators. (Committed generators are any generators that have progressed beyond Consents Issue Date under EirGrid Conditions of Connection & Use of Systems (or the distribution equivalent).) Those in areas with firm capacity (see next bullet point) will be granted Firm Access, while those in areas where the EirGrid Transmission Development Plan (TDP) will create future capacity will be allocated a set date for Firm Access. Though the RAs consider this approach will increase investor confidence, they note that projects reaching payment stages of ECP (progress beyond Consents Issue Date) after a Firm Threshold is met, and in areas where future reinforcements will increase the capacity beyond the Firm Threshold, will be provided with a fixed Firm Access date, and that this may be too late in the development process to provide sufficient certainty for some projects.
- **Firm access if constraints are below 'Firm Threshold'**: Firm Access is available where analysis shows constraints are expected to be below the Firm Threshold set for that area that year. Further detail is to be provided on how Firm Thresholds will be set.
- **First to be committed, first to be firm**: committed projects are made firm until constraints increase beyond the Firm Threshold.
- **No firm access under a 'Floor'**: firm access will not be considered relevant below an MEC of 1 MW, similar to current policy.
- **Partial firm access**: where a generator cannot be given Firm Access for the total MEC, partial Firm Access in blocks of 20MW will be considered and allocated where possible.
- **Locational signals**: the annual reviews' process will provide location signals for future firm access capacity based on the TDP.

Connection of battery storage is outside the scope of the proposal.

Time bound Firm Access dates appear to give greater certainty albeit that in areas where the Firm Threshold is breached, it is not clear how far in the future dates might be set. The CRU also notes that none of the PR5 performance incentives "directly interact with EirGrid's proposed approach to Firm Access but have some indirect interactions, such as the imperfections and constraints performance Incentive. The objectives of the Firm Access Methodology appear aligned with EirGrid's PR5 renewable generation and planning performance incentives".

The consultation sets out 19 questions including whether the scheduled FAQ date should be linked with ATRs, but with more targeted delivery incentives. There is also a suggestion that Firm Access could be made conditional on a development longstop date for the project to avoid projects being assigned firm access rights but never connecting. It is important that any such measure avoids imposing unnecessary or unreasonable risk to project development. || **Closing date: 8 November 2022**.

New Market Year || The SEMC published Market Parameters for 2022/2023 (SEM-22-052). || The SEMC also published the Imperfections tariff to be applied in 2022/2023. The SEMC approved the TSOs request to recover an Imperfections Charge of €870.81m (compared to €330.83m for the previous year) resulting in a tariff of €22.80/MWh (compared to €9.19/MWh for the previous year), driven by the increase in forward fuel prices (SEM-22-045). || Parameters for the T-1 auction for 2023/24 were published (SEM-22-064).

Capacity Market ||The SEMC published a letter stating that T1 and T-4 capacity auctions will go ahead in line with published information and EirGrid will continue to prioritise connections for currently contracted capacity in line with CRU Directions including CRU/21/030a (SEM-22-064). || The SEMC published an addendum to the Exception Application & Opt-Out Notification Process for T-4 2026/27. It relates to the timeline for processing Exception Applications (SEM-22-062). || The modification on de-rating for annual run hour limits was approved (SEM-22-063).

Directed Contracts (SEM-22-067) || Round 20 has been postponed for at least three weeks.

Monitoring || The Monthly Monitoring report for July indicated that average DAM prices were €267.19/MWh, 86% up from July 2021 (SEM-22-060). || The 2021 Fuel Mix Disclosure & CO_2 Emissions report indicated that Average All-Island CO_2 emissions per kWh of electricity increased by 9.3% from the previous year, said to be predominantly driven by an increase in reliance on coal-based generation and reduced renewable generation due to lower wind speeds (SEM-22-065).

DECISIONS OF THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

The **Office of the Commissioner for Environmental Information** has annulled a decision of Dún Laoghaire Rathdown County Council (the "Council") to refuse access to "the most up to date results of the Brent Geese tagging project…". The Council refused access on the basis that it did not hold the requested information as the tagging project forms part of a research project being conducted by a PhD student which had yet to be completed and published. The appellant stated he asked for the information as soon as possible saying it is important for submissions on planning applications in the Dublin area. The Council stated that as soon as the PhD is complete, the results will be in the public domain.

The Commissioner noted that his approach to dealing with cases where a public authority has effectively refused a request under Article 7(5) is that he must be satisfied that adequate steps have been taken to identify and locate relevant environmental information, having regard to the particular circumstances. In determining whether the steps taken are adequate in the circumstances, he said he considers that a standard of reasonableness must necessarily apply, stating it is not normally his function to search for environmental information.

The Commissioner found that the Council did not take adequate steps to identify and locate all relevant information held by it. In particular, it noted that there was a Biodiversity Officer who had been linking in with the phD student and therefore might hold information pertaining to the project.

In the particular circumstances, the Commissioner considered that the most appropriate course of action was to annul the decision of the Council in its entirety, meaning that the Council must consider the appellant's request afresh and make a new, first instance decision in accordance with the provisions of the AIE Regulations.

The **Office of the Commissioner for Environmental Information** has annulled Coillte's decision to refuse to process AIE requests because of the applicants' failure to provide an address and contact details. A number of applicants had made AIE requests to Coillte providing only a name and email address. Coillte rejected the requests on the basis that a request "shall state the name, address and any other relevant contact details of the appellant". It noted that the requests met "only the final of these three requirements" having provided an email address or a "relevant contact detail" but did not contain the appellant's address and were invalid. On appeal to the Commissioner, Coillte argued that the Commissioner's office had no jurisdiction to consider the appeals on the basis that no valid requests had been made. The Commissioner found that a "teleological interpretation" of the AIE Regulations and the Aarhus Convention did confer him with jurisdiction to review Coillte's decision. He pointed to the fact that limiting this jurisdiction would leave appellants with no option other than to go through the lengthy judicial review process. On the substantive issue, the Commissioner held that the AIE Regulations do not provide for refusal on the basis that an applicant has not provided a full name and address. In annulling the decision, he also highlighted the presumption in favour of disclosure of environmental information by public authorities.

LEGISLATION

The **Legislative Programme for Autumn 2022** has been published by the Department of the Taoiseach:

- The Planning and Development (An Bord Pleanála Appointments) Bill is flagged as priority legislation for drafting and publication this session.

- The Planning and Development Bill is also flagged as priority legislation for drafting and publication this session. It is intended to review and replace the Planning and Development Act 2000 with a consolidated Bill improving the clarity and structure of current code.

- The Aarhus Convention Bill is to consolidate and further Ireland's implementation of the access to justice provisions in the Aarhus Convention.

- The Marine Protected Area Bill is to provide for the designation and effective management of Marine Protected Areas in the Irish Maritime area.

The Water Environment (Abstractions and Associated Impoundments) Bill 2022 was published on 28 September 2022 and as of that date has completed the First Stage at the Seanad.

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

The **Department of the Environment, Climate and Communications** has published the 2020 Annual Transition Statement (ATS). The ATS includes an overview of climate change mitigation and adaptation policy measures adopted to reduce emissions of greenhouse gases and to adapt to the effects of climate change in order to enable the achievement of the national transition objective. The Minister is obliged to present the ATS to both Houses of the Oireachtas under Section 14(1) of the Climate Action and Low Carbon Development Act 2015.

The **Department of the Environment, Climate and Communications** has engaged Mr Dermot McCarthy (former Secretary General to Government and the Department of the Taoiseach) to conduct an independent review into the circumstances requiring emergency measures to be introduced to secure electricity supply over the coming winters.

The **Department of the Environment, Climate and Communications** has secured Government approval for a new Climate Action Framework for the Commercial Semi-State Sector. The Framework will apply to every commercial semi-State company and comprises of a series of five commitments as follows:

- governance of climate action objectives,
- emissions measurement and reduction target,
- emissions valuation in investment appraisal,
- circular economy and green procurement, and
- climate-related disclosures.

The **Department of the Environment, Climate and Communications** established the National Climate Stakeholder Forum (NCSF) to function as a consultative forum on climate issues. The NCSF will meet three times each year, with administrative support being provided by the Environmental Protection Agency.

The Minister of State with responsibility for Forestry at the **Department of Agriculture, Food and the Marine**, Senator Pippa Hackett, has published a Shared National Vision for Trees, Woods and Forests in Ireland until 2050. The visionary document calls for "the right trees in the right places for the right reasons with the right management – supporting a sustainable and thriving economy and society and a healthy environment". It anticipates by 2050 that Ireland's forests will be seen as a key solution to the climate, biodiversity, housing and health emergencies of the 2020s.

THE EUROPEAN COMMISSION

On 25 August 2022, **the Commission** launched an online public consultation on the upcoming legislative proposal for a new EU framework for forest monitoring and strategic plans. The aim is to develop an EU-wide forest observation framework to provide open access to detailed, accurate, regular and timely information on the condition and management of EU forests. Online consultation runs until **17 November 2022**.

ARTHUR COX

Employment

GOVERNMENT ANNOUCES REFORMS TO THE STATE PENSION SYSTEM

The Minister for Social Protection, Heather Humphreys TD, last week announced a series of landmark reforms to the State Pension system in Ireland. The measures, which were approved by Cabinet, are in response to the recommendations from the Commission on Pensions.

The Minister stated that her Department, along with the Department of Enterprise, Trade and Employment which has a Code of Practice on Longer Working, will both work with the Attorney General to look at how we can strengthen the regulations on people not having to retire at the age of 65.

The agreed reforms include the following.

- Maintaining the State Pension Age at 66 and introducing a new flexible pension age model. Under this new model, people will continue to be able to retire and draw their pension at 66 exactly as they can today. However, in addition, for the first time, from January 2024, people will have the option to continue working up until the age of 70 in return for a higher pension.
- As recommended by the Pensions Commission, a move fully to a 'Total Contributions Approach' for calculation of individual pensions entitlements on a phased basis over 10 years starting in January 2024. This will ensure that people's pension rates are based on the number of years they have worked and paid contributions. This will be a crucial step in ensuring our State Pension System is sustainable into the future and will help deliver a more fair and equitable system.
- As part of this, there will be enhanced State Pension provision for long-term carers to be introduced from January 2024. This will mean, for the first time, people who have to give up work over a long duration to look after a loved-one will have their time spent caring recognised in the pension system.
- The Department of Enterprise, Trade and Employment will introduce measures that allow, but do not compel, an employee to stay in employment until the State Pension age.
- Workers will be provided with access to a PRSI contribution statement service each year in a manner that enables them to understand their entitlements.
- The long-term sustainability of the State Pension system will be addressed through gradual, incremental increases in social insurance rates over time.
- The level and rate of increase in social insurance rates will be determined on a structured basis every five years informed by the outcome of a statutory actuarial review.
- A commitment to explore the design of a scheme that would modify the current Benefit Payment for 65-year-olds to provide a benefit payment for people who, following a long working life, 40 years or more, are not in a position to remain working in their early 60s.

For further information, see the Government's press release here.

GOVERNMENT LEGISLATIVE PROGRAMME – AUTUMN 2022 SESSION

The Government last week published the Legislation Programme for the current Dáil term. The most relevant proposed legislation from an Employment perspective are set out below:

Right to Request Remote Work Bill
To provide employees with a statutory right to make, or to have made on their behalf, a request for remote working. See our briefing for further details.
Status (priority): Heads of bill approved. Pre-legislative scrutiny has taken place.

Work-life Balance Bill
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. This is as discussed at our team meeting a couple of weeks back.
Status (priority): Heads of bill approved. Pre-legislative scrutiny has taken place.

Civil Service Regulation (Amendment) Bill
To provide that serious disciplinary action up to and including dismissal in the civil service can be assigned below the level of the head of the organisation.
Status (priority): Heads of bill approved. Pre-legislative scrutiny has taken place.

Automatic Enrolment Retirement Saving System Bill
To enable provisions for Automatic Enrolment Retirement Savings System.
Status (priority): Heads of bill being prepared.

Transposition of EU Directive 2019/1152 on Transparent and Predictable Working Conditions
To ensure that all workers have the right to more complete information on the essential aspects of the work, the right to seek additional employment, with a ban on exclusivity clauses, and the right to more predictable working schedules.
Status: No update provided.

Protection of Employees (Employers' Insolvency) (Amendment) Bill
To comprehensively review and update the legislation governing the protection of employees during their employer's insolvency.
Status: Heads of bill being prepared.

Registration of Trade Unions Bill
To modernise and consolidate the existing legislation in respect of the registration requirements for trade unions.
Status: Work is underway.

Living Wage Bill
To provide for the Programme for Government commitment to progress to a living wage.
Status: Work is underway.

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Employment Permits (Consolidation and Amendment) Bill 2022
To consolidate the Employment Permits Acts and to make certain amendments to modernise the employment permits system and increase its responsiveness.
Status: Awaiting Publication.

For further information, see the Government's Legislation Programme here.

STATUTORY SICK LEAVE SCHEME TO COMMENCE ON 1 JANUARY 2023

While no commencement order has been published, the Government has announced that the statutory sick pay scheme will commence on 1 January 2023. Workers will be entitled to three days' paid sick leave in the first year of operation (2023), rising to five days in year two (2024), seven days in year three (2025) with employers eventually covering the cost of ten days in year four (2026). Sick pay will be paid by employers at a rate of 70% of an employee's wage, subject to a daily maximum of €110.

For more information on the Sick Leave Act 2022, please see our briefing here.

HIGH COURT AFFIRMS THAT THE PRIMARY DUTY OF DIRECTORS OF A SEMI-STATE COMPANY IS OWED TO COMPANY NOT STATE SHAREHOLDER IN CONTEXT OF PERFORMANCE RELATED PAYMENT

In *Pat Keating v Shannon Foynes Port Company* [2022] IEHC 505, the High Court (Sanfey J) held that the CEO of Shannon Foynes Port Company was entitled to performance-related-payments for the amounts of which were approved by the remuneration committee, but which the board of directors had declined to authorise on the basis of a stated policy of the Minister of Transport, Tourism and Sport (the company's main shareholder) that performance related payments should not be made to CEOs of semi-state entities. The court emphasized that while a Company's directors may be required by statute to have regard to such policies, this obligation cannot override their fiduciary duty to act in what they consider to be in the best interests of the company.

For more information on this case, please see our briefing here.

Public Procurement

EU

Exemption from Utilities Directive || Dalkia has applied for confirmation that the Utilities Directive does not apply to award of contracts or the organisation of design contests for the delegated management of district heating networks in France.

Health Sector || The Commission opened a call for proposals on supporting structured dialogue at national or regional level on public procurement in the health sector. This is expected to develop new and improved national and regional strategies on public procurement. €5 million is available and the deadline for submissions is 21 February 2023.

EU CASE LAW – BREACH OF FUNDAMENTAL FREEDOMS

A Spanish Court sought a preliminary ruling (Case C-292/21) on the compatibility with EU law of a national measure pursuant to which contracts for the provision of road-safety awareness and training courses designed to enable drivers to recover points on their driving licence must be awarded as public service concessions. Only one public service concession is available in each of the five geographical zones delineated for that purpose in Spain. The successful concession holder for each zone is the only entity authorised to provide courses in the each area. The dispute concerns whether such a measure is contrary to the provisions of the Services Directive which establishes general provisions facilitating the exercise of fundamental freedoms protected by Article 49 TFEU (freedom of establishment) and Article 56 TFEU (free movement of services).

Advocate General Emiliou considers that the national measure at issue in the main proceedings restricts the freedom to provide services in a way that does not fully respect the requirements of the Services Directive. In particular, Articles 15(1), (2)(a) and (3) of the Services Directive must be interpreted as precluding national legislation pursuant to which: (i) the provision of such courses is framed as a public service concession; (ii) that provision is made subject to the requirement that only one operator may provide such courses in a particular geographical area; and (iii) the overall number of providers does not exceed the number of geographical areas delineated by the competent authority, where that legislation goes beyond what is necessary to achieve the objective of road safety.

EU CASE LAW – ABNORMALLY LOW TENDERS

A Bulgarian Court sought a preliminary ruling (Case C-669/20) in proceedings concerning a decision ranking tenderers and selecting the successful tenderer in respect of a public contract. The contracting authority ran a competition to award a public contract for management of the issue of Bulgarian identity documents. An unsuccessful bidder challenged the award, arguing that the successful tender was abnormally low.

The Commission for Protection of Competition rejected the challenge on the basis that only two tenders had been submitted so it was not possible to calculate the mean value stipulated by Bulgarian law for the purpose of determining whether one of those tenders was abnormally low.

The Court of Justice ruled that:

- Articles 38 and 49 of the Defence Contracts Directive 2009/81/EC must be interpreted as meaning that a contracting authority, where there is suspicion that a tender is of an abnormally low nature, is required to verify whether this is actually the case by taking account of all the relevant components of the invitation to tender and the contract documents, notwithstanding that it may be objectively impossible to apply criteria laid down in national law for evaluation of an abnormally low tender.

- Article 55(2) of the Directive read in conjunction with Article 47 of the Charter of Fundamental Rights must be interpreted as meaning that, where a contracting authority has failed to initiate a procedure to verify whether a tender might be of an abnormally low nature, on the ground that it considered that none of the tenders submitted to it was of such a nature, its assessment may be subject to judicial review in the context of proceedings against the decision to award the contract.

UK CASELAW – BREACH NOT SUFFICIENTLY SERIOUS

We mentioned the judgment of Braceurself Ltd v NHS England [2022] EWHC 1532 (TCC) in July, in which one aspect of the claim was successful: the Court considered that there had been manifest error in that the NHS misunderstood the basis of an answer to a question concerning accessibility of the premises and use of alternative premises. Had it correctly understood the basis of the bid, the scoring outcome would have been such that Braceurself would have been successful. The Court was to consider whether this breach was “sufficiently serious” to justify a damages award.

In [2022] EWHC 2348 (TCC) the Court has decided that the breach was not sufficiently serious to entitle the claimant to a remedy in damages. It reached this conclusion having applied the factors identified in *R v Secretary of State, Ex p. Factortame Ltd [2000] 1 AC 524, HL* and summarised in *Delaney v Secretary of State for Transport [2015] EWCA Civ 172* (namely the importance of the principle which has been breached; clarity and precision of the rule breached; degree of excusability of an error of law; existence of any relevant judgment on the point; state of the mind of the infringer, and in particular whether the breaches were deliberate or inadvertent; behaviour of the infringer after it has become evident that an infringement has occurred, persons affected by the breach, including whether there has been a complete failure to take account of the specific situation of a defined economic group; and position taken by one of the European Community institutions in the matter).

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Real Estate

BUDGET 2023: PROPERTY-RELATED MEASURES

Residential tenant tax breaks

- €500 tax credit for private tenants, i.e. those who get no other State housing supports.
- Claimable "in year" in the years 2023 to 2025 and can be claimed for 2022 from early 2023.
- An individual can claim one credit per year but the value of the credit will be doubled in the case of married couples and civil partners.

Residential landlord tax breaks

- From 1 January 2023, Landlords can claim €10,000 per premises in respect of pre-letting expenses (double the previous amount).
- The premises must now only be vacant for six months to qualify (reduced from 12 months).

Vacant homes tax

- To be introduced in 2023.
- Self-assessed and administered by the Revenue Commissioners.
- Aims to increase the supply of homes for rent or purchase to meet demand, rather than raise revenue.
- To apply to residential properties occupied for less than 30 days in a 12-month period.
- Tax to be charged at three times the property's existing base LPT liability.
- Exemptions where property is temporarily vacant for "genuine reasons" including properties recently sold or currently listed for sale or rent, properties vacant due to the occupier's illness or long-term care and properties vacant as a result of significant refurbishment work.
- Will not apply to derelict properties or properties unsuitable for use as a dwelling which are not captured under the LPT system.
- Finance Bill to contain further information.

Residential Zoned Land Tax (announced in Budget 2022)

- Amendments to be incorporated into the Finance Bill to streamline its operation.

Property tax regime generally

- Review of institutional funding vehicles including REITs, IREFs and Section 110 companies.
- Working group to consider the taxation of funds generally.

Housing

- Extension of the help to buy scheme to 31 December 2024.
- Extension of the Living City Initiative (LCI) to 31 December 2027.
- €4.5 billion in public funding for the provision of more social, affordable and cost rental homes in 2023 including €215 million for the Local Authority affordable purchase scheme, the AHB Cost rental scheme and the national First Home Shared Equity scheme.

Construction

- A 10% levy to be applied to concrete blocks, pouring concrete, and certain other concrete products from 3 April 2023.
- Levy proceeds to be used to fund the MICA redress scheme.

Climate change / retrofitting houses

- Half of the approx. €600 million carbon tax yield in 2023 will go towards improving the energy efficiency of homes.
- €850m allocated to the Department of the Environment, Climate and Communications, of which €377m will go towards energy efficiency including the Warmer Homes Scheme.
- Funding to support the introduction of a new low-cost loan scheme for residential retrofitting.

Stamp duty

- No changes to residential and non-residential stamp duty rates.
- Stamp duty residential development refund scheme extended to 31 December 2025, i.e. projects wishing to avail of this scheme must commence construction by 31 December 2025 to qualify for a refund of eleven-fifteenths of the stamp duty paid on land subsequently developed for residential purposes. No other relief changes announced, e.g. amending the 75% land coverage test, extending the timeframe for commencing construction and extending the deadline for completing construction.
- Young Trained Farmer (Stamp Duty) Relief extended to 31 December 2025.
- Farm Consolidation (Stamp Duty) Relief extended to 31 December 2025.

See Budget 2023 for further details.

GOVERNMENT AUTUMN 2022 LEGISLATIVE PROGRAMME

The Government has published its Autumn Legislative Programme. Property-related priority legislation for drafting and publication this session includes:

- **Licencing of Construction Activity Bill** - to provide for the establishment of a statutory licensing system for construction and related activities (*heads in preparation*).

- **Land Value Sharing and Urban Development Zones Bill** - to amend the Planning and Development Act 2000 to introduce new provisions to deal with land value sharing and urban development zones reflecting Housing for All (*heads approved, PLS to be determined*).

- **Planning and Development Bill** – to review and replace the Planning and Development Act 2000 with a consolidated bill (*work is underway*).

Other legislation for this session includes:

- **Housing (Miscellaneous Provisions) Bill** – to amend the Housing (Miscellaneous Provisions) Act 2009 including provisions in relation to social housing assessments and rent schemes and to amend the Housing (Miscellaneous) Act 2014 in relation to tenant purchase (*work is underway*).

- **Residential Tenancies Bill** – to amend the Residential Tenancies Act 2004 to enhance tenancy protections, particularly during receiverships and to enhance landlord and tenant supports and services (*heads in preparation*).

- **Property Services Regulation (Amendment) Bill** – to revise the Property Services Regulation Act 2011 in light of the Services Directive 2006/123/EC (on services in the internal market) and Recognition of Professional Qualifications Directive 2005/36/EC and related ECJ jurisprudence following an EU-PILOT query (*heads in preparation*).

- **Co-operative Societies Bill** - to consolidate and modernise the existing Industrial and Provident Societies legislation (*heads in preparation*).

- **Companies (Administrative, Governance & Insolvency Amendment) Bill** – to give effect to outstanding Programme for Government commitments on rights of workers as creditors; trading entities splitting operations; and transactional avoidance (*work is underway*).

- **Limited Partnership Bill** – to modernise the Limited Partnership Act 1907 (*heads in preparation*).

The following bills are already on the Dáil order paper:

- **Tailte Éireann Bill** – which will dissolve the Property Registration Authority and Ordnance Survey Ireland and transfer their functions to Tailte Éireann (Irish Land) and also transfer the functions of the Commissioner of Valuation and the Boundary Surveyor to Tailte Éireann.

- **Screening of Third Country Transactions Bill** – which will provide for a process to allow for certain transactions that may present risks to the security or public order of the State to be reviewed by the Minister for Enterprise, Trade and Employment.

HOUSING: READY TO BUILD SCHEME

This scheme, which will be funded under the Croí Cónaithe (Towns) Fund, will see local authorities make available serviced sites in towns and villages at discounted rates for individual purchasers who wish to build their own home. Read more here and here.

HOUSING: MORTGAGES

The Department of Finance has published its Housing and Property Sector Chartpack September 2022. Section 5 summarises mortgage market activity for Q2 2022, including the number of mortgages drawn-down, the value of those drawdowns, mortgage interest rates (averaging 2.5%), the interest rates on new mortgages (averaging 2.6%), the rolling approval and drawdown figures, and the total mortgages outstanding (based on last week's Central Bank of Ireland Q2 2022 NPL statistics).

State Aid

STATE AID: NEW STATE AID SCHEME TO PROVIDE ELECTRICITY GRANTS UP TO €500,000 FOR STRUGGLING FIRMS

The Government is preparing a state aid scheme that will allow businesses to apply for direct grants of up to €500,000 to offset the cost of electricity. Under the terms of the emergency scheme, so-called "energy intensive" businesses of all sizes will be able to apply for government supports of a minimum of €20,000 up to a maximum of €500,000, provided they can show evidence that operating profits (Ebitda) have declined by at least 15% this year as a direct result of rising energy costs. The proposed support scheme, which is still being finalised by Government officials, classifies "energy intensive" firms as any business that can show spending on energy products such as gas and electricity amounts to over 3% of its overall turnover. See the full article here.

STATE AID: COMMISSION APPROVES ADDITIONAL GERMAN MEASURES TO SUPPORT ELECTRICITY PRODUCTION FROM RENEWABLE SOURCES

The European Commission has approved, under EU State aid rules, three additional measures to support electricity production from renewable energy sources in Germany. The additional measures supplement the German Renewable Energy Act, and will further contribute to achieving Germany's environmental targets and the EU's strategic objectives relating to the EU Green Deal:

1. A change from a fixed to a sliding market premium in the payment structure for innovation tenders. This change aims to ensure that electricity producers are not overcompensated in times of high electricity prices. A sliding market premium varies depending on the evolution of market prices and only covers the gap between the cost of energy production and its market price;

2. The introduction of financial incentives for consumers to invest in small rooftop solar photovoltaic installations, with a view to feeding more electricity into the grid instead of only using it for self-consumption;

3. One additional round of ground-based and rooftop solar photovoltaic tenders in 2022.

The Commission found that the aid is proportionate, as it is limited to the minimum necessary, and that the positive effects of the measures, in particular the positive environmental effects, outweigh their negative effects in terms of distortions to competition. See the full article here.

STATE AID: COMMISSION APPROVES €19.8 MILLION CROATIAN AID MEASURE IN FAVOUR OF IE-ENERGY

The European Commission has approved, under EU State aid rules, a €19.8 million Croatian aid measure in favour of energy storage operator IE-Energy d.o.o. ("IE-Energy"). The measure is aimed at helping IE-Energy to partially finance the procurement and the installation of grid-scale batteries to provide transmission system operators ("**TSOs**") with balancing services. TSOs use grid-scale batteries to maintain a continuous balance between electricity supply from power stations and demand from consumers, and to store electricity when needed. The aid will take the form of a direct grant and will cover approximately 30% of capital expenditures. The Commission assessed the measure under Article 107(3)(c) of the TFEU, and in particular its Guidelines on State aid for climate, environmental protection and energy. The Commission concluded that the aid is necessary and appropriate to address an existing market failure, as there is a lack of incentives to provide balancing services to TSOs through grid-scale energy storage facilities. See the full press release here.

STATE AID: EU APPROVES IRISH €20 MILLION STATE AID SCHEME FOR CULTURAL VIDEO GAMES

Ireland has been given approval by the EU for a new €20 million scheme that will support the development of cultural video games. Aimed at encouraging projects that contribute to a varied cultural landscape, the scheme will be open to digital games development companies, with up to €8 million in tax credits per beneficiary. Beneficiaries must be liable for taxation in Ireland. Under the scheme, which will run until 31 December 2025, the maximum amount of the tax credit will be equal to 32% of eligible costs, expenditure must be incurred on the development of a digital game spent in the European Economic Area, and 80% of total expenditure incurred on its development or €25 million, whichever is lowest. See the full article here.

STATE AID: COMMISSION APPROVES €700 MILLION ITALIAN SCHEME

The European Commission has approved a €700 million Italian scheme to support companies in the context of Russia's war against 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 TFEU, recognising that the EU economy is experiencing a serious disturbance. The measure will be open to SMEs and MidCap companies (entities having less than 1,500 employees) active in all sectors that are affected by the current geopolitical crisis and the subsequent sanctions and countersanctions. Companies active in primary production of agricultural products, fishery, aquaculture, banking and financial sectors as well as commercial intermediation and trading companies are however excluded. Eligible beneficiaries will be entitled to receive limited amounts of aid in the form of direct grants. To be eligible, companies must also count Ukraine, Russia or Belarus as suppliers for certain portions of their total supplies. The Commission found that the Italian 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. See the full press release here.

ARTHUR COX

STATE AID: COMMISSION APPROVES €4 BILLION ROMANIAN SCHEME TO SUPPORT COMPANIES IN THE CONTEXT OF RUSSIA'S INVASION OF UKRAINE

The European Commission has approved a €4 billion Romanian scheme to support companies across sectors 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 TFEU, recognising that the EU economy is experiencing a serious disturbance. Under this measure, the aid will take the form of: (i) loan guarantees with a maximum budget of €3.6 billion, and (ii) direct grants with a maximum budget of €390 million to compensate parts of the costs due under the guaranteed loans. The eligible beneficiaries will be entitled to receive new loans that are covered by a State guarantee of up to 90% of the loan amounts, with maximum maturities of up to six years. With respect to limited amounts of aid in the form of direct grants, the aid will not exceed (i) €62,000 and €75,000 per company active in the agriculture, fisheries and aquaculture sectors respectively, and (ii) €500,000 per company active in all other sectors. Support under the scheme will be granted no later than 31 December 2022. See the full press release here.

ARTHUR COX

Telecoms

COMREG ISSUES DRAFT DETERMINATION IN NBI & EIRCOM DISPUTE

The dispute arose in the context of a request made by National Broadband Ireland ("**NBI**") to Eircom for Duct Access, and the validity of the NBI request. The draft determination outlines that NBI made a valid access request. The full briefing can be found here.

COMREG ISSUES RESPONSE TO CONSULTATION ON SHORT-TERM LICENSING FRAMEWORK FOR SPECTRUM RIGHTS IN THE 700 MHZ AND 2.1 GHZ BANDS FROM OCTOBER 2022

In order to prevent significant disruption to consumers, and as a result of ongoing litigation, ComReg has put in place a short-term licensing measure scheduled to commence in October 2022. Despite the views submitted by the mobile network operators that the fee structure for the interim license was 'excessive', ComReg has set the fees for a 2 x 5 MHz block of spectrum for a 3 month period at: €401,000 for 700 MHz, and €212,000 for 2.1 Ghz. The full briefing can be found here.

THREE ISSUED WITH A FINDING OF NON-COMPLIANCE

ComReg has announced that it has notified mobile network operator Three Ireland of a finding of non-compliance with respect to obligations under universal service regulations. The regulator noted that the notification to Three relates specifically to a failure by the network operator to comply with regulations, as the contract provided to its customers 'does not specify in an easily accessible form the details of prices and tariffs appropriate to their plan'. The full briefing can be found here.

NATIONAL BROADBAND IRELAND CONFIRMS FIBRE NETWORK ROLLOUT MOMENTUM

National Broadband Ireland (NBI) has confirmed its full fibre infrastructure now passes more than 80,000 premises. The full briefing can be found here.

EIR REPORTS REVENUE DECLINE IN 2Q 2022

Eir has published its financial results for the quarter ended 30 June 2022, posting a 3% year on year drop in underlying revenue. According to Eir, growth in post-paid mobile and bundling, as well as an increase in national broadband plan revenue was more than offset by a reduction in turnover due to the sale of communications provider Tetra; a change in the product mix; rising costs; and its 'aggressive subscriber acquisition strategy'. The full briefing can be found here.