



NOVEMBER 2022

Horizon Scanner: Infrastructure, Construction, Energy

Legal and regulatory developments impacting sectors across the economy including [energy](#), [construction & engineering](#), [real estate](#), [industrials](#), [transport](#) and [digital infrastructure](#).

Highlights this month...

EU PURSUES SIGNIFICANT INTERVENTIONS

Emergency energy market interventions begin to apply from 1 December 2022, while reforms to accelerate decarbonisation across the economy near finalisation.

[Find out more](#)

ELECTRONIC COMMUNICATIONS


Legislation under development in Ireland indicates significant reform to come in the regulatory regime for electronic communications.

[Find out more](#)

KEY CONSULTATIONS

Amid numerous regulatory developments impacting infrastructure development, a reminder that consultation on firm access to the grid wraps up soon.

[Find out more](#)



Construction & Engineering

LEGISLATION UNDER DEVELOPMENT

Construction Safety Licensing

The Government approved the publication of the Construction Safety Licensing Bill 2022, which is intended to modernise and reform the existing accreditation model and provide for a licencing model for construction and quarrying activities. We provide further details on the proposal [here](#).

Decarbonisation

The EU's package of legislation aimed at reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 (known as Fit for 55) is being negotiated and it is anticipated that the various instruments will be finalised from the end of this year onwards. In a series of four articles [here](#) we considered the impact on construction and the last article, looking at the REPowerEU initiative, is now available. An update on latest Fit for 55 developments is in the Energy section of this horizon scanner.

Critical Infrastructure – Investment Screening

The [Screening of Third Country Transactions Bill 2022](#) is undergoing the legislative process this Autumn, most recently having been referred to the Select Committee on Enterprise, Trade and Employment.

The Bill sets out a framework to enable the Minister for Enterprise, Trade and Employment to review, for the first time, transactions involving foreign investment that may impact on security or public order in Ireland. Once enacted, the legislation would give the Minister the power to mitigate the effect of transactions in sensitive sectors identified as problematic or, if necessary, prohibit them outright.

The Bill applies to transactions that directly or indirectly relate to, or impact upon, one or more of several matters, which include **critical infrastructure** such as energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure and sensitive facilities, including the land/real estate used crucial for the use of such infrastructure.

The final Bill is currently expected to be enacted by late 2022 or early 2023. We look at further details in our briefing [here](#).

Budget 2023

Publication of the [Finance Bill 2022](#) indicates that the defective concrete products levy will now be calculated at 5% of the open market value of the concrete product on the supply date (reduced from the 10% rate announced in the Budget), to come into effect from 1 September 2023. The Bill indicates that every chargeable person is required, prior to making a first supply of a concrete product, to register with the Revenue Commissioners as a chargeable person for the purposes of the legislation.

SUSTAINABILITY

Contracts

NEC's new [Secondary Option X29](#) on climate change, which we looked at in our briefings in April and July, provides a number of contractual mechanisms aimed at achieving tangible sustainability and net-zero commitments (Climate Change Requirements in the Scope; a Performance Table for benchmarking performance against targets distinct from the Climate Change Requirements; and a mechanism for managing climate related changes to the Scope, Prices, Performance Table, Completion Date and Key Dates). NEC has announced that the [final 11 versions](#) of Secondary Option X29 for each contract, and associated guidance notes, are now available for free download from the NEC website.

Ireland's Built Environment

The Irish Green Building Council published a [Roadmap](#) to decarbonise Ireland's Built Environment across its Whole Life Cycle. It sets out near-term actions that could be put in place by Government, Lenders, the Construction Industry, and Product Producers.

Sustainable Urban Development

The [European Urban Initiative](#) launched a €50 million call for applications from urban authorities to support projects that progress four areas: constructing and renovating in a spirit of circularity and carbon neutrality; preserving and transforming cultural heritage; adapting and transforming buildings for affordable housing solutions; and regenerating urban spaces. The [closing date](#) is 19 January 2023.

SECTORAL EMPLOYMENT ORDER

It has been reported that the High Court has agreed to make an order setting aside the [Sectoral Employment Order \(Electrical Contracting Sector\) 2021](#), which sets pay and conditions for electrical workers, after the State informed the Court that it was not objecting to the order sought by the Náisiúnta Leictreach Contraitheor Eireann/National Electrical Contractors of Ireland (NECI) to quash the SEO. The SEO had come into effect at the start of February 2022.

NEC states: "Combatting climate change has to be considered at every point in the life of an asset and needs the engagement of clients and all key members of the supply chain."

[Read more about our Construction & Engineering Group >](#)



Digital Infrastructure

LEGISLATIVE DEVELOPMENTS

Communications Regulation Bill 2022

The Communications Regulation Bill is currently at the Committee stage of Dáil Éireann with a view to enacting the Bill early next year. For further information, our recent article on the Bill is available [here](#).

COMREG UPDATES

Update on the Nuisance Communications Industry Taskforce

Following the formation of the Nuisance Communications Industry Taskforce (“**NCIT**”) in December 2021, ComReg has published an update regarding the taskforce’s activities to date. This includes the trial of a ‘Do Not Originate’ list, which compiles phone numbers used by fraudsters intended to imitate in-bound only calls. The full briefing is available [here](#).

ComReg publishes Second Interim Report on Measurement of Non-Ionising Radiation

ComReg has published its second interim analysis of non-ionising radiation (“**NIR**”) levels emitted by radio spectrum licensees’ transmitters. NIR emissions within any part of the transmission site or surrounding area to which the general public has access must be within the limits set down in the guidelines published by the International Commission on Non-Ionizing Radiation Protection. Read the full report [here](#).

INDUSTRY NEWS

DECC provides Update on the Delivery of the National Broadband Plan

The Department of the Environment, Climate and Communications (“**DECC**”) provided an update that National Broadband Ireland (“**NBI**”) remains on track to pass 100,000 premises by the end of January 2023, having passed more than 85,000 premises at the end of September. The DECC confirmed that more than 20,000 premises had been connected to a high speed broadband service under the NBP as of 30 September 2022.

Eir Fibre-to-the-Home Network passes 900,000 Premises

More than 900,000 homes and businesses across Ireland have now been passed by eir’s fibre-to-the-home network, as it accelerates its rollout to 250,000 annual premises under its deal with InfraVia signed early this year. The news comes just over five months after eir’s previous announcement of reaching 800,000 premises in late April. The full briefing is available [here](#).

SIRO unveils Rollout Plan

SIRO has announced it is rolling out its full fibre network to over 70,000 homes and businesses across South Dublin and the Dún Laoghaire/Rathdown local authority area. SIRO is investing €50 million in the project and the rollout will take approximately two years, with works expected to be completed by the end of 2024. The full briefing is available [here](#).

"The Communications Regulation Bill 2022 focuses on giving effect in Irish law to the provisions of the European Electronic Communications Code dealing with enforcement, security, dispute resolution and a number of end-user rights."

[Read more about Digital Infrastructure at Arthur Cox >](#)



Employment

PROTECTED DISCLOSURES (AMENDMENT) ACT 2022

The Protected Disclosures (Amendment) Act 2022 will come into operation in its entirety on 1 January 2023.

Once commenced, all private sector organisations with 250 or more employees will be required to establish formal reporting channels and procedures for workers to make protected disclosures. The threshold does not apply to employers who are public bodies or who fall within the scope of certain European Union legislation, including in relation to financial services, products, markets, prevention of money-laundering and terrorist financing, transport safety, and protection of the environment. Such employers, regardless of size, must also comply with the obligations contained in the Act from 1 January 2023.

Employers should review existing protected disclosures policies to ensure they are fully up to date and in compliance with the new legislation.

Failure to comply with certain obligations contained in the Act are designated as offences attracting significant penalties. For further information on the Act, see our detailed briefing [here](#).

"All private sector organisations with 250 or more employees will be required to establish formal reporting channels and procedures for workers to make protected disclosures"

WORK LIFE BALANCE AND MISCELLANEOUS PROVISIONS BILL 2022

The Work Life Balance and Miscellaneous Provisions Bill 2022 will transpose the EU Directive on work-life balance for parents and carers into Irish law. The Bill is expected to be passed into law later this year.

The Bill contains a new entitlement for employees to take up to five days' unpaid leave for medical care purposes, along with a new entitlement for employees who are the parents of children up to age 12 and who are providing care to those children, or employees who are providing personal care or support to certain specified persons to apply for a flexible working arrangement.

The Bill will also increase the number of weeks from 26 to 104 weeks during which mothers are entitled to take paid time off work for breastfeeding purposes.

For further information on the Bill, see our detailed briefing [here](#).

NATIONAL MINIMUM WAGE ORDER 2022

The Tánaiste and Minister for Enterprise Trade and Employment, Leo Varadkar, TD has signed the National Minimum Wage Order 2022, which declares that the national minimum hourly rate of pay will increase from €10.50 to €11.30 from 1 January 2023. A copy of the Order is available [here](#).

"The national minimum hourly rate of pay will increase from €10.50 to €11.30 from 1 January 2023"

SECTORAL EMPLOYMENT ORDER

It has been reported that the High Court has agreed to make an order setting aside the [Sectoral Employment Order \(Electrical Contracting Sector\) 2021](#), which sets pay and conditions for electrical workers, after the State informed the Court that it was not objecting to the order sought by the Náisiúnta Leictreach Contraitheor Eireann/National Electrical Contractors of Ireland (NECI) to quash the SEO. The SEO had come into effect at the start of February 2022.

[Read more about our Employment Group >](#)

A low-angle photograph looking up at a wooden pergola structure. The wooden beams form a series of triangles against a backdrop of green trees and a bright, slightly hazy sky. Sunlight filters through the leaves, creating a warm, golden glow. In the center of the image, there is a white rectangular box containing the word "Energy" in a blue serif font.

Energy

KEY DEVELOPMENTS

EU Energy Market Interventions

EU Member States agreed on interventions in the electricity market to be applied from 1 December 2022. We look at the final Regulation [here](#). There was also political agreement on gas market interventions, based on a draft Regulation which we consider [here](#).

Reform of the EU's Electricity Market and new European Hydrogen Bank

The Commission's 2023 Work Programme indicates that it intends to propose in early 2023 a comprehensive reform of the EU's electricity market. It also includes a plan to create a European Hydrogen Bank to invest €3bn in kick-starting a hydrogen market. The next step is to agree legislative priorities with the Parliament and Council. Further information is available in the [work programme](#) and [press release](#).

Fit for 55 and REPowerEU

Fit for 55 is a significant package of EU legislative reforms intended to decarbonise sectors across the economy. Trilogue negotiations for many of the instruments are underway and initiatives to spur hydrogen and biomethane markets are being progressed. Work on integrating the REPowerEU proposals to speed up the permit-granting process for renewable energy projects continues this month. We provide a snapshot of the current status and next steps [here](#).

Firm Access Consultation

Clarity on Firm Access policy in Ireland has been long-awaited. A proposed policy is being consulted on, with a closing date of 8 November 2022. It includes elements that could help to provide more certainty for project developers, but much will depend on the detail of its implementation. We look at the proposal [here](#).

Offshore Wind

The Commission for Regulation of Utilities has published its decision on connection & charging policy, intended to enable EirGrid to complete and issue Grid Connection Assessments to [Phase 1 projects](#). See more under 'CRU Business', below. A reply to a Dáil written question also indicated a Government intention to prioritise renewable energy plans and projects in the Irish maritime area. See more under 'Domestic Developments', below.

Capacity Market Decision

The SEMC [rejected](#) a proposal to amend the Capacity Market Code which aimed to extend the long-stop date and maximum duration of New Capacity in circumstances where Substantial Completion is delayed by failure of third parties to deliver requirements in a timely manner. We comment further under 'SEMC Business', below.

RESS 3

The Department of the Environment, Climate and Communications is [consulting](#) on the terms and conditions for RESS 3. The closing date is 9 December 2022.

EU

COP27

The Council approved the EU's general [negotiating position](#) for the 27th UNFCCC Meeting of the Parties in Sharm El-Sheikh on 6-18 November 2022. The Council states that current NDCs are insufficient to keep global warming to 1.5°C above pre-industrial levels. The EU indicates it is prepared to update the NDCs of the EU and Member States to reflect the final outcome of the Fit for 55 legislative package. The Council has also [approved](#) climate finance to support developing countries.

State of the Energy Union

The Commission published the annual [State of the Energy Union](#) report, which focuses on the policy responses in Fit for 55 and REPowerEU and reviews supply and demand data. [Snapshots](#) from each country for 2021 indicate that, in Ireland, renewables formed 47% of the energy mix and 46% of the electricity mix. The country specific recommendation was to:

"Accelerate the deployment of renewable energy, in particular offshore wind, including by introducing reforms to improve the efficiency of the planning and permit system, particularly by reducing the duration of procedures. Upgrade energy infrastructure, including for storage, and enhance the stability of the grid. Ensure the fast implementation of deep building retrofits. Accelerate the electrification of transport, including by installing charging facilities."

Digitalisation

The EU published an [Action Plan](#) on digitalising the energy sector. The Commission indicates that, in the medium term, digitalisation will enable seamless interactions among very diverse stakeholders. In particular, it will allow consumers to profit from domestic energy sources such as solar PVs or bidirectional EV charging. The Commission will formally establish the [Smart Grids Task Force](#), which will be renamed the Smart Energy Expert Group. In the longer-term, digitalisation will be a prerequisite for the integration of decentralised forms of renewable energy in the grid. Integration of renewables requires more grid decisions to be taken closer to the edge of the network and greater grid flexibility, which can be provided by active consumers and prosumers flexibly managing their energy assets. The plan also looks at cryptocurrencies and cybersecurity.

Strategic Energy Technology Plan

The Commission is [calling](#) for evidence on revision of the Strategic Energy Technology Plan. The closing date is 2 November 2022.

Critical Raw Materials

The Commission is calling for [evidence](#) and consulting on preparation of a European Critical Raw Materials Act. The closing date is 25 November 2022.

Carbon Cycles

The Parliament published a [briefing](#) on Sustainable carbon cycles, promoting removal, storage and recycling.

SMEs

The Commission and IEA continue to collaborate to consider ways Member States and SMEs can increase [SME resilience](#) through energy savings and energy efficiency.

INTERNAL MARKETS

Monitoring Reports

The Commission published the electricity and gas market [reports](#) for Q2 of 2022. They include data on the energy mix, price fluctuations and the fall of Russian gas imports to the EU.

ACER published the 2021 monitoring [report](#) on security of electricity supply. It indicates that the cost of additional capacity mechanisms is anticipated to rise. It recommends that further attention should be given to some approaches to calculation of value of lost load, cost of new entry, and reliability standard defining necessary level of supply. ACER also published the annual [report](#) on Energy Retail and Consumer Protection.

Network Development Planning

ACER is [consulting](#) on new framework guidelines on scenarios for network planning. The closing date is 14 November 2022. ENTSO-E also [published](#) a report on what would be necessary to achieve a power system fit for a carbon neutral Europe. ENTSG [published](#) an updated list of projects to be included in the gas Ten Year Network Development Plan.

Balancing Energy

Changes to the implementation framework for the [European balancing platforms](#) for exchange of balancing energy have been approved. These frameworks are intended to support efficient cross-border exchange of balancing energy.

Long-term Transmission Rights

ACER is [consulting](#) on allocation of long-term transmission rights in the Core and Nordic CCRs. The closing date is 23 November 2022. ACER has also [reported](#) on use of congestion income in 2021.

Winter Outlook

ENTSO-E [published](#) early insights to electricity system adequacy this winter and ENTSG [published](#) the Winter Supply Outlook for gas.

"In infrastructure project development, risk is typically allocated to the party best placed to manage that risk."

INVESTMENT

Sustainable Finance and Transparency

The Commission published a further FAQ on sustainability disclosures under Article 8 of the EU Taxonomy Regulation. Our update is available [here](#).

Further updates in the area of sustainable finance are available in the ESG section of our [Finance Horizon Scanner](#).

REPowerEU

The EIB Group [announced](#) it will support [REPowerEU](#) with an additional €30 billion in loans and equity financing over the next five years. The additional funds will be directed to renewables, energy efficiency, grids and storage, electric-vehicle charging infrastructure, and breakthrough technologies, such as low-carbon hydrogen.

CLIMATE LITIGATION

The UK Government indicated that it will not pursue an appeal against the High Court ruling that its Net Zero Strategy was unlawful in that it did not meet statutory requirements (in R (on the application of Friends of the Earth Ltd and others) v Secretary of State for the Business, Energy and Industrial Strategy [2022] EWHC 1841 which we looked at in July). The judgment is [here](#) and a court summary is [here](#).

DOMESTIC DEVELOPMENTS

Legislation under Development

[Development \(Emergency Electricity Generation\) Bill 2022](#) completed Seanad Éireann, Fifth Stage. It is intended to facilitate installation of 450MW of capacity at Shannonbridge and Tarbert or alternative appropriate sites. It provides that none of the provisions of the Planning and Development Act 2000 shall apply and that the development will be exempt from the provisions of the Environmental Impact Assessment Directive on the basis that the development in an exceptional case for the purpose of that Directive. It provides for the Minister to arrange that an appropriate assessment be carried out by An Bord Pleanála, subject to any modifications as to process as may be prescribed.

New Legislation

[European Union \(Energy Efficiency Obligation Scheme\) Regulations 2022](#) will come into operation on 1 January 2023 to establish a scheme for 2023 for the achievement of energy savings required under Article 7 of the [Energy Efficiency Directive](#). Obligated parties (companies with annual energy sales of 400GWh or more) must implement measures to assist customers to make more efficient use of energy. The 2014 Regulations are largely revoked. ([Press Release](#))

[Electricity Costs \(Domestic Electricity Accounts\) Emergency Measures and Miscellaneous Provisions Act 2002](#) was signed into law to make provision for establishment of the Electricity Costs Emergency Benefit Scheme II, intended to make benefit payments to domestic electricity costs during the period from 18 October 2022 until 30 June 2023, with payment period dates set out in [Electricity Costs Emergency Benefit Scheme II Regulations 2022](#). The CRU has also published guidance for stakeholders ([CRU/2022/972](#)).

[Air Pollution Act 1987 \(Solid Fuels\) Regulations 2022](#) came into operation on 31 October 2022 to regulate the sale and distribution of solid fuel used for space or water heating in domestic or licenced premises. It places obligations on producers, transporters, and retailers. ([Press Release](#))

Prioritisation of renewable energy plans and projects in the Irish Maritime Area

In late September a [reply](#) by Peter Burke TD to a Dáil written question indicated that:

"... the Government's intention is that the following projects in the maritime area will receive priority attention:

- Any marine infrastructure projects that align with Government decisions to address risks to energy security of supply.
- Projects that are capable of delivering 200MW or above of offshore renewable energy to meet domestic demand before 2030, using well established, proven technologies.
- Infrastructure that will support delivery and deployment of Renewable Energy projects such as grid and port facilities.
- Projects utilising emerging technology that may have the ability to assist the State in meeting its 2030 targets such as floating wind and green hydrogen.

To give effect to this decision, approval has also been given to the immediate development of a Statutory Marine Planning Policy Statement (MPPS) ... that will prioritise energy and energy-related projects above all other maritime activities during the six year lifetime of the MPPS. By taking this action, the State's consenting authorities, such as An Bord Pleanála and the soon to be established Maritime Area Regulatory Authority (MARA) will prioritise the processing of renewable energy projects, including those that support the development of Offshore Renewable Energy infrastructure in both the marine and onshore.

The Foreshore Unit in my Department is currently assessing the current caseload of foreshore lease and licence applications in the context of this Government decision. A key consideration will be how the significant number of site investigation licenses that are on hand and not associated with the Phase 1 projects can be managed given the priority status afforded across Government to applications associated with projects capable of delivering before 2030 using well established technologies."

ATR System Reinforcements

EirGrid [announced](#) that, from September 2022, ATR system reinforcement updates will be contained in EirGrid's Network Delivery Portfolio. It indicates that generator customers will continue to receive direct ATR related communications from their system operator, should the need arise.

Connection of Small Scale Generation

ESBN [launched](#) a trial of a new small scale generation connection process.

Sustainable Development Goals

The Government [announced](#) a National Implementation Plan for the Sustainable Development Goals 2022-2024. Each Minister has responsibility for implementing individual SDG targets.

Biofuels

A [study](#) has been published reviewing the requirements and constraints on biofuels in Ireland arising from the Renewable

CRU BUSINESS

Offshore Grid Connection

[CRU/2022/968](#): Ireland's first offshore renewables support auction (ORESS 1) is [scheduled](#) to begin in late November. Projects are to receive Grid Connection Assessments (GCAs) from the TSO in order to prepare their bids for the ORESS 1 auction. The CRU has published its decision on connection & charging policy associated with the GCA, intended to enable EirGrid to complete and issue GCAs to [Phase 1 projects](#).

Projects that are successful in ORESS 1 must apply for a full connection offer within three months of the ORESS 1 Notice of Award and EirGrid will issue an offer within a target of 90 business days from the application. The full connection offer is valid for acceptance until the later of six months after it issues and three months after receipt of the final planning consent, but there is a longstop validity date of 31 December 2025. To accept the full connection offer, the project needs to be in receipt of final planning consent and have paid the First Stage Payment. The term of a connection agreement will end no earlier than 30 years after the Operational Date with an automatic one-year rolling extension.

The decision includes the information to be contained in a GCA, including details of relevant transmission works required for energisation.

It is emphasised that this approach relates to Phase 1 projects only. We looked at the planned transition from a decentralised to centralised offshore transmission system model [here](#).

Emergency Measures on Domestic Accounts

[CRU/2022/972](#): As mentioned above, the CRU published a document on the Electricity Costs (Domestic Electricity Accounts) Emergency Measures and Miscellaneous Provisions Act 2022 to provide guidance for ESB Networks, suppliers and customers.

Fuel Mix and CO2 Emissions

[CRU/2022/967](#): The CRU published the 2021 fuel mix disclosure and CO2 emission intensities for suppliers in Ireland.

Nominated Electricity Market Operators

[CRU/2022/969](#): The Regulatory Authorities have designated EirGrid plc and SONI Ltd to act as NEMOs pursuant to [Regulation \(EU\) 2015/1222](#) establishing a guideline on capacity and congestion management.

Compliance and Enforcement

[CRU/2022/971](#): The CRU has published its annual report on its compliance and enforcement activities.

SEMC BUSINESS

Capacity Market

[SEM-22-074](#): The SEMC rejected a proposal to amend the Capacity Market Code which aimed to extend the long-stop date and maximum duration of New Capacity in circumstances where Substantial Completion is delayed by failure of third parties to deliver requirements in a timely manner.

The proposed amendment was submitted on the basis that, to achieve Substantial Completion, Capacity Market participants require grid connection, planning permission, gas connection, and other deliverables from third parties. It was indicated that the risk of non-controllable third-party delays affects investment decisions made by participants developing New Capacity projects, potentially resulting in the non-delivery of these projects.

The SEMC considered that it is for Capacity Market participants to manage this through a contingency in their Implementation Plans, that extending time for third party delay might incentivise submission of over-optimistic Implementation Plans, and that the amendment could weaken incentives to deliver projects in a timely manner.

In infrastructure project development, risk is typically allocated to the party best placed to manage that risk, and it is usual for contractual arrangements to allow extension of time where it can be demonstrated that a third party is responsible for delay which could not be mitigated by the party claiming relief. In this case, the concern is around delay on the part of statutory bodies in auctions being conducted by statutory bodies. The decision was reported in the press [here](#).

[SEM-22-071](#): The SEMC called for evidence on the impact of inflation on delivery of new Capacity Market Projects. The initial three week deadline for replies was extended to 4 November 2022 ([SEM-22-080](#)).

[SEM-22-075](#): The SEMC is consulting on TSO proposals for determining auction capacity requirements and de-rating Factors (to be deployed in the T-1 2023/24 auction). The closing date is 10 November 2022.

[SEM-22-076](#): The SEMC is consulting on the assessment on the Best New Entrant Net Cost of Entry for Capacity Year 2026/2027. The BNE's Net CONE rate is set in advance of a capacity auction and is used to calibrate the Auction Price Caps, Existing Capacity Price Cap, and the demand curve for the auctions. The SEMC stated that, for the upcoming auction T-4 2026/2027, the Auction Price Cap may be reviewed and updated in the Final Auction Information Pack, based on the outcome of this consultation. The closing date is 30 November 2022.

Nominated Electricity Market Operators

[SEM-22-070](#): The Regulatory Authorities have designated EirGrid plc and SONI Ltd to act as NEMOs pursuant to [Regulation \(EU\) 2015/1222](#) establishing a guideline on capacity and congestion management for the period beginning on 3 October 2022. Further, the NEMO designation period in Ireland, set at three years, will switch to being on an enduring basis. Compliance will be checked against the requirements of Article 6 of the Regulation once a year, based on submissions made by NEMOs. The Regulatory Authorities will roll over the final year of the current revenue recovery approach to next year and consult separately on the future revenue recovery approach for SEMOpx.

SEM Parameters

[SEM-22-077](#) & [SEM-22-078](#): Operational and scheduling and dispatch parameters have been set for 2023.

Directed Contracts

[SEM-22-072](#): The Regulatory Authorities will proceed with DC Round 20. The primary subscription windows will be 22-24 November and 29 November – 1 December.

[Read more about our Energy Group >](#)



Environment & Planning

RECENT JUDGMENTS

High Court [quashes](#) SHD planning permission because of Board's failure to circulate submission

The Board failed to circulate a submission received during public consultation to the local authority as required within the statutory time limit. The Board and the developer argued that the body who made the submission had suffered no prejudice because the Board had still given it full consideration, even if the local authority had not.

The High Court disagreed, and found that the body was deprived of *“the opportunity to influence the views of the Chief Executive and of the elected members, whose views might in turn and by the Chief Executive's report, have influenced the Board in deciding the SHD application”*.

Having found that neither the elected members nor the Chief Executive considered the relevant submission for purposes of informing the Chief Executive's report, and the ETI Submission did not inform that report, the court noted that: “Clearly, the relevant provisions of the 2016 Act, considered as a whole, are designed to ensure that the submissions and observations of members of the public are not merely recorded in summary by the Chief Executive in his/her report. It is necessary that they be substantively considered by both the Chief Executive and the elected members and incorporated into the formation, and expression in the report, of the views of the Chief Executive and the elected members on the proposed development.”

Court of Appeal [determines](#) that a windfarm developer is not a ‘public authority’ for the purposes of the AIE Regulations

In overturning the High Court decision, the Court of Appeal found that while the windfarm developer did have special powers, it had not been entrusted with the performance of a service in the public interest. In this regard, the Court found that the authorisation to construct a generating station and licence to generate electricity granted to the windfarm developer *permitted* it to generate electricity. However, it had no *obligation* to do so under national law.

In determining whether the windfarm developer was controlled by a public authority on the basis that it was a joint venture of Coillte and the ESB, the Court held that it was not sufficient to merely show that a public authority had the potential to exert control over it. Instead, it would need to be demonstrated that the windfarm developer did not perform its day to day functions in a genuinely autonomous manner.

High Court [quashes](#) section 5 declaration with errors on its face but [finds](#) no breach of fair procedures by failure to invite interested party to make submissions

A landlord had sought a section 5 declaration in respect of a change of use of the leased premises from retail warehouse to a discount store. Planning permission had previously been granted for a retail warehouse development on the site (the **“1998 permission”**). No conditions in the 1998 permission addressed the *type* of retail activity permitted in the development. A subsequent permission granted permission for a subdivision of the unit and contained a condition limiting the goods to be sold from the unit to ‘bulky goods’ as defined by the Retail Planning Guidelines (the **“2015 permission”**).

In concluding that the change of use was development and was not exempted development, the Board said that the permitted use under the 1998 permission was as a retail warehouse and that the 2015 permission had not altered this. On that basis, the Board determined that the sale of convenience goods was not consistent with the permitted use.

The High Court found that this was incorrect as a matter of law because the permitted use under the 1998 permission as a retail warehouse was not confined to use for the retail sale of bulky goods. The Court found that the 2015 permission, while not altering the use as a retail warehouse, did introduce a new condition to the effect that the units could not be used for the sale of non-bulky goods. The Court did not accept the Board's submissions that the error was immaterial. The Court also rejected the argument that the error should be overlooked because the Board could have arrived at a similar conclusion in a lawful fashion. The High Court held that it would not be appropriate to leave an incorrect section 5 declaration on the planning registrar. The Court found that it was consistent with good administrative decision making to remit the matter to the Board so that it could reach a lawful decision.

The lessee brought separate judicial review proceedings claiming that, as an interested party, it should have been invited to make submissions on the section 5 referral. It claimed that the Board had an obligation to exercise its discretionary powers and do so under Section 131 of the Planning and Development Act 2000. Section 131 empowers the Board to request any person (including a non-party to the section 5 planning authority declaration decision) to make submissions or observations on a referral where it is of the opinion that it is appropriate in the interests of justice to do so.

In refusing relief, the High Court found that the lessee was clearly fully aware of the section 5 referral. There was nothing stopping it from making submissions pursuant to section 130 of the Act – which allows any person to make submissions to the Board in relation to a referral - or requesting the Board to exercise its powers under section 131.

DECISIONS OF THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

The Commissioner [annuls](#) decision of daa to refuse access to documents regarding health effects of aircraft noise

The appellant had requested access to documentation relating to the health effects of aircraft noise on residents in the vicinity of Dublin airport. The Commissioner annulled the decision on the basis that the daa failed to give substantive reasons for the refusal and instead simply cited the relevant grounds for refusal under the AIE Regulations.

The Commissioner [annuls](#) Department's decision to refuse information sought on the Integrated Forestry Information System (“IFORIS”)

The appellant had requested information relating to the assessment of forestry applications and licenses. The Commissioner found that insufficient reasons were given for the refusal.

The Department stated that delivery of the information was not feasible given the large quantity of data, which would amount to terabytes in size. Further, the Department claimed that the datasets contained confidential personal information and information indicating the location of protected species. The Department also asserted that many of the datasets were available publicly elsewhere.

The Commissioner found that these reasons were not provided for under the AIE Regulations and that the decision was instead based on the perceived motivations behind the appellant's request. In this respect, the Commissioner held that the applicant is not required to state his or her interest in making the request.

The Commissioner also found that that the Department had not taken reasonable steps to identify whether it was possible to separate the datasets containing personal and sensitive information. Further, the Commissioner took the view that the Department could not say that the request was manifestly unreasonable due to volume where it had failed to actually seriously consider the processing of the request and had failed to consider any measures that might mitigate the burden caused by the volume of information sought.

The Commissioner [annuls](#) local authority's refusal to grant information requested in relation to environmental inspections

The appellant had requested access to information relating to an environmental inspection carried out on a dairy farm.

The local authority partially refused the request, stating that it did not hold certain of the records. The Commissioner found that the local authority had not demonstrated that it has carried out reasonable searches to obtain relevant records.

The Commissioner [annuls](#) decision of local authority to refuse to deal with request for information on an enforcement file

The local authority had not acknowledged the request for access to information on an enforcement file in relation to an alleged unauthorised development.

The Commissioner found that the local authority had failed to process the request adequately, and had not directed the appellant to the AIE or FOI section of the local authority. The Commission held that the manner in which Fingal CC dealt with the request as “*unacceptable*” and “*disappointing*”. The Commissioner found that the administrative systems that authorities have in place to deal with FOI and AIE requests “*should not prevent or delay the processing of requests*”.

The Commissioner [directs](#) the daa to release portions of draft EIS

In April 2021, the Commissioner [varied](#) a decision of the daa to refuse access to a draft EIS and directed the release of certain portions of the draft report. The draft EIS had been prepared in relation to an application to amend certain operational conditions for the new North Runway and primarily consisted of introductory chapters which set out background as to why such amendments were required. The Commissioner was of the opinion that the disclosure of these portions of the draft would contribute to public understanding of the daa's environmental decision-making processes and functions.

However he said other parts of the draft should remain undisclosed. These other parts were those requiring further sign off from daa, comments between daa and their expert consultants and advisors, and parts of the draft described as being of a 'detailed and sensitive nature'. The Commissioner felt that the public interest in having an EIS completed to a high standard necessitated detailed discussions with expert advisors and there was a strong interest in allowing a public authority this “*private thinking space*” to complete the report, which would then be made publically available. The partial disclosure of general introductory sections of the draft would not, however, undermine this “*private thinking space*”.

The daa sought clarification from the Commissioner as to how the decision should be applied to the EIS appendices which had not been before the Commissioner at the time the decision was made. The Commissioner reiterated his previous decision and said that certain information in the appendices could be withheld on the basis that they were a work in progress and incomplete. The Commissioner found that the appendices contained “*detailed descriptions and supporting data*”, some of which was the subject of internal draft comments suggesting edits due to error or inaccuracy. The Commissioner held that it was not in the public interest to publish such information for the reasons set out in his previous decision. However, the Commissioner directed the release of the remaining portions of the draft appendices on the basis that this would contribute to public understanding of the daa's decision-making processes and functions.

The Commissioner [annuls](#) decision of the Department to refuse request for Irish Hen Harrier Satellite Tracking Initiative Report

The appellant's request arose out of work carried out by the National Parks and Wildlife Service (NPWS) in relation to the conservation and monitoring of hen harriers. The Department refused the request on the basis that the full data set had not yet been collected and analysed. The Department further stated that the release of the information sought would adversely affect intellectual property rights.

The Commissioner stated that the Department must establish that a recognised intellectual property right exists and cannot just make reference to the existence of property rights in general. Furthermore, the Commissioner found that no relevant intellectual property rights existed. The Commissioner [annulled](#) the decision of the Department and directed the release of the information sought.

Commissioner [annuls](#) Department's decision to refuse access to Departmental correspondence

The Commissioner annulled the Department's decision to refuse to release correspondence between it and EU Directorate-General (DG) for the Environment.

The Commissioner found that the manner in which the Department dealt with the request was unacceptable on the basis that the Department had given multiple different reasons for refusal at different stages of the request, review and appeal stages. The Commissioner recommended that the Department review its procedures for searching for environmental information, and take account of the requirement under the Regulations to “*make all reasonable efforts to maintain environmental information held by or for it in a manner that is readily reproducible and accessible*.” The Commissioner ordered a fresh decision-making process in respect of the request.

LEGISLATION

[Water Environment \(Abstractions and Associated Impoundments\) Bill 2022](#)

The bill is currently before the Seanad. The bill provides for a modern licensing and control regime for water abstractions. The proposed system of licensing is to be administered by the Environmental Protection Agency, with local authorities also maintaining an ongoing enforcement role.

[Planning and Development, Maritime and Valuation \(Amendment\) Act 2022 \(Commencement of Certain Provisions\) Order 2022 \(S.I. No. 447 of 2022\)](#)

This S.I. was made by the Minister for Housing, Local Government and Heritage under Section 1(4) of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. It appoints 9 September 2022 as the day on which Part 1 and Part 3 (other than Sections 44, 45, 46, 54, 70, 71, 72, 73 and 75) of the 2022 Act shall come into operation.

[Maritime Area Planning Act 2021 \(Commencement of Certain Provisions\) \(No. 3\) Order 2022 \(S.I. 488 of 2022\)](#)

This S.I. provided for the commencement on 1 October 2022 of Part 8 of the MAP Act.

[Planning and Development Act 2000 \(Exempted Development\) \(No. 3\) Regulations 2022 \(S.I. 493 of 2022\)](#) and the supporting [Planning and Development \(Solar Safeguarding Zone\) Regulations 2022 \(S.I. 492 of 2022\)](#)

These regulations came into effect on 5 October 2022 and contain the most recent provisions regarding planning exemptions for solar panel installations.

These provisions amend the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) by way of an amendment to the Exempted Development provisions in Schedule 2.

They set out the exemptions from planning permission for the installation of solar panels on houses and other buildings as well as the applicable conditions and limitations.

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

The Department of the Environment, Climate and Communications

Sectoral Emissions Ceilings agreed

The Department of the Environment, Climate and Communication has [published](#) a summary report on Emissions Ceilings. Following approval of the Carbon Budgets, the Government agreed the Sectoral Emissions Ceilings on 28 July 2022.

National Implementation Plan for the Sustainable Development Goals 2022-2024

The Department of the Environment, Climate and Communications has [announced](#) the cross-departmental National Implementation Plan for the Sustainable Development Goals 2022 – 2024. The Plan sets out five strategic objectives and 51 actions. The strategic objectives are as follows:

- Strategic Objective 1: To embed the SDG framework into the work of Government Departments to achieve greater Policy Coherence for Sustainable Development.
- Strategic Objective 2: To integrate the SDGs into Local Authority work to better support the localisation of the SDGs.
- Strategic Objective 3: Greater partnerships for the Goals.
- Strategic Objective 4: To further incorporate the principle of Leave No One Behind into Ireland’s Agenda 2030 implementation and reporting mechanisms.
- Strategic Objective 5: Strong reporting mechanisms.

The Department of Housing, Local Government and Heritage

Action Plan for An Bord Pleanála

The Department of Housing, Local Government and Heritage has [published](#) the Action Plan for reform of An Bord Pleanála, which has just been approved by the Government. This is in response to the finalisation of Phase One of the OPR review of the Board’s systems and procedures. The plan sets out specific actions to be taken by the Board as part of the reform process.

CAP Strategic Plan 2023-2027 approved

The Department of Agriculture, Food and the Marine stated that the Cabinet has [approved](#) Ireland’s CAP Strategic Plan 2023-2027, worth almost €10 billion. Minister McConalogue noted when bringing the plan that it has already undergone SEA and AA.

Department of Agriculture, Food and the Marine

Determinations for Ireland’s Draft Forest Strategy (2022 – 2030)

The Department has announced that the Minister of State for Agriculture is in the process of [preparing](#) a Forest Strategy for Ireland.

An Bord Pleanála

An Bord Pleanála welcomes the OPR Review recommendations

The Board [published](#) a statement welcoming the recommendations made by the OPR Review.

EU

Countdown to COP15

The Directorate-General for the Environment has [announced](#) ‘Countdown to COP15’ in preparation for the upcoming event in which biodiversity recovery will take priority. At the UN General Assembly in New York, the EU Executive Vice-President Frans Timmermans renewed the EU’s commitment to reverse biodiversity loss.



Read more about our Environment and Planning Group >



Public Procurement

EU

Optional Grounds for Exclusion

In a German case [C-416/21](#), the awarding authority advertised a contract for public transport bus services. J submitted two tenders: one on his own behalf, and a second on behalf of a bus transport company where he was managing director and sole shareholder.

The awarding authority excluded both tenders for breach of competition rules in that they had been prepared by the same person.

The excluded parties lodged a complaint to the regional Public Procurement Board. Their complaint was upheld on the basis that they were not considered to have breached [Article 101](#) of the TFEU, which prohibits anti-competitive agreements between undertakings, since they were an economic unit within the meaning of the relevant case-law and could rely on 'group privilege'.

The case came before the CJEU as a preliminary reference. A first question was whether a tender has to fall foul of Article 101 of the TFEU to be excluded under Article 57(4)(d) of [Directive 2014/24/EU](#) (which provides an optional ground for exclusion of a tenderer where *"the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition"*). The CJEU's answer was no: Article 57(4)(d) is broader in scope than Article 101 of the TFEU.

A second question was whether Article 57(4) of Directive 2014/24/EU provides the exhaustive list of optional grounds for exclusion of an economic operator, such that the award of the contract would not be precluded on a different basis - namely the principle of equal treatment provided in Article 18(1) of [Directive 2014/25/EU](#) - given that two of the tenders were neither independent nor autonomous.

The CJEU answered that yes, Article 57(4) does exhaustively set out the optional grounds for exclusion. However, that does not prevent a contracting authority from declining to award a contract where there had been a breach of the principle of equal treatment – such as where tenders, though submitted separately, are neither autonomous nor independent.

When the case for Direct Award is not watertight

In an Italian case [C-437/21](#), the awarding authority made a direct award of the high-speed maritime passenger transport service between two Italian ports.

The Italian Court dismissed a challenge by the incumbent, finding that [Directive 2014/25/EU](#) allowed for direct award of public service contracts for rail transport by sea. Under Italian law, the service in question should be classified as a rail transport service, the award of which was not subject to the obligation to carry out any tendering procedure.

The claimant argued there was no urgency justifying a direct award and that the maritime transport service could not be treated like a rail transport service, since the new operator used hydrofoils.

In response to a preliminary reference from the Italian appellate Court, the CJEU considered that, while [Regulation \(EEC\) No 1370/2007](#) on public passenger transport services by rail and by road could be applicable to maritime transport by high-speed vessels in circumstances such as in this case, that regulation was applicable to public passenger transport by national sea waters 'without prejudice' to [Regulation \(EEC\) No 3577/92](#) applying the principle of freedom to provide services to maritime transport within Member States. In the event of conflict, the latter prevailed.

The Court considered that Regulation (EEC) No 3577/92 must be interpreted as precluding national legislation whose purpose is to treat maritime transport services like rail transport services if the effect of such treatment is to exclude the service in question from the application of the rules on public procurement applicable to it.

UK

Late Submission of Tender & Voluntary Suspension of Competition

In ongoing proceedings in the UK, a bidder was ruled out of a competition when it failed to submit a compliant bid by the deadline. The bidder uploaded a document to the wrong place on the awarding authority's e-Portal. When the bidder tried to upload the document to the correct place, the e-Portal would not permit the same document to be uploaded in two locations, and an error message was generated to indicate this. The bidder's request for assistance was acknowledged some minutes before the deadline and there were further communications between the parties.

This is the type of practical issue that can arise in competitions and which requires a considered response that ensures compliance with the rules and fairness to all bidders.

Pending trial, the awarding authority voluntarily paused the competition. The judge noted that the parties sought, each for their own reasons, to accommodate a way forward that did not involve contesting the Claimant's application to suspend award of the contract:

"Had the Claimant won that application, it would have obtained the chance at least of re-joining a competition that had not run its course, but it would have been potentially exposed under the undertaking in damages that the court requires as a condition of granting such interim relief. Had NHS England been successful in resisting the Suspension Application, it would have been permitted to continue the procurement and grant the contract(s) to the winning bidder(s), but at the risk of being potentially ordered to pay damages to the Claimant"

At a late stage, the awarding authority sought a cross-undertaking in damages from the bidder. The Court considered that it did not have the power to require this – an undertaking in damages could be sought as a condition of granting interim relief, but that would be different. Moreover, the parties had already freely agreed that the procurement competition be paused. Hearing of the full case is expected early in 2023. ([InHealth Intelligence Ltd v NHS England \[2022\] EWHC 2471](#))

When is a claim out of time?

An application to strike out a procurement challenge in [Siemens Mobility Ltd v High Speed Two \(HS2\) Ltd](#) [2022] EWHC 2451 demonstrates nuances that can arise when determining whether a procurement challenge has been made outside the permitted time.

A ground of challenge was that one of the people involved in the evaluation process had a conflict of interest in that they worked previously for a rival bidder, were members of that rival bidder's pension scheme, and that the financial fortunes of the rival bidder could impact the value of the pension.

The awarding authority argued that the claimant had *actual* knowledge of this more than 30 days before the claim, because they knew the person had been employed by

the rival bidder and so knew or ought to have known they would be in receipt of a company pension. The Court rejected this - it could not be said at this interim stage that there would be a finding that the claimant had the necessary actual knowledge more than 30 days before the claim.

The awarding authority argued that the claimant had *constructive* knowledge of the pension issue more than 30 days before the date of claim, in that a reasonably well informed and diligent (RWIND) tenderer would by then have been alert to the possibility of the pension issue. However, the Court considered that, while a RWIND tenderer would be aware of the likelihood of a longstanding previous employee having a pension entitlement, it would also be aware that pension arrangements, including on cessation of employment, can take many forms. The Court was satisfied that the claimant had made a reasonable level of enquiry at the material time.

The Court therefore did not strike out this aspect of the claim.

COVID-19 Litigation

The Good Law Project brought a number of challenges to decisions to award contracts in the context of the early stages of the COVID-19 pandemic. In the recent case of [Good Law Project Limited, R v Secretary of State for Health and Social Care](#) [2002] EWHC 2468, it challenged a decision to award contracts in respect of the development of antibody lateral flow tests. It was common ground that use of the negotiated procedure without prior publication applied in the circumstances of the case. While some of the Good Law Project’s challenges in this area were upheld by the Courts, none of its grounds of challenge were successful here – they related to rationality; apparent bias, conflict of interest and unlawful nationality preference; equal treatment and transparency; and state aid. In addition, the awarding authority successfully challenged the Good Law Project’s standing in relation to all the grounds.



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Read more about our Public Procurement Group >

"the Court considered that, while a RWIND tenderer would be aware of the likelihood of a longstanding previous employee having a pension entitlement, it would also be aware that pension arrangements, including on cessation of employment, can take many forms."

"Article 57(4) does exhaustively set out the optional grounds for exclusion. However, that does not prevent a contracting authority from declining to award a contract where there had been a breach of the principle of equal treatment."

A low-angle photograph looking up at a wooden pergola structure. The wooden beams form a series of triangles against a bright, slightly overcast sky. Lush green foliage is visible through the gaps in the pergola. In the center of the image, there is a white rectangular box containing the text "Real Estate" in a blue serif font.

Real Estate

"Stamp Duty Relief to be extended by extending the date by which construction must commence to 31 December 2025"

RESIDENTIAL LANDLORD AND TENANT

Winter Ban on Termination of Tenancies

The Government has published legislation providing for a temporary stay on tenancy terminations this winter. The legislation will defer no fault tenancy terminations that are due to occur during the winter from taking effect until after 31 March 2023. Our briefing on the [Residential Tenancies \(Deferment of Termination Dates of Certain Tenancies\) Bill 2022](#) is available [here](#).

BUDGET 2023

Finance Bill 2022 Property-Related Measures

The [Finance Bill](#) implements the measures set out in Budget 2023 and also contains other measures which were not announced on Budget day. The main property-related measures are summarised below.

Help to Buy scheme: extended for another two years to 31 December 2024.

New income tax credit in respect of rental payments: to be the lesser of 20 per cent of the qualifying payment made and €500, or €1,000 in the case of a jointly assessed couple, to apply in relation to the 2022 to 2025 years of assessment inclusive.

Living City Initiative: extended until 31 December 2027.

Pre-letting expenses to be deduction against rental income: to apply after six months' non-occupancy (capped at €10,000) from 1 January 2023.

Stamp duty rate of 10% where a person acquires 10 or more residential units (excluding apartments) in any 12-month period: to apply where there is an acquisition of a partial interest in a residential unit and partial interest to be taken into account when determining whether the 10-unit threshold has been met - acquisitions by home reversion firms (who purchase residential units and then rent them back to the former owner) to be exempt from the 10% rate.

Stamp duty repayment: where a residential unit is acquired and then sold within 12 months for the purpose of affordable home arrangements under the Affordable Housing Act 2021.

Partial stamp duty repayment: to be available for properties:

- let to a housing authority or an AHB for social housing purposes;
- designated as cost rental dwellings under the Affordable Housing Act 2021;
- registered as designated centres under the Health Act 2007; or
- registered as children's residential centres under the Child Care Act 1991.

Stamp duty relief under Section 83D (stamp duty refund where non-residential property is subsequently developed for residential purposes): to be extended by extending the date by which construction must commence to 31 December 2025.

Vacant homes tax (VHT): further detail set out including:

- VHT will apply to residential properties which are residential for the purposes of LPT so will not apply to derelict or uninhabitable properties;
- VHT will apply to properties occupied as dwellings for less than 30 days in a chargeable period, with the first chargeable period commencing on 1 November 2022 and ending on 31 October 2023;
- VHT will be three times the base LPT amount;
- VHT will not be charged on properties where no LPT was payable in the year in which the chargeable period ends, properties that were sold during the chargeable period, or properties that were subject to a bona fide tenancy lasting at least 30 days during the chargeable period;
- exemptions to apply where the chargeable person dies, where a grant to administer the estate of a deceased chargeable person issues in the chargeable period, where the property was being actively marketed for sale or rent, where sale or occupation was prohibited by court order, where the property was undergoing structural works, substantial repairs or significant refurbishment during the chargeable period, where the property was not occupied by the chargeable person as a result of his or her mental or physical infirmity and where the property is owned by a North-South implementation body within the meaning of the British-Irish Agreement Act 1999; and
- Revenue to establish a register of vacant homes and associated chargeable persons.

Residential zoned land tax (RZLT): amends the Taxes Consolidation Act 1997 to support the efficient administration of the RZLT, provides for an exemption from RZLT where landowners are precluded from developing land within the scope of the tax due to contractual obligations entered into prior to 1 January 2022 and provides for the deferral of residential zoned land tax while residential development is underway.

Defective concrete block levy: to be calculated at 5% of the open market value of certain concrete products (reduced from the 10% rate announced in the Budget) to come into effect from 1 September 2023.

REAL ESTATE FINANCE

CBI Mortgage Measures

The Central Bank has [confirmed](#) changes to its mortgage measures. Our briefing is [here](#). The key changes are:

First-time buyers (FTBs): Loan-to-income (LTI) limit increased from 3.5 times income to 4 times income.

Second and subsequent buyers (SSBs): LTV limit increased from 80% to 90%, so that a 10% deposit will be required rather than a 20% deposit.

Allowances: The allowances (i.e. the proportion of lending allowed above the limits) will now apply at borrower-type level (e.g. FTB) rather than the individual limit (e.g. FTB LTI).

Exposures of EU Banks to Residential Real Estate

The European Banking Authority (EBA) has published a [thematic note on EU banks' exposures to residential real estate](#). EU banks reported >4.1 trillion of credit collateralised by residential immovable property. Key points include:

Demand for housing was robust in recent years, reflecting the low interest rate environment, and changing preferences due to the pandemic. The EU banks' strong capital and liquidity positions enabled them to meet that demand to a large extent. However, housing supply could not keep up, leading to higher house prices.

The macroeconomic environment has deteriorated abruptly, and the probability of a recession has increased. Although employment rates are still high, demand for housing and real estate markets could still be affected by these developments.

Almost one-third of loans from EU banks are in the residential mortgage market. Factors such as more prudent standards of loan origination, stricter risk management,

"First Time Buyers Loan-to-income limit increased from 3.5 times income to 4 times income. Subsequent buyers limit increased from 80% to 90%, so that a 10% deposit will be required rather than a 20% deposit".

lower loan-to-value ratios and borrowers locking-in fixed interest rates for longer periods, may offset the negative impact on bank mortgage portfolios in case of an abrupt decline in house prices.

The current level of downside risks stemming from residential real estate exposures is increasing. Supervisors and banks should continue to closely monitor developments in the market and in mortgage portfolios.

[Read more about our Real Estate Group >](#)



State Aid

GENERAL

European Commission withdraws Antitrust COVID-19 Temporary Framework

The European Commission decided to withdraw the Antitrust COVID Temporary Framework in light of the relative improvement of the sanitary crisis in Europe. The Commission considered it appropriate to withdraw the Temporary Framework as the exceptional circumstances and related challenges that may trigger the need for companies to cooperate in order to mitigate the effects of the crisis are, at this stage, no longer present. See the full article [here](#).

European Commission adopts revised State aid Framework for research, development and innovation

The European Commission has adopted a revised Communication on State aid rules for research, development and innovation (“**2022 RDI Framework**”), which sets out the rules under which Member States can grant State aid to companies for RDI activities, while ensuring a level playing field. The 2022 RDI Framework, which contributes to the EU’s strategic objectives relating to the green and digital transitions, entered into force on 19 October 2022.

The 2022 RDI Framework includes a number of targeted adjustments: (i) to simplify and reflect the experience gained from the application of the previous framework, (ii) to reflect regulatory, economic and technological developments, and (iii) to align the relevant rules to the current EU policy priorities, such as the European Green Deal and the Industrial and Digital Strategies. See the full article [here](#).

ENERGY

State aid: European Commission approves €1 billion German measure to support Salzgitter to decarbonise its steel production by using hydrogen

The European Commission has approved, under EU State aid rules, a €1 billion German measure to help Salzgitter Flachstahl GmbH to decarbonise its steel production processes by using hydrogen, including renewable hydrogen produced on site, using a new production facility. The Commission found that this measure contributes to the achievement of the EU Hydrogen Strategy and the European Green Deal targets, while helping reduce dependence on imported Russian fossil fuels and will fast forward the green transition, in line with the REPowerEU Plan.

The Commission assessed the measure under EU State aid rules, in particular Article 107(3)(c) of the TFEU, which enables EU countries to support the development of certain economic activities subject to certain conditions, and the Guidelines on State aid for climate, environmental protection and energy 2022.

The Commission found that the project applies an innovative technology and facilitates the development of an economic activity, in particular the production of steel in a more sustainable manner. The aid also has an ‘incentive effect’ and a limited impact on competition and trade within the EU. Furthermore, its positive effects outweigh any potential distortion of competition and trade in the EU. On this basis, the European Commission approved the aid under EU State aid rules.

See the full article [here](#).

European Commission approves €220 million Spanish measure to support COBRA in production of renewable hydrogen

The European Commission has approved, under EU State aid rules, a €220 million Spanish measure to support Cobra Instalaciones y Servicios, S.A. in the production of renewable hydrogen, with the aim of promoting its use in industrial sectors. The Commission found that the measure contributes to the achievement of the EU Hydrogen Strategy and the European Green Deal targets, while helping reduce dependence on Russian fossil fuels and will fast forward the green transition in line with the REPowerEU Plan.

As part of its assessment of the measure, the European Commission found that:

- The measure facilitates the development of an economic activity, in particular the production of renewable hydrogen. At the same time, it supports the objectives of key EU policy initiatives such as the European Green Deal, the EU Hydrogen Strategy and the REPowerEU Plan.
- The aid has an ‘incentive effect’, as the beneficiary would not carry out the investments in renewable hydrogen without the public support.
- The measure has a limited impact on competition and trade within the EU. In particular, it is necessary and appropriate to ensure production of renewable hydrogen.
- The aid brings about positive effects that outweigh any potential distortion of competition and trade in the EU. On this basis, the Commission approved the Spanish measure under EU State aid rules.

See the full article [here](#).

European Commission approves €10 billion Polish scheme to compensate energy-intensive companies for indirect emission costs

The European Commission has approved, under EU State aid rules, a Polish scheme to partially compensate energy-intensive companies for higher electricity prices resulting from indirect emission costs under the EU Emission Trading System (“**ETS**”).

The scheme notified by Poland, with a total estimated budget of €10 billion (PLN 45 435 million), will cover part of the higher electricity prices arising from the impact of carbon prices on electricity generation costs (so-called ‘indirect emission costs’) incurred between 2021 and 2030. The support measure is aimed at reducing the risk of ‘carbon leakage’, where companies relocate their production to countries outside the EU with less ambitious climate policies, resulting in increased greenhouse gas emissions globally.

The European Commission assessed the measure under EU State aid rules, and in particular the ETS State aid Guidelines. The Commission found that the scheme is necessary and appropriate to support energy-intensive companies to cope with the higher electricity prices and to avoid companies relocating to countries outside the EU with less ambitious climate policies, resulting in an increase in global greenhouse gas emissions.

See the full article [here](#).

"The Commission found that the measure contributes to the achievement of the EU Hydrogen Strategy and the European Green Deal targets."

"The scheme notified by Poland, with a total estimated budget of €10 billion, will cover part of the higher electricity prices."



Transport

EU

Fit for 55 and REPowerEU

Fit for 55 is a significant package of EU legislative reform intended to decarbonise sectors across the economy, including transport. Trilogue negotiations for many of the instruments are underway and initiatives to spur hydrogen and biomethane markets are being progressed. We provide a snapshot of the current status and next steps [here](#).

New European Hydrogen Bank

The Commission’s 2023 Work Programme indicates that it intends to propose in early 2023 a new European Hydrogen Bank to invest €3bn in kick-starting a hydrogen market. The next step is to agree legislative priorities with the Parliament and Council. Further information is available in the [work programme](#) and [press release](#).

EU Transport Fora

The European Commission has coordinated the [formation](#) of a new Expert Group on Urban Mobility to implement its Urban Mobility Framework. It is also [calling](#) for members to re-establish the Sustainable Transport Forum. The closing date for applications is 15 November 2022.

Accelerate Transport

The Commission published the annual [State of the Energy Union](#) report. [Recommendations](#) for Ireland include: “Accelerate the electrification of transport, including by installing charging facilities.”

Digitalisation

The EU published an [Action Plan](#) on digitalising the energy sector. It is intended to support, among other things, bidirectional EV charging.

REPowerEU

The EIB Group [announced](#) it will support [REPowerEU](#) with an additional €30 billion in loans and equity financing over the next five years. The additional funds will be directed to energy transition, including electric-vehicle charging infrastructure, and breakthrough technologies, such as low-carbon hydrogen.

COP27

The Council approved the EU’s general [negotiating position](#) for the 27th UNFCCC Meeting of the Parties in Sharm El-Sheikh on 6-18 November 2022. The Council states that current NDCs are insufficient to keep global warming to 1.5°C above pre-industrial levels. The EU indicates it is prepared to update the NDCs of the EU and Member States to reflect the final outcome of the Fit for 55 legislative package.

DOMESTIC DEVELOPMENTS

Irish Transport System

AN OECD [report](#) has recommended a major redesign of the Irish transport system moving away from car dependency. Policy highlights are available [here](#). The Minister for Transport [welcomed](#) the planning application for Metrolink and [announced](#) new routes under the Connecting Ireland Rural Mobility Plan. Pathfinder Projects were [launched](#) to support the development of new public and active transport, and the NTA [announced](#) that it invested €184m in active travel and sustainable transport in 2021.

Sustainable Development Goals

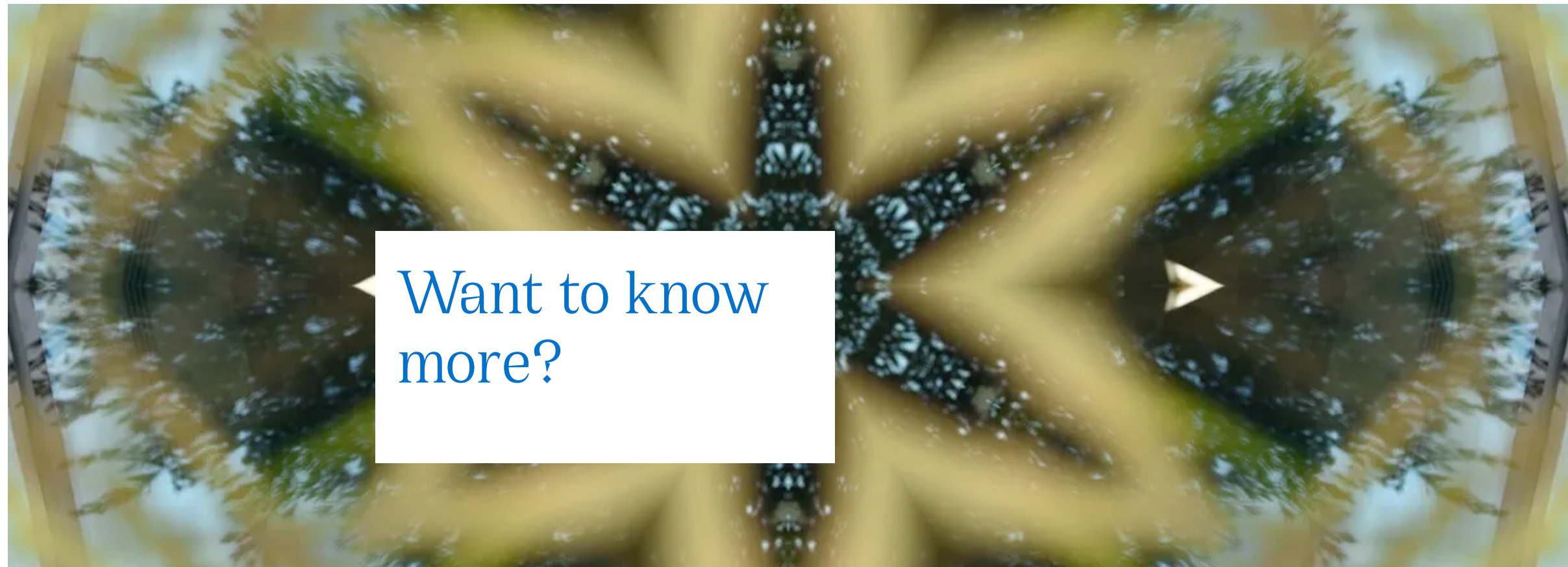
The Government [announced](#) a National Implementation Plan for the Sustainable Development Goals 2022-2024. Each Minister has responsibility for implementing individual SDG targets.

Biofuels

A [study](#) has been published reviewing the requirements and constraints on biofuels in Ireland arising from the Renewable Energy Directive and National Targets.

[Read more about our Transport Group >](#)

"The Commission's 2023 Work Programme indicates that it intends to propose in early 2023 a new European Hydrogen Bank to invest €3bn in kick-starting a hydrogen market."



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more?

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Contacts



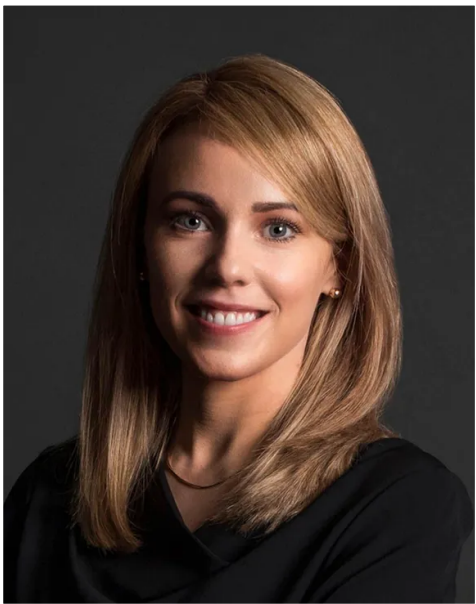
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