



DECEMBER 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...

RENEWABLE ENERGY PROJECT DELIVERY

As an emergency EU Regulation to help speed up the permit-granting process is agreed, project developers in Ireland take stock of changes proposed in the onshore RESS 3 scheme, while the clock starts for preparation of offshore project auction bids with the publication of ORESS 1 terms and conditions.

[Find out more](#)

JUDICIAL REVIEW


The Government has given the go-ahead for the establishment of a dedicated Planning and Environment division of the High Court, to be managed by judges with specialist training.

[Find out more](#)

CONSTRUCTION CONTRACTS - DISPUTES

Case law in Ireland on statutory adjudication continues to develop, with a recent High Court decision to enforce the costs element of an Adjudicator's decision.

[Find out more](#)



Construction & Engineering

ADJUDICATION

The High Court in Ireland granted another application to enforce an adjudicator’s decision. In *Western Excavations and Ground Works Ltd v Glenman Corporation Ltd* 2022/165 MCA the High Court, probably for the first time, also enforced the Adjudicator’s costs element, as well as the substantive aspects, of the Adjudicator’s decision.

We understand that the terms of the Adjudicator’s appointment provided that both parties were jointly and severally liable for discharge of the Adjudicator’s fees and, when the Adjudicator delivered a decision in favour of Western Excavations, the Adjudicator directed that Glenman discharge in full the Adjudicator’s fees. The High Court ultimately ordered Glenman to discharge the Adjudicator’s fees but it is worth noting that the Adjudicator had, in the meantime, brought proceedings against both parties to recover the fees, reflective of the Adjudicator’s terms of appointment.

Looking to future adjudications, this decision can be seen as supportive of statutory adjudication, in that the Court supported the Adjudicator’s approach to costs, and was not prepared to allow the costs of adjudication to erode the benefit of the outcome for Western Excavations.

CHALLENGES TO DEVELOPMENT PROJECTS

We look in the Environment & Planning section at the Supreme Court [decision](#) in [Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General \[2022\] IESC 43](#), which concerns “costs protection” under section 50B of the Planning and Development Act 2000. In light of the Supreme Court judgment, it is clear that a legislative change is required if the application of section 50B is to be restricted.

SUSTAINABILITY

Two new sets of regulations aim to reduce Ireland’s emissions and meet renewable energy targets. They concern further new requirements for electric vehicle charging infrastructure and mainstreaming of renewable energy in buildings. Further information is available in our briefing [here](#).

COLLABORATION

The RIAI is [collaborating](#) with Build Digital Project to encourage the adoption of digital information management and Building Information Modelling across the Irish public and private sectors.

In the UK, private sector stakeholders produced a [construction playbook](#), building on the guidance already provided in the UK Government’s [construction playbook](#). The intent is to guide clients and construction and design teams towards more collaborative ways of working to boost productivity, quality and value, sustainability and health, safety and wellbeing.

RETENTIONS

In the UK, NEC and the Construction Leadership Council made new [guidance](#) available on limiting the use of retentions in NEC contracts. The guidance notes that retention payments are intended to secure performance and incentivise the elimination of defects, but that problems can also arise due to late or non-payment of retentions. Therefore it encourages awareness of other mechanisms available for minimising the potential for defects, including careful drafting of requirements for achieving completion, and effective quality management during the contract. The guidance also notes a potential commercial benefit for clients if a retention is not required, in that works may be provided at a lower cost to the client than would otherwise be the case.

Use of retentions has been under consideration for some time and it will be interesting to see uptake of guidance such as this across the market, albeit that the package put in place to guarantee performance must always be considered carefully on a project-specific basis.

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

"...the package put in place to guarantee performance must always be considered carefully on a project-specific basis ..."



Digital Infrastructure

COMREG UPDATES

Multi Band Spectrum Award – Court of Appeal ruling will permit ComReg to implement Auction, subject to specific requirements

On 21 July 2022, Mr Justice McDonald in the High Court made an order granting a stay on the implementation of the auction for the Multi Band Spectrum Award. This stay order was appealed by ComReg and was subsequently varied by the Court of Appeal. On 8 November 2022, the Court of Appeal granted an order allowing ComReg to proceed with the auction, but preventing ComReg from notifying the winning bidders of their entitlement to apply for licences, pending the determination of substantive proceedings. ComReg has confirmed it is now progressing the main stage of its spectrum sale process. Read the full report [here](#).

ComReg makes finding of non-compliance against Three regarding Premium Rate Services (“PRS”)

The finding of non-compliance was in relation to the provisions of Section 3.2 of the PRS Code of Practice. This section sets out that PRS “Providers must make all reasonable endeavours to ensure that PRS provided by them are of a sufficient technical quality so as not to cause end-user harm and to ensure compliance with the requirements of the Code”. Read the full report [here](#).

ComReg publishes third interim report on Measurement of Non-Ionising Radiation

ComReg published its third interim analysis of non-ionising radiation (“NIR”) levels emitted by radio spectrum licensee’s 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. At each of the 20 sites surveyed, the aggregate level of NIR measured was found to be below the exposure limits for the general public. Read the full report [here](#).

INDUSTRY NEWS

Sub-marine cable system linking Iceland and Galway in final stages

Farice, which is owned by the Icelandic Government, announced this week that the IRIS sub-sea cable system is now in its final phase of implementation. The new 1,770km cable, which is being deployed by SubCom, will have landing points in Thorlakshofn (Iceland) and Galway. IRIS is expected to be ready for service in the first quarter of 2023. Read the full report [here](#).

Vodafone agrees to sale of its mast company Vantage Towers

A consortium led by private equity firms KKR and Global Infrastructure Partners (“GIP”) will buy up to half of Vodafone’s 81.7% stake in Vantage. Vodafone Group is understood to have been looking to divest a stake in its tower unit for a number of months, after spinning it off early last year. Vantage Towers operates around 83,000 towers across ten European countries, including Germany, Ireland, Spain and the UK, with Vodafone Group currently holding an 82% stake in the business. Read the full report [here](#).

Cellnex completes takeover of CK Hutchison Towers

Cellnex Telecom has completed its acquisition of the UK telecoms tower assets of CK Hutchison, the Hong Kong-based owner of British cellco Three UK. The transaction includes interest in and revenues deriving from up to 6,600 sites, once build-to-suit programmes are completed. The UK’s Competition and Markets Authority (“CMA”) gave the transaction the green light in March this year on the condition that Cellnex divest around 1,000 of its existing sites which would overlap with the sites included in the CK transaction. Cellnex complied with this requirement in October, when it disposed of roughly 1,100 sites to Wireless Infrastructure Group. Read the full report [here](#).

"Providers must make all reasonable endeavours to ensure that PRS provided by them are of a sufficient technical quality so as not to cause end-user harm and to ensure compliance with the requirements of the Code."

"The new 1,770km sub-marine cable will have landing points in Thorlakshofn (Iceland) and Galway."

[Read more about our Competition and Regulated Markets Group >](#)



Employment

"The principal differences in the integrated Bill compared with the original Right to Request Remote Working Bill are in the grounds for refusal and the right to redress."

WORK LIFE BALANCE BILL TO INCLUDE RIGHT TO REQUEST REMOTE WORKING

The Government has approved the integration of the right to request remote work for all workers into the Work Life Balance and Miscellaneous Provisions Bill which it still hopes to enact by the end of the year. This means that employers will now consider requests for flexible or remote working under one piece of legislation and one Code of Practice to be developed by the Workplace Relations Commission.

According to the statement, the principal differences in the integrated Bill compared with the original Right to Request Remote Working Bill are in the grounds for refusal and the right to redress. The Right to Request Remote Working Bill provided for 13 specific grounds upon which an employer could refuse a request, as well as a general "business grounds" provision. Under the integrated Bill, the enumerated grounds will be replaced by an obligation on the employer to consider both their needs and the needs of employees when considering a request. This represents an enhanced right to complaint, when compared with the original Right to Request Remote Working Bill as published earlier this year, which did not include a requirement for an employer to have regard to a Code of Practice and contained a number of grounds for refusal of a request.

The Government statement is [here](#).

GOVERNMENT ISSUES INTERIM GUIDANCE ON THE HANDLING OF REPORTS MADE UNDER THE NEW PROTECTED DISCLOSURES REGIME

The Minister for Public Expenditure and Reform, Michael McGrath, TD, has published interim guidance for public bodies and prescribed persons on the handling of reports made to them under the Protected Disclosures Act. While the guidance is intended to support public sector bodies in meeting their obligations under the Protected Disclosures Act 2014, as amended by the Protected Disclosures (Amendment) Act 2022, (the "Act") in relation to the establishment and operation of internal and external reporting channels, private sector employers coming within the remit of the new Act may also find some of the material in the guidance helpful.

For more information on the guidance, see our briefing [here](#).

TRANSPPOSITION OF THE DIRECTIVE ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS

The EU Directive on transparent and predictable working conditions aims to improve working conditions in the European Union by promoting more transparent and predictable employment while ensuring labour market adaptability. The Directive had a transposition deadline of 1 August 2022, which Ireland did not meet. Many provisions of the Directive were already introduced in Ireland through the Employment (Miscellaneous Provisions) Act 2018. The Government aims to transpose the remaining provisions into Irish legislation "at the earliest opportunity possible this year".

For more information on the impact of the Directive on Irish employment law, see our briefing [here](#).

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

"The Directive aims to improve working conditions in the European Union by promoting more transparent and predictable employment while ensuring labour market adaptability"



Energy

"The objective of UAEC is to significantly de-risk RESS participant exposure to uncertainty surrounding curtailment and oversupply, which generation participants are not able to easily manage..."

KEY DEVELOPMENTS

Renewable Electricity Support Scheme

DECC is consulting on new features it proposes to include in the onshore RESS 3 support scheme, several of which also feature in the first offshore support scheme, ORESS 1. We consider aspects of RESS 3 [here](#) and ORESS 1 [here](#).

Emergency Intervention to Speed up Renewable Energy Project Delivery

Fit for 55 and REPowerEU seek to introduce obligations on Member States aimed at speeding up delivery of renewable energy projects. Some of these will be reflected in the Recast Renewable Energy Directive III, currently being finalised.

Given that it will take time to transpose the Recast Directive, the Council called for temporary emergency measures. An emergency Regulation setting out measures to accelerate the deployment of renewable energy is therefore now close to being finalised. We look at the Regulation [here](#).

Update on Fit for 55 / REPowerEU

Our latest update on progress of this legislation is available [here](#) and includes a status update on measures in the areas of renewable electricity, gas, and emissions reduction.

Notably, “go-to areas” for renewables, as proposed in REPowerEU, have reappeared as “renewables acceleration areas”.

Electricity Storage and System Services

The Government is consulting on an [Electricity Storage Policy Framework for Ireland](#) and the closing date for responses is **27 January 2023**. Questions are wide-ranging and the consultation is a good opportunity to consider the potential of storage in a holistic way across markets.

Meanwhile, the Regulatory Authorities and TSOs are working towards a new day ahead auction for the procurement of system services, which will be a significant move away from current regulated contracts. This is unlikely to be implemented in full before 2026. An approach to procurement over the interim period is also being considered. We look further at these developments [here](#).

Interconnection

EirGrid and RTE signed the technical and financial agreements for the Celtic Interconnector between Ireland and France. Once operational, Ireland will be coupled again with the wholesale market in the EU. The EIB press release is [here](#).

As regards interconnection with Great Britain, the Commission published a [proposed position](#) to be taken on behalf of the EU. The position envisages that the EU and the UK will recommend that TSOs start preparing technical procedures on efficient use of electricity interconnectors and will request TSOs for additional information on the cost-benefit analysis and outline proposals of technical procedures.

Electricity Market Intervention

The Government in Ireland is in the process of implementing the electricity market interventions mandated by the EU. We provide further detail [here](#).

Gas Market Intervention

EU energy ministers [considered](#) the draft Regulation on enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks, which we considered [here](#).

These proposals have been divided up: [agreement](#) has been reached on a Regulation for measures on [joint purchases of gas and a solidarity mechanism](#) (summarised [here](#)). Further work is needed to agree on the parameters of the [gas market correction mechanism](#). The Regulation is to be formally adopted, and agreement on the market correction mechanism sought, at the next energy Council meeting in December.

As regards gas storage, the filling trajectory with intermediary targets of 90% for 2023 has been set out in an [Implementing Regulation](#).

FURTHER EU DEVELOPMENTS

Long-term Strategy

The Commission sent a letter of formal [notice](#) to Ireland for failure to submit its long-term strategy consistent with the climate neutrality objective, as required under the Governance of the Energy Union and Climate Action [Regulation](#).

Market Monitoring

ACER [reported](#) on wholesale electricity market trends for 2021 during which it identified progress in short-term market integration. Forward market integration remained stable but forward liquidity in local markets is limited for a large part of Europe. It also [reported](#) on decarbonised gas volumes.

The Future of Gas Networks

ACER [published](#) a study on future regulatory decisions concerning gas infrastructure, which considers areas of decision-making that will be required under the new gas legislation mentioned above in the Fit for 55 update.

REMIT

ACER [updated](#) its REMIT data reporting guidance.

INVESTMENT

Corporate Reporting

The Corporate Sustainability Reporting Directive has been adopted. It will replace the current regime under the EU Non-Financial Reporting Directive and apply to all large EU companies and non-EU companies with substantial activity in the EU. Listed SMEs will also be in-scope, but will have more time to adapt to the new rules. We provide further information [here](#).

Sustainable Finance

The Commission has requested the European Banking Authority to provide advice on green loans. We provide further information [here](#). Developments in sustainable finance are available in the ESG section of our [Finance Horizon Scanner](#).

Leveraging EU Funding

The Eurazeo Transition Infrastructure Fund reached first [close](#) with commitments from the European Investment Fund and institutional investors. The objective is to invest in transition infrastructure including energy transition, digital transition, clean transport, and circular economy. Further [EIF contributions](#) to equity funds were announced during COP27.

Green Bonds

The Commission issued a new €6 billion NextGenerationEU [green bond](#) to finance green projects under Member States’ Recovery and Resilience plans.

EU Innovation Fund

The Commission [launched](#) a third call for large-scale projects aimed at decarbonisation under the EU Innovation Fund. It is open until **16 March 2023**.

Biomethane Fund

It has been reported that the State has established a fund to support the biomethane sector. A press report is available [here](#).

FURTHER DOMESTIC DEVELOPMENTS

Renewable Transport Fuel Obligation

The Government is [consulting](#) on the Renewable Transport Fuel Obligation Rate and the establishment of an Advanced Biofuel Obligation Rate. The closing date for responses is **7 December 2022**.

Heat Obligation

The Minister for Environment, Climate and Communications will [introduce](#) an obligation on the heat sector to include renewable heat, by 2024.

Security of Supply

DECC is [considering](#) over 400 responses to the security of supply consultation.

CRU BUSINESS

Offshore Connection Assets

[CRU/2022/972](#): The CRU consulted on regulatory treatment of Phase 1 offshore assets, providing a short consultation period to close on 2 December 2022. It proposed that:

- The Developer would be paid an Asset Transfer Contribution of 70% of an approved estimate of the assets on transfer of ownership to EirGrid. The estimate would be approved by the CRU before ORESS 1, and further costs would be recovered by the Developer through ORESS (or a CPPA).
- The ownership of the assets would be transferred to EirGrid in a single stage process after an 18 month “proving” period post energisation.
- EirGrid would assume responsibility for operations and maintenance of the assets at operational handover aligned to a single stage asset ownership transfer.
- There would be a Guarantee of Availability of the assets after ownership transfer for planned outages that extend beyond five days per year and all unplanned outages. The associated compensation for the guarantee would be at the ORESS strike price.

Celtic Interconnector

[CRU/2022/976](#): The regulatory authorities in Ireland and France have reviewed their 2019 decision on the cross-border allocation of investment costs. They confirm that the project remains beneficial for customers that there are no grounds to amend the cost allocation decision.

Smart Pay as You Go

[CRU/2022/974](#): The CRU published a correction to the Suppliers’ Code of Practice for Smart Metering, relating to customer messaging around smart pay as you go (in both electricity and gas).

SEMC BUSINESS

Capacity Market

[SEM-22-086](#): Following the decision in October to reject a proposed Capacity Market Code amendment aiming to extend dates where Substantial Completion is delayed by failure of third parties to deliver requirements in a timely manner, the SEMC has now indicated that a consultation process is beginning on 1 December and closing on 15 December for proposed mitigation measures when implementation milestones have been delayed as a result of actions undertaken by third parties. A timetable is [here](#) and the proposed modifications are as follows:

- CMC_12_22: Remedial Action in the event of planning application delay to a project that qualifies under a Direction
- CMC_13_22: Third Party Judicial Review Remedial Action
- CMC_14_22: Mitigation of impact of Third-Party Delays on Participants and extension of Support term
- CMC_15_22: Introduction of New Remedial Action to Enable Extensions due to Planning and Permitting Delays

BNE Net CONE Assessment

[SEM-22-089a](#): Replies to questions submitted during consultation [SEM-22-076](#) have been published.

Balancing Market Payments for DSUs

[SEM-22-036](#): This decision is aimed at ensuring that Demand Side Units receive energy payments in the balancing market at all times.

Monthly Monitoring

[SEM-22-082](#): The latest SEM data is available. Actual wind generation increased year on year from 24% to 32%.

Directed Contracts

[SEM-22-085](#): An Information Paper was published on quantities and prices for Round 20.

SEM Testing Tariffs

[SEM-22-084](#): The SEMC indicates no change has been made save for inflation.

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



Environment & Planning

RECENT JUDGMENTS

Supreme Court has [clarified](#) the issue of costs protection in planning/environmental cases

The Supreme Court has held that any challenge to a decision made pursuant to a statutory provision which gives effect to the EIA Directive, SEA Directive, IPPC Directive or Habitats Directive enjoys “costs protection”. This means that the entire proceedings are covered by the “special costs rule”, not just those grounds which relate to those four directives.

The judgment also means that the “costs protection” applies to any application or a decision where any element of the four directives are relevant. This appears to capture all potential grounds that could be raised in a planning and environmental context.

The Supreme Court arrived at its conclusion by applying a strict interpretation of the legislation and specifically referred to the fact that if the Oireachtas had wanted section 50B of the Planning and Development Act 2000, which sets out the “special costs rule”, to have a narrower effect then they could have drafted it to say that.

High Court [notes](#) that remittal of development plan would be questionable

The High Court quashed an indicative road route in a Land Zoning Map of the Meath County Development Plan 2021-2027.

The court stated that remittal would be questionable in the context of quashing a provision of a development plan. As development plans are adopted as a whole, there is no particular point in the process to which the draft plan can be remitted. The court noted that the preferable approach to addressing partial quashing of a development plan is through statutory variation, as provided for in the legislation.

Supreme Court [refuses](#) applicants leave to appeal on points of detail relating to Appropriate Assessment

This case concerns a challenge to a grant of planning permission for a waste processing plant near Cavan town. Two of the grounds relied on by the applicants were that, pursuant to *Holohan v An Bord Pleanála*, it was not permissible for a planning authority to leave over matters for post-consent agreement when the decision to grant planning permission would affect European sites, and that there was a failure to carry out proper appropriate assessment (“AA”). All grounds put forward by the applicants were rejected by the High Court and the Court of Appeal.

Leave was sought by the applicants to appeal to the Supreme Court. It was refused on the basis that the Supreme Court did not believe that any matters of general public importance arose, nor was it in the interests of justice that leave be granted. It stated that the CJEU has already identified the ‘legal test’ for points of detail in AA cases and that the trial judge had applied proper considerations to his construction of the planning conditions in question.

Supreme Court [determines](#) that competent authority not required by Habitats Directive to impose time limit on approval for local authority development

The Supreme Court has dismissed a challenge to An Bord Pleanála’s approval of flood defence works by a local authority. The applicants claimed that the lack of a time limit on the approval breached the requirements under the Habitats Directive related to carrying out appropriate assessment. It was argued that the indefinite nature of the approval was unlawful because such an approval could be activated at any time, even if ecological circumstances had changed, potentially rendering the appropriate assessment out-dated or flawed.

The court noted that the Habitats Directive does not include an express time limit requirement. The court held that it would not be necessary to impose such a requirement as the applicant’s concerns were addressed by a general obligation under Article 6(2) of the Habitats Directive, requiring Member States to take appropriate steps to deal with changing environmental conditions and the obligations on public authorities under Regulation 27 of the Birds and Natural Habitats Regulations 2011. The court also noted that the concerns could be addressed by the discretionary power of An Bord Pleanála to impose conditions, including time limits, when granting permission.

Supreme Court [refuses](#) applicant leave to appeal remittal decision in respect of incinerator at Ringaskiddy, County Cork

This case concerns a challenge to a grant of planning permission for the development of an incinerator at Ringaskiddy, Co Cork in 2018. The High Court found that the decision was made invalid by objective bias and concluded that it was appropriate to remit the matter to the Board to the point in time immediately before the objective bias arose. Leave to appeal to the Court of Appeal was refused.

Leave to appeal to the Supreme Court has now also been refused. The applicant argued that it was necessary to require the planning process to re-commence (as distinct from remitting the matter to the Board at a relatively advanced stage of the process) to avoid the developer obtaining the benefit of any flawed process and to guard against any “damage to public confidence in the integrity of the Board’s decision-making”. In refusing leave, the Supreme Court found that the Board clearly fell into error and the order for remittal simply gives them a fresh opportunity to make a determination in accordance with the law, in circumstances where the facts giving rise to the objective bias will not be present. It stated that the principles governing the exercise of the discretion to remit are well established.

Supreme Court [refers](#) questions to CJEU on validity of National Planning Framework and National Development Plan

The Supreme Court has referred questions to the CJEU on whether the National Planning Framework (“NPF”) and National Development Plan (“NDP”) were adopted in breach of EU law, due to a failure to carry out SEA / a lawful SEA. The points for referral will be finalised following consideration of observations from the parties. A voluntary SEA was carried out. The applicants claimed that it was insufficient in its assessment of alternatives.

To determine whether the plans require SEA, the Supreme Court applied the tests from the Directive: (a) Were they plans or programmes required by legislative, regulatory or administrative provision; and (b) did they set a framework for future development. The court was clear that the NPF was a framework document, though chose to seek clarification from the CJEU as to whether it passed the first ‘test’, as the NPF had been adopted *voluntarily* by the Government without any statutory basis. The Supreme Court will seek clarification from the CJEU on whether the NDP came under the exemption from SEA by virtue of it being a ‘budgetary plan’. The court queried this exemption, given that the NDP makes provision for the allocation of funds for specific infrastructure projects in support of the spatial development plan.

The Supreme Court also examined the validity of the SEA that had been carried out. Clarification will be sought from the CJEU as to whether the SEA Directive requires alternatives in SEA to be assessed in a comparable way to the preferred option or whether a lesser degree of scrutiny of alternatives is sufficient. The applicants had also argued that the monitoring arrangements given in the SEA were inadequate, though the Supreme Court held that the SEA Directive was not prescriptive and that the establishment of the Office of

the Planning Regulator, whose role includes ongoing monitoring of the NPF, met the monitoring requirements under the SEA Directive.

Supreme Court [rejects](#) challenge to planning permission on the basis that CJEU ruling on validity of Habitats Regulations 2011 will not affect approval

The Supreme Court has dismissed an appeal challenging An Bord Pleanála’s decision in June 2020 to grant planning permission for the Dublin Mountains Visitor Centre. The High Court is awaiting a CJEU determination in this case on questions referred regarding the validity of the post-consent derogation licence process under the Habitats Regulations 2011 (the “**2011 Regulations**”). The High Court sought clarification as to whether the post-consent derogation process should be integrated into the planning system and subject to public participation in order to be compatible with the requirements for strict protection under the Habitats Directive.

The applicant in this case claimed that the High Court was wrong for dismissing the challenge to the planning permission prior to receiving a determination from the CJEU. The applicant submitted that, were the CJEU to rule that the derogation provisions are incompatible with the Habitats Directive, it must follow that the planning permission was granted under a flawed and unlawful procedure and should therefore be quashed due to invalidity. The Supreme Court upheld the High Court’s decision on the basis that it found the challenge to the derogation process to be a separate and independent claim against the State respondents only. The Supreme Court found that as the applicant’s challenge concerned the post-consent procedure, the validity of the planning permission could not be affected by the outcome of the challenge to the 2011 Regulations.

Supreme Court [dismisses](#) appeal and holds that an increase in the diameter of wind turbines was not unauthorised development

A condition of Barranafaddock Sustainability Electricity Limited’s grant of planning permission for a wind farm provided that details of the proposed turbines were required to be submitted to and agreed with Waterford County Council (the “**Planning Authority**”) prior to development commencing. In their compliance submission, they included a schematic showing that the rotor blade turbines would in fact have an increased diameter. The Planning Authority in their response to the submission stated, “noted and agreed”.

The Supreme Court held that the increase in the rotor diameter of the wind turbines did not constitute unauthorised development in circumstances where the proposed increase had been agreed with the Planning Authority. The existence of a section 5 declaration from the Board determining that the proposed increase was development and was not exempted development did not change this fact, as the Supreme Court found that the Board cannot make a determination that a development is unauthorised.

The Supreme Court emphasised the need to challenge a planning decision, in this case the approval of a compliance submission, within the eight-week timeline.

Court of Appeal [refuses](#) to grant extension of time in respect of judicial review brought outside eight-week time limit

The Court of Appeal has dismissed a challenge of An Bord Pleanála’s decision on appeal to grant permission for agricultural buildings in County Clare on the basis that the applicant failed to bring the case within the statutory eight-week time limit. The Court of Appeal definitively lays down the rules regarding when the eight-week time limit begins and ends in the context of judicial reviews of planning permissions. The clock begins to tick on the date of the decision of the planning authority and runs up until and including the day before the eight week mark from the decision. By way of example, in this case An Bord Pleanála’s decision was delivered on 27 September 2018, meaning that the time limit expired on 21 November 2018.

The Court of Appeal also considered whether to grant the applicant an extension of time, applying the dual test of whether there was “*good and sufficient reason*” for it and whether the delay had been caused by circumstances outside the applicant’s control. The Court of Appeal found that the applicant had failed to put forth any evidence in order to satisfy these two requirements.

CJEU [finds](#) that there is an obligation on Member States to ensure that effective judicial protection is afforded to environmental associations

An environmental association authorised to bring legal proceedings in accordance with German legislation brought a challenge in Germany to a decision of the Federal Motor Transport Authority to authorise the use of a certain software in Volkswagen vehicles. According to the organisation, the software constituted a defeat device, which was prohibited by EU law.

The German Court requested that the CJEU interpret the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters in conjunction with the Charter of Fundamental Rights of the European Union.

The CJEU found that the Aarhus Convention, read in conjunction with the Charter, imposes on Member States an obligation to ensure effective judicial protection and prohibits them from depriving environmental associations of any possibility of verifying that certain rules of EU environmental law are being complied with.

The CJEU also made findings specifically in relation to defeat devices.

CJEU [finds](#) that Austrian rules on waste are not compliant with the Waste Framework Directive

This relates to a referral by an Austrian Court with respect to the interpretation of Article 6(1) of the Waste Framework Directive (2008/98/EC). The Court made the referral to the CJEU in circumstances where it noted that, although the excavated materials at issue in the case were of the highest quality class and appropriate for the improvement of the cultivation areas in question, the formal criteria laid down in their Federal Waste Management Plan, interpreted strictly, could prevent those materials from ceasing to be waste.

In furthering the Circular Economy, the CJEU found that the Waste Framework Directive precluded national legislation which classified uncontaminated excavated materials as waste where there was no intention or requirement to discard them and where they met the definition of ‘by-products’. It also found that national legislation, which meant that ‘end of waste’ status could only be achieved where materials were used directly as a substitute and met formal criteria that were irrelevant for environmental protection, was precluded.

DECISIONS OF THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

The Commissioner [annuls](#) local authority’s refusal to grant access to ecological survey information

The local authority had refused access on the basis that the material was unfinished as it was related to ongoing research, and claimed that granting the request would breach confidentiality of personal information.

"In effect, an appeal to An Bord Pleanála rather than a judicial review challenge should be the default position in the first instance."

The Commissioner held that the local authority had failed to demonstrate a “*clear link*” between the disclosure of the records and any adverse effect on personal confidentiality. The Commissioner also found that it was “*not an appropriate application*” of the incomplete material exemption to simply apply it to the records on the basis that they were related to further work. The local authority had also failed to weigh the public interest in disclosure against the interest served by refusal.

The Commissioner criticised the local authority’s “*blanket approach*” whereby it failed to give adequate reasons and failed to adequately assess the records to determine whether they came within the scope of the request. A fresh decision-making process was ordered.

The Commissioner annuls two decisions by the National Transport Authority refusing access to Bus Connects and roundabout files

The National Transport Authority (“NTA”) had initially refused to grant access to the first request without giving reasons, but later claimed that the request was manifestly unreasonable due to the volume of information sought. Despite a subsequent clarification from the applicant, limiting the scope of the request, the NTA maintained its refusal on the same basis. The Commissioner held that once the applicant had refined the scope the NTA had failed to assist them and could no longer rely on the manifestly unreasonable request exemption. The Commissioner [ordered](#) a fresh decision making process.

In refusing the second request, which concerned design files, the NTA claimed that the files consisted of incomplete materials forming part of a future submission to An Bord Pleanála and stated that release would not be in the public interest as it may give rise to misunderstandings. The NTA also argued that the files did not fall within the definition of environmental information. The Commissioner found the files to be environmental information as they concerned a project likely to affect the environment (the Bus Connects project). The Commissioner also stated that any adverse effect on the project by potential misunderstandings could be mitigated by stating that the designs were not final. The Commissioner [ordered](#) release of the requested files.

The Commissioner [remits](#) request to provide file on River Bride Flood Relief Scheme back to the Department of Public Expenditure and Reform (“DPER”)

In April 2021, Dr Fred Logue requested that DPER provide him with the file for the decision taken by the Minister to approve the River Bride Flood Relief Scheme. There was a considerable amount of correspondence between the parties. In its decision, in May 2021, DPER stated that all of the information in relation to the decision of the Minister had been published on the website and that there is no absolute requirement for the Minister to make supplementary information publicly available, except where he/she considers such information contains significant additional information in relation to the effects on the environment.

The appellant requested an internal review and was then provided with redacted copies of some of the additional documents he had requested. He was not permitted ‘in situ’ access to view the documents. He appealed to the Commissioner.

The Commissioner directed that the DPER conduct reasonable and appropriate searches and keep the appellant informed of the results of those searches. It also directed that the DPER provide the appellant with the basis for their redactions.

The Commissioner [annuls](#) ESB’s decision to refuse access to insurance policy relating to smart meter installations

The applicant submitted a multi-part request to the ESB for documents relating to the installation of smart meters in County Laois. The ESB granted the applicant’s request in part, but redacted some of the information on the basis that it was third party personal information, and therefore, was not considered environmental information. The appellant argued that there are obvious health and safety risks involved with the devices and therefore that it would need to have the appropriate insurance cover and would likely affect the environment. The ESB argued that although it did have insurance coverage, the insurance policy would not better inform the public or better enable the public to contribute to environmental decision-making in relation to the rollout of the devices. The Commissioner agreed with the applicant and found that public access to the insurance policy would contribute to the accountability and transparency of the activities engaged in by ESB and its subsidiary/associated companies. Therefore, an insurance policy did constitute environmental information and the release of the information would be in line with the statutory obligation.

The Commissioner [highlights](#) the shortfalls in An Bord Pleanála’s policies and procedures and draws his decision to the attention of the Minister for the Environment, Climate and Communications

An SHD developer requested all information in relation to the “informal consultations” with staff members in An Bord Pleanála and asked to speak to a member of staff regarding these consultations. The applicant argued these informal conversations led to the alteration of the planning application and resulted in the submission of an application for only a phase of the development, as opposed to the entirety of the project. The applicant requested the information within a two week time frame. The Board failed to respond to the applicant’s request in two weeks and further failed to respond to the applicant’s request within the statutory requirement, citing clerical error and work constraints.

The Board refused the applicant’s request, stating that the information requested was not held by its office and that it only had the documents relating to the pre-application consultations as required by statute. It further went on to state that perhaps these “informal” consultations took place by phone and that the SHD section of the Board had no recollection of the call.

The applicant went on to argue that the advice given in these ‘informal’ consultations resulted in a material change in his planning application and the Board, therefore, breached its own procedures in providing such advice.

The Commissioner found that the Office cannot force the Board to release information it does not have any records of. However, the Commissioner was not satisfied all reasonable steps were taken to identify the applicant’s request, nor was there any duty to maintain the information requested, especially if the advice given resulted in a material change in the planning application. The Office directed that the Board set out in detail what steps were taken to identify the documents and provide reasons on why the information provided in the ‘informal’ consultations was not recorded. The Office criticised the Board’s management of records and called upon the Minister for further review.

LEGISLATION

[S.I. No. 565/2022 - Planning and Development \(Amendment\) \(No. 2\) Regulations 2022](#)

These regulations enable Irish Water to apply for planning permission in respect of waste water treatment plants and other water related infrastructure on sites that Irish Water does not yet own, but where it is their intention to compulsorily acquire the land if planning permission is subsequently granted. These regulations aim to avoid undue delays and streamline work processes undertaken by Irish Water.

[Development \(Emergency Electricity Generation\) Act 2022](#)

This Act was commenced on 11 November 2022. It is to provide for emergency measures for electricity generation development in the State to deal with the ongoing energy crisis.

[Derelict Sites \(Amendment\) Bill 2022 \(Bill 94 of 2022\)](#)

The aim is to amend and extend the Derelict Sites Act 1990. The Bill is currently in its Second Stage in Dáil Éireann.

[General Scheme of Planning and Development and Foreshore \(Amendment Bill\) 2022](#)

This General Scheme provides for amendments to the process of appointments to the Board of An Bord Pleanála and to the definition of 'foreshore'.

[S.I. No. 539/2022 - Environmental Protection Agency Act \(Registration of Coal Bagging Operators and Solid Fuel Suppliers\) \(Revocation\) Regulations 2022](#)

These regulations revoke the remaining provisions of the Environment Protection Agency Act (Registration of Coal Bagging Operators and Solid Fuel Suppliers) Regulations 2012.

[S.I. No. 550/2022 - Planning and Development, Maritime and Valuation \(Amendment\) Act 2022 \(Commencement of Certain Provisions\) \(No. 4\) Order 2022](#)

This Order commenced sections 2, 8 and 9 of the Act on 4 November 2022. The sections concerned amend the definitions and sections 31AO and 31AP of the Planning and Development Act 2000.

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

An Bord Pleanála

Statement [issued](#) on Internal Review Report

The Chairperson of An Bord Pleanála issued a statement on the Internal Review Report, whose unauthorised release was the subject of recent media commentary. The statement asserts that the report concludes that the matters relating to a senior official and potential conflicts of interest had been the subject of "*materially inaccurate media reports and that there was no case to answer in respect of breaches of the Board's Code of Conduct or conflicts of interest in decision-making*".

Department of Agriculture, Food, and the Marine

€1.3 billion investment in forestry funding [announced](#)

The Department along with the Taoiseach and the Minister of State with responsibility for Forestry announced a proposed investment by the Government of €1.3 billion in Irish forestry. The funding will be for the next national Forestry Programme and represents the largest ever investment by an Irish Government in tree-planting.

More than 3,600 new forestry licenses [issued](#) this year to date

The Department welcomed the continued high output of new forestry licences this year, with licencing output 34% higher than last year. The updated figures were contained in the Forestry Licensing Plan 2022 – Quarter 3 Update. The turnaround in forestry licencing shows that the 56% increase in new forestry licences last year will be further increased this year.

Department of Housing, Local Government and Heritage

The Minister for Housing, Local Government and Heritage has [commenced](#) Section 22 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022 (the Act) from 20 October 2022

These new provisions amend the judicial review provisions in section 50A of the Planning and Development Act 2000 to provide for the following:

- the introduction of a requirement that any available appeal or other available administrative remedy should, unless special circumstances exist, be exhausted before a judicial review challenge of a planning decision can be initiated. In effect, an appeal to An Bord Pleanála rather than a judicial review challenge should be the default position in the first instance; and
- on the quashing of a planning decision by the Court, an applicant for planning permission may apply to the Court to have the quashed decision remitted back to a planning authority or the Board for reconsideration, having regard to such directions as the Court considers appropriate to avoid delays.

Environmental Protection Agency

The EPA has [published](#) a report entitled [Urban Waste Water Treatment in 2021](#)

The EPA states that poorly treated sewage continues to harm the quality of our rivers, lakes and coastal waters. The report shows that investment in wastewater infrastructure is delivering improvements to priority areas identified by the EPA but treatment at many areas is still not as good as it needs to be. The EPA calls on Irish Water to provide for all improvements needed at these areas in its next investment plan, which covers the period 2025-2029.

EU

European Green Deal

[Rules for cleaner air and water are proposed](#)

The Commission is proposing stronger rules on ambient air, surface and groundwater pollutants and treatment of urban wastewater. The proposals include large reductions in the annual limit value for fine particulate matter (PM2.5), new standards for micro-pollutants, increased monitoring for micro-plastics and requirements to track industrial pollution at source to increase the possibilities of re-using sludge and wastewater. The proposals also include an extended Producer Responsibility scheme whereby producers will be required to pay for the cost of removing toxic micro-pollutants from EU wastewaters.

[EU reaches agreement on national emission reductions from transport, buildings, waste and agriculture](#)

As mentioned in the Energy & Climate section, the EU has reached provisional agreement to increase the ambition of the EU's Effort Sharing Regulation. This agreement establishes binding annual greenhouse gas emission targets for Member States in sectors not currently included in the EU Emissions Trading System.

[EU agrees to increase carbon removals through land use, forestry and agriculture](#)

The EU has reached a provisional deal on the Land Use, Land Use Change and Forestry (LULUCF) regulation to increase the EU's target for net carbon removals by natural sinks to 310 million tonnes of CO2 equivalent by 2030. Member States will be responsible for caring for and expanding their carbon sinks to meet the new EU target. Member States have many measures at hand to improve their land management, including sustainable forest management or the rewetting of peatlands, and should update their strategic plans under the Common Agricultural Policy to reflect the higher ambition for the land sector.

These agreements are the latest steps in the adoption of the European Commission's 'Fit for 55' legislative package to deliver the European Green Deal, which is the EU's long-term growth strategy to make Europe climate-neutral by 2050.

[Read more about our Environment and Planning Group >](#)



Public Procurement

EU

Monitoring the Public Procurement of Clean Vehicles

Changes to eForms for the publication of public procurement notices are being brought in to assist Member States in their obligations to publish information on clean vehicles, by monitoring the data being collected through the TED database. The Implementing Regulation is [here](#).

Further Guidance on Disclosure of Competitors’ Tenders

In the Polish Case [C-54/21](#), an unsuccessful tenderer (Antea) complained that it was deprived of the right to an effective remedy because of the excessive nature of the confidential treatment given to information in competitors’ tenders, and because of the lack of an adequate statement of reasons for the scores awarded.

Antea had sought information on the other bids including in relation to services previously provided, lists of persons who would perform the contract, subcontractors, the project development design and the description of the manner of performance of the contract.

The contracting authority maintained that each tenderer provided credible and coherent explanations for the classification of the information as trade secrets, on the basis of which it was decided to grant confidential treatment.

The referring court considered that the information could not all be regarded as being a trade secret or, more generally, as confidential. By contrast, the fact that Antea had very little information about its competitors’ tenders was problematic, since it might impede effective use of remedies.

In response, the CJEU provided guidance following analysis of [Directive 2014/24/EU](#). It indicates that EU law precludes national legislation that would require publication of all information except trade secrets, but that it also precludes a practice of accepting requests for confidential treatment of trade secrets as a matter of course.

In assessing whether to give the unsuccessful tenderer information about other bids, the contracting authority must “assess whether that information has a commercial value outside the scope of the public contract in question, where its disclosure might undermine legitimate commercial or fair competition”.

Where full access to information is refused, the contracting authority must grant that tenderer access to the essential content of that information, to ensure the dissatisfied tenderer has a right to an effective remedy.

If a court finds that information which should have been disclosed to a dissatisfied tenderer was treated as confidential and the right to an effective remedy was breached, that does not necessarily mean there has to be a new contract award decision, provided that national procedures allow the court to adopt measures that restore the right to an effective remedy or allow the applicant to bring a new action. The time limit for bringing a new action will not start to run until the applicant has access to all the information which had been wrongly classified as confidential.

When are multiple European Single Procurement Documents (“ESPDs”) needed?

Article 59(1) of [Directive 2014/24/EU](#) requires that, where an economic operator relies on the capacities of other entities, the ESPD it submits must also contain information on those entities.

In Dutch [Case C-631/21](#), the incumbent challenged a decision to award a contract to Touringcars. Touringcars’ tender and ESPD was submitted by F.

Touringcars was a general partnership formed for an indefinite period. Its two partners were K BV, which employed 39 people, and F Touringcars BV, which did not employ staff.

F was the managing director of Touringcars but each partner operated its own transport undertaking. K was the managing director of K BV, but F was responsible for its management. In the partnership, F and K consulted one another regularly, but F effectively directed it. The sole director and shareholder of F Touringcars BV was ultimately F.

The incumbent argued that the two partners’ conduct had to be assessed in the light of individual ESPDs.

The CJEU considered the situation of a joint undertaking which although not a legal person, had the form of a firm governed by national legislation; which was on the national commercial register; which may have been set up on either a temporary or a permanent basis; and where the joint partners were active in the same market as the joint undertaking, and were jointly and severally liable for the performance of obligations.

The CJEU concluded that such a joint undertaking must provide the contracting authority with only its own ESPD, if it shows that it can perform the contract in question using only its own personnel and materials.

If, on the other hand, the joint undertaking considers that it must seek the own resources of certain partners to perform the contract, it must be regarded as having recourse to the capacities of other entities, and so must submit an ESPD for itself and for each of the partners whose capacities it intends to use.

UK

The Procurement Bill and EU-UK Discussions

The Procurement Bill, intended to replace the existing regulatory framework in the UK, is at report stage in the House of Lords. Further details on next steps are available [here](#). The UK Government has indicated that changes will not come into force until late 2023. Summary provisions, and a planning and preparation checklist, are available [here](#).

At the second [meeting](#) of the Trade Specialised Committee on Public Procurement between the EU and UK, the EU sought assurances that the new UK legislation will not lead to discrimination of EU operators, goods or services, including those established in the U.K. The UK stressed the Bill is fully compliant with its international commitments on discrimination, including the WTO Agreement on Government Procurement and the UK-EU Trade and Co-operation Agreement.

The EU also requested an update on the implementation of policy on ‘Reserving Below Threshold Procurements’, as well as confirmation that EU invested companies established in the UK will be treated as UK companies in this regard. The UK indicated that its policy informs contracting authorities of their options and applies to procurements with a value below the TCA’s financial thresholds for public procurement. The UK stated that EU owned suppliers established in the UK are treated the same as UK owned suppliers in the UK.

Be Prepared to Disclose Information to Support your Argument

In *Bromcom Computers Plc v Academies Enterprise Trust* [2022] 10 WLUK 402, part of the argument made by the claimant challenging a procurement decision was that it had been successful in obtaining contracts under the same framework agreement from other contracting authorities which had acted lawfully. In these circumstances, the Court considered that it was

"The time limit for bringing a new action will not start to run until the applicant has access to all the information which had been wrongly classified as confidential."

"If the joint undertaking considers that it must seek the own resources of certain partners to perform the contract, it must be regarded as having recourse to the capacities of other entities, and so must submit an ESPD for itself and each of the partners whose capacities it intends to use."

reasonable that the claimant be required to disclose to the defendant information about those previous bids, including in relation to how they were evaluated and scores awarded.

Approach to Disclosure

Last month we looked at [InHealth Intelligence Ltd v NHS England \[2022\] EWHC 2471](#), ongoing litigation arising from a bidder being ruled out of a competition when it failed to upload a compliant bid. Directions were given for disclosure and the parties largely agreed the scope of disclosure. The defendant indicated that to comply with this it would search its emails and messages using the term 'procurement process'. The claimant, however, argued that this was unduly narrow. The Court ruled that the approach is satisfactory: the defendant has not rowed back from the agreed scope of disclosure and the proposed search was broad and would capture the relevant material.

[Read more about our PPP and PFI Group >](#)

[Read more about our Public Procurement Group >](#)



Real Estate

IRISH PROPERTY FUNDS

Leverage Limited of 60% and other CBI Measures

The Central Bank announced its [macroprudential policy framework for Irish property funds](#) on 24 November 2022.

While some points await clarification, key points to note are as follows:

- The framework will apply to AIFMs of AIFs that are domiciled in Ireland, authorised under domestic legislation, and investing 50% or more directly or indirectly in Irish property assets.
- Irish authorised funds investing less than that amount in Irish property assets, or investing in non-Irish property assets, are out of scope.
- The Central Bank is introducing a 60% leverage limit on the ratio of property funds' total debt to their total assets. For the purposes of the calculation, leverage will include debt from any source including banks, alternative lenders and shareholder debt. It is also introducing guidance to limit liquidity mismatch for property funds.
- This leverage limit will be subject to a five-year implementation period for existing funds, which will expire on 24 November 2027.
- The Central Bank will only authorise new property funds with leverage below the 60% limit.

Read more [here](#).

COMMERCIAL LANDLORD AND TENANT

Impact of COVID-19 Regulations on Commercial Leases

A recent High Court case on the impact of Irish COVID-19 Regulations on payment obligations in retail leases will be of interest to landlords and tenants. The judgment illustrates the narrow scope of doctrine of frustration and that the COVID-19 Regulations do not amount to frustration of such leases.

Read more [here](#).

RESIDENTIAL MORTGAGES

Updated Non-Performing Loans Data

New data published by the Central Bank will be of interest to clients looking at arrears data for portfolios of residential loans: [Understanding Repayment Amounts of Long-Term Mortgage Arrears Borrowers](#).

The new data covers banks, retail credit and credit servicing firms, and looks at long-term mortgage arrears (**LTMA**s), and shows that around 50% of all LTMA accounts made no repayment towards their mortgage in 2020 and 2021, and that the remaining LTMA cases are increasingly concentrated in cases where no payment is being made at all.

Retail credit firms and credit servicing firms have played an increasingly important role in the Irish residential mortgage market, holding a significant proportion of PDH mortgages. At the end of 2021, such firms held 14% of all outstanding PDH mortgages, but 65% of LTMA PDH accounts and 75% of accounts that made no repayment towards their mortgage in 2021, up from 58% in 2020, largely due to portfolio sales by retail banks.

HOUSING

Housing for All Q3 Progress Report

This Government [progress report](#) looks at implementation of Housing for All, and updates Housing for All actions in a number of areas including reform of the planning system, delivering social and affordable homes on State lands, boosting construction productivity, increasing construction sector capacity and improving the rental market.

PLANNING

New Planning and Environment Division of the High Court

The Cabinet has approved plans to establish a dedicated Planning and Environment division of the High Court. According to the [Department of Justice press release](#), the new division will:

- be managed by judges with specialist training;
- provide for greater specialism to enable more efficient management of cases dealing with planning and environmental matters and judicial review in particular;
- operate in a similar manner to the Commercial Court; and
- work in tandem with reforms to planning legislation, to bring about improvements in the ability to process cases and in costs, consistent with Ireland's obligations under EU environmental law.

Primary legislation will be needed to allow for the appointment of additional judges, but the actual establishment of the Court can be effected without the need for amending primary legislation.

"The judgment illustrates the narrow scope of doctrine of frustration and that the COVID-19 Regulations do not amount to frustration of such leases."



State Aid

GENERAL

Commission approves €1.22 billion Irish scheme to support companies in context of Russia's war against Ukraine

The European Commission approved a €1.22 billion Irish scheme which will support companies across sectors 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 and on 28 October 2022, based on Article 107(3)(b) of the TFEU, recognising that the EU economy is experiencing a serious disturbance. See the full article [here](#).

Commission approves amendments to German schemes, including up to €45 billion budget increase, to support companies in context of Russia's war against Ukraine

The European Commission approved amendments to existing German umbrella schemes, including their prolongation and an up to €45 billion overall budget increase, which will support companies in the context of Russia's war against Ukraine. The amendments were approved under the State Aid Temporary Crisis Framework, adopted by the Commission on 23 March 2022 and amended on 20 July 2022 and on 28 October 2022, based on Article 107(3)(b) of the TFEU, recognising that the EU economy is experiencing a serious disturbance. See the full article [here](#).

TRANSPORT

State aid: Commission approves €180 million Czech scheme to support rail and urban transport operators using electric traction

The European Commission approved, under EU State aid rules, a €180 million Czech scheme to support rail and urban public transport operators using electric traction. The measure will contribute to improving the environmental performance of rail and urban transport, in line with the objectives of the Commission's Sustainable and Smart Mobility Strategy and the European Green Deal. See the full article [here](#).

State aid: Commission approves €500 million Italian scheme to improve environmental performance of vessels

The European Commission approved, under EU State aid rules, a €500 million Italian scheme to help companies in the maritime transport sector to acquire clean and zero-emission vessels, as well as to retrofit more polluting vessels. The measure will contributes to the achievement of the objectives of the European Green Deal and 'Fit for 55' package. See the full article [here](#).

FORESTRY

€1.3 billion announced for new Forestry Supports

The Taoiseach, Micheál Martin, Minister of State with responsibility for Forestry, Senator Pippa Hackett, and Minister for Agriculture, Food and the Marine, Charlie McConalogue, announced a proposed investment by the Government of €1.3 billion in Irish forestry. The funding will be for the next national Forestry Programme and represents the largest ever investment by an Irish Government in tree-planting. The programme will now be the subject of state-aid approval by the European Commission. See the full article [here](#).

"The measure will contribute to improving the environmental performance of rail and urban transport, in line with the objectives of the Commission's Sustainable and Smart Mobility Strategy and the European Green Deal."



Transport

"Under the Fit for 55 Effort Sharing Regulation, the updated emission reduction targets for Member States range from -10% to -50% compared to 2005.... The sectors covered include transport."

EU

Update on Fit for 55 / REPowerEU

Our latest update on progress of this legislation, aimed at decarbonising all sectors of the economy, is available [here](#).

Standards for Large Vehicles

EVP Timmermans [indicated](#) that the Commission is preparing a proposal for stronger CO2 standards for trucks, coaches and buses.

Mobility as a Right

The European Economic and Social Committee [called](#) for mobility to be recognised as an individual right and for the adoption of a participatory approach to public transport planning, along with new business models to make transport systems more innovative and attractive. It called for the Commission to take action in this area. Meanwhile, the Commission is [inviting](#) views on a common European mobility data space within the context of its Sustainable and Smart Mobility Strategy. A call for evidence is open until **7 December 2022**.

Aviation

The First General Assembly of the Alliance for Zero-Emission Aviation has established [working groups](#) including in relation to airport infrastructure, and operational and environmental considerations.

Shipping

At COP27, the Commission [pledged](#) an additional €10 million for a project to reduce international shipping's greenhouse gas emissions.

Corporate Reporting

The Corporate Sustainability Reporting Directive has been adopted. It will replace the current regime under the EU Non-Financial Reporting Directive and apply to all large EU companies and non-EU companies with substantial activity in the EU. Listed SMEs will also be in-scope, but will have more time to adapt to the new rules. We provide further information [here](#).

Leveraging EU Funding

The Eurazeo Transition Infrastructure Fund reached first [close](#) with commitments from the European Investment Fund and institutional investors. The objective is to invest in transition infrastructure including clean transport. Further [EIF contributions](#) to equity funds were announced during COP27.

Green Bonds

The Commission issued a new €6 billion NextGenerationEU [green bond](#) to finance green projects under Member States' Recovery and Resilience plans.

EU Innovation Fund

The Commission [launched](#) a third call for large-scale projects aimed at decarbonisation under the EU Innovation Fund. It is open until **16 March 2023**.

DOMESTIC DEVELOPMENTS

Ten-Year Strategy for the Haulage Sector

The Department of Transport [consulted](#) further on its draft strategy, which includes sections on road infrastructure and usage charging, with a view to publishing the final strategy by the end of the year.

Renewable Transport Fuel Obligation

The Government is [consulting](#) on the Renewable Transport Fuel Obligation Rate and the establishment of an Advanced Biofuel Obligation Rate. The closing date for responses is **7 December 2022**.

Biomethane Fund

It has been reported that the State has established a fund to support the biomethane sector. A press report is available [here](#).

Electricity Storage and System Services

The Government is consulting on an [Electricity Storage Policy Framework for Ireland](#) and the closing date for responses is **27 January 2023**. Questions are wide-ranging and the consultation is a good opportunity to consider the potential of storage in a holistic way across markets, and from all sources, including electric vehicles.

Irish Rail

The Government [intends](#) to order 90 new battery-electric train carriages this year for delivery in 2026.

Airports

The Department of Transport will carry out a mid-term review of the Regional Airports Programme, intended to provide funding for small airports.

Sustainable Transport

Transport for Ireland [published](#) the Limerick Shannon Metropolitan Area Transport Strategy, a roadmap for sustainable transport in the region over the next 20 years.



Want to
know more?

Please contact us if you would like to know more about anything in this Horizon Scanner or if you have a matter you would like to discuss. Please click [here](#) to view recent editions of our Horizon Scanner.



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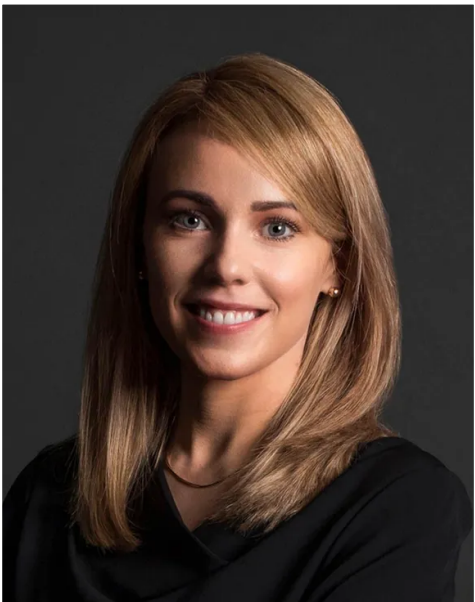
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