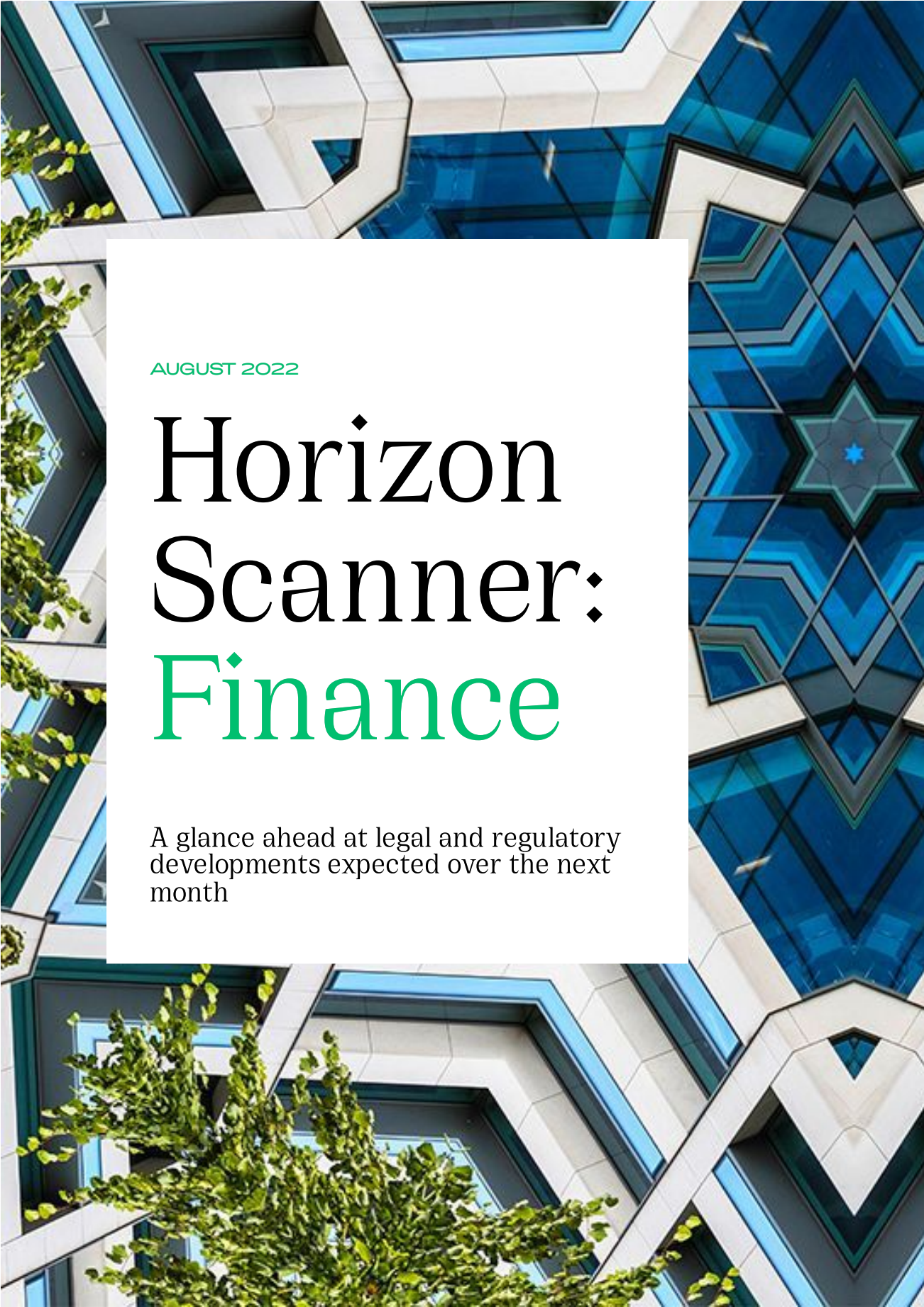




AUGUST 2022

Horizon Scanner: Finance

A glance ahead at legal and regulatory developments expected over the next month

This month...

BRIEFING

The Central Bank (Individual Accountability Framework) Bill has been published

Read the latest update from our [Financial Regulation: Individual Accountability and SEAR](#) team.

[Read the article](#)

AC AUDIO

Electronic Signatures

#ACAudi is now streaming on Spotify, Apple Podcasts, Google Podcasts and Audible. Take a look back at one of our most popular episodes 'eSignatures'.

[Listen here](#)

PUBLICATIONS

ICLG guide to Fintech Laws and Regulations 2022

Robert Cain, Partner, Financial Regulation, Louise O'Byrne, Partner, Employment, Maura McLaughlin, Partner, Corporate and M&A, and Colin Rooney, Partner, Technology and Innovation, have authored the Ireland chapter.

[Find out more](#)



Thought Leadership

Highlights from our most recent and relevant content

Financial Regulation:

- [AML Update: Central Bank highlights recurring issues with VASP applications](#)

Financial Regulation, Individual Accountability and SEAR:

- [The Central Bank \(Individual Accountability Framework\) Bill 2022](#)

FinTech:

- [Arthur Cox contributes to ICLG Fintech 2022](#)

ESG:

- [ESG Update: Complementary Climate Delegated Act published in Official Journal](#)
- [ESG and Financial Services](#)
- [Speak my Language: Are you taxonomy aligned? \(Irish Building Magazine Series\)](#)
- [Arthur Cox contributes to Ashurst's global guide on "Investing in hydrogen"](#)

Lending:

- [Crowdfunding Update: Transitional period will be extended by 12 months to 10 November 2023](#)
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Securities Settlement:

- [CSDR Update: Simplifying Collection and Distribution of Cash Penalties](#)

Financial Sanctions:

- [EU Sanctions against Russia: Sectoral Sanctions extended by a further 6 months to 31 January 2023](#)
- [Seventh Package of EU Sanctions against Russia: EU Council adopts 'maintenance and alignment' package](#)

Company Law

- [Directors' duties: new statutory duties to have regard to the interests of creditors](#)
- [Companies \(Corporate Enforcement Authority\) Act 2021: Amendments to the Companies Act 2014](#)
- [Company Law: Back to Basics – The Corporate Enforcement Authority \(Podcast\)](#)
- [New Corporate Enforcement Authority established in Ireland](#)

Listings:

- [Funds Registration Update](#)
- [The International Stock Exchange \("TISE"\) revises its Continuing Obligations \(Chapter 3\) Listing Rules](#)

Establishing a business in Ireland:

- [Practical Law Global Guide: Establishing a Business in Ireland](#)



Looking Ahead: Irish Developments

IRISH DEVELOPMENTS

Individual Accountability Framework (IAF) and the Senior Executive Accountability Regime (SEAR)

The Minister for Finance had signposted his plans to publish the [Central Bank \(Individual Accountability Framework\) Bill 2022](#) by the end of July 2022, and it was published on 28 July 2022. The IAF/SEAR Bill is a legislative priority for the Government and is expected to figure prominently on the agenda when the Houses of the Oireachtas reconvene in mid-September 2022. For more information on the draft Bill, including details on how it has evolved since the General Scheme was first published in July 2021, read the latest update from our Financial Regulation: Individual Accountability and SEAR team. That update also sets out short-term and medium-term steps that in-scope regulated firms can take to pre-position themselves for the new framework, which is expected to come into force in H2 2023.

"The IAF/SEAR Bill is a legislative priority for the Government."

Review of the Consumer Protection Code

A discussion paper on the Central Bank's planned review of the Consumer Protection Code (CPC) had been expected by the end of H2 2022. The Central Bank has now confirmed (as part of its [response to the Department of Finance's consultation on its Retail Banking Review](#)) that it plans to publish the CPC discussion paper in the later part of Q3 2022. Key potential discussion points signposted by the Central Bank include what it means for a regulated firm to act in consumers' best interests, what should be expected of regulated firms, what responsibilities should rest with consumers, how choice and availability of products and services can best be achieved, how technology and digitalisation can benefit consumers, how consumers can be protected regarding pricing, behavioural expectations of regulated firms that offer unregulated products, and how best to service vulnerable consumers. The revised form of the CPC is then expected to be settled during 2023 and 2024.

Mortgage Refinancing

The Central Bank plans to publish findings from a recent mortgage refinancing field trial shortly (also signposted in its [response to the Department of Finance's consultation on its Retail Banking Review](#)). The trial focused on specific behavioural obstacles encountered by holders of variable rate mortgages who want to refinance. The Central Bank is expected to propose changes on how mortgage lenders present information to consumers on potential savings from mortgage switching following publication of its findings.

"The Central Bank is expected to propose changes on how mortgage lenders present information to consumers on potential savings from mortgage switching."

Outsourcing

Now that the Central Bank has launched its new [outsourcing webpage](#) which contains its outsourcing register template and associated guidance notes for each sector, in-scope regulated firms can begin to finalise arrangements for submitting their completed outsourcing registers via the Central Bank's online reporting system by the 7 October 2022 deadline.

"in-scope regulated firms can begin to finalise arrangements for submitting their completed outsourcing registers"



Looking Ahead: ESG



ESG

SFDR Level 2 RTS and Disclosure Templates

The [Commission Delegated Regulation](#) containing the 13 sets of regulatory technical standards under the Sustainable Finance Disclosures Regulation (SFDR) was published in the Official Journal on 25 July 2022. It comes into force on 14 August 2022 and will apply from 1 January 2023.

The Delegated Regulation sets out the content, methodology and presentation of the information to be disclosed by financial market participants when disclosing sustainability-related information under SFDR. It also sets out the content and presentation of the 'do no significant harm' principle, the sustainability indicators and adverse sustainability impacts and the information on the promotion of environmental or social characteristics as well as sustainable investment objectives in pre-contractual documents, on websites and in periodic reports.

Integrating Sustainability Considerations

The EU delegated regulations incorporating sustainability considerations into MiFID II ([here](#)), AIFMD ([here](#)), the Insurance Distribution Directive ([here](#)) and the Solvency II Directive ([here](#)) have had direct effect in Ireland since 1 August 2022.

The Irish transposing legislation required by 31 July 2022 for the EU delegated directive ([here](#)) incorporating sustainability considerations into the UCITS Directive has not yet been published.

The Irish transposing legislation required by 22 August 2022 for the EU delegated directive ([here](#)) which will integrate sustainability considerations into MiFID II's product governance rules from 22 November 2022 has been published: [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 3\) Regulations 2022](#). The new regulations update the product governance requirements in Schedule 4 of the 2017 Irish MiFID Regulations.

Environmental Risks and the Pillar 1 Prudential Framework

The European Banking Authority's [discussion paper on the role of environmental risk in the prudential framework for credit institutions and investment firms](#) closed for feedback on 2 August 2022. The purpose of the paper was to explore whether and how environmental risks could be incorporated into the Pillar 1 prudential framework, the potential incorporation of a forward-looking perspective into the prudential framework, and the importance of collecting relevant and reliable information on environmental risks and their impact on institutions' financial losses.

Taxonomy Regulation – Human Rights Minimum Safeguards

The EU Platform on Sustainable Finance's consultation on its [draft report on human rights minimum safeguards under the Taxonomy Regulation](#) closes on 22 August 2022.

Article 3 of the Taxonomy Regulation provides that one of the three criteria for environmentally sustainable economic activities is compliance with minimum safeguards, which require organisations to implement procedures aligned with specified international human rights requirements. The draft report proposes that compliance with minimum safeguards should be defined for four core topics: human rights, bribery and corruption, taxation and fair competition. It suggests that the European Commission treat insufficient or inadequate corporate due diligence processes on human rights as evidence of non-compliance with the minimum safeguards. The report also looks at the connections between the minimum safeguards and the SFDR, the proposed Corporate Sustainability Reporting Directive and the proposed Corporate Sustainability Due Diligence Directive.

The Platform will submit its final report to the European Commission in September 2022.

"The Delegated Regulation sets out the content, methodology and presentation of the information to be disclosed by financial market participants when disclosing sustainability-related information under SFDR."

"The new regulations update the product governance requirements in Schedule 4 of the 2017 Irish MiFID Regulations."



Looking Ahead: Structured Finance and Securitisation

STRUCTURED FINANCE AND SECURITISATION

Securitisation Regulation Review

The market awaits the publication by the Commission of its Article 46 review of the functioning of the EU Securitisation Regulation – this is expected at the beginning of September 2022. Read our update on the Commission's pre-review consultation here: [Securitisation Regulation: Commission consults on how framework is functioning](#).

STS Notification Requirements

[Commission Delegated Regulation \(EU\) 2022/1301](#) comes into force on 15 August 2022. It amends the regulatory technical standards set out in Delegated Regulation (EU) 2020/1226 on the information to be provided by originators in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations.

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Looking Ahead: NPLs

NPLs

Credit Servicing Directive

The European Banking Authority's [consultation](#) on draft implementing technical standards (ITS) setting out the templates to be used by credit institutions for the provision of information to NPL purchasers under the new Credit Servicing Directive will close on 31 August 2022.

The draft ITS aim to provide a common standard for NPL transactions across the EU, allowing for cross-jurisdiction comparison and reducing information mismatches between NPL sellers and purchasers.

The EBA expects to submit the final draft ITS to the European Commission by the end of Q4 2022.

"The draft ITS aim to provide a common standard for NPL transactions across the EU"



Looking Ahead: Financial Regulation

FINANCIAL REGULATION

AML

The Financial Action Task Force's (FATF) [consultation on its review of its Recommendation 25 on the transparency and beneficial ownership of legal arrangements](#) closed on 1 August 2022. It sought feedback on the scope of legal arrangements, risk assessment and foreign trusts, trustee obligations, the definition of beneficial owners, obstacles to transparency, the approach to collecting beneficial ownership information, and what is meant by adequate, accurate and up-to-date information. FATF is expected to suggest changes to Recommendation 25, arising out of feedback received, at its October 2022 meetings.

Benchmarks - LIBOR

The UK's Financial Conduct Authority will review its decisions to compel continued publication of the 1-, 3- and 6-month sterling LIBOR settings for tough legacy contracts and notify the market of the outcome after its current consultation period ends on 24 August 2022.

Benchmarks administered in a third country

The European Commission's [targeted consultation on the regime applicable to the use of benchmarks administered in a third country under the EU Benchmarks Regulation](#) closed on 12 August 2022 and the Commission plans to publish a proposal to review the regime in Q4 2022. At the moment, under transitional arrangements in the EU Benchmarks Regulation, supervised entities can continue to use benchmarks provided by third-country administrators until 31 December 2023. From 1 January 2024 onwards, benchmarks provided by third-country administrators may only be used if the administrator is located in a third country that has satisfied the equivalence requirements of the EU Benchmarks Regulation and is included in the register maintained by ESMA.

Central Counterparties (CCPs)

Most of [Regulation \(EU\) 2021/23 on a framework for the recovery and resolution of CCPs](#) applies from 12 August 2022. Four related sets of guidelines are awaited from ESMA (written arrangements and procedures for the functioning of resolution colleges; assessments of resolvability; provisions of co-operation arrangements; and summaries of resolution plans) – ESMA now expects to finalise these in Q4 2022.

MiFID II

The following Commission Delegated and Implementing Regulations relating to commodity derivatives position limits, management controls and reporting under the MiFID II Directive come into force on 15 August 2022:

- [Commission Delegated Regulation \(EU\) 2022/1302](#) on the application of position limits to commodity derivatives under MiFID II (repealing and replacing [Commission Delegated Regulation \(EU\) 2017/591 \(RTS 21\)](#)).
- [Commission Delegated Regulation \(EU\) 2022/1299](#) on the content of position management controls by trading venues under MiFID II.
- [Commission Implementing Regulation \(EU\) 2022/1300](#) on the format of position reports by investment firms and market operators under MiFID II. This amends Table 2 of Annex II to [Commission Implementing Regulation \(EU\) 2017/1093](#).



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