

DECEMBER 2022

Horizon Scanner: Finance

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

This month...

PUBLICATIONS

Mondaq: ESG Regulation Comparative Guide (Ireland)

Of Counsel and Senior Professional Support Lawyers from across the firm contributed the comparative guide for Ireland.

[Read the Guide](#)

PUBLICATIONS

Balance for Better Business

Arthur Cox features in the Balance for Better Business Annual Report 2022.

[Read the Report](#)

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Looking Ahead:
Thought Leadership

THOUGHT LEADERSHIP

Individual Accountability Framework/SEAR

[Individual Accountability Framework: Bill begins Dail Committee Stage](#)

AML

[AML Update: ECJ decision impacts access to beneficial ownership information](#)

[AML Update: Central Bank publishes details on how database of accounts will operate](#)

Banking

[Retail Banking Report: 34 recommendations will now form part of Government policy](#)

Consumer Protection

[Protecting Consumers: Central Bank reminds RFSPs of its expectations](#)

Derivatives

[Energy Derivatives Market: Regulations increasing commodity clearing threshold and widening assets eligible for collateral now in force](#)

ESG

[Green Loans: Commission calls for advice from EBA](#)

[ESG Update: ESAs call for evidence on greenwashing](#)

[Corporate Sustainability Reporting Directive Adopted](#)

[EFRAG Delivers draft ESRS to European Commission](#)

[European Parliament adopts Corporate Sustainability Reporting Directive](#)

[New Gender Balance Targets on Boards of EU Listed Companies](#)

[ESAs Publish Q&A on the SFDR RTS](#)

[Central Bank Issues Paper on Sustainable Finance Disclosures, Investment Process and Risk Management](#)

Irish Property Funds

[Central Bank finalises CP145 guidance on Irish Property Funds](#)

Insurance

[EIOPA publishes FAQ on upcoming Insurance Recovery and Resolution Directive](#)

[CJEU decision emphasises broad scope of the IDD](#)

[EIOPA issues methodology for assessing value for money of unit-linked products](#)

Contract

[High Court summary judgment shows narrow scope of doctrine of frustration and impact of COVID-19 regulations on Irish commercial leases](#)

Renewables

[Update on Fit for 55 and REPowerEU – “Renewables Acceleration Areas” gain political support](#)

[Latest Approach to Support for Onshore Renewable Energy in Ireland](#)

[Approach to Support for Offshore Renewable Energy in Ireland](#)

[Agreement reached on fast tracking consenting processes for renewable energy](#)

[New Regulations on Electric Vehicle Charging Infrastructure and Use of Renewable Energy in Heating](#)

[Update on Fit for 55 and REPowerEU: fast-tracking of renewable energy projects remains a priority amid initiatives to decarbonise all sectors](#)

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Looking Ahead: Irish Developments

“One of those recommendations is that providers of retail banking products design and publish customer charters with service standards”

IRISH DEVELOPMENTS

Individual Accountability Framework

Dáil Committee Stage for the Central Bank (Individual Accountability Framework) Bill 2022 is likely to continue in December 2022. 69 Committee Stage amendments were proposed (mostly by the Department of Finance) in advance of the start of Dáil Committee Stage on 30 November 2022 but only 22 were discussed before the allocated timeslot ended. The Minister for Finance reiterated his hope that the Bill can complete all stages in the Houses of the Oireachtas before the start of the Christmas recess, and confirmed that he will make himself available for any additional Committee slot in December. At the time of writing, the date for that slot has not yet been confirmed.

[See the Thought Leadership section of this Horizon Scanner for related insights.](#)

Retail Banking Review - Report Due

Following the publication by the Minister for Finance of the Report arising from the year-long Retail Banking Review on 29 November 2022, work will start this month on some of the 34 recommendations, which the Report confirmed “...are now Government policy”. The Central Bank of Ireland has been asked, as part of the recommendations set out in the Report, to factor some additional points into its review of the Consumer Protection Code. One of those recommendations is that providers of retail banking products design and publish customer charters with service standards – pending the inclusion of that requirement in the revised CPC framework, those providers are expected to be asked to do this on a voluntary basis in the meantime, and further information on expectations is likely to be needed.

[See the Thought Leadership section of this Horizon Scanner for related insights.](#)

Execution using Common Seals

Section 43A of the Companies Act 2014, introduced with effect from 21 August 2020 for an “interim period”, provides that during the “interim period” a company’s seal, and the signatures of those who countersign the seal, may be on separate copies of the relevant agreement or deed. This was a very welcome measure during the COVID-19 pandemic, and continues to be used by companies. The “interim period” is currently due to expire on 31 December 2022. There has been no indication that the “interim period” will be further extended, or that the Companies Act will be amended to enshrine this method of execution as a permanent feature of Irish company law.

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Looking Ahead: ESG

ESG

SFDR – PAI Disclosures

Pre-contractual disclosures by financial market participants must, from 30 December 2022, include information on adverse sustainability impacts at financial product level under Article 7(1) of the Sustainable Finance Disclosures Regulation (**SFDR**).

SFDR – Review

The Commission is required to publish an evaluation of the SFDR by the end of December 2022.

Climate Transition Benchmarks

Administrators of EU Climate Transition Benchmarks must select, weight, or exclude underlying assets issued by companies that follow a decarbonisation trajectory by 31 December 2022.

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Looking Ahead: EMIR



EMIR

We expect the European Commission’s official proposal on its review of EMIR to be published on 7 December 2022, and will publish our insights once we have reviewed the proposal.



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Looking Ahead: EU Financial Regulation

"The EBA's Guidelines on remuneration and gender pay gap reporting under the Investment Firms Directive will also apply from 31 December 2022."

EU FINANCIAL REGULATION

AML – Beneficial Ownership

The Financial Action Task Force's consultation on proposed changes to its updated Guidance on Recommendation 24 on the transparency and beneficial ownership of legal persons closes for responses on 6 December 2022. It is also looking for feedback in connection with its review of Recommendation 25 and its Interpretive Note on the transparency and beneficial ownership of legal arrangements. Again, responses are sought by 6 December 2022.

FATF's ongoing work in the beneficial ownership space comes at the same time as a new and time-sensitive workstream for EU Member States, following the recent decision of the European Court of Justice that the provision of the Fourth Money Laundering Directive which requires Member States to ensure that "any member of the general public" can access information held on the central registers of beneficial ownership of corporates is invalid. Ireland is one of the Member States where the ability to search its central register of beneficial ownership of corporates has been suspended while its operator, the Companies Registration Office, works on restricting access to designated persons.

[See the Thought Leadership section of this Horizon Scanner for related insights.](#)

AML - Compliance Officers

The EBA's [Guidelines on the role of AML/CFT compliance officers](#) apply from 1 December 2022.

Banks and Investment Firms – Remuneration and Gender Pay Gap Benchmarking

The European Banking Authority's updated Guidelines on the remuneration and gender pay gap benchmarking under the Capital Requirements Directive (which were revised to take account of additional requirements introduced by CRD V regarding the application of derogations and the benchmarking of the gender pay gap, and to include guidance to harmonise the benchmarking of approvals granted by shareholders to use higher ratios than 100% between the variable and fixed remuneration) will apply from 31 December 2022.

The EBA's Guidelines on remuneration and gender pay gap reporting under the Investment Firms Directive will also apply from 31 December 2022.

The benchmarking data for the financial year ending in 2022, excluding gender pay gap data, will need to be submitted by credit institutions and investment firms to competent authorities by 31 August 2023, and by competent authorities to the EBA by 31 October 2023. The first benchmarking exercise regarding the gender pay gap will cover financial year 2023.

The EBA's related Guidelines on the data collection exercise on high earners under CRD and IFD have also been updated and will apply from 31 December 2022. The updates reflect the amended CRD remuneration framework (including the introduction of derogations to pay out a part of the variable remuneration in instruments and under deferral arrangements) and the introduction of the specific remuneration regime for investment firms by the IFD and the Investment Firms Regulation.

CRR

[Commission Delegated Regulation \(EU\) 2022/2257](#) supplementing the Capital Requirements Regulation (**CRR**) with regulatory technical standards specifying the calculation methods of gross jump-to-default amounts for exposures to debt and equity instruments and for exposures to default risk arising from certain derivative instruments, and specifying the determination of notional amounts of instruments other than the instruments referred to in Article 325w(4) of the CRR comes into force on 8 December 2022.

Crypto-Assets

In line with the ongoing international focus on how best to regulate crypto-assets and their providers, recent consultations by the Financial Stability Board close this month.

Its consultation on a proposed framework for the international regulation of crypto-asset activities closes on 15 December 2022. The recommendations on which it is consulting are based on a principle of 'same activity, same risk, same regulation' i.e. where crypto-assets and intermediaries perform an equivalent economic function to one performed by instruments and intermediaries of the traditional financial sector, they should be subject to equivalent regulation, acknowledging that regulation should also take account of novel features and specific risks of crypto-assets and address potential financial stability risks that could arise from the growing interlinkages between the crypto-asset ecosystem and the traditional financial system. Linked to this consultation is a list of specific questions on which the FSB is seeking feedback, and related proposed updates to the FSB's High-level Recommendations of the Regulation, Supervision and Oversight of 'Global Stablecoin' Arrangements.

Guidelines on disclosure of non-performing and forborne exposures

The EBA's revised Guidelines on disclosure of non-performing and forborne exposures will apply from 31 December 2022. The amendments clarified that the Guidelines will continue to apply to listed small- and non-complex institutions and to other medium-sized institutions that are non-listed.

MIFID II – Market Outages

As part of its review reports on the MIFID II Directive, ESMA published a September 2021 report on algorithmic trading in which it committed to providing guidance on how trading venues should communicate with market participants in case of an outage. Its subsequent consultation on how national competent authorities should ensure that trading venues have appropriate communication protocols in case of a market outage closes for responses on 16 December 2022, with ESMA planning to publish a final opinion in Q1 2023.

Outsourcing

The deadline for firms to confirm to their national competent authority if their review of cloud outsourcing arrangements of critical or important functions has not been finalised following the application of [ESMA's Guidelines on outsourcing to cloud service providers](#) is 31 December 2022 – if that review has not been completed, firms must also set out the measures planned to complete the review or the possible exit strategy.

The "consultation on a proposed framework for the international regulation of crypto-asset activities closes on 15 December 2022."

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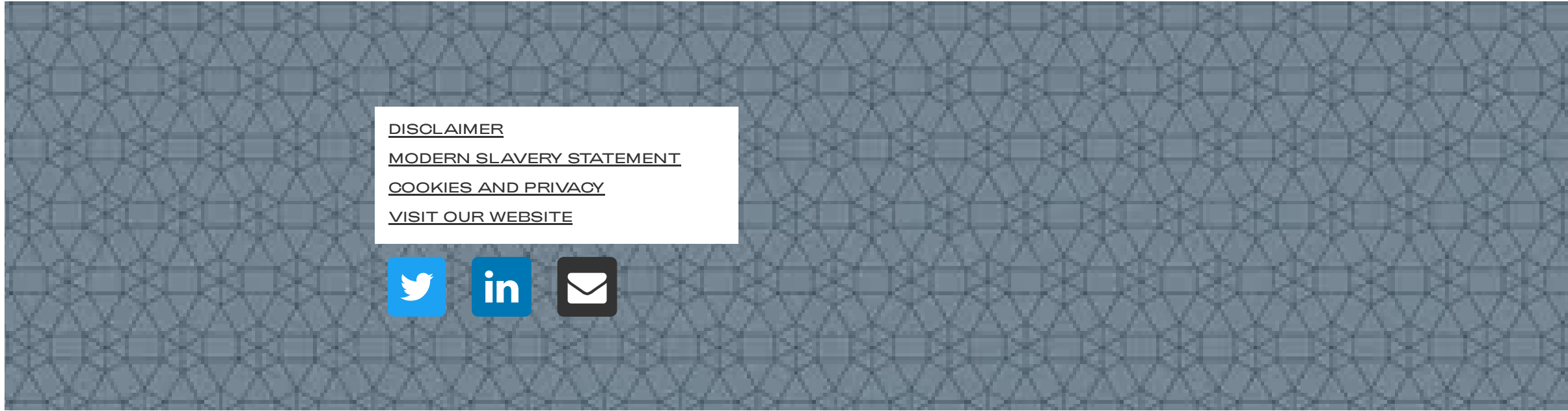


Looking Ahead: Insurance



INSURANCE

EIOPA plans to publish the first European-wide dashboard on the natural catastrophe insurance protection gap this month, and will present a full overview of the latest sustainability-related developments at its Sustainable Finance Conference on 7 December 2022



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