

OCTOBER 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](#)

EVENTS

ICMA Women's Network Ireland Event: Career Journeys

We are delighted to be hosting the inaugural ICMA Women's Network Ireland event: Career Journeys on 6 October 2022.

[Find out more](#)

Sustainable Business

Arthur Cox releases its annual Sustainable Business Impact Report

We are delighted to have released our second annual Sustainable Business Impact Report, covering the 12-month period to June 2022.

[Read the Report](#)



Looking Ahead:
Thought Leadership

Thought Leadership

AML

[AML Update: Minor changes to MLD4 Central Database Regulations](#)

Consumer Protection

[Consumer Protection Code: Central Bank publishes Discussion Paper](#)

ESG

[Arthur Cox contributes to Mondaq's ESG Guide](#)

Financial Sanctions

[EU Sanctions against Russia: Sanctions against Annex I individuals and entities extended to 15 March 2023](#)

Finance and Corporate Transactions with a UK Real Estate Element

[New Requirements for Irish Entities with Real Estate Interests in the UK](#)

Insurance

[Shifting patterns in life insurance market](#)

[Insurance Europe supports European Parliament proposal to supervise third party litigation funding](#)

[CBI Insurance Newsletter for September 2022](#)

[EIOPA statement on 'silent cyber' risks](#)

[EIOPA statement on exclusions for systemic events](#)

[Responses to CBI consultation on intra-group transactions](#)

Asset Management and Investment Funds

[SFDR: Central Bank Confirms Fast-track Filing Process](#)

[Central Bank issues process clarifications for UCITS and AIFs' SFDR Level 2 pre-contractual documentation updates](#)

Company Law

[Company Law: Back to Basics – Directors' Duties](#)

[Directors' duties to creditors: practical changes in governance structures and early warning tools](#)

Corporate Governance

[Arthur Cox contributes to ICLG Corporate Governance 2022](#)

Energy and Transport

[EU Emergency Energy Measures – Considerations in Ireland](#)

[European Commission publishes further details of Energy Market Interventions](#)

[September Developments in the Transport Sector](#)

Digital Services

[The first look at the EU's Digital Services Package](#)



Looking Ahead: Irish Developments

"Their latest update sets out short term and medium term steps that in-scope regulated firms can take to pre-position themselves for the new framework."

IRISH DEVELOPMENTS

Individual Accountability Framework

We expect the [Central Bank \(Individual Accountability Framework\) Bill 2022](#) to begin its progress through the Houses of the Oireachtas in October 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, keep an eye on the updates from our market-leading [Financial Regulation: Individual Accountability and SEAR](#) team. Their [latest update](#) 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.

Retail Banking Review

Work will continue throughout October on the report, due to be presented to the Minister for Finance in November 2022, setting out the results of the [Retail Banking Review](#) which has been the subject of a consumer survey and public consultation since its launch on 23 November 2021.

Retail Banking Framework/CPC Review

Following the launch, by the Central Bank, of its [Consumer Protection Code Review](#) on 3 October 2022, key stakeholders and members of the public will this month begin to review the themes raised by the Central Bank in its [Consumer Protection Code Review: Discussion Paper](#) and start to formulate their responses. The Discussion Paper is open to responses until 31 March 2023. For more information, read our recent insights: [Consumer Protection Code: Central Bank publishes Discussion Paper](#).

Outsourcing

In-scope regulated financial services providers are expected to submit their completed Outsourcing Register via the Central Bank's Online Reporting System by 7 October 2022, following the recent launch by the Central Bank of its [Outsourcing webpage](#) with the Outsourcing Register Template and associated Guidance Note for each sector.



Looking Ahead: ESG

"EU Taxonomy's credibility had been damaged arising from the Commission's push for the Complementary Climate Delegated Act."

ESG

Taxonomy: Fossil gas and nuclear energy

September 2022 saw confirmation that an alliance of environmental bodies, including the WWF and Client Earth, has taken legal action against the European Commission, seeking to exclude fossil gas from the EU Taxonomy. Fossil gas was included in the EU Taxonomy via the Complementary Climate Delegated Act (see our update on that Act: [ESG Update: Complementary Climate Delegated Act published in Official Journal](#)). Greenpeace had separately requested a review of the Commission's decision to label fossil gas and nuclear energy as green (as a precursor to possible legal action). Five members of the Platform on Sustainable Finance also [resigned](#) in September citing, among other issues, their views that the EU Taxonomy's credibility had been damaged arising from the Commission's push for the Complementary Climate Delegated Act. Against that backdrop, the European Supervisory Authorities submitted their [final draft amending regulatory technical standards](#) relating to the information that should be provided in pre-contractual documents, on websites and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities to the Commission on 30 September, which the Commission will now begin to consider this month.

ECB begins to tilt its corporate bond purchases

Beginning this month, the European Central Bank is 'tilting' its corporate bond purchases towards companies with a better climate performance, with a view to gradually decarbonising its holdings in line with the goals of the Paris Agreement. More information on how the ECB will do this (in particular, details on the three sub-scores that will be used to make up the overall climate score given to a bond holding (a backward-looking emissions sub-score, a forward-looking target sub-score and a climate disclosure sub-score)) was set out by the ECB [here](#) last month.



Looking Ahead: Sanctions

Sanctions

Eighth Package of Sanctions Proposed

The European Commission announced an eighth package of sanctions on 28 September 2022. Key elements of this package will include:

- Further sanctions on specific individuals and entities (more details are set out in the [press statement by European Commission High Representative/Vice-President Borrell](#))
- New import bans on Russian products.
- An extended list of products that can no longer be exported to Russia, including additional aviation items, electronic components and specific chemical substances.
- Additional bans on providing European services to Russia.
- A prohibition on EU nationals sitting on governing bodies of Russian state-owned enterprises.
- A legal basis for the oil price cap agreed in principle by the G7.
- Strengthening how the EU penalises circumvention of sanctions, by listing individuals if they circumvent the sanctions.

We expect this eighth package of sanctions to be adopted by the EU Council, and published in the Official Journal, early this month.

"An extended list of products that can no longer be exported to Russia, including additional aviation items, electronic components and specific chemical substances."



Looking Ahead:
Structured Finance
and Securitisation

STRUCTURED FINANCE AND SECURITISATION

Securitisation - European Commission report on review of the securitisation framework

The Commission's report on its review of the EU Securitisation Regulation is expected by 31 October 2022 and may be accompanied by limited proposals for reform.

Securitisation - ECB Guide on the notification of securitisation transactions

While the ECB recommended that significant institutions follow its new [Guide](#) in respect of all securitisation transactions originated after 1 April 2022, there was a phase-in implementation period for those significant institutions that were unable to properly notify the ECB from 1 April 2022. That phase-in period expired on 1 October 2022 and the significant institutions that benefitted from that phase-in period are now expected to have finalised the necessary set-ups and systems enable them to submit notifications in line with the Guide.

Securitisation - Homogeneity of underlying exposures

The European Banking Authority's (EBA) [consultation paper](#) on draft regulatory technical standards (RTS) on the homogeneity of the underlying exposures in STS securitisations closes on 28 October 2022. The homogeneity requirement aims to facilitate the assessment of underlying risks in a pool of underlying exposures and to enable investors to perform robust due diligence. The draft RTS, once finalised, will carry over the provisions on homogeneity set out in the existing RTS (Commission Delegated Regulation (EU) 2019/1851) with some modifications and will apply to all securitisations.

Securitisation - Prudential Framework Review

Responses from the European Supervisory Authorities to the Commission's October 2021 [call for advice](#) on the securitisation prudential framework review was due on 1 September 2022 and is now expected by the end of October 2022.

Securitisation - Synthetic Excess Spread

The EBA's [consultation paper](#) on draft RTS on the determination by originator institutions of the exposure value of synthetic excess spread (SES) under Article 248(4) of the Capital Requirements Regulation (CRR) closes on 14 October 2022.

The CRR, as amended by the Capital Markets Recovery Package, requires that SES is considered a securitisation position by the originator institution with regard to a synthetic securitisation and mandates the EBA to submit draft RTS specifying the determination of the exposure value to the Commission. The draft RTS, set out in chapter 4 of the consultation paper, specify the calculation of the exposure value of the elements that should be included in the exposure value of SES, taking account of the relevant losses expected to be covered by SES.

"The homogeneity requirement aims to facilitate the assessment of underlying risks in a pool of underlying exposures and to enable investors to perform robust due diligence."

"The CRR, as amended by the Capital Markets Recovery Package, requires that SES is considered a securitisation position by the originator institution"



Looking Ahead: NPLs

NPLs

European Commission Guidelines on NPL sales

The Commission's planned guidelines on best practices and conditions for successful NPL sales on the secondary market ([sign posted in July 2022](#)), were not published as planned in September 2022, so may be published this month instead. We will be publishing an NPL Update when those guidelines are available.



Looking Ahead:
Financial
Regulation

FINANCIAL REGULATION

AML – AML Action Plan moves ahead

A deal is expected on the key deliverables under the European Commission's AML Action Plan during Q4 2022, and we are likely to see the first compromise texts this month. Trilogue discussions between the Commission, European Parliament and EU Council will then begin. For more information on the AML Action Plan, read our insights here: [AML: EU-level supervision and a single rulebook by the end of 2025](#) and [Crypto-Assets and AML: Agreement on MiCA; AML Action Plan progresses](#). Key points to watch will be how the Commission and EU Council react to the European Parliament's suggestion, in its [draft report](#), that the beneficial ownership threshold be reduced from 25% to 5%, and whether agreement is reached on where the new regulator, AMLA, will be based.

AML – Transparency and Beneficial Ownership

The Financial Action Task Force is expected to use its October 2022 meetings to consider responses to its recent [consultation](#) on a review of Recommendation 25 on the transparency and beneficial ownership of legal arrangements. That consultation covered the scope of legal arrangements, risk assessment and foreign trusts; obligations of trustees; the definition of beneficial owners; obstacles to transparency; the approach to collecting beneficial ownership information; and adequate, accurate and up-to-date information.

Bank Resolution – 'Daisy Chain' proposal finalised

The EU Council [announced on 4 October 2022](#) that the Commission's so-called 'daisy chain' proposal had been finalised, following its approval by the European Parliament in September. The proposal will incorporate (into the existing EU framework for bank resolution) a dedicated treatment for the indirect subscription of instruments eligible for internal minimum requirement for own funds and eligible liabilities; further align the treatment of global systemically important institution groups with a multiple-point-of-entry resolution strategy with the treatment outlined in the Financial Stability Board's international total loss-absorbing capacity term sheet (TLAC); and clarify the eligibility of instruments in the context of the internal TLAC. The next step is publication in the Official Journal.

Capital Requirements

The Central Bank's [consultation \(CP149\)](#) setting out its proposals to update its November 2021 Implementation Notice regarding Options and Discretions in the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD) closes on 18 October 2022. The ECB revised its harmonised policies for exercising options and discretions in respect of banks in the single supervisory mechanism (SSM) earlier this year, including the ECB [Recommendation](#) and [Guideline](#) relating to less significant institutions (LSIs). In view of the ECB updates and the recently-introduced Investment Firms Directive/Investment Firms Regulation (IFD/IFR) framework, the Central Bank has proposed that the changes to the ECB's LSI-related Recommendation would be applied in full to LSIs, and that the existing approach in the Implementation Notice of exercising options and discretions in a harmonised manner (unless otherwise specified) with respect to credit institutions and investment firms would be maintained. In so doing, those additional parts of the SSM options and discretions framework that have not historically applied to "Class 1 minus" investment firms prior to IFR/IFD and SSM revisions to its LSI options and discretions instruments would be applied to such firms.

[Commission Delegated Regulation \(EU\) 2022/1622](#) of 17 May 2022 supplementing the CRR with regulatory technical standards (RTS) on emerging markets and advanced economies comes into force on 11 October 2022.

[Commission Implementing Regulation \(EU\) 2022/1650](#), amending [Commission Implementing Regulation \(EU\) 2016/1646](#) which contains implementing technical standards on the main indices and recognised exchanges in accordance with the CRR has been published in the Official Journal and will apply from 17 October 2022.

Crowdfunding Regulation – deadline passes to benefit from transitional period

Crowdfunding service providers that are within the scope of the EU Crowdfunding Regulation and who were already carrying on in-scope crowdfunding services on 10 November 2021 can continue to provide those services on a transitional basis until 10 November 2023, provided that their authorisation application was submitted to their national competent authority before 1 October 2022. For more information, read our insights here: [Crowdfunding Update: Transitional period will be extended by 12 months to 10 November 2023](#).

Deposit Guarantee Schemes

The European Banking Authority's [public consultation](#) on its draft revised Guidelines on deposit guarantee schemes (DGS) contributions closes on 31 October 2022. The revised Guidelines aim at enhancing the proportionality between the risk of a credit institution and its contributions to the DGS and at streamlining and simplifying the original Guidelines. While the EBA views the methodology in its [current guidelines](#) as still appropriate, it has suggested some improvements.

EMIR – Pension scheme arrangements

[Commission Delegated Regulation \(EU\) 2022/1671](#) came into effect on 1 October 2022, further extending the temporary exemption for certain pension scheme arrangements from the clearing obligation under EMIR to 18 June 2023.

Energy Crisis – financial workstream deliverables

In last month's [State of the Union address](#), Commission President Ursula von der Leyen announced the first package of emergency energy measures aimed at providing an EU-wide response to the difficulties that high energy prices are causing for consumers, as well as for energy firms participating in wholesale energy markets. As part of the [financial workstreams](#), ESMA is due to respond to the Commission on a more harmonised approach to 'limit pricing' by 17 October.

MiFID II – Product governance guidelines

ESMA's [consultation on updates](#) to its MiFID II [product governance guidelines](#) closes on 7 October 2022. ESMA has proposed updates to the existing guidelines regarding (a) the specification of any sustainability-related objectives a product is compatible with; (b) identifying a target market per cluster of products instead of per individual product (the clustering approach); (c) the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and (d) the periodic review of products, including the application of the proportionality principle. Annex IV of ESMA's proposed amendments includes a draft list of good practices showing how firms apply the product governance requirements in practice. Illustrative examples and case studies relating to the application of aspects of the guidelines are set out in Annex V.

MiFID II – Suitability and appropriateness

ESMA's [guidelines on aspects of appropriateness and execution-only under MiFID II](#) will apply from 12 October 2022.

"The EU Council announced on 4 October 2022 that the Commission's so-called 'daisy chain' proposal had been finalised, following its approval by the European Parliament in September."

"The revised Guidelines aim at enhancing the proportionality between the risk of a credit institution and its contributions to the DGS and at streamlining and simplifying the original Guidelines."

Operational Resilience – DORA

The European Parliament has confirmed that it will consider the proposed regulation on digital operational resilience (**DORA**) at its 17 to 20 October plenary session.



Looking Ahead: Insurance

INSURANCE

Climate Change Risk

The Central Bank's [Guidance for \(Re\)Insurance Undertakings on Climate Change Risk \(CP151\)](#) closes on 26 October 2022. The proposed guidance aims to clarify the Central Bank's expectations on how (re)insurers address climate change risks in their business and to help them in developing their related governance and risk management frameworks.

Outsourcing

See the 'Irish Developments' section of this Horizon Scanner for information on the 7 October deadline for the submission of Outsourcing Registers to the Central Bank.

"The proposed guidance aims to clarify the Central Bank's expectations on how (re)insurers address climate change risks in their business and to help them in developing their related governance and risk management frameworks."



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.

Authors



MAEDHBH CLANCY

Of Counsel

Banking and Finance, Debt Capital Markets,
Financial Regulation

+353 1 920 1225

maedhbh.clancy@arthurcox.com



SINEAD CANTILLON

Senior Professional Support Lawyer

Banking and Finance, Debt Capital Markets,
Financial Regulation

+353 1 920 1083

sinead.cantillon@arthurcox.com



SINEAD WILLIAMS

Associate

Debt Capital Markets

+353 1 920 1439

sinead.williams@arthurcox.com

Key contacts

Cormac Kissane, Partner
Head of Finance

cormac.kissane@arthurcox.com
+353 1 920 1186

Kevin Lynch, Partner
Banking and Finance

kevin.lynch@arthurcox.com
+353 1 920 1199

Aiden Small, Partner
Debt Capital Markets

aiden.small@arthurcox.com
+353 1 920 1072

Robert Cain, Partner
Financial Regulation

robert.cain@arthurcox.com
+353 1 920 1050

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