SEPTEMBER 2022

Horizon Scanner: Finance

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

This month...

PUBLICATIONS

Legal 500 Green Guide

The Legal 500 Green Guide looks at firms that are engaging proactively with sustainability, both in terms of working with clients as well as their own best practices and initiatives.

Read the guide

AC AUDIO

Financial Regulation Trends and Priorities

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BRIEFING

Operational Resilience

This briefing from our Technology and Innovation Group looks at DORA (the Digital Operational Resilience Act) and upcoming EU legislation on cybersecurity.

Find out more

Looking Ahead: Irish Developments

The latest update sets out steps that in-scope regulated firms can take to pre-position themselves for the new framework

IRISH DEVELOPMENTS

Individual Accountability Framework

With Dáil Éireann due to re-convene on Wednesday 14 September 2022 at 2pm, the Government's legislation programme for the Autumn Session 2022 is keenly awaited.

The progress of the <u>Central Bank (Individual Accountability Framework) Bill 2022</u> (published on 28 July 2022), a legislative priority for the Government, will be closely watched during this Dáil session. 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 <u>Financial Regulation</u>: <u>Individual Accountability and SEAR</u> team. The <u>latest update</u> 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.

Looking Ahead: ESG

ESG

"The ESAs were asked to submit draft amending regulatory technical standards relating to ... the exposure of financial products to investments in fossil gas and nuclear energy activities by 30 September 2022."

Sustainable Finance Disclosures Regulation (SFDR) – Nuclear and Fossil Gas Activities

In April 2022, the European Commission <u>asked the European Supervisory Authorities (ESAs)</u> to propose amendments to the SFDR Level 2 Delegated Regulation. That Delegated Regulation (which bundles together thirteen sets of Level 2 technical standards required by the SFDR) was in final draft form at the time. It was then published in the Official Journal on 25 July 2022 (as <u>Commission Delegated Regulation</u> (EU) 2022/1288) and will apply from 1 January 2023.

The April 2022 request from the Commission to the ESAs related to the development of amendments to the SFDR Level 2 Delegated Regulation to ensure that investors receive information reflecting the provisions set out in the <u>Complementary Climate Delegated Regulation</u> (which covers nuclear and fossil gas activities, and which was in draft form at the time). The ESAs were asked to submit 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 by 30 September 2022.

For further information on the Complementary Climate Delegated Regulation, read our recent update: <u>ESG Update: Complementary Climate Delegated Act published in Official Journal</u>.

SFDR - Taking Stock of Voluntary Disclosures

The ESAs are required by the SFDR to provide a report to the Commission, by 10 September each year, on the extent of voluntary disclosures of principal adverse impact (**PAI**) accompanied by recommendations on voluntary disclosure standards. This year's report was published ahead of time (on 28 July 2022) and is available <u>here</u>. The report concluded that compliance with voluntary disclosures varies significantly as between jurisdictions and financial market participants (**FMPs**), making it hard to identify particular trends. FMP compliance is higher when it is part of a larger group, but FMPs that do not take PAI into account often provide less-than-adequate explanations for their approach. National competent authorities (**NCAs**) reported overall low levels of disclosure of the degree of alignment with the objective of the Paris Agreement.

Best practices identified by the ESAs in their report include the addition of a prominent and detailed PAI statement on the sustainability section of an FMP's website, clear descriptions by FMPs of efforts to consider PAI, and credible efforts to align with the objectives of the Paris Agreement. Preliminary recommendations to NCAs include continuous market observation to identify non-compliant FMPs, greater sample sizes, more detailed reporting, regular surveys and questionnaires, offsite inspections, the potential use of IT tools for website supervision, and the provision of additional instructions to supervised entities on the technical aspects of website disclosures.

Taxonomy Regulation - Human Rights Minimum Safeguards

The EU Platform on Sustainable Finance's consultation on its <u>draft report on human rights minimum</u> <u>safeguards under the Taxonomy Regulation</u> closed on 22 August 2022. The Platform plans to submit its final report to the Commission this month. More information on this consultation is contained in the <u>August 2022 edition of our Finance Horizon Scanner</u>.

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Looking Ahead: Structured Finance and Securitisation

STRUCTURED FINANCE AND SECURITISATION

Securitisation - Prudential Framework Review

1 September 2022 is the deadline set by the European Commission for the Joint Committee of the European Supervisory Authorities to respond to its <u>call for evidence for the purposes of the securitisation prudential framework review</u>. The response will inform the content of the report due from the Commission to the EU Council and the European Parliament under Article 519a of the Capital Requirements Regulation, with a particular focus on provisions which set out the key parameters for the calculation of risk-weighted exposure amounts for positions in a securitisation. The Commission's Article 519a report was due on 1 January 2022 (as was its report under Article 46 of the Securitisation Regulation on the functioning of that regulation generally). It is not clear if the two reports will be made available simultaneously (in which case, they may be some months away) or whether the Article 46 report will be published first (as no public consultations or calls for evidence remain outstanding for that report).

Market Abuse Regulation - Pre-Hedging

The deadline for responses to ESMA's call for evidence on pre-hedging is 30 September 2022.

During its review of the Market Abuse Regulation (**MAR**), ESMA made market participants aware that some national competent authorities had received suspicious transaction and order reports on pre-hedging behaviour. The practice of pre-hedging is not defined in EU law. Mixed views were expressed to ESMA by market participants on the usefulness of pre-hedging and the risks associated with it, with several market participants asking that ESMA issue guidance on what should be considered as MAR-compliant in terms of pre-hedging and what behaviour might constitute front-running. Some market participants also asked for guidance on procedural aspects of pre-hedging, such as the documentation required, transparency regarding pre-hedging arrangements by brokers to their clients, and internal policies of market makers.

Looking Ahead: **NPLs**

NPLs

Credit Servicing Directive

"The guidelines are expected to set out conditions to be met, and the sequence of main activities to be performed, when preparing for and carrying out an NPL sale." The European Banking Authority's <u>consultation</u> 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 closed on 31 August 2022. The EBA had been tasked with submitting the final draft ITS to the European Commission by 29 September 2022, but this is now expected to slip into Q4 2022.

Commission Guidelines on NPL sales

The Commission <u>signposted in July 2022</u> that it plans to publish guidelines in September 2022 on best practices and conditions for successful NPL sales on the secondary market. The guidelines are expected to set out conditions to be met, and the sequence of main activities to be performed, when preparing for and carrying out an NPL sale. The Commission hopes that these will become a market practice standard for all institutions engaging in sales of NPLs. We will be publishing an NPL Update when those guidelines are available.

Looking Ahead: Financial Regulation

FINANCIAL REGULATION

Banks' crypto-asset exposures

The Basel Committee on Banking Supervision's (**BCBS**) <u>second public consultation</u> on the prudential treatment of banks' cryptoasset exposures closes for comment on 30 September 2022.

Banks - EBA 2022 Transparency Exercise

September 2022 will see the launch by the European Banking Authority (**EBA**) of its annual EU-wide transparency exercise, the output from which is expected to be released in December 2022 at the same time as the EBA's annual Risk Assessment Report. The 2022 exercise will disclose capital positions, financial assets, risk exposure amounts, sovereign exposures and asset quality information of the EU banking sector for H2 2021 and H1 2022, based exclusively on supervisory reporting data.

Banks - Resolvability and Transferability

Following the EBA's <u>consultation on draft guidelines on transferability</u> in January 2022, final guidelines are expected by 30 September 2022. Those guidelines are intended to complement the <u>guidelines on</u> <u>improving banks' resolvability</u>, also published in January 2022. The January 2022 resolvability guidelines set out requirements to improve resolvability in the areas of operational continuity in resolution, access to financial market infrastructure, funding and liquidity in resolution, bail-in execution, business reorganisation and communication. The proposed transferability guidelines are designed to assess the feasibility and credibility of transfer strategies and include requirements relating to the implementation of transfer tools when considered as the preferred or alternative strategies for institutions. Institutions and resolution authorities are expected to comply in full with the both sets of guidelines by 1 January 2024.

Banks - SRB Priority Letters

The Single Resolution Board (**SRB**) is expected to issue its yearly priority letters to banks in September 2022, setting out horizontal and bank-specific priorities.

Bank Recovery and Resolution Directive - Exchange Mechanic

The EBA's consultation on publication of the writedown and conversion and bail-in exchange mechanic closes on 7 September 2022. The Bank Recovery and Resolution Directive gives resolution authorities the power to write-down and convert capital instruments. Approaches vary among resolution authorities to the publication of information setting out how they would effectively execute the write down and conversion of capital instruments and the use of the bail-in tool (known as the 'exchange mechanic'). The EBA's proposed set of stand-alone guidelines (which would sit alongside the existing guidelines on improving banks' resolvability) is designed to give resolution authorities a clear framework to publish their approach to using the bail-in tool. The EBA sees it as essential that resolution authorities set out their preferred approach to the exchange mechanic, with a particular emphasis on clarifying whether they intend to make use of interim instruments or not; an indicative timeline for the application of the exchange mechanic; how potential valuation adjustments would take place; that actual execution may differ; and that the publication is a living document to be updated as further progress is made by resolution authorities. The final report is expected before the end of Q4 2022. The EBA expects resolution authorities that have not already done so to start publishing a high-level document from January 2024 setting out the key aspects of their preferred approach. Resolution authorities that have already published information are expected to check if that publication complies with these draft guidelines.

Bank Resolution - 'Daisy Chain' proposal

The Commission's so-called 'daisy chain' proposal is scheduled for a vote at the European Parliament's plenary session on 12 September 2022. 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 (**MREL**); 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. This follows <u>political agreement between the EU Council and the Parliament</u> on the two key discussion points (a revised deduction regime to avoid double-counting, and a transitional regime for MPE groups) in

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"ESMA's proposals,

based on the progress made with the benchmark transition in the interest rate derivative market, would introduce additional classes to the scope of the clearing obligation." April 2022.

Capital Requirements Regulation – Connected Clients

The EBA's <u>consultation on draft regulatory standards on identifying groups of connected clients under</u> <u>CRR</u> closes on 8 September 2022.

CSDR and Settlement Discipline

ESMA's <u>consultation on potential changes to the CSDR Delegated Regulation on Settlement Discipline</u> to simplify how cash penalties for settlement fails are collected and distributed will close on 9 September 2022. For our insights on the proposal, see here: <u>CSDR Update: Simplifying Collection and Distribution</u> <u>of Cash Penalties</u>.

Distributed Ledger Technology (DLT)

9 September 2022 is the closing date for comments on ESMA's <u>consultation paper on guidelines on</u> standard forms, formats and templates to apply for permission to operate a DLT market infrastructure.

EMIR - Clearing and Derivative Trading Obligations

ESMA's <u>consultation on the clearing and derivative trading obligations in view of the 2022 status of the</u> <u>benchmark transition</u> will close on 30 September 2022. ESMA's proposals, based on the progress made with the benchmark transition in the interest rate derivative market, would introduce additional classes to the scope of the clearing obligation (**CO**) (the overnight indexed swap (OIS) class referencing TONA (JPY), and the expansion of the maturities in scope of the CO for the OIS class referencing SOFR (USD)) and of the derivative trading obligation (the introduction of certain classes of OIS referencing €STR (EUR)).

EMIR - FRANDT commercial terms

From 18 June 2021, clearing members of central counterparties, and clients of clearing members, which provide clearing services, whether directly or indirectly, have been required provide those services under fair, reasonable, non-discriminatory and transparent (**FRANDT**) commercial terms. <u>Commission Delegated Regulation (EU) 2021/1456</u> which supplements EMIR by setting the conditions under which the commercial terms for clearing services for over-the-counter derivatives are to be considered to be FRANDT, requires that commercial terms for clearing services agreed before 9 September 2021 must be reviewed and, where necessary to meet the requirements laid down in the Annex, modified by 9 September 2022.

From 1 September 2022, covered entities belonging to a group with an aggregate average notional amount of non-centrally cleared derivatives for March, April, and May 2022 greater than €8 billion will be subject to the BCBS's margin requirements for non-centrally cleared derivatives when transacting with another covered entity (provided that it also meets that condition).

Payment Services

The EBA's <u>guidelines on the limited network exclusion under the revised Payment Services Directive</u> have applied since 1 June 2022. The guidelines clarify how national competent authorities should assess whether a network of service providers or a range of goods and services qualify as 'limited' and are, as a result, not subject to PSD2. The additional 3-month transitional period for issuers that already benefitted from the exclusion to submit a new notification to their NCA expires on 1 September 2022.

Retail Investor Protection Framework

The Commission plans to submit an impact assessment to the Regulatory Scrutiny Board in September 2022, following its <u>May 2022 call for evidence on a new package of measures to increase consumer</u> <u>participation in capital markets</u>. The call for evidence focused in particular on whether changes are needed to the MiFID II, PRIIPs and Insurance Distribution Directive frameworks to address obstacles to cross-border investor participation in EU capital markets, and how retail investor protection rules can be improved to reflect the increased use of digital tools.



INSURANCE

Central Bank Guidance for (Re)Insurance Undertakings on Intragroup Transactions and Exposures

"The Central Bank's intention is that the guidance will give clarity on the Central Bank's expectations with regard to intragroup transactions." The Central Bank of Ireland's <u>Consultation on Guidance for (Re)Insurance Undertakings on</u> <u>Intragroup Transactions and Exposures</u> (**CP150**) closes on 22 September 2022. CP150 stems from the assessments carried out by the Central Bank, following thematic reviews, as to whether the fundamentals of the governance and the management of risks introduced by intragroup arrangements, as well as the treatment of these items by (re)insurance undertakings, are sound, by reference to the relevant regulatory requirements. The Central Bank's intention is that the guidance will give clarity on the Central Bank's expectations with regard to intragroup transactions and exposures of (re)insurance undertakings supervised by the Central Bank and in doing so to promote a level playing field in this regard. The draft guidance focuses on three key exposures: intragroup assets; intragroup reinsurance; and cash pooling/treasury function arrangements. CP150 demonstrates the continued regulatory focus on intra-group transactions for (re)insurance undertakings, with the Central Bank seeking to ensure that all such intra-group arrangements are robustly assessed by (re)insurers, in the same manner as transactions with third parties.



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 <u>here</u> to view recent editions of our Horizon Scanner.

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