

MAY 2023

Horizon Scanner: Finance

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

This month...

ARTHUR COX RANKED AS A TOP-TIER LAW FIRM IN THE LEGAL 500

We are delighted to be recognised as a Tier 1 firm in 23 practice areas in The Legal 500 EMEA 2023 edition, including a Tier 1 ranking for Fintech, which has been introduced as a new practice area in the 2023 guide.

[Read more here](#)

AO AUDIO PODCAST

In this podcast episode, [Amelia Walsh](#) and [Deirdre O'Mahony](#) discuss what the Central Bank of Ireland will be able to investigate individuals for under the new IAF/SEAR regime, including breaches of new conduct rules and the new duty of responsibility.

[Listen here](#)

ARTHUR COX SHORTLISTED AT THE WOMEN IN BUSINESS LAW AWARDS EMEA 2023

We are very pleased to announce that we have been shortlisted in seven categories at the Women in Business Law Awards EMEA 2023.

[Read more here](#)



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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Looking Ahead: Irish Developments

IRISH DEVELOPMENTS

Future of the bank levy

The [public consultation on the future of the bank levy](#) launched by the Minister for Finance following the publication of the Retail Banking Report in November 2022 closes on 5 May 2023.

The Retail Banking Report had noted that a failure to amend the levy could place existing retail banks at a disadvantage vis-à-vis new market entrants who would be exempt from it. Balanced against that, an amendment to the existing levy framework could act as a disincentive to new market entrants.

The recent consultation sought feedback on whether the levy should be retained in its current format, amended, reformulated so as to be based on a different methodology more aligned with those used by other jurisdictions, or abolished (with a potential €87 million loss of annual review).

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EU Financial Regulation

EU FINANCIAL REGULATION

Anti-Money Laundering

Trilogues on the EU AML package will start on 11 May 2023, after the [European Parliament adopted its negotiating position in April 2023](#). The Parliament continues to push for a reduction in the beneficial ownership threshold from 25% to 15%, but neither the Commission nor the EU Council has proposed any change to that threshold.

BANKS

Prior Permission Regime

[Commission Delegated Regulation \(EU\) 2023/827](#) comes into force on 9 May 2023. It contains amending regulatory technical standards (RTS) in relation to the prior permission to reduce own funds and the requirements relating to eligible liabilities instruments. It updates previous RTS to take account of the changes introduced by CRR2. The related press release from the Single Resolution Board is [here](#), confirming that the new regulation will not impact ongoing requests and permissions already granted by the SRB

Interest Rate Risk Reporting

The EBA's [public consultation](#) on draft amending implementing technical standards (ITS) on supervisory reporting with respect to interest rate risk in the banking book (IRBB) closed on 2 May 2023.

The draft amending ITS aim to provide quality data to supervisors to monitor institutions' IRBB risk and the implementation of the [policy package published by the EBA in October 2022](#). The reporting package under consultation is particularly relevant in the current environment of high inflation combined with growing interest rates.

EMIR

ESMA's [consultation](#) on amendments to its Guidelines for Trade Repositories on position calculation under EMIR closes for feedback on 9 May 2023. ESMA is looking for input from market participants, in particular trade repositories and authorities with access to EMIR data, on the extent to which consistency of position calculation can be enhanced across trade repositories under EMIR Refit standards regarding the scope of data to be used; the time of calculation; and the calculation methodologies.

Fitness and Probity

The European Supervisory Authorities' [consultation on draft joint guidelines on the system for the exchange of information when assessing the fitness and propriety requirements](#) closed on 2 May 2023.

The ESAs are required to set up a system for the exchange of information relevant to the 'fit and proper' assessments of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities (CAs). The ESA's have developed a cross-sectoral database, and the draft guidelines relate to the use of that database (which will hold limited information on persons who are subject to a 'fit and proper' assessment) i.e. how information will be inputted and searched, and how CAs should cooperate to exchange information once they have used the database to identify that another CA has carried out a previous assessment. The database is expected to be available, and final guidelines issued, by the end of 2023.

Insurance Distribution Directive

EIOPA's [consultation](#) on draft amendments to the RTS adapting the base euro amounts for the professional indemnity insurance cover and financial capacity of insurance intermediaries under the Insurance Distribution Directive closes on 6 May 2023. After considering the responses received, EIOPA plans to finalise the draft RTS for submission to the Commission by 30 June 2023.

Markets in Financial Instruments Regulation

We expect the next round of trilogue discussions on the proposed changes to MiFIR to take place in mid-May 2023. Negotiating positions differ on two key areas: what type of data will be included in a future consolidated tape of EU trades, and whether payments for order flow will be prohibited in full or whether Member States will be able to opt-out of this on a Member State-by-Member State basis.

Retail Investment Strategy

We expect the Commission to publish its retail investment strategy on 24 May 2023. While the Commission had planned to include a full ban on inducements for retail financial advice, recent indications are that we are more likely to see stronger rules on when inducements can be paid, and perhaps a targeted ban on inducements for execution-only transactions.

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Looking Ahead: Thought Leadership

THOUGHT LEADERSHIP

Financial Regulation

[Bank Resolution: Commission CMDI proposal published](#)

[MiCA and Transfers of Funds Regulation finalised](#)

[Risk and compliance control frameworks: Latest Central Bank letter to investment firms](#)

[US dollar LIBOR given expected extension by the UK Financial Regulator](#)

Individual Accountability and SEAR

[Fitness and Probity: New Regulations and Guidance published](#)

[IAF/SEAR Update: First commencement order signed](#)

ESG

[EU Taxonomy: Commission consults on Environmental Delegated Act](#)

Insurance

[European court decision on extra-contractual rules in motor insurance claims](#)

[ILS reform on the cards following ECB/EIOPA discussion paper](#)

Asset Management and Investment Funds

[Central Bank permits investment in digital assets by QIAIFs](#)

Company Law

[Department to launch public consultation on proposals to enhance the Companies Act 2014](#)

[New Requirement for Directors to provide PPS Numbers to CRO](#)

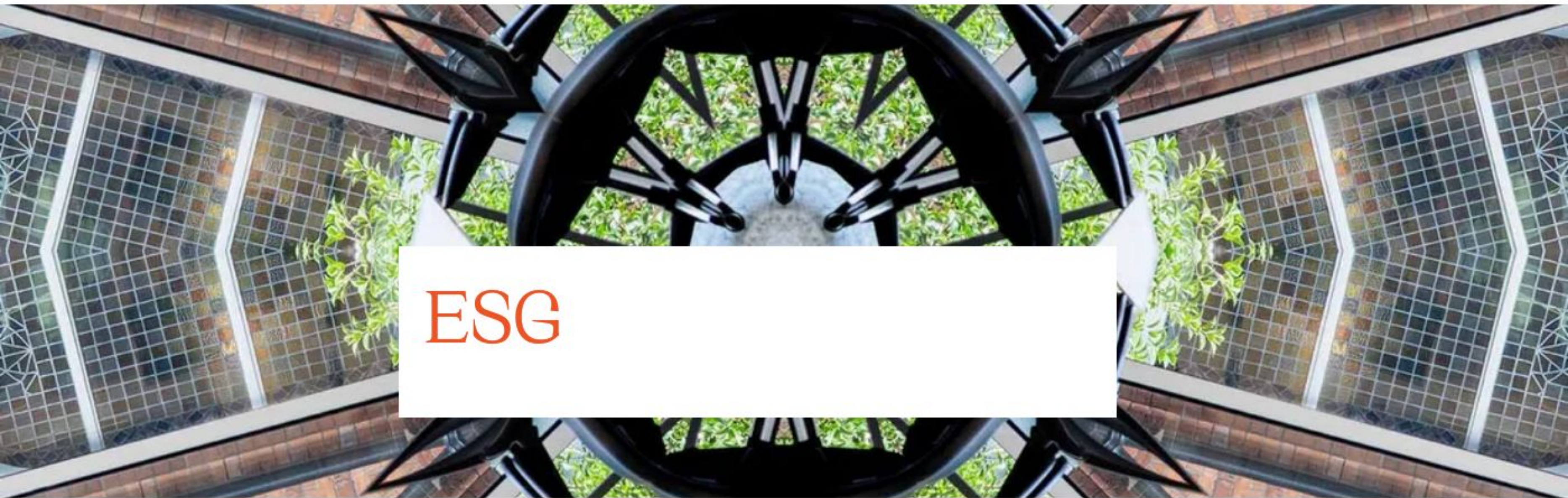
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ESG

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Combatting Greenwashing

ESMA plans to deliver a progress report by the end of May 2023 on its analysis of greenwashing (the three European Supervisory Authorities were mandated by the European Commission to carry out a thorough analysis, with a final report due in May 2024). Their objective is to better understand what constitutes greenwashing, the risks it presents for the financial markets, the supervisory response, and whether (and how) the legal framework might need to change to better combat greenwashing.

[Read our insights here](#)

Sustainability-Linked Loans

Following the publication of updates to both the [Sustainability Linked Loan Principles \(SLLP\)](#) and the [Guidance on SLLP](#) in February 2023, the LMA had signposted its plans to finally publish draft provisions for sustainability-linked loans in May 2023. At the time of writing, those draft provisions had just been published and our analysis of those provisions will be published shortly.

Taxonomy Regulation: New Environmental Delegated Act

The Commission's [4-week consultation](#) on a draft Taxonomy Environmental Delegated Act with technical screening criteria (**TSC**) for economic activities making a substantial contribution to the four remaining environmental objectives under the Taxonomy Regulation ends on 3 May 2023. Those four objectives are: the sustainable use and protection of **water and marine resources**, the **transition to a circular economy**, **pollution prevention and control** and the **protection and restoration of biodiversity and ecosystems**.

[Read our insights here](#)

Taxonomy Regulation: Updates to Climate Delegated Act

As part of the above [4-week consultation](#) on the draft Taxonomy Environmental Delegated Act, the Commission also proposed changes to the Taxonomy Climate Delegated Act (by way of a separate delegated regulation to the above draft delegated act) to add TSC for economic activities not yet included in that Taxonomy Climate Delegated Act (largely dealing with manufacturing activities in relation to key components for low carbon transport and electrical equipment, and some transitional activities in the transport sector). That closes for feedback on 3 May 2023.

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