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Go Further

# Knowledge Network

**2024 Legal Landscape: Key Developments  
and What Lies Ahead**

*Thursday, 7 November 2024*

- AML/CFT
- Finance: ‘Honourable Mentions’
- CPC Review
- 2024 Case-law
- Individual Accountability Framework
- ESG
- Digital Regulation



Martin O'Neill  
Of Counsel, Finance

# AML/CFT Primer and 2024 Developments

# What is Money Laundering?

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Placement    Layering    Integration



| Legislation   | Guidance   |
|---|--|
| <ul style="list-style-type: none"><li>• Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021</li><li>• “Beneficial Ownership” Regulations</li><li>• EU Directive 2015/849 (“AMLD4”, as amended)</li><li>• Criminal Justice (Terrorist Offences) Acts 2005 and 2015</li></ul> | <ul style="list-style-type: none"><li>• CBI ‘Guidelines for the Financial Sector (23 June 2021)’</li><li>• EBA Guidelines</li><li>• DoJ AML Compliance Unit Guidelines (March 2024)</li><li>• FATF Recommendations</li></ul> |

# What is Money Laundering?

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## Section 7(1) CJA 2010

“A person commits an offence if...

- a) engages in any of the following acts in relation to property that is the proceeds of criminal conduct:
  - i. concealing or disguising the true nature [*etc*];
  - ii. converting, transferring, handling, acquiring, possessing or using the property;
  - iii. removing the property from, or bringing the property into, the State, and
- b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.”



# What is Terrorist Financing?

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## Section 13(1) 2005 Act

“...by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending...or knowing that they will be used in whole or in part... to carry out [a terrorist offence]”



## S25 CJA 2010 (Meaning of “Designated Person”)

- “...any person, acting in the State in the course of business carried on by the person in the State, who or that is [a]...
  - credit institution...
  - financial institution...
  - trust or company service provider...
  - casino...
  - person who effectively directs a private members’ club...
  - virtual asset service provider...”
  - [others]”



## CBI

- CBI-authorized firms
- “Schedule 2” firms (s108A CJA 2010)

## Professional Bodies and PSRA

## Department of Justice

- Gambling service providers
- TCSPs (unless otherwise supervised)
- All others

# Designated Person: Obligations

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- Business Risk Assessment
- Customer Risk Assessment
- Customer Due Diligence (CDD)
- Suspicious Transaction Reporting



- SI 110/2019, as modified by SI 233/2020
  - RBO: Central Register of Beneficial Ownership of Companies and Industrial & Provident Societies
  - CBI: Beneficial Ownership Register of Certain Financial Vehicles
- SI 194/2021
  - Revenue: Central Register of Beneficial Ownership of Trusts (CRBOT)
  - Designated Person Obligations

## Danske Bank to Pay \$2 Billion to Resolve Estonia Money-Laundering Probes

The bank in the settlement admitted to defrauding other banks regarding its Estonia customers and its anti-money-laundering controls

## Swedbank hit with record \$386 million fine over Baltic money-laundering breaches

Al Jazeera's investigative unit filmed high-ranking Cypriot politicians, including the parliamentary speaker Demetris Syllouris, promising to support the sale of a Cypriot passport to representatives of a fictitious Chinese businessman with a money-laundering conviction.

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## Six pillars

- 1 Ensuring the effective implementation of the existing EU AML/CFT framework
- 2 Establishing an EU single rule book on AML/CFT
- 3 Bringing about EU level AML/CFT supervision
- 4 Establishing a support and cooperation mechanism for FIUs
- 5 Enforcing Union-level criminal law provisions and information exchange
- 6 Strengthening the international dimension of the EU AML/CFT framework

## *AMLA*

- New AML Authority Regulation (EU 2024/1620)

## *Single Rulebook*

- New AML Regulation (EU 2024/1624)
- 6<sup>th</sup> AML Directive (EU 2024/1640)
- Recast “Wire Transfer” Regulation (EU 2023/1113)

## **AMLA:** “heart” of the reformed system

- Governance and Funding
- Direct / indirect supervision
- Significant supervisory powers



- Risk monitoring
- Managing central database
- Facilitating co-operation
- Supervisory methodologies (risk-based approach)
- Direct supervision
- Indirect supervision
- Monitoring financial sanctions
- Adopting technical standards / guidelines and recommendations

- **AML Regulation**
  - Captures and enhances existing provisions applicable to obliged entities
- **MLD6**
  - Organises the AML/CFT system at the national level
- **Recast Wire Transfer Regulation**
  - Ensuring cryptoasset transfers can be traced

## Increased scope, including:

- Cryptoasset service provider (MICAR-aligned)
- Crowdfunding service providers/intermediaries
- All mortgage/consumer credit providers and intermediaries

## Internal governance:

- Compliance manager + compliance officer
- Group-wide requirements
- 3rd country branches and subsidiaries

- **Customer Due Diligence**

- More granular customer ID&V provisions
- AMLA RTS on standardised datasets for identifying customers
- AMLA guidelines re ongoing monitoring

- **Cap on large cash payments**

- €10k limit (or less) for cash payment to traders

- **Beneficial ownership**

- Non-EU legal entities may need to register
- Additional explanation requirements

# Reform – Gambling Regulation Act 2024

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- Gambling Regulatory Authority of Ireland
- Licensing regime
- “Designated Person”
- Overlapping obligations



Martin O'Neill  
Of Counsel, Finance

# 2024 Highlights - Finance

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- MICA Regulation taking effect
  - Sanctions and Aircraft Leasing
  - Investment Funds
    - ELTIF 2.0 and RTS
    - AIFMD II
  - EMIR 3
  - EU 'Listing Act'
  - EU Insurance Recovery and Resolution Directive
  - Capital Requirements (CRR III and CRD VI)
  - Transposition EU Credit Servicing Directive



## Reform of CPC 2012

- Clarify
- Modernise
- Integrate
- Enhance accessibility

## Scope

- CPC “consumer”: annual turnover threshold increase (€3m to €5m)
- Full CPC will apply ‘buy now pay later’ loans, ‘hire purchase agreements’ and ‘consumer hire agreements’.

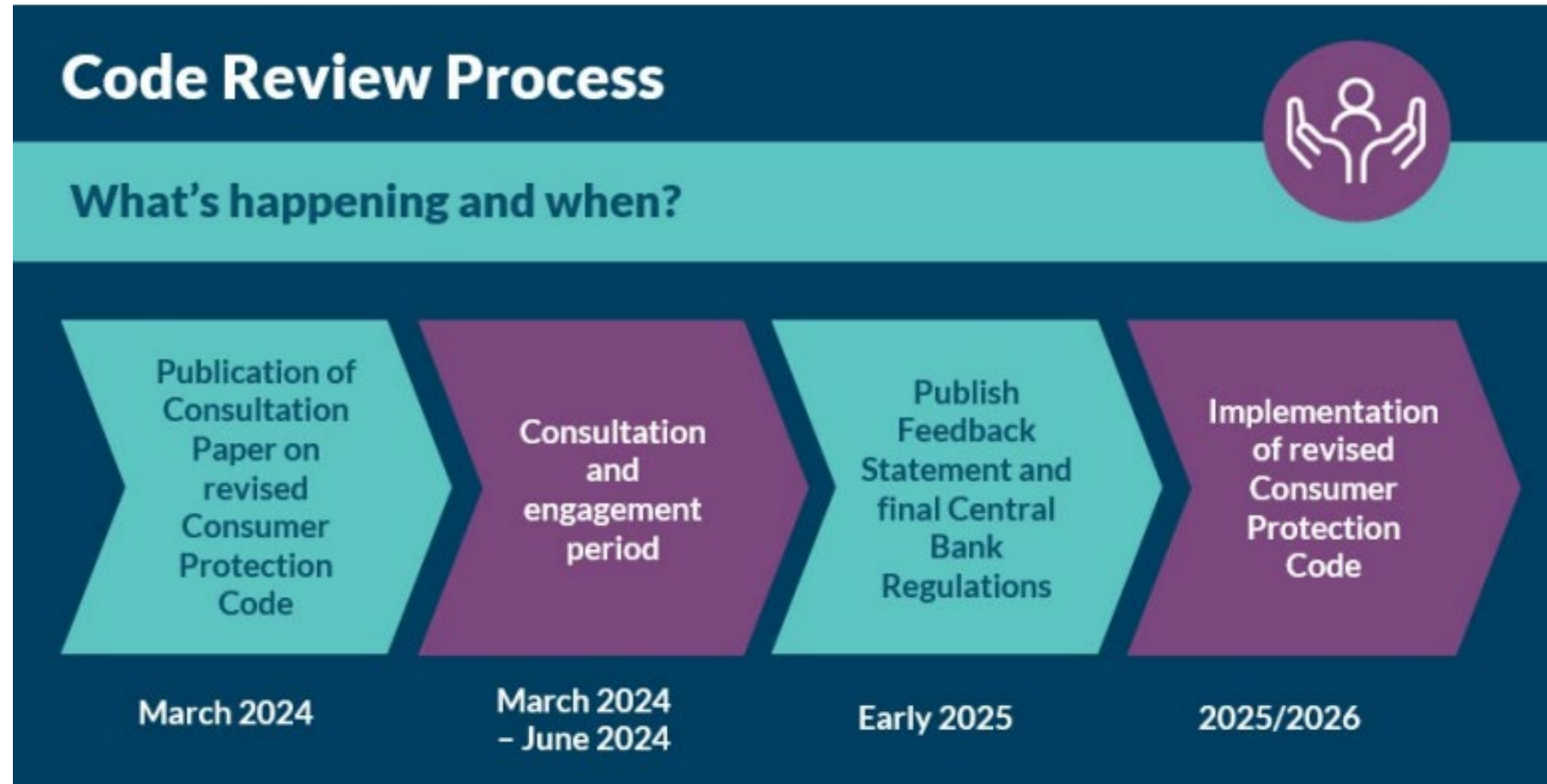


Figure 6 - Timeline of Revised Consumer Protection Code – Source: Central Bank of Ireland

## Two new CBI Regulations

- Standards for Business
  - Evolution of existing “General Principles”
  - Applies to “customers”
- Conduct of Business
  - Evolution/integration of requirements
  - Cross-sectoral and sector-specific requirements
  - Applies to CPC “consumers”

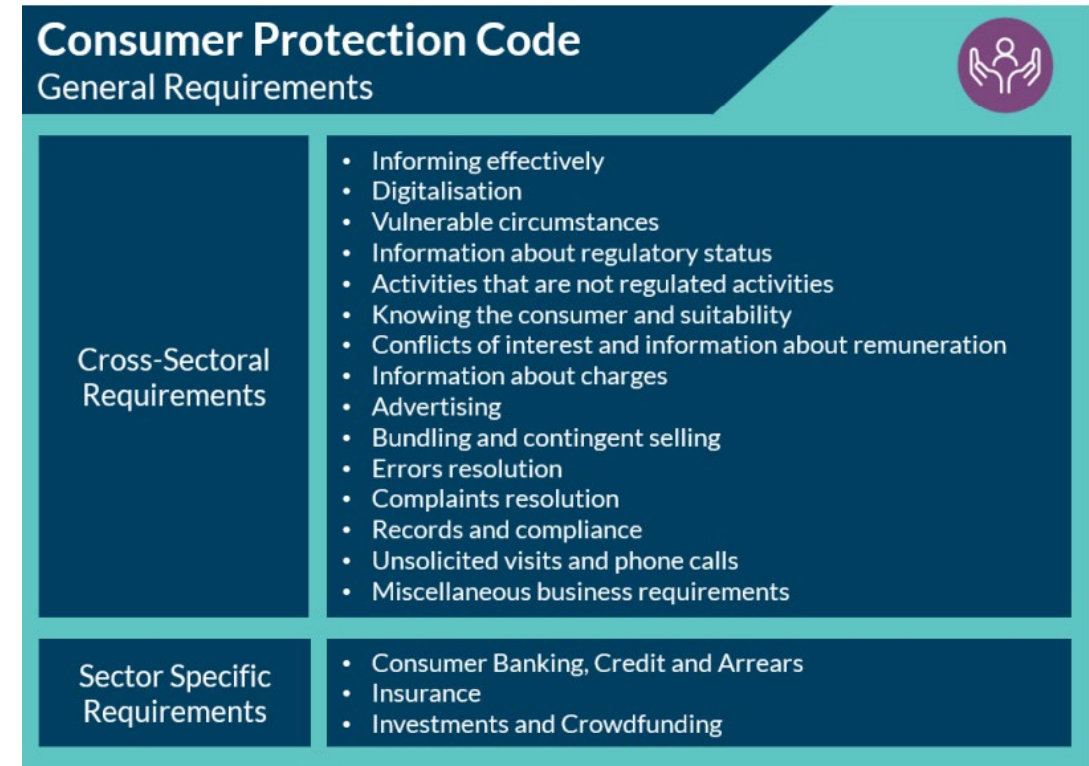


Figure 7 - Structure and Content of Section 48 General Requirements – Source: Central Bank of Ireland

## CBI Guidance

- ‘Securing Customers’ Interests’
- ‘Protecting Consumers in Vulnerable Circumstances’
- Further guidance

- 
- a) secure its [CPC consumer] customer’s interests
  - b) act with honesty and integrity
  - c) act with due skill, care and diligence
  - d) act in the best interests of customers and treat them fairly and professionally
  - e) ensure all information it provides to customers is presented in a way that seeks to effectively inform the customer
  - f) control and manage its affairs and systems sustainably, responsibly and in a sound and prudent manner
  - g) maintain adequate financial resources
  - h) control and manage its affairs and systems to counter the risks to customers of financial abuse
  - i) engage and cooperate with the [CBI...] in good faith and without delay.

# Clarification – Part 3 (Supporting Standards) and Guidance

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## Securing Customers' Interests

- “take into account customers’ interests”
- Resolving and disclosing issues quickly
- “cross-read” issues for one customer to similar cohorts
- Guidance: Customer retains autonomy and responsibility but only if empowered

# Clarification – Part 3 (Supporting Standards) and Guidance

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## Informing Effectively

- Material features can reasonably be understood
- Clear, accurate, plain language
- Bring key information to customers' attention

## Financial Abuse

- Systems and controls
- Monitoring trends and vulnerabilities
- Notifying customers



## Johnson v FirstRand Bank Ltd (London Branch) (UK Court of Appeal)

- Broker's discretionary commission
- Disinterested duty / Fiduciary duty
- Informed consent?
- Lender liability (bribery / accessory)

## AB v Central Bank of Ireland (Irish Financial Services Appeals Tribunal)

- Pre-Approval Controlled Functions (PCF) Application
- Fitness and Probity
- “...fundamental procedural flaws...”
- Independent review of F&P regime

## Standard Chartered PLC v Guaranty Nominees Ltd and Ors (UK High Court)

- LIBOR Tough Legacy
- Test Case
- Contractual Interpretation

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## Ulster Bank DAC v Financial Services and Pensions Ombudsman (Court of Appeal)

- FSPO tracker mortgage decisions
- Curial deference?

## Flatley v Austin Group Ltd (High Court)

- First judgment on Consumer Rights Act 2022
- “Blacklist” includes a term which “...require[s] a consumer to bear his or her own costs in respect of any arbitration”



Josh Hogan

Partner, Financial  
Regulation

# FinReg – Individual Accountability Framework

# The Individual Accountability Framework (“IAF”) Legal Framework

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The legal framework constituting the IAF consists of:

- 1 The Central Bank (Individual Accountability Framework) Act 2023;
- 2 Regulations issued by the Central Bank of Ireland (the “**CBI**”) in relation to (i) SEAR; (ii) Fitness and Probity Certifications; and (iii) holding companies; and
- 3 CBI Guidance on the IAF published in April 2024 (the “**IAF Guidance**”).

The framework is based on principles of proportionality, predictability and reasonable expectations.

# The 4 Pillars of The Individual Accountability Framework

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The Senior Executive Accountability Regime (“**SEAR**”)



Conduct Standards and Business Standards



Enhancements to CBI’s Fitness & Probity Regime



Reforms to CBI’s enforcement powers

As of 1 July 2024 (with the commencement of the first phase of SEAR), all four IAF pillars are now in operation.

# Pillar 1 - The Senior Executive Accountability Regime (“SEAR”)

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- Finalised **SEAR Regulations** issued on 16 April 2024 pursuant to Section 48 of the Central Bank (Supervision and Enforcement) Act 2013.
- Operative from **1 July 2024** for in-scope firms\* SEAR initially applies to:
  - **credit institutions** (excluding credit unions);
  - **insurance undertakings** (excluding reinsurance undertakings, captive (re)insurance undertakings and insurance special purpose vehicles);
  - **investment firms** which underwrite on a firm commitment basis and/or deal on own account and/or are permitted to hold client assets; and
  - **incoming third country branches** of the above.
- The CBI has the power to extend SEAR to other sectors via Regulations.





# Pillar 1 - SEAR: Duty of responsibility and reasonable steps

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SEAR requires in-scope firms to set out clearly and fully where responsibility and decision-making lie within the firm's senior management, including by preparing statements of responsibility for each senior executive and responsibility maps for the entire firm.

Regulation 53B Central Bank Reform Act 2010 (No. 23)

*“A person who has inherent or allocated responsibility for an aspect of the affairs of a regulated financial service provider shall take any **steps that it is reasonable in the circumstances for the person to take** to secure that, while the person has that responsibility, the aspect of the affairs of the regulated financial service provider is conducted so as to avoid contravention by it of its obligations under financial services legislation.”*

- Some guidance provided on what constitutes “reasonable steps”
  - Context specific and varies based on facts and circumstances in each case;
  - No list of exhaustive steps to be followed by PCF/CF holders;
  - CFs and PCFs should not adopt a check-box mentality in applying the guidance.

- Allocation of responsibilities
  - **Inherent Responsibilities:** Regulation 4 (non-NEDs) and 5 (NEDs)
  - **Prescribed Responsibilities:** Regulation 6
  - **Other Responsibilities:** Regulation 8
  - **Requirement to Allocate:** Regulation 9
  - **Statement of Responsibilities:** Regulation 10
  - **Identification of Areas of Responsibility and Management Responsibilities Maps:** Regulation 7
  - **Record Keeping:** Regulation 12

## Conduct Standards

- A single set of standards of behaviour, applicable since 29 December 2023, to persons who perform a controlled function (“**CFs**”), including all persons who perform a pre-approval controlled function (“**PCFs**”), in all regulated firms, irrespective of sector (and are not linked to whether a firm is in scope of SEAR).
- Further CBI Guidance in Chapters 4 to 6 of the IAF Guidance.
- **Additional Conduct Standards** apply to PCFs or persons performing the CF1 role (i.e. individuals with the ability to exercise a significant influence on the conduct of the affairs of the firm). These apply since 29 December 2023.
- **Defence** to any enforcement action in relation to a breach of the Conduct Standards/Additional Conduct Standards if the person can show that she or he acted reasonably in all of the circumstances of the case.
- The **Business Standards** are reflected in the draft Central Bank Reform Act 2010 (Section 17a) (Standards for Business) Regulations 20xx and are being developed in line with the CBI’s review and consultation on the Consumer Protection Code 2012.

## The Common Conduct Standards

- Act with honesty and integrity
- Act with due skill, care and diligence
- Co-operate in good faith and without delay with regulatory authorities
- Act in the best interest of clients and treat them fairly and professionally
- Operate in compliance with standards of market conduct and trading venue rules

## The Additional Conduct Standards

- Ensure the business of the regulated financial service provider is controlled effectively
- Ensure the business of the regulated financial service provider is conducted in accordance with obligations under financial services legislation
- Ensure delegated tasks are assigned to appropriate person with effective oversight
- Disclose any information that the CBI would reasonably expect notice of promptly and appropriately

- Final guidance on Fitness and Probity Standards published in December 2023.
- Requires Regulated Financial Service Providers (“**RFSPs**”) to periodically certify the fitness and probity of persons in CF and PCF roles.
- Regime updated to introduce **certification, enhanced due diligence and reporting obligations** in respect of the fitness and probity of persons in CF and PCF roles.
  - From 1 January 2025, and annually thereafter, a firm must submit to the CBI confirmation of compliance with certification requirements.
- Enhancements relating to the fitness and probity investigative process is subject to separate guidance.
- In July 2024, the CBI published the findings of an independent review of the F&P regime, triggered by decision of the Irish Financial Services Appeals Tribunal (“**IFSAT**”) which identified “fundamental procedural flaws” in relation to the CBI’s handling of specific applications to perform PCF roles. The CBI has stated that it will implement reforms based on the findings of the review by the end of the year.

## The Administrative Sanctions Procedures (“ASP”) followed CBI’s consultation paper CP154.

Removal of the “participation link” – the CBI will no longer have to first find that a firm has committed a regulatory breach before it can take enforcement action against any individual in that firm.

### Key changes:

- Role of the Responsible Authorised Officer (RAO)
- Specific timeframe for responses
- Use of information
- Legal professional privilege - disclosure agreement
- Publication of the details of the notice of inquiry
- Appointment of inquiry members
- Conflicts
- The process in ‘undisputed facts’ settlements and investigation report settlements
- Sanctions
- High Court confirmation



- **1 January 2025** - Date from which firms must submit, to the CBI, confirmation of compliance with the certification requirements
- **1 July 2025** - Date from which SEAR applies to (independent) non-executive directors

- Independent Non-Executive Directors
- Controlled function role holders - the scope of application of the IAF to the personnel of EEA institutions that are providing services to Irish customers on a branch or cross-border services basis
- Holding companies
- Collective decision making







Éamon Ó Cuív

Partner, Financial  
Regulation

# ESG

# Corporate Sustainability Reporting Directive (CSRD)

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- CSRD entered into force on 5 January 2023
- Irish transposing legislation - S.I. No. 336/2024 - European Union (Corporate Sustainability Reporting) Regulations 2024 – came into operation on 6 July 2024 – some inconsistencies with CSRD have been identified
- Key features:
  - expanded scope
  - inclusion in Directors' Report
  - audit requirement (initially on a limited assurance basis)
  - Development of standardised framework for reporting (the **ESRS**)
- Phased implementation - first wave of companies due to start reporting on financial years starting on or after 1 January 2024 (reporting 2025)



## Biggest Developments in 2024

- ESMA guidance issued on “fund naming” conventions to tackle greenwashing risks.
  - Final guidelines published in August 2024.
  - Article 8/9 funds using sustainability related terms must meet requirements or change their names.
- The European Commission issued a consultation paper on SFDR which includes proposals to put in place a new, pan-EU (formal) ESG fund labelling regime (also referred to as “SFDR 2.0”).
  - Joint opinion published by ESAs in June 2024.
  - Preference for move from disclosure regime to labelling/categorization regime with clear eligibility requirements for each category.
- Other proposals to amend the RTS under SFDR as it relates to PAIs, the DNSH test, the reporting requirements etc. under SFDR (SFDR 1.5).



## What lies ahead?

### ESMA Fund Naming Guidelines

- Guidelines apply from 21 November 2024, with existing funds obligated to comply by 21 May 2025.
- Central Bank of Ireland has established a streamlined/fast-track process for funds to make the necessary updates to ensure compliance with the Guidelines or change their name to remove any sustainability related term.

### SFDR 2.0

- No set timeline for the European Commission to publish a proposed SFDR 2.0.

### Continued periodic reporting obligations for funds and fund managers

- Annual reports to include latest SFDR periodic disclosures.

- Entered into force on **25 July 2024**. To be transposed by 26 July 2026 with phased implementation from 26 July 2027 onwards
- Applies in relation to a company's own operations, and those of its subsidiaries and operations of their business partners where related to their 'chains of activities'
- Scope narrower than that of CSRD
- Requires in-scope companies to:
  - companies will have to integrate due diligence into their policies and risk-management systems;
  - take '**appropriate measures**' to prevent/mitigate potential adverse impacts, and bring actual adverse impacts to an **end/minimise** their extent
  - provide for **remediation**
  - establish and maintain a **complaints procedure**, and to monitor the **effectiveness of procedures**
  - **report under CSRD** or otherwise publish annual statements on their websites.
- In-scope companies required to adopt **climate transition plans**
- EU Member States to designate **NCA**s responsible for enforcement (e.g. inspections and investigations; penalties on non-compliant companies, including "naming and shaming" and fines)
- Introduction of civil liability regime pursuant to which companies may become liable for breaching their due diligence obligations and their victims will have the right to be compensated for damages
- Compliance with due diligence obligations can be used as part of the award criteria for public and concession contracts



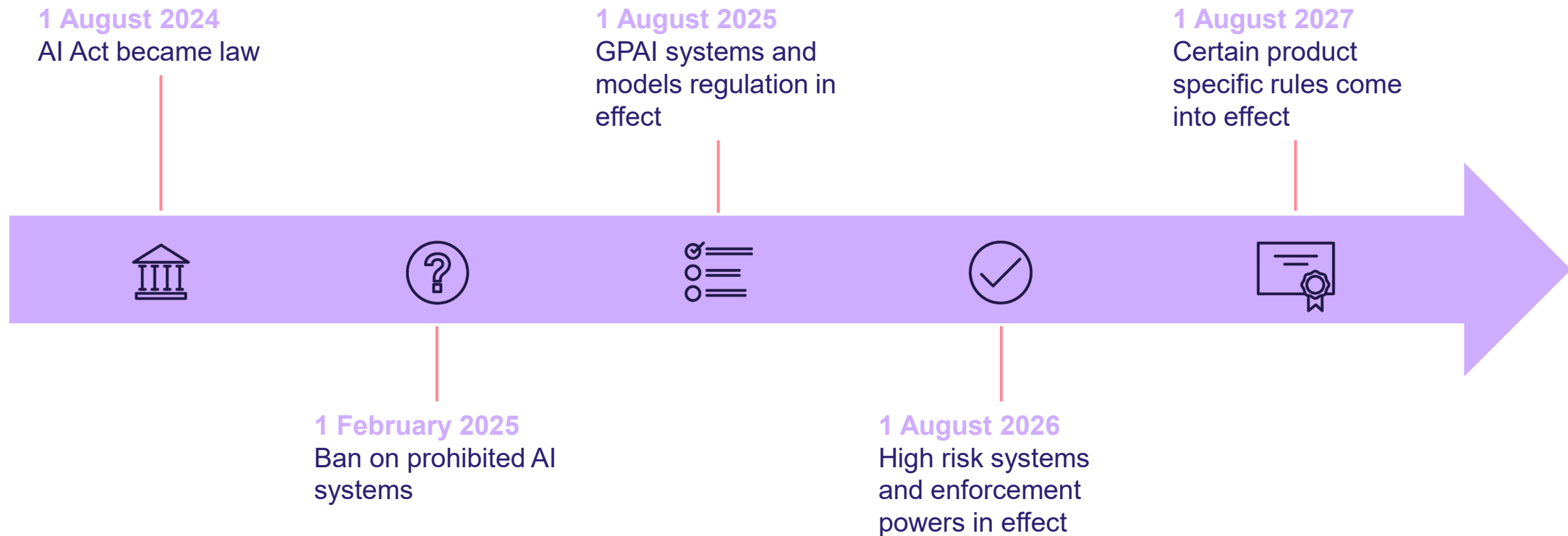
Doug McMahon

Partner, Technology  
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# Digital Regulation

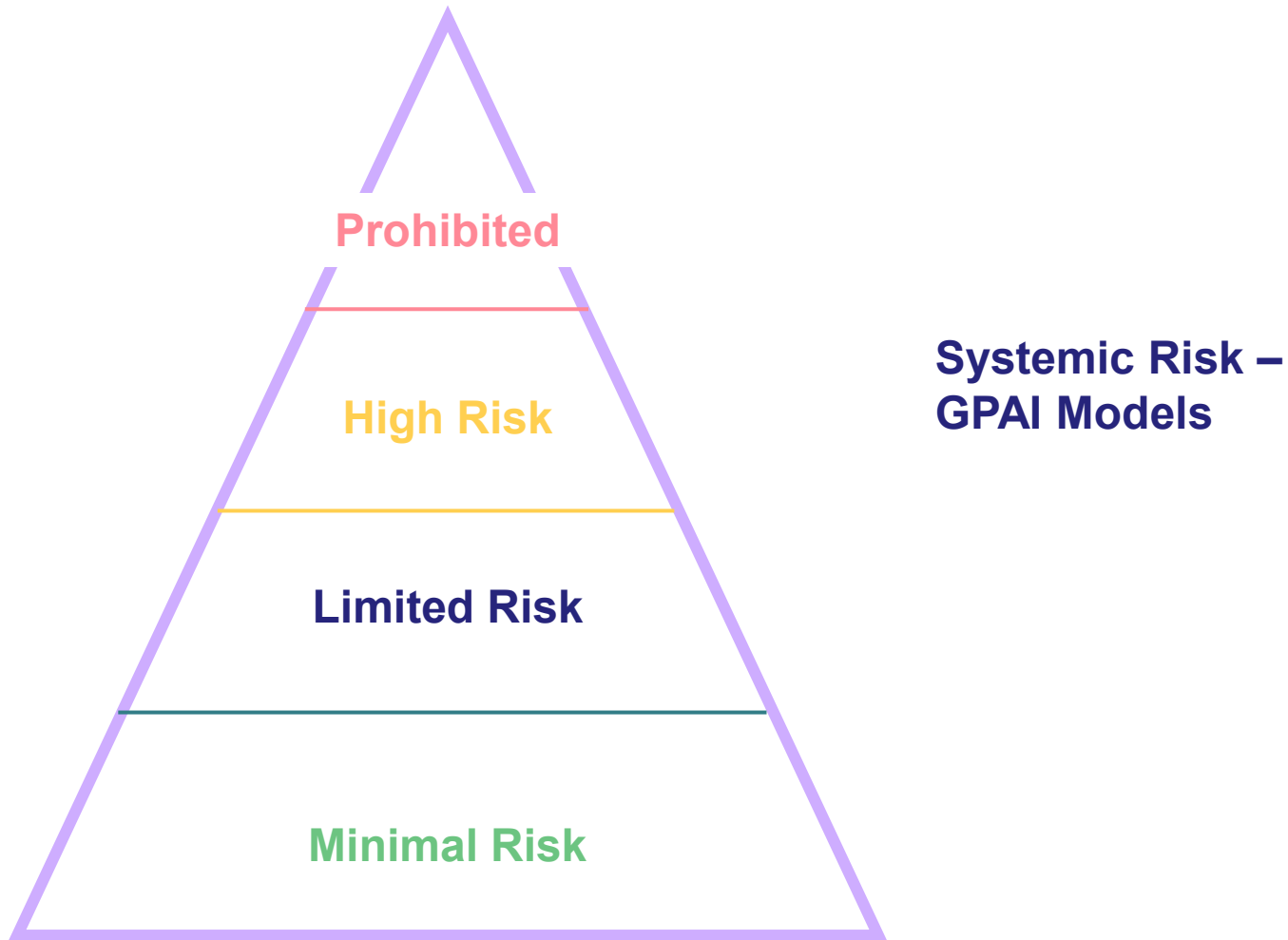
# AI Act - Timeline for Implementation

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# AI Act - A Risk Based Approach

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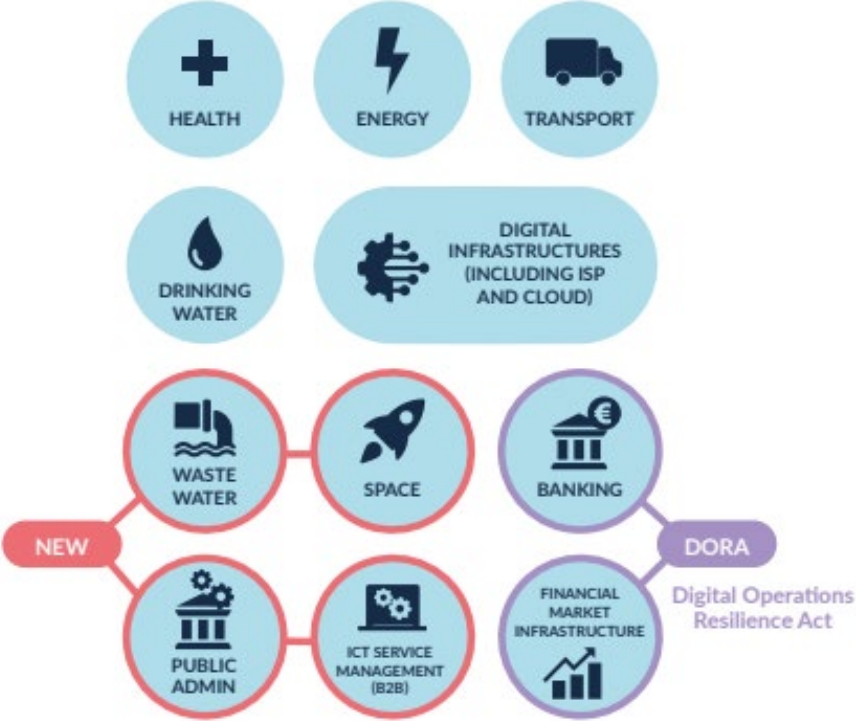
# AI Act - What should be done today?

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- Audit current use of AI systems
- Identify the road map for use of AI systems in the organisation
- Make plans to cease using any AI systems that will be prohibited
- Identify responsibilities within the organisation for AI Act compliance
- Consider the compliance burden as part of budgetary planning activities

## Sectors of High Criticality



## Other Critical Sectors



- Important entities
  - 50-249 employees
  - Annual revenue between €10 million and €50 million
- Essential entities
  - 250+ employees
  - Greater than €50 million annual revenue
  - Additional designations

# NIS 2 – What should be done today?

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- Confirm if you are in scope
- Plan a risk assessment for potential cyber threats
- Develop or review your information security policy
- Develop or review your incident response plan
- Review supply chain and plan for updating contracts





- The **Digital Operational Resilience Act** (“**DORA**”) comprises Regulation (EU) 2022/2554 and Directive (EU) 2022/2556
- Applicable on an EU-wide basis from **17 January 2025**
- DORA aims to consolidate and upgrade information and communications technology (“**ICT**”) risk requirements in the financial sector in a single European legal act
- DORA has broad application to financial entities, but also impacts third party ICT services providers

## ICT risk management

- Reporting of major ICT–related incidents and notifying, on a voluntary basis, significant cyber threats to the competent authorities
- Digital operational resilience testing
- Information and intelligence sharing in relation to cyber threats and vulnerabilities

## ICT Third Parties

- Measures for the sound management of ICT third–party risk
- Requirements in relation to the contractual arrangements concluded between ICT third–party service providers and financial entities
- rules for the establishment and conduct of the oversight framework for critical ICT third–party service providers

# DORA – What should be done today?

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- 
- Establish a DORA implementation team which benefits from management support and buy-in
  - Conduct a gap analysis of existing ICT risk management frameworks against DORA requirements
  - Review ICT contractual arrangements and assess ICT third-party risk
  - Commence engagement with ICT third-party service providers
  - Commence the process of conducting a thorough cyber hygiene review.



- [EU AI Act Enters into Force: Key Compliance Dates for Stakeholders](#)
- [Big Data, Big Change: The New AI Act has Big Implications for the Financial Services Sector](#)
- [Impending Cybersecurity obligations: Are you subject to NIS 2?](#)
- [NIS 2 Implementation by October 2024: Government Publishes General Scheme of National Cyber Security Bill](#)
- [The EU Digital Operational Resilience Act: Are You in Scope of the New Requirements?](#)
- [Delving into DORA: ICT Contractual Arrangements](#)



# Coffee Break



Martina Firbank  
Of Counsel, Real Estate

# Real Estate Legal Developments of 2024

Housing

Wider Built Environment

Budget 2025 – Taxes  
affecting Real Estate

Case law



- Housing
  - Housing Commission Report 2024
  - Private Rented Sector
  - Social & Affordable Sector
- Housing Commission Report 2024
  - published May 2024 ([here](#))
  - established December 2021 to review challenges and consider formulation of long-term housing policy



- Housing Commission Report
  - Benchmarks actions & signposts future reforms
  - Government's revised target of 303,000 homes from 2025 to 2030 (published 5 Nov [here](#)) 20% lower than Commission
  - Key principle of reforms: consistent and coherent housing policy
- Recommendations include:
  - measures to enable necessary public infrastructure and utilities on land zoned for housing
  - establishment of Housing Delivery Oversight Executive
  - measures to scale up housing output as a priority
  - measures to attract diversity of funding from private sources including international capital
  - measures to transition at scale to cost rental



## Private Rented Sector – In effect

- Residential Tenancies (Amendment) Act 2024, enacted 12 July 2024 and commenced 19 July 2024
- Affects agreements with students in respect of “student accommodation”
  - Arrangements of more than 41 weeks only permitted where student requests
  - Students may terminate on 28 days notice between 1 May to 1 October in any year
  - Providers cannot seek or require payments in excess of more than one month
  - Students may only opt to make excess payments where the student is also liable to pay tuition fees to the accommodation provider

For further information, see our briefing: [here](#)





## Private Rented Sector – Proposed

- Residential Tenancies (Amendment) (No. 3) Bill 2024, initiated on 24 July 2024 and Dáil first stage completed
- Provides for a new tenant right to purchase, among other matters
- Requires the landlord when terminating tenancy due to an intention to sell to also serve on tenant a notice of invitation to bid for the purchase of the property
- NB: As initially drafted:
  - Does not apply to entire build-to-rent or other wholly owned apartment blocks
  - Only applies when terminating for sale



## Social & Affordable Sector – Enacted but not commenced

- Housing (Miscellaneous Provisions) Act 2024, enacted on 29 October 2024 and awaiting commencement order(s)
  - **Approved Housing Bodies**
    - amends Housing (Regulation of Approved Housing Bodies) Act 2019 so that AHBs in existence prior to coming into effect of 2019 Act do not need to comply with strict criteria for new applicants and will simply be registered by AHBRA
  - **Cost Rental Tenancies**
    - amends certain provisions regulating cost-rent tenancies under Affordable Housing Act 2021
  - **Land Development Agency**
    - increases amount Minister for Finance may direct NTMA to pay the LDA





# Real Estate – Legal Developments 2024 – Wider Built Environment

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New “Zoning Value Payment” for development lands

**Land (Zoning Value Sharing) Bill 2024**



Environmental, Social and Governance

**Energy Performance of Buildings (Recast)**



Foreign Investment into Ireland

**Screening of Third Country Transactions Act 2023**



# Real Estate – Legal Developments 2024 – Wider Built Environment

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- Land (Zoning Value Sharing) Bill 2024, initiated 12 September 2024 and completed Dáil first stage
  - Imposes ‘zoning value payment’ of:
    - 25% of increase in value of relevant land due to zoning
    - as condition of relevant planning permissions
  - Provision for repayment of all / part where housing provided is social / affordable
  - Applications in respect of relevant land for anything other than a relevant permission must be accompanied by statutory declarations and will be subject to scrutiny



- “relevant land” means land that is, whether on or after the date on which this section comes into operation— (a) zoned— (i) solely or primarily for residential use, (ii) for a mixture of uses, including residential use, or (iii) for commercial or industrial uses and not residential use, or (b) within a strategic development zone
- “relevant permission” means a permission that includes permission for either or both of the following: (a) a residential development of more than 4 housing units; (b) a commercial development of 500 or more square metres gross floor space

## Energy Performance of Buildings Directive (recast)

- Published in the Official Journal of the European Union on 8 May 2024 and entered into force on 28 May 2024: each member state, including Ireland, must implement by 29 May 2026
- Potential to be transformative in reducing energy emissions from buildings
- Directive sets clear targets for results to be achieved by each member state but gives significant discretion how to achieve those
- Important detail for Irish stakeholders to be revealed in Irish implementing legislation



- Budget 2025 & Finance Act 2024
  - Stamp Duty
  - Residential Zoned Land Tax
  - Vacant Homes Tax increase from five to seven times a property's base Local Property Tax liability
- Government Report on Funds Sector including review of taxation of vehicles used in RE investment published 22 October 2024 ([here](#))



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**Finance Act 2024**, initiated on 10 October and passed by both houses on 6 November 2024

- Stamp duty
- From (and including) 2 October 2024:
  - 10% rate for bulk purchases increased to 15%
  - new 6% residential rate on balance above €1.5m (except for 3 or more apartments in apartment block)
- Old rates apply if instrument certifies contract in place before 2 October and completes by 31 December 2024
- 4-year timeframe for reclaiming stamp duty paid on contracts or licences for transactions that do not complete

For further information, see our briefing: [here](#)

## Residential Zoned Land Tax

- Rezoning request may be made between 1 February and 1 April 2025 – if successful, exempt from RZLT for 2025 and subsequent years
- New exemption for JR proceedings taken by an unconnected third party
- Deferral period for appeals taken by an unconnected third party to commence from the date of the grant of the planning permission
- Transfers between companies in a capital gains tax group that are both within the charge to Irish corporation tax do not trigger a clawback of deferred tax
- New 12-month pre-development deferral period

For further information, see our briefing: [here](#)



- Bewley's Café Grafton Street Ltd v RGRE Grafton Ltd, Circuit Court, 25 October 2024
- Court-determined market rent on statutory renewal of lease
- Note: Expired lease contained upward-only rent review clause
- Highlights:
  - Complexity of valuations for certain properties
  - Landlord's obligation to refund rent "overpaid"





Sinéad Martyn

Partner,  
Environmental and  
Planning

# Planning Update

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“The President has considered all relevant constitutional aspects of the Planning and Development Bill 2023 and, having considered the options available to him, today signed the Bill.

The President had followed the passage of the Bill through both Houses of the Oireachtas, and taken note of the debate at all stages and of the issues raised, including in particular the discussion on a citizen’s constitutional right to access to justice and possible issues of compliance with the Aarhus Convention.

While the President took note of the important concerns that were raised in the discussion on the Bill, the question he had to consider was the suitability for clarification of an Article 26.1.1 referral to address, for example, whether there may be an interference arising from changes in the constitutional right of access to the Courts and/or the right to litigate. His conclusion is that such issues are probably best tested in a facts specific way rather than in the abstract.

The President is of the view that, in this instance, the issue of potential unconstitutionality contained in the provisions of the Planning and Development Bill 2023 would be more appropriately tested by means of an action determined primarily on proven facts, rather than by way of an Article 26 referral.

When considering any piece of legislation, the President is also cognisant of Article 34.3 of Bunreacht Na hÉireann, which provides that no Court can question the validity of any legislation following a referral by the President to the Supreme Court. In this context, the President’s decision to sign this legislation leaves it open to any citizen to challenge the provisions of the Bill in the future.”



- Not yet commenced
- Regulations not yet published
- Further amendments signalled

## First up: Statutory Deadlines

- Decisions by An Coimisiún Pleanála: **18 weeks**
- Decisions by OCP with EIA/ AA: **26 weeks**
- Decisions by planning authorities: **8 weeks**
- Exceptions and extensions possible but stricter deadlines

## Judicial Review

- Removal of leave stage
- Environmental costs regime
- Stricter standing rules for unincorporated entities
- Remittal and correction of errors

## Alterations and extensions

- Changes to current extensions permissible under section 42



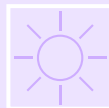
Commencement of **Water Environment (Abstractions and Associated Impoundments) Act 2024** – requires licensing of certain abstractions, including abstractions equalling or exceeding 2,000m<sub>3</sub>/day;



**Webster & Anor -v- Meenacloghspar [Wind] Limited** [2024] IEHC 136, 8 March 2024 – noise nuisance and planning;



**Crofton Buildings & Anor v An Bord Pleanála** [2024] IESC 12, 10 April 2024 – remittal of decisions of An Bord Pleanála;



**Concerned Residents of Treascon and Clondoolusk -V- An Bord Pleanala, Ireland and the Attorney General and Elgin Energy Services Limited** [2024] IESC 28, 4 July 2024 – EIA classes and solar farms



Paul Heffernan

Consultant,  
Corporate

# Company Law and Corporate

- 
- **Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024<sup>1</sup>**
  - **Other 2024 Legislation & Developments of note**
    - Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024
    - European Union (Corporate Sustainability Reporting) Regulations 2024 (see ESG presentation)
    - European Union (Adjustments of Size Criteria for Certain Companies and Groups) Regulations 2024
    - Irish Corporate Governance Code (see our briefing [here](#))

1

Awaiting signature

## Outlook

- CS3D (see ESG presentation)
- Gender Balance Directive
- Scheme for Bill for Limited Partnerships and Business Names (published July 2024)

# Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024

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See our detailed Briefing [here](#)

## Virtual General Meetings

A Covid-19 period ability for companies to hold virtual or hybrid general meetings (due to expire at year end) is being put on a permanent statutory footing

A company will have the ability to conduct general meetings wholly virtually, with all attendees participating online without requirement for a physical meeting location, or by a hybrid meeting with participants participating both virtually and in-person. Such online participants will be deemed present at the meeting

A chairperson will have the ability to adjourn the meeting if the failure of the electronic communication platform interferes with proceedings of the meeting

Resolutions can only be voted upon if the chairperson can identify those entitled to vote and can verify the content of the voting instructions given by online participants

# Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (Cont'd)

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## Mergers

- The process whereby two private Irish companies can merge so the assets and liabilities (and corporate identity) of one are transferred by operation of law to the other, before the former is dissolved, will be clarified to provide that one of the companies must be an LTD or a DAC (currently the 2014 Act specifies that one must be an LTD)
- In the case of private companies, a group of subsidiary companies that is wholly-owned by the same parent company will be able to take part in a merger by absorption in one transaction rather than (at present) in several transactions



# Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (Cont'd)

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## Company Strike off

New grounds will be introduced for the involuntary strike-off of a company by the Registrar of Companies, namely on the grounds of:

- a) failure to deliver notice of change of the situation of the company's registered office
- b) there not being any current company secretary of the company recorded in the Companies Registration Office and
- c) failure to notify the Registrar of Beneficial Ownership of certain information in relation to the beneficial owner of a company

These new grounds will not give rise to consequential disqualification of directors.

# Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (Cont'd)

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## Use of company seal

- Re-instatement on a permanent basis of a mechanism (first introduced as s43A to 2014 Act under Covid-19-related legislation) to enable documents under seal to be executed in different counterparts, with the aggregate of the documents to be considered as one instrument
- Instead of the company seal and authorised signatures being applied to the same page, the seal and each of the signatures can appear on “several documents in like form”, which will be taken together to constitute one “instrument”
- When S43A applied this firm took the view:
  - a) if constitution allowed seal be used with one signature, s43A required two signatures
  - b) that you didn't need to have 3 instruments separately executed to be able to avail of s43A, two sufficed

# Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024 (Cont'd)

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## SAP Declarations to be Prescribed

A copy of various declarations that must be made where a company is using the summary approval procedure under the 2014 Act will have to be delivered to the Registrar in the prescribed form. Currently, a company may submit a copy of many types of such declarations to the Registrar using their own forms (containing the required particulars) or the administrative forms issued by the Registrar

Practical difficulties may arise re SAP's already concluded and where papers (using current formats) are out for signature when section is commenced

## Small company audit exemption

A company that qualifies as a small company will not be entitled to an audit exemption where it fails to deliver, for a second or subsequent time within a period of five consecutive years, an annual return. Currently the exemption is lost if any annual return is not filed on time

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## Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024

- Update on law on collective redundancies and greater information and consultations rights for employees. Establishment of Employment Law Review Group
- Insolvency related provisions (see our Briefing [here](#))

## General Scheme of Registration of Limited Partnerships and Business Names Bill 2024

- The General Scheme repeals and replaces the Limited Partnerships Act 1907 and the Registration of Business Names Act 1963 to provide for modern business practices and a robust, transparent and fit for purpose regulatory framework for those engaged in business using a business name or the limited partnership model.
- These objectives will be achieved by additional information and reporting requirements; additional powers for the Registrar consistent with those for companies to ensure the integrity of the Registers are upheld; and enhanced enforcement and compliance provisions; whilst retaining the nature of the limited partnership framework.

# European Union (Adjustments of Size Criteria for Certain Companies and Groups) Regulations 2024

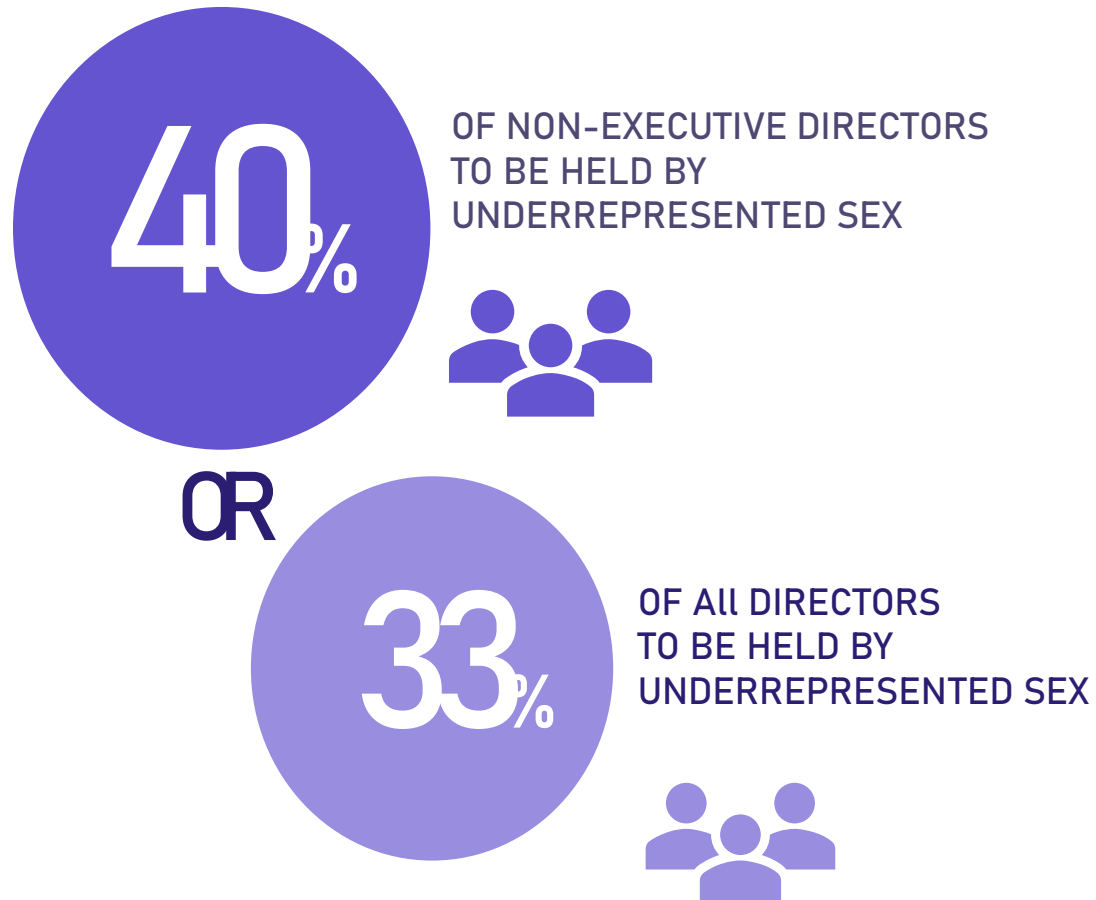
The size criteria for certain companies and groups have been amended as set out below. Other conditions, which require to be satisfied in each case to qualify as a particular type of company (such as the obligations to form an audit committee or to prepare a directors' compliance statement), have not been altered.

| Adjustments of Size Criteria for Certain Companies and Groups                       |  |  |           |
|---|--|--|-----------|
| <i>Company must not exceed two of three criteria for current and preceding year</i> |  |  |           |
| <b>Micro Company</b>  |  |  |           |
| Period  | Turnover   | Balance Sheet Total                    | Employees |
| Before 1 July 2024  | €700,000   | €350,000                               | Max 10    |
| From 1 July 2024  | €900,000   | €450,000                               | Max 10    |
| <b>Small Company</b>  |  |  |           |
| Period  | Turnover   | Balance Sheet Total                    | Employees |
| Before 1 July 2024  | €12 million  | €6 million                             | Max 50    |
| From 1 July 2024  | €15 million  | €7.5 million                           | Max 50    |
| <b>Small Group</b>  |  |  |           |
| Period  | Turnover   | Balance Sheet Total                    | Employees |
| Before 1 July 2024  | €12 million net (or €14.4 million gross)   | €6 million net (or €7.2 million gross) | Max 50    |
| From 1 July 2024  | €15 million net (or €18 million gross)   | €7.5 million net (or €9 million gross) | Max 50    |
| <b>Medium Company</b>   |  |  |           |
| Period  | Turnover   | Balance Sheet Total                    | Employees |
| Before 1 July 2024  | €40 million  | €20 million                            | Max 250   |
| From 1 July 2024  | €50 million  | €25 million                            | Max 250   |
| <b>Medium Group</b>   |  |  |           |
| Period  | Turnover   | Balance Sheet Total                    | Employees |
| Before 1 July 2024  | €40 million net (or €48 million gross)   | €20 million net (or €24 million gross) | Max 250   |
| From 1 July 2024  | €50 million net (or €60 million gross)   | €25 million net (or €30 million gross) | Max 250   |
| <b>Large Company</b>  |  |  |           |
| Criteria  | The default category: any company that does not qualify as a micro company, a small company or a medium company. |  |           |

The new thresholds may apply to financial years beginning on or after 1 January 2024, but a company may elect to apply them to a financial year beginning on or after 1 January 2023.

# Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures

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- To be implemented by **28 December 2024**
- EU listed companies
- A minimum either 40% of all non-executive director positions or
- 33% of all director positions are held by the "underrepresented sex" (to use the EU's term)
- by **30 June 2026**
- "effective, proportionate and dissuasive" penalties for non-compliant companies



Stephen Ryan

Of Counsel,  
Competition

# Merger Control and FDI Screening

# A new regime for screening foreign investment into Ireland

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- Screening of Third Country Transactions Act 2023
  - signed into law on **31 October 2023**
  - expected to enter into force in the **latter part of Q4 2024**.
- Administered by Department of Enterprise, Trade and Employment.
- Developed on foot of EU Regulation 2019/452, which sets out minimum requirements for inward investment screening regimes of EU Member States.
- Ireland is one of the last EU Member States without a regime for screening foreign investment in force
  - 22/27 Member States now have regimes in force
  - Only Ireland, Croatia, Cyprus, Greece and Bulgaria do not.



# Balancing the objectives behind the new regime

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*“The Irish Inward Investment Screening mechanism provides Government with powers to protect security and public order from hostile third country actors seeking to harm the country through ownership of, or influence over, sensitive businesses and assets. The mechanism provides the Minister with the power to assess, investigate, authorise, mitigate, or prohibit foreign investments based on a range of security criteria.*

*At the same time, while acknowledging the necessity to respond to the threats posed, foreign investment remains key to Ireland’s economic growth and development. It is anticipated that only a small number of investments, mergers or transactions might pose a risk to our security and public order and so, the investment screening mechanism must be proportionate and tailored to these risks, without undermining Ireland’s attractiveness to inward FDI more generally.”*

*DETE, Guidance for Stakeholders and Investors,  
Draft of May 2024 (“**Draft Guidance**”)*

## Mandatory notification regime

- Obligation to notify qualifying transactions to the Minister for Enterprise, Trade and Employment
  - Notification prior to completion
  - ‘Standstill’ obligation
  - Review period of 90 days from issuance of screening notice, extendable to 135 days
  - Outcomes: clearance, deemed clearance, directions (divestments, behavioural remedies), prohibition

## Call-in regime

- Minister may also ‘call in’ for review acquisitions by non-EEA/Swiss investors of Irish targets which do not satisfy the thresholds for mandatory notification but which give rise to security or public order concerns

# Thresholds for Mandatory Notification

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|    | Threshold  | Guidance   |
|----|--|--|
| 1. | The transaction relates to an undertaking or asset in the State  | <ul style="list-style-type: none"><li>• <b>Undertaking in the State:</b><ul style="list-style-type: none"><li>• constituted or governed by the laws of the State, or</li><li>• has its principal place of business in the State.</li></ul></li><li>• <b>Asset in the State:</b><ul style="list-style-type: none"><li>• <b>For tangible assets:</b> physically located in the State</li><li>• <b>For intangible assets:</b> owned, controlled or otherwise in the possession of an undertaking in the State.</li></ul></li></ul>  |
| 2. | A third country undertaking or a connected person either:<br>(a) acquires control of an asset/undertaking in the State ( <b>“Control Test”</b> )<br>(b) changes the percentage of shares or voting rights it holds in an undertaking in the State from 25% or less to more than 25%, or from 50% or less to more than 50% ( <b>“Shareholding Test”</b> ) | <ul style="list-style-type: none"><li>• <b>Third country:</b> jurisdiction other than an EU or EEA Member State or Switzerland.</li><li>• <b>Third country undertaking:</b><ul style="list-style-type: none"><li>• constituted or otherwise governed by the laws of a third country,</li><li>• controlled by at least one director, partner, member or other person, that is an undertaking constituted or otherwise governed by the laws of a third country or is a third country national; or</li><li>• a third country national.</li></ul></li><li>• <b>Connected person</b> includes EEA/Swiss-incorporated company with a foreign controller.</li></ul> |

# Thresholds for Mandatory Notification

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|    | Threshold   | Guidance   |
|----|---|--|
| 3. | Value of transaction and connected transactions is at least €2,000,000  | <ul style="list-style-type: none"><li>The €2 million threshold relates to the <b>consideration</b> being paid by the acquiring party, <b>including any international dimension</b> that might include assets or undertakings not located in the State.</li></ul>   |
| 4. | Same undertaking does not control all parties to transaction  | <ul style="list-style-type: none"><li><b>Intra-group transactions</b> do not require notification.</li></ul>   |
| 5. | Transaction relates to, or impacts upon: <ul style="list-style-type: none"><li>i. critical infrastructure whether physical or virtual,</li><li>ii. critical technologies and dual-use items,</li><li>iii. supply of critical inputs,</li><li>iv. access to sensitive information, or</li><li>v. freedom and pluralism of the media.</li></ul> | <ul style="list-style-type: none"><li>It is the activity of the <b>target</b> that is the focus for these purposes.</li><li><b>Critical infrastructure:</b><ul style="list-style-type: none"><li>defined in accordance with EU Directive 2022/2557 on the resilience of critical entities, and</li><li>includes energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure.</li></ul></li><li><b>Critical technologies and dual use items:</b> items set out in Annex 1 of EU Regulation 2021/821 or equipment covered in the Council Common Position 2008/944/CFSP.</li></ul> |



Mary Brassil  
Partner, Employment

# Employment Review

## Revenue Commissioners v Karshan (Midlands) Ltd T/A Domino's Pizza [2023] IESC 24

- On 20 October 2023, the Supreme Court delivered its unanimous judgement in this case holding that pizza delivery drivers were to be treated as employees and not independent contractors for the purpose of the Taxes Consolidation Act 1997
- Question for the Supreme Court was whether the mutuality of obligation was a “*sine qua non*” of the employment relationship and created on ongoing obligation on the employer to provide work and the worker to perform work
- In the unanimous judgement, Justice Murray stated that “*the term ‘mutuality of obligation’ has, through a combination of over-use and under-analysis been transformed in employment law from what should have been a straightforward description of the consideration underlying a contract of employment, to a wholly ambiguous label.*”

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## The New Five Factor Test

- 1 Does the contract involve the **exchange of wages** or other remuneration for work?
- 2 If so, is the agreement one pursuant to which the worker is agreeing to **provide their own services**, and not those of a third party, to the employer?
- 3 If so, does the employer exercise **sufficient control** over the worker to render the agreement one that is capable of being an employment agreement?
- 4 If these three requirements are met, the decision maker must then determine whether the terms of the contract between employer and worker interpreted in the light of the admissible factual matrix and having regard to the **working arrangements** between the parties as disclosed by the evidence, **are consistent with a contract of employment**, or with some other form of contract having regard, in particular, to whether the arrangements point to the putative employee working for themselves or for the putative employer.
- 5 Finally, it should be determined whether there is **anything in the particular legislative regime** under consideration that requires the court to adjust or supplement any of the foregoing.

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## Employment (Collective Redundancies and Miscellaneous Provisions) and Companies (Amendment) Act 2024

- Liquidators or similar appointees (defined as a ‘responsible person’) have the same employee consultation obligations as would ordinarily apply to employers
- 30-day consultation period with employee representatives
- Information to be provided to such employee representatives
- Responsible persons must notify the Minister at least 30 days before the first dismissal (currently exempt), and a failure to do so will be an offence
- Employees can present a complaint to the WRC if dismissed prior to the expiry of the 30-day period following notification to the Minister



## The Code of Practice for Employers and Employees on the Rights to Request Flexible Working and Remote Working published in March 2024

- The WRC is not entitled to consider the “merits” of any decision made by the employer to refuse a request, including the reasons for reaching their decision. This was confirmed in the recent WRC case - *Alina Karabko v TikTok Technology Ltd*

## Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024

- allows for the postponement of maternity leave for up to 52 weeks in the event of a serious health condition
- amends the Employment Equality Acts to provide for a restriction on the use of non-disclosure agreements in respect of allegations of discrimination, victimisation, harassment and sexual harassment

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## Employment Equality Act 1998 (Section 20A) (Gender Pay Gap Information) (Amendment) Regulations 2024

- Threshold for reporting for employers with 250+ employees, reduced to 150+ employees (2024) and threshold will reduce to 50+ employees (2025)

## EU Directive 2021/0050 on Pay Transparency

- Mandatory gender pay gap reporting in all EU member states
- Additional gender pay gap reporting requirements in respect of 'category of worker'
- Joint pay assessment (equal pay audit) if gender pay gap of 5%+ cannot be justified on objective or gender-neutral grounds
- Pay transparency for job applicants and prohibition on employers asking job applicants about their pay history
- Employees right to information on individual pay level and the average pay levels broken down by gender  
Prohibition of pay secrecy clauses

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**Aim is to consolidate existing legislation and to modernise the employment permits system and increase its responsiveness.**

- Revisions to the existing labour market needs test
- Creation of two new types of employment permit: Seasonal employment permit and Dependant Employment Permit
- The salary of a permit holder can now be paid by an entity other than the employer. This allows for employment agencies to be employers of permit holders
- Employment permit holders can now change their permit employer to another employer after a period of nine months has passed since the permit holder commenced their first employment permit in the State
- 50:50 rule has now been waived for new employers with no employees at the time of the permit application
- Salary thresholds for permits will now be automatically indexed

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## Mallon v Minister for Justice [2024] IESC 20

- Judicial review proceedings challenging mandatory retirement age of 70 imposed on sheriffs pursuant to Court Officers Act 1945
- Mr Mallon argued that this statutory provision was incompatible with the Employment Equality Acts and the EU Employment Equality Directive
- ✓ The Supreme Court upheld the mandatory retirement age of 70 and concluded that the statutory provision setting the retirement age pursued legitimate aims, such as effective succession planning and maintaining intergenerational fairness
- ✓ The Supreme Court rejected the proposal that there was a need for individual assessments in setting that age and stated that requiring individual assessments would, in fact, undermine the consistency and predictability provided by a general retirement age rule and substantially negate the benefit of having such a rule in the first place



James Quirke  
Partner, Tax

# Tax (Corporate, Employment and Pensions)

- The Finance Bill 2024 introduces an exemption from Irish tax on foreign dividends received by Irish companies from certain foreign companies.
- Under the new rules, a company will have the option to claim the participation exemption or to continue to use existing tax-and-credit relief, by way of an election in its annual corporation tax return.
- Where a company elects to claim the participation exemption for an accounting period, it must do so for all distributions potentially in scope of the exemption in that period.
- The participation exemption will be available for relevant distributions received on or after 1 January 2025 from subsidiaries in EU/EEA and tax treaty partner source jurisdictions.

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## Advantages of new measures:

- Eliminates the need for complex calculations to determine foreign tax credits for offset against Irish corporation tax, reducing administrative burdens for businesses.
- Reduces the need for detailed record-keeping and complex tax filings related to foreign income.
- Enhances Ireland's attractiveness as a destination for multinational investment and as a location for international corporate group holding companies and private equity fund structures.

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Revenue are adopting an aggressive approach to staff entertainment and are seeking to apply payroll taxes to such expenses where they do not fall within one of the following categories:

- Free or subsidised canteen meals which are specifically exempt from income tax under tax legislation provided available to all employees.
- Provision of staff events or parties which are reasonable and open to all employees.
- Revenue's concession on staff entertainment expenses provides that where an employer provides social events, such as Christmas parties, sports days or other inclusive events, no taxable BIK should arise where expenses are seen to be reasonable and the event is open to all employees. Revenue are not prescriptive in their outline of what may be considered 'reasonable' in the context of staff entertainment.

In our experience, Revenue may not regard staff entertainment expenses as being “reasonable” after three to four events are held in a year. Consideration should also be given to the cost of such events for the purpose of the reasonableness test.



- The Finance Act 2022 introduced Section 897C which requires employers to report details of certain expenses or benefits (principally travel and subsistence and small gift exemption) made to employees and directors. Reporting the details of these expenses or benefits commenced on 1 January 2024.
- In June 2024, Revenue confirmed that the period of ‘service to support compliance’ is extended to the end of 2024. While no penalties or audits will be imposed during 2024, from 1 July 2024 Revenue expects all employers providing reportable benefits to submit details on or before the provision of the benefit.
- Revenue’s concession on staff entertainment expenses provides that where an employer provides social events, such as Christmas parties, sports days or other inclusive events, no taxable BIK should arise where expenses are seen to be reasonable and the event is open to all employees. Revenue are not prescriptive in their outline of what may be considered ‘reasonable’ in the context of staff entertainment.

---

The Finance Bill 2024 includes enhancements to existing initiatives designed to ease the financial burden on PAYE workers:

1. The Small Benefit Exemption threshold has increased to €1,500 from 1 January 2025. The number of qualifying benefits has also been extended from two to five, with the first five gifts/benefits qualifying for relief where more than five are provided.
2. There has been a further extension to the temporary universal relief of EUR 10,000 applied to cars within emissions categories A–D (and all vans) for company car BIK purposes.
3. An exemption from benefit in kind (“BIK”) has been introduced where an employer provides a facility for the charging of a company-provided electric vehicle at the qualifying residence of a director or an employee. For the relief to apply, the employer must retain ownership of the charging facility.

## Limit on Employer PRSA contributions

### Business

## Government move on PRSA loophole ‘leaves short window’ for business owners

Finance Bill has placed a limit on employer contributions from a BLK-exemption perspective to 100 per cent of income drawn from the business in the same year

**New pension rules have caught company directors on the hop. What are they and how do they work?**

The Finance Bill tightens rules on open-ended employer contributions to PRSAs

---

## Limit on Employer PRSA contributions

- Finance Bill 2024 is introducing a limit on the amount of employer paid contributions that can be made into an employee's Personal Retirement Savings Account (PRSA) without incurring a benefit in kind charge.
- The new limit, to be known as the 'employer limit', will be an amount not exceeding 100% of the employee's earnings from that employer in the year of assessment. Where the earnings are reduced due to sickness, unemployment or unpaid leave, the earnings figure for the previous year will apply.
- This measure appears to be intended to prevent excessive funding of employee pension funds in certain circumstances following the abolition of the BIK charge on employer paid PRSA contributions in last year's Finance Act.

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## Changes to the Standard Fund Threshold

- Commencing in 2026, the Standard Fund Threshold (the maximum amount that can be accumulated in an individual's pension fund without incurring an excess fund charge) will rise by annual increments of €200,000, reaching €2,800,000 in 2030.
- From 2031 onwards, the ceiling will be automatically linked to growth in the quarterly estimate for average weekly earnings published by the Central Statistics Office.
- This is the first adjustment to the SFT since 2014. Allowing for the impact of wage inflation, the value of the maximum tax-efficient pension fell by over 39% in real terms during the last 10 years according to CSO data.
- The restoration of the link between the SFT and wage increases is welcome, if long overdue.
- The maximum tax efficient pension lump sum will remain at €500,000.

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## Pensions: Auto Enrolment Pension Scheme

The Finance Bill 2024 sets out the tax treatment that will apply to the Auto Enrolment Pension scheme, which is due to commence in September 2025. Briefly, this will follow the treatment of PRSAs, i.e.

- Employer contributions will not be treated as a BIK
- Income and gains accrued in the scheme during the time that the contributions are invested will be exempt from tax
- Amounts paid from the fund (after any tax-free lump sum) will be taxed

Other provisions applying to PRSAs, such as the SFT, will also apply to Auto Enrolment funds. Employee contributions will not attract tax relief, since the government will instead pay a contribution directly into the employee's Auto Enrolment fund.



Seán Barton

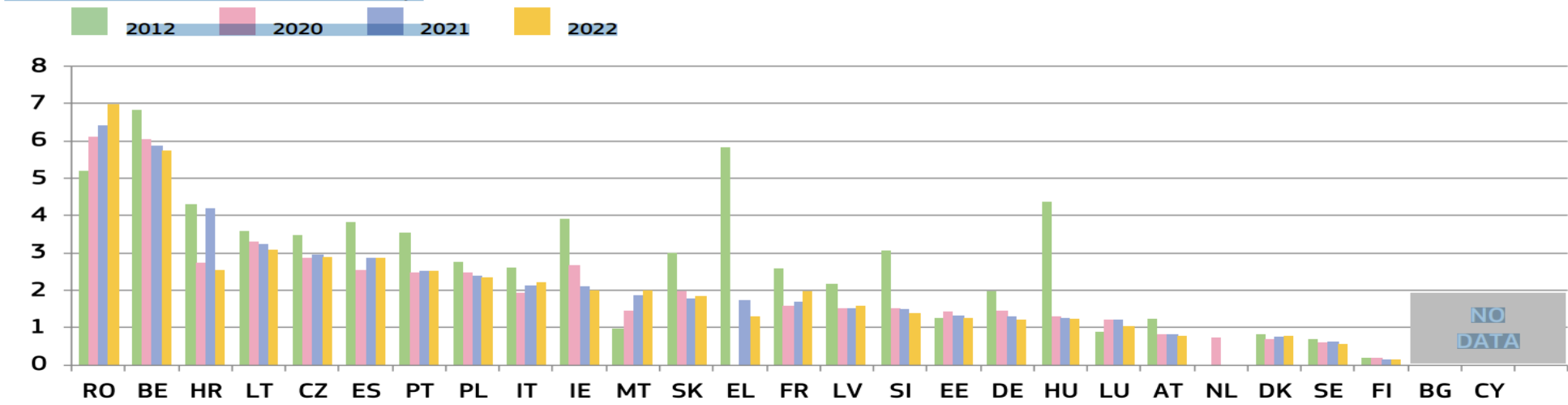
Consultant, Disputes

# What's new and what's coming in disputes and administrative law?

# Ireland is not especially litigious: CEPEJ 2024

3.1. Efficiency of justice systems 3.1.2. General data on efficiency – Estimated length of proceedings –

**Figure 3** Number of incoming civil and commercial litigious cases in 2012, 2020 – 2022 (\*) (1<sup>st</sup> instance/per 100 inhabitants) (source: CEPEJ study)

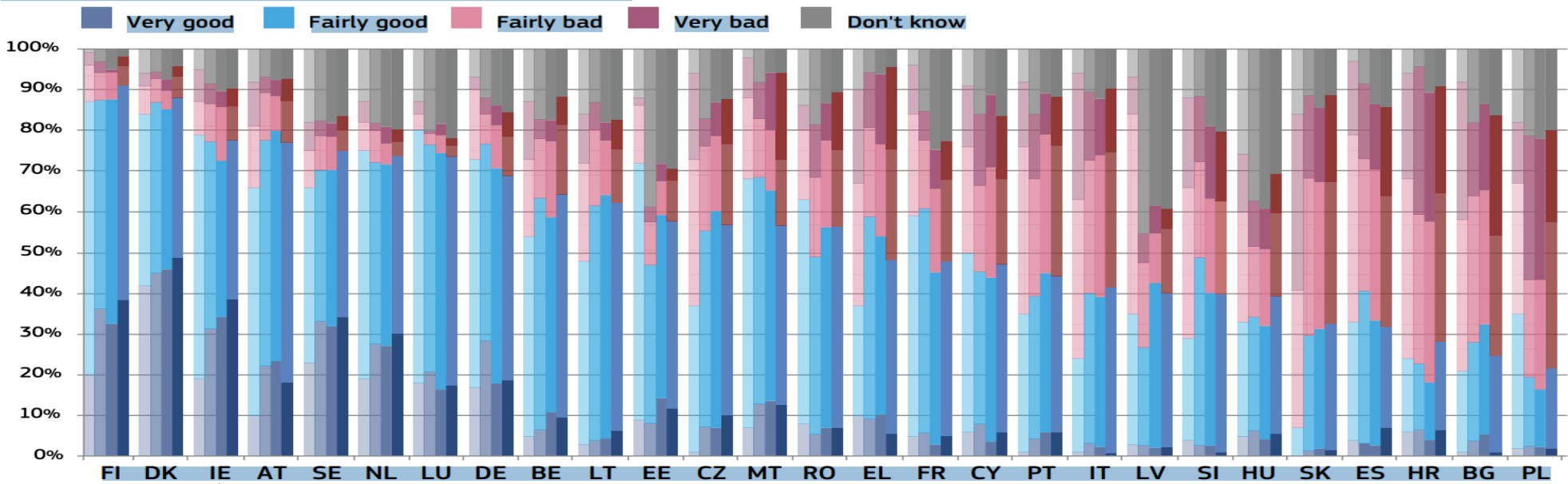


(\*) Under the CEPEJ methodology, litigious civil/commercial cases concern disputes between parties, e.g. disputes about contracts. Non-litigious civil/commercial cases concern uncontested proceedings, e.g. uncontested payment orders. Methodology changes in **EL** and **SK**. Data for **NL** include non-litigious cases.



3.3. Independence 3.3.1. Perceived judicial independence and effectiveness of investment protection

**Figure 53** How companies perceive the independence of courts and judges (\*) (source: Eurobarometer <sup>(113)</sup> - light colours: 2016, 2022 and 2023, dark colours: 2024)



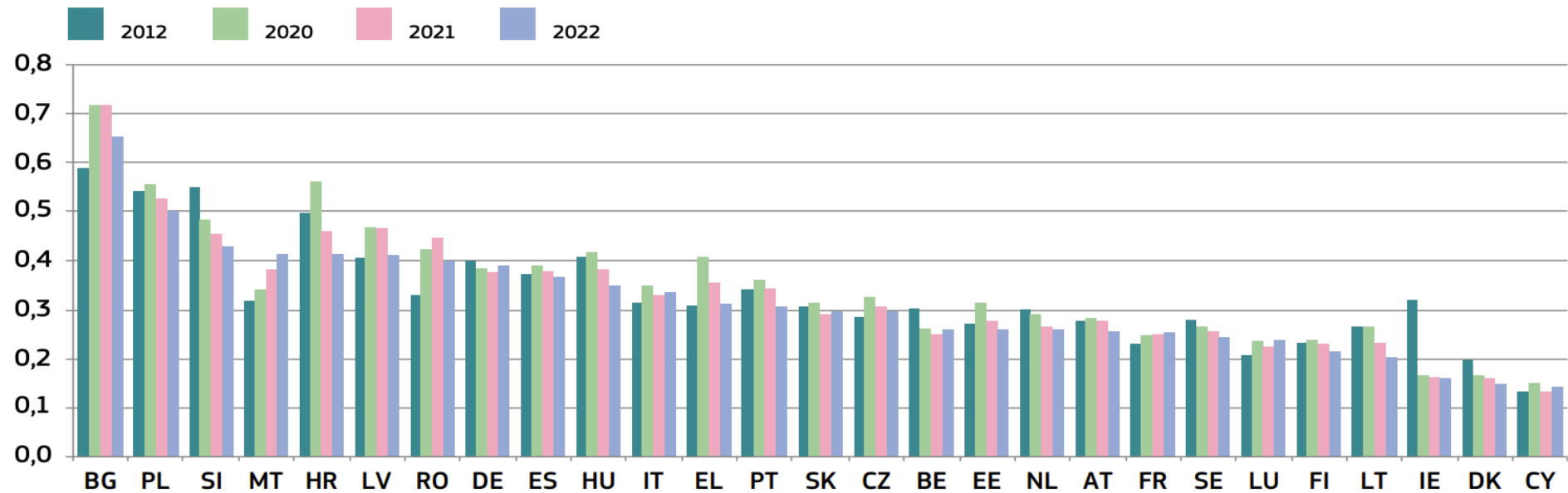
(\*) Member States are ordered first by the percentage of respondents who stated that the independence of courts and judges is very good or fairly good (total good); if some Member States have the same percentage of total good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is fairly bad or very bad (total bad); if some Member States have the same percentage of total good and total bad, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very good; if some Member States have the same percentage of total good, total bad and of very good, then they are ordered by the percentage of respondents who stated that the independence of courts and judges is very bad.

# “A century of persistent and consistent underinvestment” in the courts: Chief Justice, October 2024

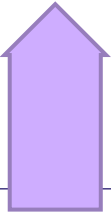
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**Figure 34** General government total expenditure on law courts as a percentage of GDP, 2012, 2020 – 2022 (\*)

(source: Eurostat)

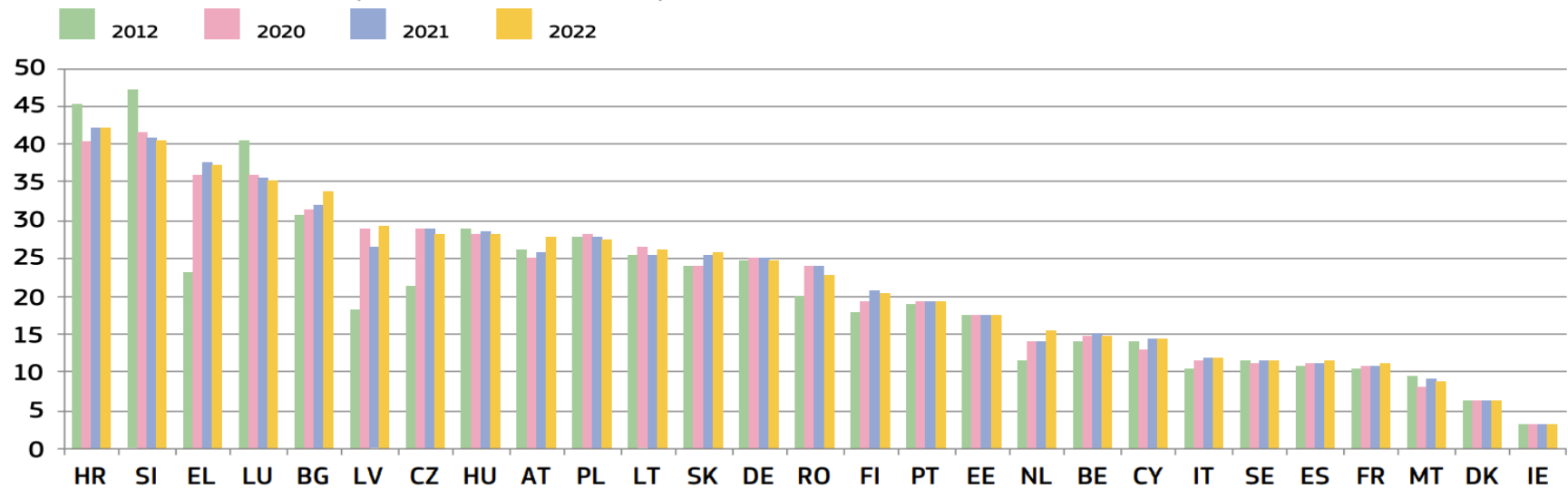


(\*) Member States are ordered according to their expenditure in 2021 (from highest to lowest). Data for other years is provisional for **BE**, **DE**, **ES**, **FR** and **PT**.



# Still relatively few judges

**Figure 37** Number of judges, 2012, 2020 – 2022 (\*) (per 100 000 inhabitants) (source: Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ) study)



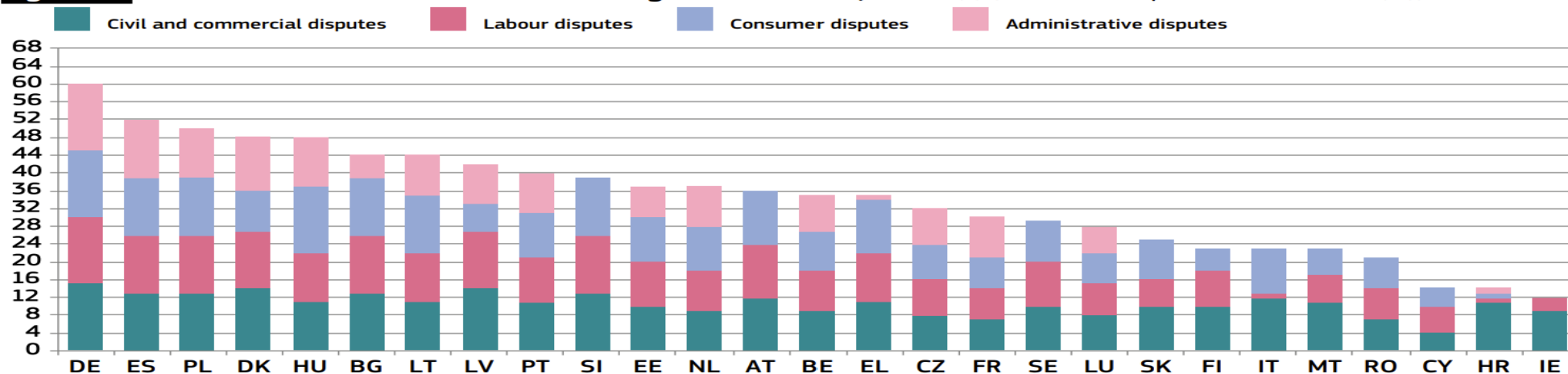
(\*) This category consists of judges working full-time, in accordance with the CEPEJ methodology. It does not include the Rechtspfleger/court clerks that exist in some Member States. **AT**: data on administrative justice have been part of the data since 2016. **EL**: since 2016, data on the number of professional judges include all the ranks for criminal justice as well as administrative judges. **IT**: Regional audit commissions, local tax commissions and military courts are not taken into consideration. Administrative justice has been taken into account since 2018.



- Non-EU Courts generally do not accept the Achmea and Komstroy decisions that a clause in a BIT involving a Member State which confers supervisory jurisdiction on a non-EU state court is incompatible with the EU Treaties: Swiss Supreme Court 4A\_244/2023, 3 April 2024
- Court can remove a stay where proceedings have been referred to arbitration in appropriate circumstances: *Jephson and Jephson v Aviva Insurance Ireland DAC* [2024] IEHC 309

- *Byrne v Arnold* [2024] IEHC 308: 5% reduction of part-party costs in favour of the plaintiffs, to reflect default in compliance with section 14 of the Mediation Act 2017 (statutory declaration)

**Figure 28 Promotion of and incentives for using ADR methods, 2023** (\*) (source: European Commission <sup>(76)</sup>)



(\*) Maximum possible: 68 points. Aggregated indicators based on the following indicators: 1) website providing information on ADR; 2) media publicity campaigns; 3) brochures for general public; 4) provision by the court of specific information sessions on ADR upon request; 5) court ADR/mediation coordinator; 6) publication of evaluations on the use of ADR; 7) publication of statistics on the use of ADR; 8) partial or full coverage by legal aid of costs ADR incurred; 9) full or partial refund of court fees, including stamp duties, if ADR is successful; 10) no requirement for a lawyer for ADR procedures; 11) judge can act as a mediator; 12) agreement reached by the parties becomes enforceable by the court; 13) possibility to initiate proceedings/file a claim and submit documentary evidence online; 14) parties can be informed of the initiation and different steps of procedures electronically; 15) possibility of online payment of applicable fees; 16) use of technology (artificial intelligence applications, chat bots) to facilitate the submission and resolution of disputes; and 17) other measures. For each of these 17 indicators, one point was awarded for each area of law. **IE**: Administrative cases fall into the category of civil and commercial cases. **EL**: ADR exists in procurement procedures before administrative courts of appeal. **ES**: ADR is mandatory in labour law cases. **PT**: For civil/commercial disputes, court fees are refunded only in the case of justices for peace. **SK**: The Slovak legal order does not support the use of ADR for administrative purposes. **FI**: Consumer and labour disputes are also considered to be civil cases. **SE**: Judges have procedural discretion on ADR. Seeking an amicable dispute settlement is a mandatory task for the judge unless it is inappropriate due to the nature of the case.

- Legality of rules-based time limits in judicial review confirmed: *Harte v Superior Courts Rules Committee and others* [2024] IESC 2
- Interim relief (including a stay or injunction) in judicial review should be for a limited time only and in interlocutory applications, the onus is on the applicant to satisfy the *Campus Oil/Merck* test or, for mandatory interlocutory injunctions, the more elevated *Maha Lingham* “strong case” test (+ *Okunade* where applicable): *MD v Board of Management of a Secondary School* 2024 IESC 11
- Rules of the Superior Courts (Order 84) 2024 (S.I. No. 163/2024): effective 26 April 2024: the application is made when the papers are filed in the Central Office (or in urgent cases, filed in court)
- Equal treatment for the family unit not based on marriage, - *Nicolaou* was wrongly decided: *O’Meara v Minister for Social Protection* [2024] IESC 1
- Court Proceedings (Delays) Act 2024 [not yet commenced]
- Health (Assisted Human Reproduction) Act 2024 [not yet commenced]

- Transfer of power to give preliminary rulings (Art 267) from Court of Justice to General Court in matters of VAT; excise duties; customs code; tariff classification of goods under the combined nomenclature; compensation and assistance for passengers whose transport services are delayed or cancelled or who are denied boarding; scheme for greenhouse gas emission allowance trading, but Court of Justice retains competence over preliminary ruling requests raising questions of principle, such as interpretation of the Treaties or the Charter of Fundamental Rights
- Filtering mechanism: if a case has been considered by an independent board of appeal and then by the General Court, it can proceed to the Court of Justice only if it raises an issue that is significant with respect to the unity, consistency or development of EU law.
- Written observations submitted by interested persons will be made public on the Court's website within a reasonable time after the closing of the proceedings, unless that person raises objections to the publication of its own written submissions.
- LPP: Legal consultations provided by a lawyer, regardless of the area of law involved, benefit from protection guaranteed by Article 7 of the Charter, and an injunction or rule requiring a lawyer to provide information related to their relations with their client constitutes an interference with the right to respect for communications between a lawyer and its client. The rights protected in Article 7 of the Charter are not absolute and according to Article 52 of the Charter, restrictions may be imposed, provided such limitations are established by law, that they respect the essential content of said rights, and that, in compliance with the principle of proportionality, they are necessary and genuinely meeting the objectives of general interest recognised by the EU. A national regulation or administrative practice that would authorise a generalised interference in these communications would be contrary to the Charter: Case C-432/23, *Ordre des Avocats du Barreau de Luxembourg*, 26 September 2024

- *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* UKPC 16: Over-rules *Salford Estates (No 2) Ltd v Altomart Ltd (No 2)* EWCA Civ 157 holding that the existence of an arbitration agreement does not automatically preclude the initiation or continuation of winding-up proceedings, and insolvency proceedings can be pursued provided there is no substantial and genuine dispute over the debt.
- *Tesco Ireland v Stateline Transport Limited* [2023] IEHC 587: Reminder that under section 53 of the Companies Act 2014, any judgment or order against a company wilfully disobeyed may, with leave of the court, be enforced by: (i) sequestration against the property of the company; (ii) attachment against the directors or other officers of the company; or (iii) sequestration against the property of such directors or other officers.
- Circuit Court Rules (Order 36) 2024 (S.I. No. 107/2024) amend Order 36 rules 9 and 10 of the Circuit Court Rules by removing a reference to decrees and judgments being in force for a period of twelve years.



- *Scanlan v McDonnell t/a The Woodlands Caravan & Camping Park* [2024] IEHC 324: the presence of a services cable, either hanging down from the services post or on the ground, was not an “unusual” danger in a caravan park and could have been avoided by the plaintiff taking care for her own safety; no liability arises to occupiers under section 3 of the Occupiers Liability Act 1995 when the risk of injury constitutes a “usual” danger and the risk of injury created can be avoided by the visitor taking care which they may reasonably be expected to take for their own safety.
- *Delaney v PIAB and others* 2024 IESC 10: Questions of hard law and democratic legitimacy meant that Judicial Council personal injuries guidelines under section 7 alone were either soft law and non-binding or were hard law and unconstitutional, but the personal injury guidelines adopted by the Judicial Council on 6 March 2021 were given force of law by virtue of section 30 of the Family Leave and Miscellaneous Provisions Act 2021, and therefore became constitutional. See now section 14 of the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024 which establishes a procedure for this going forward.
- *Urban and Rural Recycling Limited v Zurich* [2024] IESC 43: Where an operative on a waste truck was injured while it was being driven by a fellow employee, the employer, URRL was a ‘user’ of the vehicle at the time the injuries were sustained. If the operative’s injuries were caused by the negligence of URRL or of any person for whose acts or omissions URRL was liable, and if that wrongdoing rendered URRL’s use of the vehicle at the time of the accident ‘negligent’, then URRL’s liability to the operative was captured by section 56 of the Road Traffic Act 1961 (ie was within mandatory insurance).
- Rules of the Superior Courts (Particulars) 2024 (S.I. No. 229/2024): amend Orders 1A and 19 of the Rules of the Superior Courts to require, subject to consent or leave of the court, that section 11 notices under the Civil Liability and Courts Act 2004 be combined with requests for particulars.

- *Randall v Garda Commissioner* [2024] IEHC 540: disclosing the suspect's identity by Norwich Pharmacal order ("NPO") was necessary for the applicant to pursue civil claims but disclosure of the entire investigation file was not necessary at this stage and the disclosure request had gone far beyond what Collins J in *Blythe and Board of Management of Salesian Secondary College (Limerick) v Facebook Ireland Ltd* [2021] IEHC 287 described as a request for a specific and limited piece of information (or documentation) which is needed in order to confirm that such a cause of action or complaint is well-founded.
- Rules of the Superior Courts (Order 11) 2024 (S.I. 362/2024), effective 31 July 2024: the High Court can grant permission to serve a NPO application outside Ireland; also extends to relief as constructive or resulting trustee and catch-all where jurisdiction to award relief against a person out of the jurisdiction is given to the Court by any enactment or rule of law not otherwise mentioned or the exercise of extra-territorial jurisdiction is otherwise permissible under Article 29.8 of the Constitution as being in accordance with the generally recognised principles of international law.
- District Court (Data Protection) Rules 2024 (S.I. 13/2024: amend Order 40 of the District Court Rules to facilitate amendment of the Data Protection Act 2018 by Part 12 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023 conferring jurisdiction on the District Court.
- Digital Services Act 2024: procedure for notification to Coimisiún na Meán of compliance with orders under Art 9 (Orders to act against illegal content) and Art 10 (Orders to provide information) .

# Other significant procedural developments

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- Rules of the Superior Courts (Order 61) 2024 (S.I. 161/2024): amend Order 61 of the Rules of the Superior Courts (“RSC”) to increase the time prescribed for the filing of an appeal from the Circuit Court to the High Court to 28 days and to provide that service is to follow the filing of an appeal.
  - Rules of the Superior Courts (Interrogatories) 2024 (S.I. 363/2024): amend Order 31 of the RSC to remove the requirement to seek the court’s permission to deliver interrogatories where the number of interrogatories is not more than twenty and provide amended forms so that answers need not be yes/no.
  - District Court (Civil Restraining and Behaviour Orders) Rules 2024 (S.I. 364/2024): facilitate the operation of Part 5 of the Criminal Justice (Miscellaneous Provisions) Act 2023 under which an order may be made where there are reasonable grounds for believing that the respondent has engaged in relevant conduct towards the applicant or a connected person and making the order is, in the circumstances, necessary for, and proportionate to, protecting the safety and welfare of the applicant. The order may prohibit use or threat of violence; following, communicating or approaching defined places (eg home, place of work), by default for five years.

Digital Rules per Kelly Report to facilitate secure digital environment enabling -

- parties/ representatives to file with the court and exchange pleadings and other documents throughout the life-cycle of the case, at first instance and on appeal
- transaction online of court fee and other payments associated with the case
- generation and dissemination of hearing dates and court calendar management
- online applications for adjournments or other orders or directions
- association of audio/video recordings with the digital case file
- recording and issuance of orders and directions in the case

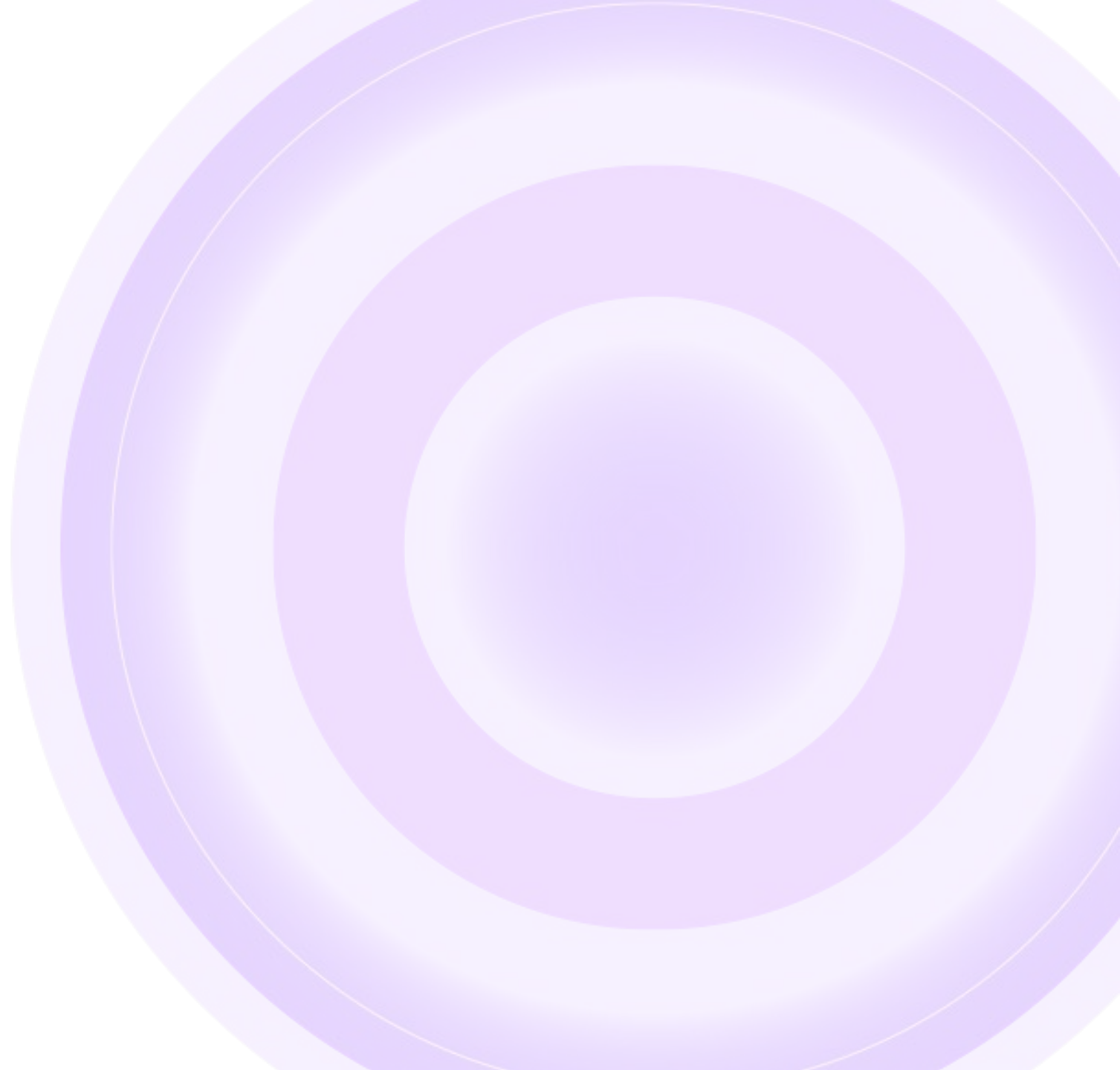
Multi-party litigation:

- ICCL designated on 5 June 2024 as Ireland's first qualified entity under the Representative Actions for The Protection of the Collective Interests of Consumers Act 2023.
- Qualified bodies under the Data Protection Act 2018

Increased use of admission of business records under section 15, Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

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**Questions?**



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Such advice should always be taken before acting on any of the matters discussed.

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