

# 2023 Review and 2024 Horizon Scan: Finance and Financial Services

*Wednesday, 24 January 2024*

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# Overview

- **ESG**
- **Individual Accountability Framework**
- **Credit Servicing**
- **ELTIF 2.0**
- **Case Law**
- **Honourable Mentions**





# ESG



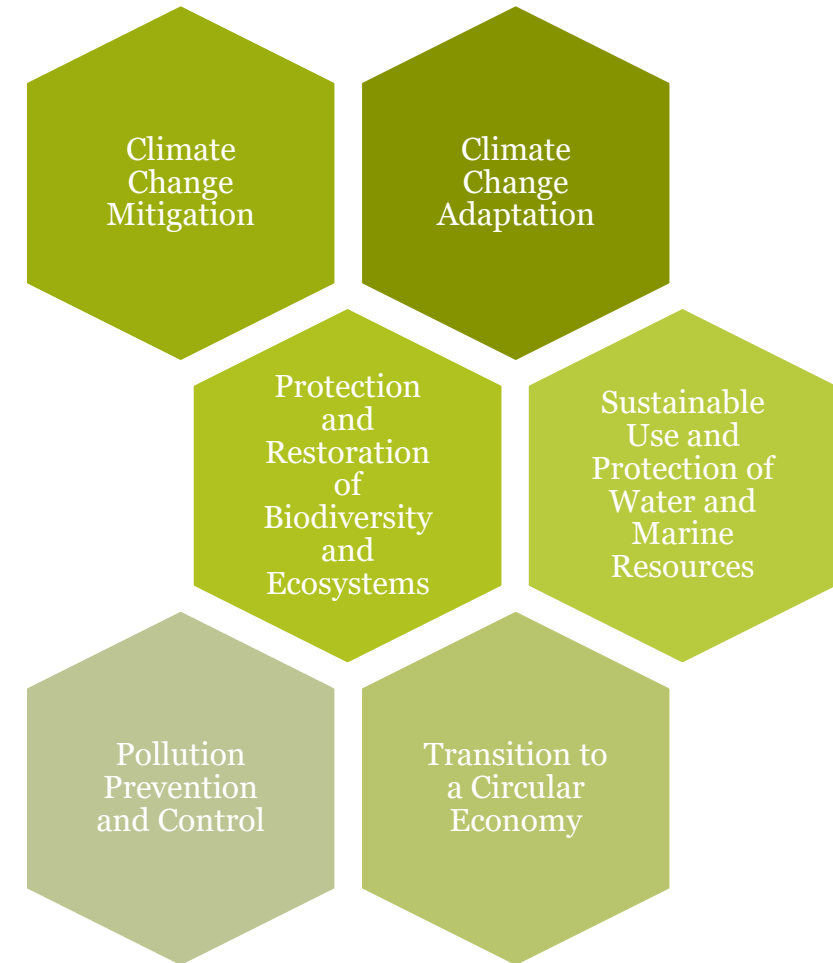
# Corporate Sustainability Reporting Directive (CSRD)

- CSRD entered into force on 5 January 2023.
- Key features:
  - expanded scope
  - inclusion in Directors' Report
  - audit requirement (initially on a limited assurance basis)
  - development of standardised framework for reporting (the **ESRS**)
- Delay in adoption of sector-specific ESRS
- Increase of financial thresholds for “large undertakings”
- Domestic transposition required by **6 July 2024**.
- Phased implementation - first wave of companies due to start reporting on financial years starting on or after 1 January 2024 (reporting 2025)



# Taxonomy Regulation

- Broadly, the Taxonomy Regulation sets out criteria for individual economic activities to satisfy in order for that activity to be classified as “environmentally sustainable” by reference to six environmental objectives.
- Principal developments in 2023:
  - the adoption of a delegated act setting out technical screening criteria for the four non-climate environmental objectives – namely water, biodiversity, pollution and circular economy;
  - the adoption of another delegated act amending the existing Climate Delegated Act and setting out technical screening criteria additional economic activities.



# Sustainable Finance Disclosure Regulation (SFDR)

- ESMA guidance issued on “fund naming” conventions to tackle greenwashing risks.
- 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”).
- 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).



# Corporate Sustainability Due Diligence Directive (CSDDD)

- Provisional political agreement on **14 December 2023**.
- Applies in relation to a company's own operations, and those of its subsidiaries and value chains.
- Proposed 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;
  - **mitigate negative human rights and environmental impacts**; adverse impacts are defined by reference to annexed international instruments;
  - establish and maintain a **complaints procedure**, and to monitor the **effectiveness of procedures**;
  - **report under CSRD** or otherwise publish **annual statements** on their websites.
- Larger companies required to adopt **climate transition plans**.
- EU Member States to designate **NCA**s responsible for enforcement which will be able to launch inspections and investigations and impose 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**.
- Subject to formal approval by the co-legislators.



# EU Green Bond Standard

- Key features:
  - establishes requirements which apply to bonds where the issuer wants to label them as “European Green Bonds”;
  - provides for the development of optional sustainability disclosures for non-EuGB bonds marketed as environmentally sustainable; and
  - establishes a registration system and supervisory framework for external reviewers of European Green Bonds.





## Other Notable ESG-related Developments

- 🍃 **CRD VI:** focus on integrating ESG risk within Pillar 2 and focusing on risk management, following the lead already set by the supervisory authorities in their guidance.
- 🍃 **Proposed Regulation on ESG Ratings Providers:** designed to improve transparency in the ESG ratings market.
- 🍃 **Draft EBA Guidelines on Management of ESG Risks:** consultation currently running until 18 April 2024. Draft guidelines set out requirements for institutions for the identification, measurement, management and monitoring of ESG risks, including through plans aimed at addressing the risks arising from the transition towards an EU climate-neutral economy.
- 🍃 **Proposed Voluntary EBA “Green Loan” Label:** proposed introduction of a voluntary EU label for green loans based on a common EU definition and the integration of the concept of green mortgage and its key sustainability features in the Mortgage Credit Directive.
- 🍃 **Revised CBI Minimum Competency Code:** introduction of sustainability-related amendments, with effect from 1 January 2025.
- 🍃 **Transition Finance:** Recommendations issued by EU Commission in June 2023 on facilitating finance for the transition to a sustainable economy.



# Individual Accountability Framework



# The Individual Accountability Framework

- **Central Bank (Individual Accountability Framework) Act 2023**
- **CBI Regulations** in respect of: (i) SEAR; (ii) Holding Companies; and (iii) Certification Requirements.
- **CBI IAF Guidance** published in November 2023.
- Updated Administrative Sanctions Procedure (“**ASP**”) Guidelines published in December 2023.
- Four core IAF pillars:
  1. **SEAR;**
  2. New **Conduct Standards;**
  3. Enhancements to CBI’s **Fitness & Probity Regime;** and
  4. Reforms to CBI’s **enforcement powers.**
- Majority of IAF pillars now in operation, with the exception of SEAR.
- SEAR will apply to in-scope entities **from 1 July 2024**; its applicability to (I)NEDs at in-scope firms has been **deferred until 1 July 2025**.
- Framework based on principles of proportionality, predictability and reasonable expectations.



## Pillar 1: SEAR

- SEAR will require 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.
- SEAR will be implemented on a phased basis, and will initially apply from **1 July 2024** to credit institutions (excluding credit unions), certain insurance undertakings and investment firms, and third country branches of such firms.
- The CBI has the power to extend SEAR to other sectors via regulations.
- Deferral of the introduction of the SEAR for INEDs/NEDs (of in-scope firms) until **1 July 2025**.
- The other parts of IAF including the Common Conduct Standards and Additional Conduct Standards apply to INEDs/NEDs, and came into operation on 29 December 2023.

## Pillar 2: Conduct Standards

- In operation as of 29 December 2023.
- The Conduct Standards set out a single set of applicable standards of behaviour which apply to relevant individuals in all regulated firms, irrespective of sector (and are not linked to whether a firm is in scope of SEAR).
- The **Common Conduct Standards** apply to all persons who perform a controlled function (“**CFs**”) in all regulated firms (CFs include all persons who perform a pre-approval controlled function (“**PCFs**”) as a subset of CFs).
- **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).
- Both the Common Conduct Standards and Additional Conduct Standards apply to directors (as PCFs).
- It shall be a defence to any enforcement action in relation to a breach of the Conduct Standards or of the Additional Conduct Standards if the person can show that she or he took **any steps** that it was **reasonable in the circumstances** for the person to take.
- The **Business Standards** are currently set out in the Consumer Protection Code 2012 and are being considered as part of the current **review of the Consumer Protection Code**. The Central Bank intends to update those standards separately as part of its review of the Code.
- Further guidance from CBI in respect of the Conduct Standards in Chapters 4 to 6 of the IAF Guidance.

## Pillar 3: Enhanced Fitness and Probity Regime

- The CBI's Fitness and Probity regime has been updated to introduce **certification, enhanced due diligence and reporting obligations** in respect of the fitness and probity of persons in CF / PCF roles.
- The annual certification obligation requires that a firm must not permit a person to perform a CF or PCF role unless a certificate of compliance with standards of fitness and probity is in force.
- The CBI has made Regulations (S.I. No. 2/2024) specifying requirements in relation to certification.
- A certificate of compliance is issued by the firm (not the CBI) and is valid for 12 months.
- From 1 January 2025, and annually thereafter, a firm must submit to the CBI confirmation of compliance with the certification requirements.
- The CBI will have the power to investigate former CF or PCF holders for six years after performing CF / PCF functions.
- Four new PCF roles:
  - PCF-54 (Head of Material Business Lines for Insurance Undertakings);
  - PCF-55 (Head of Material Business Lines for Investment Firms);
  - HCPCF1 (Office of the Chair of the Board of the Holding Company);
  - HCPCF2 (Office of Director of the Holding Company).

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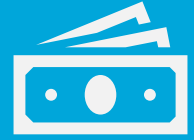
## Pillar 4: Enhanced CBI Enforcement Capabilities

- The IAF Act 2023 has removed the so-called “**participation link**” so that 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.
- The Act also amends the CBI’s **Administrative Sanctions Procedure** and the F&P Standards, so that breach of the new Conduct Standards will be a prescribed contravention of financial services legislation, such that the CBI will be able to take action against the individual(s) responsible.
- The ASP Guidelines confirm that the CBI’s approach to deciding to bring an enforcement action will remain unchanged, and that it will be **proportionate** and **risk-based**.
- Focus will be on individuals, as well as on the firm as a whole.

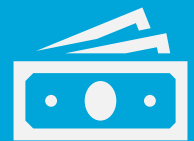
# Implementation of the IAF

- Implementing the IAF will be a significant undertaking for firms and will involve considerable time management.
- Developing Responsibility Maps and Statements of Responsibility for individuals carrying out senior executive functions will require many firms to rethink their decision making and governance arrangements.
- Roll out of statements of responsibilities will require consultation with relevant employees. HR and other internal policies will need to be updated.
- SEAR and the IAF will likely mark the end of informal decision making.
- Firms will need to consider how they can continue to make effective decisions promptly, while ensuring that “reasonable steps” are taken to ensure that Conduct Standards are complied with.
- Insurance policies for directors and officers should be reviewed.
- An extensive staff communications exercise, and training at all levels, will be key to embedding new Conduct Standards into the culture of each firm. Note – Training for CFs and PCFs re the Conduct Standards is a statutory requirement.





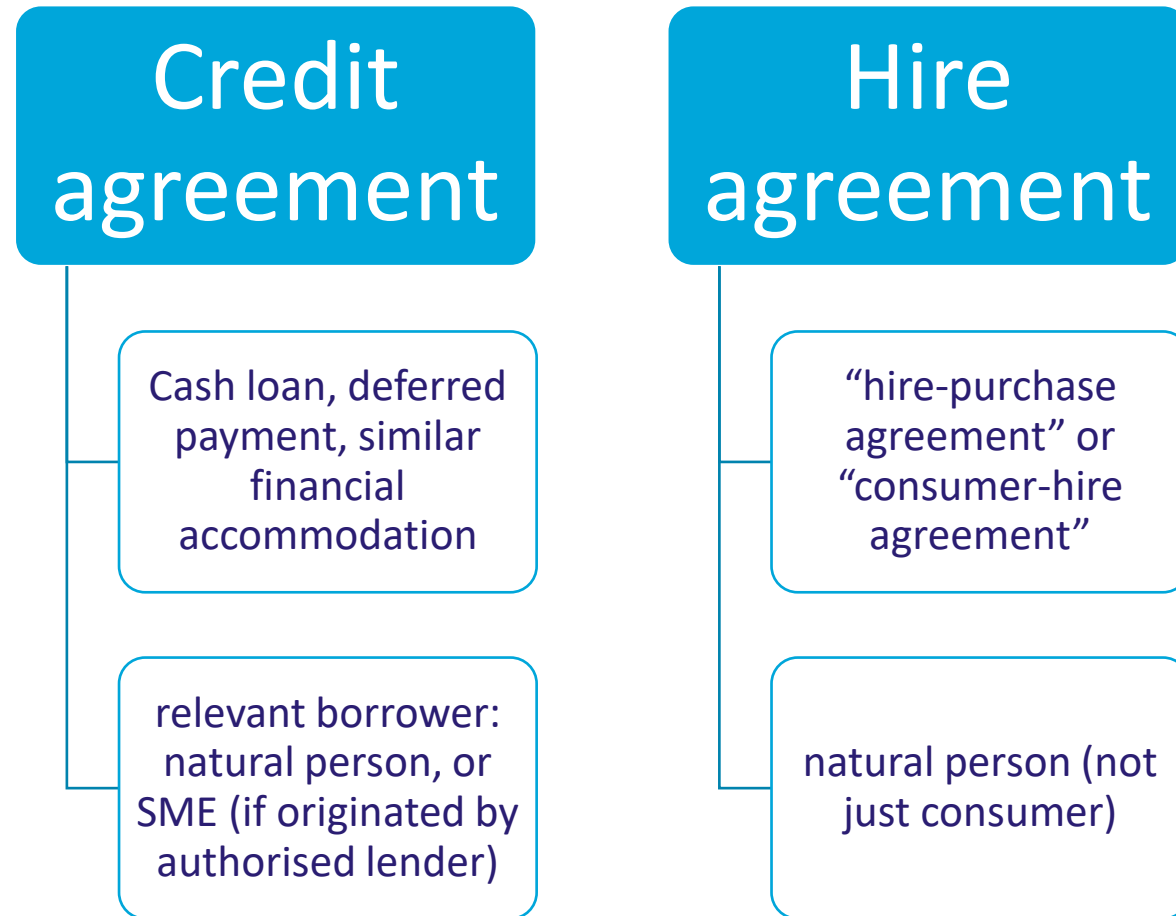
# Credit Servicing



# The Irish Credit Servicing Regime



# Irish Regime (In-Scope Agreement)



# Irish Regime (In-Scope Activity)





# Principal Legislation

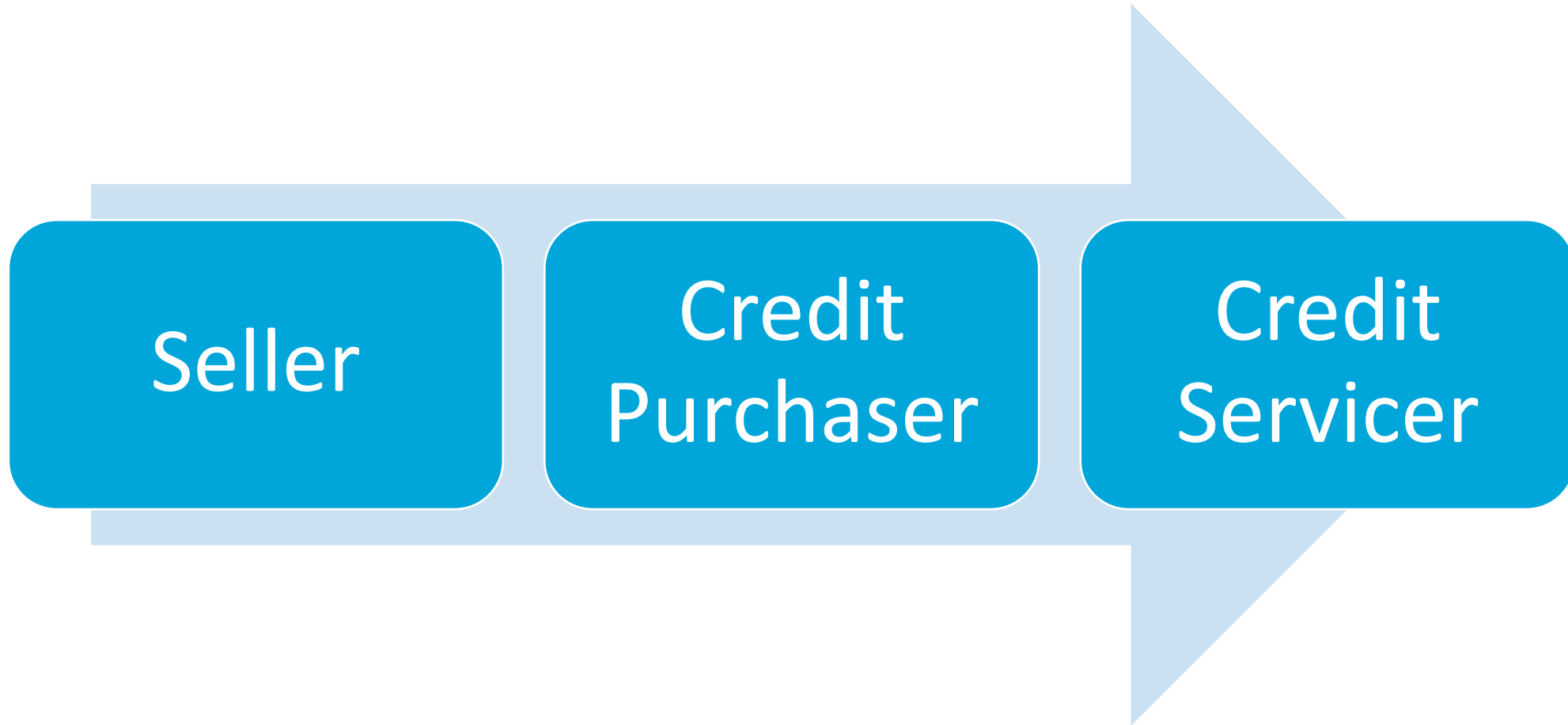
- Directive (EU) 2021/2167 on credit servicers and credit purchasers
- European Union (Credit Servicers and Credit Purchaser) Regulations 2023

## EU Regime – Scope

- Transfers on or after 30 December 2023
- NPLs issued by EU credit institution
- Purchase by entity other than EU credit institution
- Commercial and consumer customers
- Credit agreement:
  - deferred payment
  - loan
  - other similar financial accommodation



## EU Directive – who?





## Seller

### Pre-sale information to prospective purchaser

- Enable purchaser to assess value

### Implementing Technical Standards (EU 2023/2083)

- Info on counterparty, credit agreement, collateral, historical collections
- Some exemptions from ITS

### Post-sale: reporting to competent authority

## Credit Purchaser



### Regulation 18

(4) A credit purchaser shall **not** be subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, other than as provided for in these Regulations, or by provisions of applicable consumer protection law, contract law, civil law or criminal law.

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## Credit Purchaser

- 3<sup>rd</sup> country Purchaser: appoint EU-domiciled representative
- EU-domiciled Purchaser: appoint Credit Servicer for NPLs with consumers
- 3<sup>rd</sup> country Purchaser: appoint Credit Servicer for NPLs with:
  - natural persons
  - SMEs.
- Notify competent authority re Credit Servicers and secondary transfers of NPLs
- Obligations to borrowers

# Credit Servicer

- Authorisation required
- Credit servicing activities:
  - collecting or recovering payments from borrower
  - renegotiating terms of credit agreement (in line with Purchaser instructions)
  - administering complaints
  - informing borrower of changes in rates/charges applicable or payments due
- Regulations n/a to servicing by an EU credit institution, certain AIF/UCITS entities, or retail credit firms



## Credit Servicer

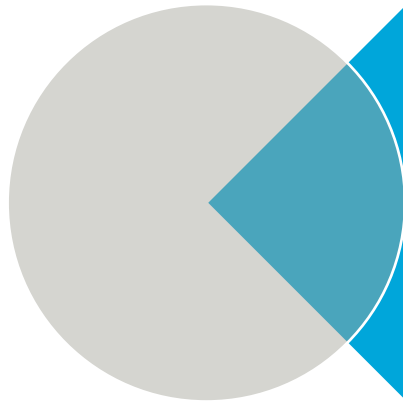
Obligations to borrower (also applies to Purchaser)

Notice to borrower (also applies to Purchaser)

Credit servicing agreement required

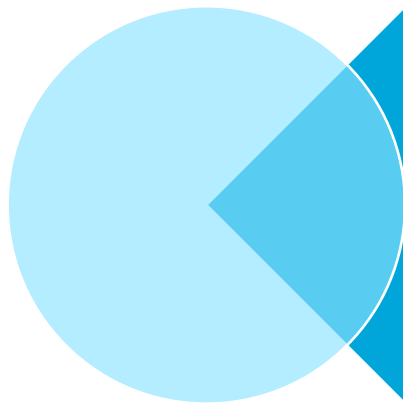
EU passport

## Other Consumer Credit Amendments



### Consumer Credit Directive

- Pre-modification information
- Arrears and enforcement policies



### Mortgage Credit Directive

- Pre-modification information
- Arrears and enforcement policies
- Assignee subject to equities



# ELTIF 2.0



# ELTIF 2.0

- 2015 Regulation revised
  - Eligible Assets and Investments
  - Portfolio composition and diversification
  - Leverage
  - Retail investor access
  - Liquidity / evergreen
- Implementation







# Selected Case Law



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## Selected Case Law

- *Bank of Ireland Mortgage Bank v Hade* (CoA)
  - Receiver sale and non-housing loan mortgage
  
- *In the Matter of Mac-Interiors Ltd* (HC)
  - Examiner for non-Irish company
  
- *Promontoria Oyster DAC (the Objecting Creditor) v Fergus O'Connor (the Debtor)* (SC)
  - Definition of “insolvency” for PIA purposes

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## Selected Case Law

- *Promontoria (Oyster) DAC v Fox & anor (CoA)*
  - Further advances and Land Registry liens
  
- *In the Matter of Latzur Limited (In Receivership) & anor and In the Matter of The Companies Act 2014 & anor (CoA)*
  - Floating charge: crystallization, de-crystallization (and re-crystallization?)

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## Selected Case Law

- *Ulster Bank Ireland DAC v Financial Services and Pensions Ombudsman* (HC)
  - Tracker mortgages
  
- *WM and Sovim SA v Luxembourg Business Registers* (CJEU)
  - Access to AML beneficial ownership register



# Honourable Mentions



# Honourable Mentions

- AML
  - RBO (SI 308/2023)
  - EU Reform
- MICA Regulation 2023
- Benchmarks
  - EU BMR: non-EU benchmarks
  - Synthetic LIBOR



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# Honourable Mentions

- Consumer
  - CPC 2012 review
  - Financial Services and Pensions Ombudsman (Amendment) Bill 2023
  - Distance Marketing Financial Services Directive replaced
  - Consumer Credit Directive II
- Screening of Third Country Transactions Act 2023
- Credit Union (Amendment ) Act 2023

# Honourable Mentions

- EMIR
- Capital Requirements Regime Reform





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# Questions?



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