



APRIL 2023

Horizon Scanner: Infrastructure, Construction, Energy

Legal and regulatory developments impacting sectors across the economy including [energy](#), [construction & engineering](#), [real estate](#), [industrials](#), [transport](#) and [digital infrastructure](#).

Highlights this month...

OFFSHORE RENEWABLE ENERGY

The Government's Policy Statement on Phase 2 sets out further detail on plans for two Designated Areas. We look at key points [here](#).

Find out more

PUBLIC WORKS CONTRACTS - CHANGE TO RISK PROFILE

The Office of Government Procurement announced several measures, including amending standard form contracts and procurement guidance, with the intent of facilitating delivery of infrastructure. Further details are in our [Construction](#) and [Procurement](#) sections.

Find out more

EU ELECTRICITY LAW

The Commission published proposed amendments to the electricity regulatory framework as a response to the impacts of the Ukraine War. The proposals signal acceleration of the current direction of travel rather than market redesign, as we discuss [here](#).

Find out more



Construction & Engineering

"The Government intends to rebalance some of the risks borne by contractors/consultants in the Public Works Contracts and Standard Conditions of Engagement for consultants."

STANDARD FORM CONTRACTS

Public Works Contracts

The Government intends to rebalance some of the risks borne by contractors/consultants in the Public Works Contracts and Standard Conditions of Engagement for consultants through capping liability and amending indemnity insurance requirements. We look at the announcements [here](#) and [here](#).

The Office of Government Procurement began to implement these measures through amendments to the Standard Conditions of Engagement for technical consultancy services (COE1) and archaeological services (COE2), and the accompanying guidelines. Further information is available [here](#).

FIDIC

FIDIC published [guidance](#) on the effects of inflation and unavailability of goods and labour following the COVID-19 pandemic and war in Ukraine. The guidance outlines provisions in FIDIC's conditions of contract that may assist in dealing with scenarios that may arise.

SAFETY

Legislation

The Government published the [Construction Safety Licensing Bill](#) to provide for the appointment of a licensing authority for the purposes of licensing workers carrying out certain activities in relation to construction work.

Case Law

In [Curley v Summerhill Construction Company Ltd](#), the High Court awarded a sub-contractor over €150,000 for injuries and loss following a fall through covering in a counter or worktop. The judgment comments on the ongoing duties arising from health and safety legislation and particularly as regards method statements. Our briefing will be available shortly.

SUSTAINABILITY

Fit for 55/REPowerEU

As work continues to finalise EU legal measures to decarbonise sectors including buildings, we look at instruments that have been finalised [here](#). They include the Recast Renewable Energy Directive which will include specific measures for buildings.

Work continues on the Recast Energy Performance of Buildings as we note [here](#). The ECB opined on the proposed amendments to this Directive, as we discuss [here](#).

"As work continues to finalise EU legal measures to decarbonise sectors including buildings, we look at instruments that have been finalised [here](#)."

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Digital Infrastructure

LEGISLATION

Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 signed into law

The Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 was signed into law on 2 March 2023, though the majority of its substantive provisions have yet to enter into force. The Act imposes enhanced obligations on the providers of public electronic communications networks and providers of publicly available electronic communications services, including the requirement to appropriately manage security risks and to report security incidents once they occur. The Act also introduces reforms to the existing civil enforcement and adjudication procedure, including by granting enhanced powers to the Minister for the Environment, Climate and Communications, as well as ComReg, as the competent national authority. Read the full Act [here](#).

"The Act imposes enhanced obligations on the providers of public electronic communications networks and providers of publicly available electronic communications services, including the requirement to appropriately manage security risks and to report security incidents once they occur."

COMREG UPDATES

Eir retains zero charge for wholesale fibre-to-the-home connection, migration and activation

Eir's wholesale fibre-to-the-home ("FTTH") connection, migration and activation charge was due to return to its previous level of €100 from 1 April 2023. Under ComReg's guidance, Eir is required to allow two months between the publication of updated price lists and their coming into effect and it must notify ComReg one month prior to publication. In this case, ComReg has derogated from previous guidance and decided to allow Eir to publish the price lists on 24 March 2023, with an effective date of 1 April 2023, in order to avoid the potentially disruptive temporary increase and subsequent decrease in prices. Read the full report [here](#).

Kaleyra pleads guilty to 22 counts of charges brought by ComReg in the Dublin District Court

Following an investigation undertaken by ComReg and subsequent prosecution on 13 February 2023, Kaleyra pleaded guilty to 22 counts brought against it. The offences related to charging premium rate services in instances where customers had not requested such services. Kaleyra was ordered to make charitable donations to the value of €5,000 and all affected customers have been refunded. Read the full report [here](#).

ComReg approves leases of spectrum rights in the 3.6 GHz band

Eir secured approval for the leasing of spectrum rights from Dense Air and Vodafone. The leases relate to a 20km radius around an existing Eir base station in the MacGillycuddy Reeks, County Kerry. ComReg has approved the leases for a period of three months from 10 March 2023. Read the full report [here](#). Additionally, Imagine Communications has been given the green light for the leasing of spectrum rights from Vodafone for a period of six months from 10 March 2023. Read the full report [here](#).

Eir confirms it will not implement proposed change to the fibre-to-the-home tariff structure

The change was set to lower rental charges, with reduced rates being applied based on the individual operators' FTTH base profile. Having reviewed the proposed changes, ComReg came to the view that the scheme raises significant concerns in relation to the impact it would have on competition and so should not be implemented. Read the full report [here](#).

ComReg launches consultation on proposed method of enhancing transparency of customer service among providers

The proposal would require providers of internet access services ("IAS") or publicly available interpersonal communications services ("ICS") to prepare, publish and update a customer charter document. The rationale behind this requirement is to create a one-stop-shop whereby a consumer can compare levels of service offered by an ICS or IAS provider. ComReg's power to require a charter, such as this, stems from the newly enacted Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (see above). Read the full report [here](#).

"The rationale behind this requirement is to create a one-stop-shop whereby a consumer can compare levels of service offered by an ICS or IAS provider."

INDUSTRY NEWS

SIRO publishes network expansion plans for County Cork

SIRO, the fibre-to-the-home wholesaler, has announced plans to make the FTTH service available to an additional 20,000 premises across Cork City and County with a planned additional investment of €25 million. This investment would see SIRO's total network investment in Cork rise to over €125 million. Read the full report [here](#).

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Employment

"Although we await the Act being passed into law and commenced, the text of the Bill is now finalised which will allow employers to update their policies and procedures."

WORK LIFE BALANCE AND MISCELLANEOUS PROVISIONS BILL 2022 PASSES BOTH HOUSES OF OIREACHTAS

The Work Life Balance and Miscellaneous Provisions Bill 2022 passed both Houses of the Oireachtas on 29 March 2023 and will now go to the President to be signed into law. Although we await the Act being passed into law and commenced, the text of the Bill is now finalised which will allow employers to update their policies and procedures.

As previously outlined [here](#), the Bill, once law, will transpose the EU Directive on work-life balance for parents and carers, and introduces some significant new rights intended to allow employees to improve the balance between their work life, and family life and caring responsibilities. Following substantial [amendments](#) as it moved through the legislative process, the Bill now also provides for a right to request remote working that is not limited to employees with parental or caring responsibilities, and a statutory paid leave entitlement of five days to support those who are victims of domestic violence.

EUROPEAN PARLIAMENT ADOPTS THE PAY TRANSPARENCY DIRECTIVE

On 30 March 2023, the European Parliament adopted the Pay Transparency Directive. Once the co-legislators have given final approval, the Directive will take effect 20 days after its publication in the Official Journal. Member States will then have three years to transpose the Directive. While Ireland has already legislated for gender pay gap reporting and other matters contained in the Directive, further legislation will be required to provide further detail in pay gap reporting and to transpose other requirements of the Directive. These include pre-employment pay transparency, and the "joint pay assessment" procedure by which employers must engage with employee representatives to address pay gaps of more than 5%. The European Parliament's press release is available [here](#).

"While Ireland has already legislated for gender pay gap reporting and other matters contained in the Directive, further legislation will be required to provide further detail in pay gap reporting and to transpose other requirements of the Directive."

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Energy

OFFSHORE WIND

Offshore Wind in Ireland: Phase 2

The Government published the Phase 2 Policy Statement which we look at [here](#). While the Government wishes to see 7GW of new offshore generation capacity by 2030, the line of sight for Phase 2 development is limited in this Policy Statement to less than 1GW. The approach highlights the importance of getting to grips with the need to adequately invest in the grid.

ORESS Q&A

The Government updated the [timetable](#) for all RESS & ORESS auctions and provided amended ORESS auction FAQs, available [here](#).

North Sea

TenneT awarded contracts for the construction of [11.2GW grid connection systems](#) to be commissioned in the period up to 2031. They will support almost two-thirds of the 65GW target agreed by Germany, the Netherlands, Denmark and Belgium in 2022. Contracts for more platforms are to be awarded at a later stage.

EU ENERGY LAW

Electricity Market Reform

The European Commission published the draft legislation and policy documents relating to reform of EU energy law. The proposals include amendments to the IME Regulation and Directive, in respect of which the Commission is [consulting](#) until 23 May 2023. They do not signal fundamental market redesign, but rather acceleration of the current direction of travel. A position paper has been published by [ENTSO-E](#).

The proposals should be used as a tool by market participants to raise awareness about barriers and to strengthen the case for solutions to progress project delivery and ensure optimal market functioning.

We look at key points [here](#) and provide a fuller briefing here: [Rapid Evolution required by EU Electricity Market Reform - Arthur Cox LLP](#).

"The proposals include amendments to the IME Regulation and Directive, in respect of which the Commission is consulting until 23 May 2023."

Fit for 55/REPowerEU

Several new instruments have been finalised and will soon apply. They include the Recast Renewable Energy Directive III. We look at these instruments [here](#).

Work continues on other elements of Fit for 55/REPowerEU, including in relation to the internal market in gas. We look at latest developments [here](#).

FURTHER EU DEVELOPMENTS

European Hydrogen Bank

The Commission published its [plan](#) to stimulate and support investment in sustainable hydrogen through a European Hydrogen Bank. Further information is available [here](#).

Net-Zero Industry Act

The Commission proposed a new [Regulation](#) to scale up manufacture of clean technologies in the EU. Further information is available [here](#). A [skills partnership](#) was established by renewable energy trade associations and representatives of installers of clean technologies.

Gas

Council Regulation [\(EU\) 2023/706](#) prolongs the period for demand-reduction measures for gas. Member States shall use best efforts to reduce consumption during 1 April 2023 to 31 March 2024 by at least 15% compared to their average consumption during 1 April 2017 to 31 March 2022. Eurostat figures show a [fall by 19.3%](#) in consumption during August 2022 to January 2023, compared with the average for the same months in 2017 to 2022.

Commission Implementing Regulation [C\(2023\) 2194](#) sets out technical rules for extending the Market Correction Mechanism to derivatives linked to gas to all EU trading hubs. It applies from 1 May 2023.

Recovery and Resilience Facility

The Commission is consulting on how the [RRF](#) is working. Member States are required to include REPowerEU proposals in RRF plans. The [scoreboard](#) indicates that no payments have been requested by Ireland. Views are invited [here](#).

EU Green Bonds

The Commission issued €6 billion of NextGenerationEU [green bonds](#) in a fourth syndicated transaction for 2023.

Green Bond Standard

Provisional agreement was reached on the proposed voluntary EU Green Bond Standard. See more on this and other developments in our [Finance](#) Horizon Scanner.

Brexit

There was a [second meeting](#) of the Partnership Council under the EU-UK Trade and Cooperation Agreement. Points discussed included electricity trading, security of supply cooperation and working arrangements for TSOs, and the EU Green Deal Industrial Plan.

INTERNAL MARKETS

Electricity

ACER has called for [improvements](#) to ENTSO-E's draft TYNDP to better contribute to the efficient and secure functioning of the electricity market. ACER intends to consult in June on proposed new Harmonised Allocation Rules for [long-term electricity transmission rights](#).

Gas

ACER launched the daily [LNG benchmark](#).

PCIs

ACER published a position paper on development of [Cost Benefit Analysis](#) Methodologies for energy infrastructure under the TEN-E Regulation.

DOMESTIC DEVELOPMENTS

Revenue Cap and Solidarity Fund

The Government published the General Scheme for legislation to provide for caps on market revenues and solidarity contribution fund payments. Further information is available [here](#) and the General Scheme is available [here](#).

PSO

The [Electricity Regulation Act 1999 \(Public Service Obligations\) \(Amendment\) Order 2023](#) has been made.

Climate Action Plan

The Annex of Actions for 2023 was finalised as we discuss [here](#).

Dublin Grid

EirGrid is [consulting](#) until 23 May 2023 on a programme to install over 50km of underground cables.

"The proposals include amendments to the IME Regulation and Directive, in respect of which the Commission is consulting until 23 May 2023."

CRU BUSINESS

SOs' Annual Performance

The Network Stakeholder Engagement and Evaluation Panel scored SO performance, linked to a financial incentive that feeds into allowed network revenues. The CRU is consulting until 7 April 2023 on the Panels' terms of reference for 2023/2024. ([CRU/2023/16](#))

Connection Policy

A Decision on ECP 2.4 indicates it will consist of a single batch window in October 2023 for two months. Storage projects are now projects where 100% of MEC is storage. The new firm access methodology will apply – regional constraints reports are expected to be published by the TSO by the end of Q1 2024. SOs are to provide longstop date reporting on 31 January and 31 July each year until further notice. In Q2 2023, the CRU intends to consult on a pilot for "renewable hubs". ([CRU/2023/26](#))

PSO

The CRU has provided a Notice for Suppliers setting out information requirements and a timeline for 2023/24 PSO submissions. ([CRU/2023/27](#))

SEMC BUSINESS

All Island Tariffs

An indicative timetable for publication of all island tariffs for 2023/2024 and calendar year 2024 is available. ([SEM-23-028](#))

Interconnectors

The RAs recommended that the Interim Cross-Zonal Arrangements apply to the Greenlink IC and subsequent interconnectors ([SEM-23-022](#)) subject to further consultation until 21 April 2023 on compensation arrangements for reductions in Net Transfer Capacity ([SEM-23-024](#)). The RAs confirmed the application of earlier decisions on SEMOp clearing and settlement arrangements and loss factors. ([SEM-23-027](#))

Capacity Market

The CRM exception application and opt-out notification process for the T-4 2027/28 capacity auction is available ([SEM-23-003](#)). As regards Auction Price Caps, Best New Entrant Net Cost of New Entry is estimated at €107.03/de-rated kW/year ([SEM-23-016](#)). The SEMC decided to extend the exemption from exposure to Non-Performance Difference Charges to protect units that are available and in-merit but not dispatched because of circumstances beyond their control ([SEM-23-029](#)).

"The SEMC decided to extend the exemption from exposure to Non-Performance Difference Charges to protect units that are available and in-merit but not dispatched because of circumstances beyond their control ([SEM-23-029](#))."

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Environment & Planning

‘The Court referred four questions to the CJEU in relation to whether there are specific requirements imposed by the EIA Directive on the developer to obtain information on species that may be affected by the development; to inform the competent authority of the absence of sufficient information; and to provide further information to the competent authority.’

RECENT DOMESTIC JUDGMENTS

- The High Court [permitted](#) a Notice Party to contest judicial review proceedings where An Bord Pleanála (the ‘Board’) had conceded the proceedings. [Read more...](#)
- The High Court [refused](#) the Applicant’s motion for leave to appeal a leave determination, refer a question to the CJEU, and costs. [Read more...](#)
- The High Court [held](#) that the Commercial Planning and SID List is designed for planning and environmental litigation by reference to the subject-matter of the dispute rather than by reference to the legal issues raised. [Read more...](#)
- High Court [finds](#) that question of whether ‘sufficient interest’ confers capacity to bring judicial review proceedings on an unincorporated body must await the outcome of CJEU reference. [Read more...](#)
- The High Court [granted](#) leave to issue a notice to cross-examine experts in relation to evidence in affidavits. [Read more...](#)
- The High Court [granted](#) liberty to file an amended Statement of Grounds to include a plea of objective bias in decision by Paul Hyde of An Bord Pleanála. [Read more...](#)
- The Court of Appeal [refused](#) Friends of the Irish Environment’s application to refer questions to the CJEU in relation to legal aid. [Read more...](#)
- The High Court [ruled](#) that the special costs rules under section 50B of the 2000 Act do not apply to EPA licence matters. [Read more...](#)
- The Court of Appeal [dismissed](#) an appeal relating to refused requests for environmental information. [Read more...](#)
- The High Court [referred](#) four questions to the CJEU in relation to alleged inadequate EIA screening. [Read more...](#)
- The Court of Appeal [set aside](#) High Court orders in relation to non-compliance with court orders for illegal dumping of waste. [Read more...](#)

‘This Act amends the Environmental Protection Agency Act 1992 and enables the Minister for the Environment, Climate and Communications to make arrangements for an alternative form of assessment to be carried out in respect of licence applications.’

LEGISLATION

Environmental Protection Agency (Emergency Electricity Generation) (Amendment) 2023

This [Act](#) amends the Environmental Protection Agency Act 1992 and enables the Minister for the Environment, Climate and Communications to make arrangements for an alternative form of assessment to be carried out in respect of licence applications. It provides for the information obtained under such assessment to be made available to the public.

S.I. No 99/2023 – European Union (Drinking Water) Regulations 2023

These [Regulations](#) give effect to the Water Framework Directive 2000/60/EC and Directive (EU) 2020/2184. The Water Framework Directive provides a comprehensive framework for water quality management across the EU.

Planning and Development (Maritime Development) Regulations 2023

These [Regulations](#) provide further detail on the procedure for obtaining the Board’s opinion under section 290 of the Planning Acts, applications to the Board under section 291, making submissions and observations in accordance with sections 291 and 292, the procedure for oral hearings under section 305, and a list of prescribed persons for the purposes of Chapter III of Part XXI.

Planning and Development (Section 179A) Regulations 2023

These [Regulations](#) amend Articles 39, 81, 82, 83 and 85 of the Planning and Development Regulations 2001 (S.I. No 600 of 2001), which concerns housing developments owned by local authorities.

Waste Management (Collection Permit) (Amendment) (No. 2) Regulations 2023

These [Regulations](#) amend the Waste Management (Collection Permit) Regulations 2007 (S.I. No 820 of 2007) by giving effect to national waste policy regarding the regulation of the collection of household and commercial waste. In particular, the Regulations provide for the introduction of incentivised charging for commercial customers, and the provision of a biowaste, mixed dry recycling and residual waste bin to all waste collection customers in the commercial sector.

Planning and Development and Foreshore (Amendment) Act 2022 (Commencement) (No. 2) Order 2023

This [Order](#) commences sections 3, 13 and 14 of the Planning and Development and Foreshore (Amendment) Act 2022. These sections amend section 179A of the Planning and Development Act 2000, which relates to housing developments owned by local authorities.

S.I. No. 106/2023 – Land Development Agency Act 2021 (Valuation of Relevant Public Land) Regulations 2023

These Regulations [prescribe](#) certain matters relevant to how land should be valued for the purposes of the Planning and Development Act.

‘In particular, the Regulations provide for the introduction of incentivised charging for commercial customers, and the provision of a biowaste, mixed dry recycling and residual waste bin to all waste collection customers in the commercial sector.’

DECISIONS OF THE COMMISSIONER FOR ENVIRONMENTAL INFORMATION

- The Commissioner for Environmental Information (the ‘Commissioner’) [permitted](#) a request for information on the technical specification for interactive mapping on which basis forestry licencing information was made available to the public. [Read more...](#)
- The Commissioner [annulled](#) the decision of the Forestry Appeals Committee (‘FAC’) as none of the exceptions argued were applicable. [Read more...](#)
- The Commissioner found that a company was [justified](#) in refusing a request for environmental information, as it was not a public authority. [Read more...](#)
- The Commissioner [annulled](#) the decision of ESBNDAC and directed a fresh decision-making process to be carried out. [Read more...](#)
- The Commissioner [allowed](#) an appeal as the Department failed to provide environmental information in the form and manner requested. [Read more...](#)
- The Commissioner [annulled](#) the decision of the Department that refused a request for information on the basis that the information is not held by or for it. [Read more...](#)
- The Commissioner [annulled](#) the decision of the Department that refused environmental information sought on the basis that it was not ‘environmental information’. [Read more...](#)
- The Commissioner [annulled](#) the decision of the OPW as the threshold for ‘manifestly unreasonable’ was not met. [Read more...](#)

‘The Commissioner assessed the three limbs of the definition of a ‘public authority’ under the AIE Regulations and found that the company was not a public authority ... and so was not obliged to process the appellant’s request for access to environmental information.’

‘The approach is aligned to the National Planning Framework priorities for compact growth and to Action 9 of Housing for All to provide a greater range of high-quality housing options.’

DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

Sustainable and Compact Settlements Guidelines for Planning Authorities - Proposed Policy Approach

This consultation outlines the evolution of wider policy since the publication of the Section 28 Guidelines, including the National Planning Framework (2018), Housing for All (2021), and the Housing for All Action Plan Update (2022). It provides a summary of the emerging policy approach in relation to density and development standards for housing. The approach is aligned to the National Planning Framework priorities for compact growth and to Action 9 of Housing for All to provide a greater range of high-quality housing options.

Public Consultation on the Approach to Replacement of Sustainable Residential Development Guidelines (2009)

The Minister for Housing, Local Government and Heritage prepared a paper outlining the proposed policy approach towards a revision of the ‘Sustainable Residential Development Guidelines’ (2009) and their replacement with Sustainable and Compact Settlements Guidelines for Planning Authorities. The paper outlines how these Section 28 Guidelines now require replacement, noting the evolution of wider policy since their adoption through, in particular, the National Planning Framework (2018).

RECENT JUDGMENTS OF THE CJEU

The CJEU held that bisphenol A belongs to the group of substances under the REACH Regulation that may have serious effects on the environment

PlasticsEurope AISBL, an association representing the interests of European producers of plastic, argued that the Executive Director of the European Chemicals Agency (the ‘ECHA’) erred in relying on studies of low reliability to identify the substance as a substance of very high concern. However, the CJEU held that the ECHA could take into account studies with varying degrees of reliability, provided that weight was given to the degree of reliability, so as to confer greater importance on the most reliable studies.

The CJEU finds that a derogation from strict emission values cannot be granted where it would contribute to the exceedance of air quality limit values set by the EU Ambient Air Quality and Cleaner Air for Europe Directive

In December 2018, Bulgaria’s Executive Agency for the Environment made a decision to update the permit for the operation of four thermal power plants, the effect of which resulted in the emission limit values of sulphur dioxide exceeding the level permitted under the EU Industrial Emissions Directive.

Although the Directive entitles Member States to set less strict emission values in certain circumstances, the CJEU held that Member States must still ensure that no significant pollution is caused by granting a derogation and that a high level of protection of the environment is achieved as a whole. Therefore, a derogation cannot be granted where it contributes to the exceedance of air quality limit values set by the EU Ambient Air Quality and Cleaner Air for Europe Directive for sulphur dioxide.

The CJEU clarified the scope of the Strategic Environmental Assessment (‘SEA’) Directive

The CJEU held that a ‘masterplan’ envisaged by the Dublin City Development Plan falls within the scope of the SEA Directive once it satisfies the following cumulative conditions: (i) the plan is subject to preparation and/or adoption by a national, regional or local authority or prepared through a legislative procedure; (ii) the plan is required by legislative, regulatory or administrative provisions; (iii) the plan envisages developments distinct from those envisaged in another plan or programme; and (iv) it is binding on the authorities with competence to grant development consent. In addition, the Court noted that the concept of ‘plans and programmes’ includes not only their preparation but also their modification.

The CJEU held that a decision of the Board of Appeal of the EU Agency for the Cooperation of Energy Regulators (‘ACER’) contained a manifest error of assessment, as the Board had only conducted a limited review of technical assessments relating to an electricity interconnector

Aquind, the project promoter for an interconnector between the UK and France, sought an exemption in respect of the interconnector, which was refused by ACER. The matter was appealed to the Board of Appeal of ACER, which carried out a limited. Aquind argued that the Board of Appeal erred in regard to the intensity of the review of complex technical and economic assessments.

The CJEU held that the members of the Board of Appeal must have prior experience in the energy sector, and therefore they should have the technical knowledge necessary to enable them to conduct detailed examinations of appeals. The Board of Appeal had not been created to confine itself to a limited review of such technical assessments, and therefore its decision in respect of the interconnector exemption contained a ‘manifest error of assessment’.

The CJEU found that Poland infringed the Habitats Directive and Birds Directive

The Commission brought an action against the Poland in respect of exemptions of forest management operations from the Habitats and Birds Directives. The Commission argued that the Polish legislation, which implemented the Directives, was capable of authorising forest management operations so generally that it extended to deliberately destroying or killing specimens of protected species. Accordingly, the CJEU held that the Polish legislature had failed to comply with its obligations under the Habitats Directive and Birds Directive.

EU REPORTS, CONSULTATIONS AND DECISIONS

Water: Late review, adoption and reporting of third river basin management plans by Ireland

It is noted in the [February infringements package](#) that Ireland, along with Denmark and Poland are beyond legal time limits as regards the review, adoption and reporting of the third river basin management plans. A formal notice has been issued to Ireland ([INFR/2022/185](#)). The Commission has called on 16 Members States to finalise review of their water plans.

Council reaches agreement on amendments to Industrial Emissions Directive

The Council adopted its position on the Commission’s proposal to review the Industrial Emissions Directive. The Member States amended the Commission’s proposals in relation to the scope of the directive, and introduced thresholds, flexibility in relation to penalties and compensation, and derogations to allow for energy security. The main objective of the revision is to make progress towards the EU’s zero pollution ambition for a toxic-free environment. The rules aim to offer better protection of human health and the environment by reducing harmful emissions from industrial installations and intensive livestock farms into the air, water and through waste discharges. As soon as the Parliament adopts its negotiating position, negotiations between the Council and the Parliament may begin.

Zero pollution: New EU report calls for stronger action to reduce harmful noise pollution

The Commission published a report on the implementation of the Environmental Noise Directive, setting out how noise can be further reduced. The report shows progress achieved since the second implementation report in 2017, which includes a more systematic assessment of noise levels and the adoption of noise management action plans by Member States. However, it warns that the current number and intensity of actions must be increased if the number of people affected by transport noise by is to be reduced by 30% by 2030, as set out in the Zero Pollution Action Plan.

The Commission published its Waste Shipment Regulation report

The Commission published the implementation report of the Waste Shipment Regulation for 2016 to 2019, a key document for the supervision and control of shipments of waste both within EU borders, and with third countries. The report reveals two major trends. First, the total amount of hazardous waste shipped both within and outside of the EU more than doubled from 3.9 million tonnes in 2001 to 8.1 million tonnes in 2019. Second, the volumes of illegal shipments detected by Member States’ inspections is increasing.

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Public Procurement

"The Government intends to rebalance some of the risks borne by contractors/consultants in the Public Works Contracts and Standard Conditions of Engagement for consultants through capping liability and amending indemnity insurance requirements."

IRELAND

Office of Government Procurement: Liability Caps, Professional Indemnity Insurance, Collateral Warranties

The Government intends to rebalance some of the risks borne by contractors/consultants in the Public Works Contracts and Standard Conditions of Engagement for consultants through capping liability and amending indemnity insurance requirements. We look at the announcements [here](#) and [here](#).

The OGP began to implement these measures through amendments to the Standard Conditions of Engagement for technical consultancy services (COE1) and archaeological services (COE2) and accompanying guidelines. Amendments to the Public Works Contracts will follow.

A new Guidance Note GN 1.6.4 Liability Caps: Application in the Standard Conditions of Engagement COE1 and COE2 will be published [here](#). The OGP indicates it will outline a recommended framework (based on an assessment of risk of loss/damages to the Client and considering relevant value for money considerations) to assist in arriving at an appropriate monetary amount for a Liability Cap for a particular contract.

The new provisions are to apply to **tenders received from 10 April 2023 onwards**. The OGP states that, for those tenders, Clients should arrange to issue tenderers with the amended form of Tender and Schedule, and may consider extending their tender deadline to accommodate the implementation of the amendments.

Further information is available [here](#).

Office of Government Procurement: Participation of SMEs

The OGP published [Circular 05/2023](#) setting out measures for contracting authorities to take to promote SME participation in public procurement. Several measures are set out: preliminary market consultation, use of lotting, and greater use of PINs to prepare the market, including to allow SMEs time to consider formation of a consortium.

Guidance is given on setting requirements around selection criteria and turnover requirements. Ways to encourage innovation are suggested, for example through considering use of pre-commercial procurement or indicating that variants to the tendered specification will be considered.

There is also a recommendation to take into account not just acquisition costs, but life-cycle costs. There is guidance on insurance for supply of goods and services, and attention is drawn to the existing guidance on requirements for works.

Minimum contract value thresholds triggering the requirement to advertise on eTenders are also increased. Summaries are available [here](#) and [here](#).

Procurement Litigation: Costs

Last month we looked at the judgment in *Sere Holdings Ltd v Health Service Executive* [here](#) and [here](#). We consider the costs' ruling [here](#): the respondent was awarded full costs, but the notice party was not.

EU

European Data Space

The Commission is developing a [Public Procurement Data Space](#) to pool data on preparation of tenders, calls for tenders and outcomes. The Communication setting out further detail is available [here](#). It indicates the objective is to have the basic architecture and data in place by mid-2023. It is intended that, by the end of 2024, all participating national publication portals will be connected, historic data published at EU level integrated, and the analytics toolkit expanded.

UK

Selection Questionnaires

The UK Government published [PPN 03/23](#) which updates the Selection Questionnaire and guidance, replacing a 2016 notice. It applies to contracting authorities in England, and those in N. Ireland and Wales exercising reserved functions. In addition to clarificatory amendments, it includes amendments to financial questions and checks, as well as new questions on health and safety, supply chains, modern slavery, carbon emissions, and data protection.

Automatic Suspension

In *Boxxe Ltd v The Secretary of State for Justice*, the Court lifted an automatic suspension of the award of a call-off contract. There is a preliminary issue to be heard around whether Broxxe's challenge is out of time but, pending that, the Court determined that damages would be an adequate remedy for Broxxe.

During the proceedings Broxxe argued that damages will not be an adequate remedy if it is successful in its substantive challenge. It argued its sub-contractor would suffer losses of £1.5 million but the sub-contractor's standing to bring a claim in its own right was highly uncertain. The Court said the position of the sub-contractor was irrelevant for the purposes of assessing whether damages would be an adequate remedy for Broxxe. The sub-contractor could have started a claim as a second claimant to the action. The fact that it had not done so could not be pleaded as relevant to the question of the adequacy of Broxxe's damages.

Boxxe also argued that there was a risk that it would not be entitled to Francovich damages. This was overcome by the Secretary of State agreeing to give an undertaking that, if Broxxe is successful in its substantive challenge, the Secretary of State will not pursue its argument that its breaches do not meet Francovich conditions.

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"It is intended that, by the end of 2024, all participating national publication portals will be connected, historic data published at EU level integrated, and the analytics toolkit expanded."

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Real Estate

"The Government is reviewing various measures to increase housing supply in the rental sector and plans to give residential tenants a right of first refusal to buy their homes where the landlord intends to sell. The detail of this measure, including how the property would be independently valued, will be set out in draft legislation in due course."

PROPERTY TAX

Residential Zoned Land Tax: Reminder of 1 May 2023 appeal deadline

1 May 2023 is the deadline for landowners to appeal the local authority decision on their submission on the initial draft RZLT maps to An Bord Pleanála. Landowners had until 1 January 2023 to make submissions to the relevant local authority if they wished to dispute the inclusion of their land on the draft map. Final maps will be published on 1 December 2023.

RESIDENTIAL LANDLORD AND TENANT

Expiration of temporary stay on residential tenancy terminations

The Government [announced](#) in March that the temporary stay on residential tenancy terminations provided for in the Residential Tenancies (Deferment of Termination Dates of Certain Tenancies) Act 2022 will not be extended. Our briefing on the legislation that enacted the temporary stays, and provided for the staggered termination of relevant tenancies over the course of April, May and June 2023, is available [here](#).

The Government is reviewing various measures to increase housing supply in the rental sector and plans to give residential tenants a right of first refusal to buy their homes where the landlord intends to sell. The detail of this measure, including how the property would be independently valued, will be set out in draft legislation in due course. The Government has indicated that it wants the measure to be in place before the Dáil rises for the summer recess.

The Government is also developing proposals for a bespoke cost rental model which would involve an option for Approved Housing Bodies and local authorities (with financial support from the Government) to purchase the property so that tenants who have received a termination notice on the ground that the landlord intends to sell the property, and who are at risk of homelessness but not on social housing supports, can continue to reside in the property. The Government states that this measure "will be rapidly established on an administrative basis prior to legislation".

The Government is also working on a new budgetary package of measures to support tenants and landlords "both in respect of short-term measures and longer-term certainty for renters and property providers". It appears that the detail of these measures may not be available until Budget 2024 is announced in October 2023.

The Government's press release also refers to an upcoming Residential Tenancies Bill as a further opportunity to strengthen tenants' rights, but further details of the Government's proposals in this regard have not been published. The press release refers to measures already implemented including tenancies of indefinite duration, increases in notice to quit periods, the extension of the Rent Pressure Zone system to 2024 and the 2% rent cap.

TITLE: COMPULSORY PURCHASE ORDERS

Law Reform Commission Report on the Compulsory Acquisition of Land

The Law Reform Commission published a [report](#) on the compulsory acquisition of land. The report is exclusively concerned with the second half of the compulsory purchase process; how and when the land will be taken and the amount the owner will be compensated for the loss of their land.

The Commission's core goal is to replace the existing law with a modern and simple legislative structure to reduce delays at acquisition stage. This includes:

- replacing the current notice to treat procedure with a new vesting procedure recommended in its draft Bill, the Acquisition of Land Bill 2023, which would repeal the entirety of the Acquisition of Land (Assessment of Compensation) Act 1919 and some provisions of the Lands Clauses Consolidation Act 1845;
- shorter time periods for each stage of the process. For example, the acquiring authority would have 12 months from the date the CPO becomes operative to decide whether to proceed with the acquisition and, if it does not proceed, the CPO will lapse (this would be shorter than the current 18-month or three-year period under the notice to treat procedure);
- the introduction of an advance payment of compensation of no less than 90% of the estimated amount, where a request is made by the owner;
- replacing of the property arbitrator with the Valuation Tribunal as the body responsible for determining compensation where the parties cannot agree; and
- the codification of the principles governing the assessment of compensation to bring clarity and certainty to the determination of claims.

The Commission considers that, once land is the subject of compulsory acquisition, it effectively sterilises the use of that land for the owner. Accordingly, the owner should know within a relatively short period if the compulsory acquisition is going ahead, with due regard to the entitlement of the acquiring authority to have time to decide whether to proceed with the CPO.

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State Aid

"The European Commission has endorsed a targeted amendment to the General Block Exemption Regulation ("GBER") to further facilitate, simplify and speed up support for the EU's green and digital transitions."

COMMISSION AMENDS GENERAL BLOCK EXEMPTION RULES TO FURTHER FACILITATE AND SPEED UP GREEN AND DIGITAL TRANSITION

The European Commission has endorsed a targeted amendment to the General Block Exemption Regulation ("GBER") to further facilitate, simplify and speed up support for the EU's green and digital transitions.

Together with the new Temporary Crisis and Transition Framework, this targeted amendment aims at making it easier for the Member States to grant necessary support for key sectors in line with the Green Deal Industrial Plan. See the full article [here](#).

COMMISSION ADOPTS TEMPORARY CRISIS AND TRANSITION FRAMEWORK TO FURTHER SUPPORT TRANSITION TOWARDS NET-ZERO ECONOMY

The European Commission has adopted a new Temporary Crisis and Transition Framework to foster support measures in sectors which are key for the transition to a net-zero economy, in line with the Green Deal Industrial Plan.

The new Temporary Crisis and Transition Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of Russia's war against Ukraine, and already amended on 20 July 2022 and 28 October 2022. Together with the amendment to the GBER, noted above, the Temporary Crisis and Transition Framework is intended to speed up investment and financing for clean tech production in Europe. See the full article [here](#) and the Commission's Fact Sheet [here](#).

COMMISSION APPROVES €100 MILLION IRISH SCHEME TO SUPPORT THE MICROELECTRONICS-MANUFACTURING SECTOR IN THE CONTEXT OF RUSSIA'S WAR AGAINST UKRAINE

The European Commission has approved a €100 million Irish scheme to support the microelectronics-manufacturing sector in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework, adopted by the Commission on 9 March 2023 to support measures in sectors which are key to accelerating the green transition and reducing fossil fuel dependencies. The new Framework amends and prolongs in part the Temporary Crisis Framework, adopted on 23 March 2022 to enable Member States to support the economy in the context of the current geopolitical crisis, already amended on 20 July 2022 and on 28 October 2022.

The purpose of the scheme is to provide financial support to microelectronics-manufacturing companies, which have been particularly affected by the current geopolitical crisis. The measure will consist of aid for additional costs due to exceptionally severe increases in natural gas and electricity prices in the form of direct grants, up to a maximum individual amount of €50 million. See the full article [here](#).

"The European Commission has approved a €100 million Irish scheme to support the microelectronics-manufacturing sector in the context of Russia's war against Ukraine."

COMMISSION ADOPTS REVISED RULES FOR FISHERY AND AQUACULTURE SECTOR

The European Commission has adopted revised Guidelines for State aid in the fishery and aquaculture sector. The revised Guidelines set out the conditions under which State aid granted by Member States to support the fisheries and aquaculture sectors may be considered compatible with the Single Market. They reflect EU strategic priorities, in particular the Common Fisheries Policy, and especially the new European Maritime, Fisheries and Aquaculture Fund and the European Green Deal. See the full article [here](#).

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Transport

"Work continues on other elements of Fit for 55/REPowerEU, including in relation to the internal market in gas, including hydrogen, as well as in relation to maritime fuels."

EU

Fit for 55/REPowerEU

Several new instruments were finalised and will soon apply. They include the Recast Renewable Energy Directive III which includes provisions specific to transport. We look at these instruments [here](#).

Work continues on other elements of Fit for 55/REPowerEU, including in relation to the internal market in gas, including hydrogen, as well as in relation to maritime fuels. We look at latest developments [here](#).

European Hydrogen Bank

The Commission published its [plan](#) to stimulate and support investment in sustainable hydrogen through a European Hydrogen Bank. Further information is available [here](#).

Transport Infrastructure

The EU announced over €180 million [funding](#) to projects that will deliver sustainable transport infrastructure.

DOMESTIC DEVELOPMENTS

Renewable Transport Fuel

Regulations have been made to support transition to more sustainable fuels, as described [here](#). The Regulations are available [here](#) and [here](#). A [consultation](#) on the draft Renewable Transport Fuel Policy Statement 2023-2025 is open until 28 April 2023.

Sustainable Transport Corridors

The NTA is [consulting](#) until 25 May 2023 on sustainable transport corridors for Cork.

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The High Court refused the Applicant's motion for leave to appeal a leave determination, refer a question to the CJEU, and costs

The applicant had unsuccessfully sought to challenge a solar farm. It subsequently sought substantive relief on foot of that first judgment, leave to appeal the first judgment, a reference to the CJEU and costs for the applications. These applications were rejected on the basis that the applicant was attempting to raise issues beyond the original High Court proceedings. The Court also rejected a proposed ground of appeal on the basis that it was purely hypothetical, in that the applicant had requested guidance on the correct remedy if the Notice Party failed to make an application to the Minister as was required.

On costs, the Court found that the applicant had not succeeded in obtaining relief and did not fall into the category of "exceptional public importance" which would allow the award of costs (even though he did not succeed). However, the claims did not fall into the category of the "frivolous" – which the Court defined as "a point so wildly meritless, or so lacking in even the possibility of ever succeeding ... or motivated by improper purposes, such that it would be inappropriate even to seek to argue it" – which would justify the costs between awarded against the Applicant. Therefore, the Court applied the default position and made no order as to costs.

The Court of Appeal refused Friends of the Irish Environment's application to refer questions to the CJEU in relation to legal aid

The Court of Appeal refused to refer questions of law to the CJEU on the issue of whether the State is required to set up a legal aid scheme for "legal" or just natural persons, and whether there is an enhanced duty to have such a scheme for environmental matters. The Court refused to make a reference on the basis that the issues were entirely new arguments not advanced during the substantive case.

The Court of Appeal dismissed an appeal relating to refused requests for environmental information

The question in this appeal was whether the requirement under Article 6(1)(b) of the AIE Regulations, to state in a request for environmental information that the request is being made pursuant to the AIE Regulations, accords with the object and purpose of the AIE Directive. Right to Know raised a request, without indicating whether the request was raised under the Freedom of Information Act or AIE Regulations. The Department of the Taoiseach sought to clarify which legislation the information was requested under, and Right to Know refused to provide this confirmation. No documents were released, and Right to Know unsuccessfully judicially reviewed the Department's implied refusal to release the relevant environmental information. It appealed the decision of the High Court to the Court of Appeal.

In dismissing the appeal, the three issues the Court considered were: (1) whether the applicants failed to exhaust alternative remedies provided for by the AIE Regulations (by appealing to the Commissioner for Environmental Information, and then appealing to the High Court on a point of law); (2) whether the High Court was correct in finding that this requirement complied with the "practical arrangements" envisaged by the AIE Directive; and (3) whether the High Court was correct to find that the requirement did not infringe the Constitution.

The High Court held that the Commercial Planning and SID List is designed for planning and environmental litigation by reference to the subject-matter of the dispute rather than by reference to the legal issues raised

An application was made to have these proceedings admitted to the Commercial Planning and SID List. This application was contested by the respondents on the basis that the relief sought by the applicants was specific performance of a settlement agreement relating to another set of proceedings. Therefore, the respondents argued that the SID List was not appropriate in circumstances where the proceedings related to an alleged breach of contract. The High Court disagreed and found that, since the subject-area of the dispute related to planning, it legitimately fell within the scope of admissibility to the SID list.

The High Court permitted a Notice Party to contest judicial review proceedings where An Bord Pleanála (the “Board”) had conceded the proceedings

In the context of a judicial review of an SHD, the Board indicated its intention to concede the proceedings on the basis that it had failed to consider whether there was adequate public transport capacity. However, the developer (the Notice Party) applied to the Court to continue to defend the proceedings. The High Court noted that the test, as set out in *Protect East Meath Limited v An Bord Pleanála & Ors (I)* [2020] IEHC 294, for a notice party continuing to defend proceedings when the decision-maker had conceded was whether the notice party produced “sufficient objective evidence” to demonstrate that there was a sound basis that the concession was incorrect. This standard is justified by the cost imposed on the courts system in hearing a defence to challenge to a decision where the decision-maker itself had conceded that the decision was incorrect.

The Court held that the Notice Party met this standard, by bringing evidence showing that transport and traffic had been assessed by the Board. To refuse the Notice Party leave to contest the proceedings would deprive the Notice Party of its constitutional rights of access to court, fair procedures and to property.

However, the Court noted that the Notice Party must take on relevant obligations (such as full disclosure of adverse matters in the process whether sought by anybody or not) though the Court is not required to give the Notice Party’s views the same weight that it would give to the decision-maker. The Court noted that there may be situations where it would be inappropriate to allow a notice party to step into the shoes of the decision-maker, but this was not one of those cases.

The High Court ruled that the special costs rules under section 50B of the 2000 Act do not apply to EPA licence matters

The High Court awarded costs in favour of the CRU and the EPA following the event of dismissal of two proceedings. The Court held that section 50B of the Planning and Development Act 2000 is inapplicable and declined to exercise discretion to depart from the default rule that costs should follow the event. The Court also rejected the alternative argument that a Veolia Order was required (that is, an order that the general rule that the winning party is awarded its costs should be departed from because, in particular, the winning party materially added to the costs of the proceedings by raising unmeritorious arguments).

The Commissioner annulled the decision of ESBNDAC and directed a fresh decision-making process to be carried out

The Commissioner found that information requested by the appellant that: a) was in the possession of the public authority, and b) had been produced or received by that authority, was “held by” ESBNDAC, whether in its capacity as asset manager or otherwise. The Commissioner annulled the decision of ESBNDAC which provided for the release of only one redacted document to the appellant, and directed that a fresh decision-making process be carried out in relation to the appellant’s request.

The High Court referred four questions to the CJEU in relation to alleged inadequate EIA screening

This case concerns the grant of permission for an SHD development less than 400 metres from the River Lee. The applicant argued that the EIA screening was inadequate, in particular in respect of bats. The Court referred four questions to the CJEU, in relation to whether there are specific requirements imposed by the EIA Directive on the developer to obtain information on species that may be affected by the development; to inform the competent authority of the absence of sufficient information; and to provide further information to the competent authority. The questions referred also ask whether, if there are no such obligations in the EIA Directive, there are consequences on species entitled to strict protection under the Habitats Directive.

The Commissioner for Environmental Information (the “Commissioner”) permitted a request for information on the technical specification for interactive mapping on which basis forestry licencing information was made available to the public

The appellant requested the technical specification provided to the developers of the Forest Licence View (“FLV”), an interactive mapping application that displays forestry licence information to the public. The Commissioner found that making information available on forestry licence information and the mapping information on forestry licencing has an environmental impact. The technical specification of the FLV affects how this information is displayed to the public and, therefore, information on the FLV falls within the definition of environmental information.

The Commissioner noted that if the Department wished to make arguments relating to the protection of intellectual property or increased risk of cyber-attacks, it could refuse the request under these grounds and the appellant could appeal if desired.

The Commissioner annulled the decision of the OPW as the threshold for “manifestly unreasonable” was not met

The Commissioner found that Article 9(2)(a) of the AIE Regulations did not provide grounds for refusal of a request for environmental information and remitted the matter to the OPW for fresh consideration. The threshold of “manifestly unreasonable” allowing for a refusal of a request was not met on the facts and the Commissioner was of the view that processing the request would not significantly interfere with the normal course of activities or incur disproportionate costs or effort by the OPW.

The Commissioner allowed an appeal as the Department failed to provide environmental information in the form and manner requested

The Commissioner found that the Department of Agriculture, Food and the Marine had not complied with its obligations under the AIE Regulations as it had failed to provide environmental information to the appellant in the form or manner requested by her in circumstances where none of the exceptions applied, namely, that the information was publicly available in an easily accessible form or manner, or that the access provided was reasonable.

The Commissioner annulled the decision of the Department that refused a request for information on the basis that the information is not held by or for it

The Commissioner found that the Department of Agriculture, Food and the Marine had not established that reasonable and appropriate searches had been conducted to identify and retrieve environmental information within the scope of the appellant's request in relation a specific action point of the National Peatlands Strategy. The Commissioner annulled the Department's decision and remitted the matter for further consideration.

**The High Court granted liberty to file an amended Statement of Grounds to include a plea of objective bias in decision
by Paul Hyde of An Bord Pleanála**

The applicant was granted liberty to file an amended Statement of Grounds to include a plea of objective bias against the Board. The brother (Stefan Hyde) of the Board's deputy chair (Paul Hyde, who had adjudicated on the application) was a 50% shareholder in the Fire Safety Engineering and Access Consultants acting for the developer in relation to the proposed development, and Stefan Hyde had a fiduciary interest in the application being successful, as his firm would also act at the development stage if successful before the Board.

Factors the Court took into account were: (1) whether a party seeking an amendment in planning judicial review has to comply with section 50(8) of the 2000 Act in relation to extending the time limit for an application for leave to apply for judicial review, (2) whether an application for an amendment that is an "entirely" or "substantially" new case has to satisfy O. 84 r. 23(2) RSC, and (3) whether the test for amendment in the interests of justice is satisfied.

The High Court granted leave to issue a notice to cross-examine experts in relation to evidence in affidavits

The High Court granted leave to Salmon Watch Ireland CLG to issue a notice to cross-examine experts from ALAB and MOWI in relation to data underpinning technical evidence set out in affidavit evidence. Holland J stated that conflicts of evidence as between affidavits can usually be resolved only by cross-examination, due to reasons of fairness and reliability of evidence.

The Court of Appeal set aside High Court orders in relation to non-compliance with court orders for illegal dumping of waste

The Court of Appeal set aside orders of the High Court in relation to non-compliance with court orders of two appellants to discontinue the holding, recovery and disposal of waste at farmlands in Co. Meath. The Court held that the trial judge erred in failing to consider the respective circumstances of each of the appellants separately and that the fine of approximately €6.2 million imposed by the High Court for contempt of Court, jointly and severally on the appellants, was wholly disproportionate, particularly as there was clear evidence that compliance with the order was impossible and beyond the means of the two appellants. The Court also held that the part of the order restraining the appellants from dealing with their lands, if enforced, would reduce the appellants to destitution.

The Commissioner annulled the decision of the Forestry Appeals Committee (“FAC”) as none of the exceptions argued were applicable

The appellant requested “[a]ll records relating to the engagement of the FAC in the drafting of the legislation which became the Forestry (Miscellaneous Provisions) Act 2020”. The FAC refused this request on the following exceptions: (i) the FAC was acting in a legislative or judicial capacity, (ii) the information was protected by confidentiality, and/or (iii) the information concerned internal communications.

The Commissioner refused all the grounds sought to be relied on as: (i) the legislation in question had been enacted by the time of the refusal, meaning that this exception could not be relied upon, (ii) the FAC had not provided any specific adverse effect on the confidentiality that would be caused by the release and had applied it in a blanket manner (when each record should have been assessed individually), and (iii) the FAC had merely identified a hypothetical undermining of the interest protected by the internal communications exception.

The Commissioner annulled the decision and ordered the FAC to make a fresh determination, as the FAC had not properly assessed what information fell into the scope of the request.

The Commissioner annulled the decision of the Department that refused environmental information sought on the basis that it was not “environmental information”

The Commissioner found that a Form 2 (used to apply for payment of a grant approved under the Forest Roads Scheme) falls under the definition of “environmental information” as the Forest Road Scheme is a measure that brings with it a real and substantial possibility of impact on the environment. The information contained in Form 2 is “on” the Forest Road Scheme as it is integral to the Scheme and enables the public to be better informed about the Scheme.

High Court finds that question of whether 'sufficient interest' confers capacity to bring judicial review proceedings on an unincorporated body must await the outcome of CJEU reference

The applicant, an unincorporated residents' association, argued that it was a "person" for the purposes of section 50(2) of the Planning and Development Act 2000, as amended. As such, the applicant argued that it had capacity and standing to bring the judicial review proceedings having demonstrated 'sufficient interest' by participating in the planning process. The Court found the applicant's interpretation of the 2000 Act to be "persuasive" but reserved judgment pending the determination of CJEU reference in *Dublin 8 Residents Association v An Bord Pleanála* relating to unincorporated bodies' capacity to bring such proceedings.

The Commissioner found that a company was justified in refusing a request for environmental information, as it was not a public authority

The company refused a request for environmental information on the basis that it is not a public authority. The Commissioner assessed the three limbs of the definition of a “public authority” under the AIE Regulations and found that the company was not a public authority within the meaning of this definition and so was not obliged to process the appellant’s request for access to environmental information.