

MAY 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...

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### RENEWABLE ENERGY

RESS 3 Terms and Conditions are available, with the qualification process opening on 30 May 2023. Find out more [here](#).

Find out more

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### EU ENERGY TRANSITION

Publication of new legislation, including the recast Renewable Energy Directive and revised EU Emissions Trading Scheme Directive, is imminent. Our latest update is [here](#).

Find out more

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### HEALTH AND SAFETY IN CONSTRUCTION

The importance of keeping safety plans and method statements updated as projects progress is emphasised by the High Court, as discussed [here](#).

Find out more

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# Construction & Engineering

## SAFETY

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. Our briefing is available [here](#).

## DISPUTE RESOLUTION

The “pay now, argue later” approach that parties can expect in adjudication is underlined in the Scottish case of *Atalian Servest AMK Ltd v BW (Electrical Contractors) Ltd* [2023] CSIH 18, where an appeal court enforced an adjudicator’s decision.

A feature of the case was that the “volume of written materials was enormous”. The parties could have agreed to convert the adjudication to an arbitration but, by invoking adjudication, the referring party was entitled to a speedy process. The decision was bound to be one involving broad justice at high speed. Against that background, the adjudicator’s determination was an exemplary piece of work. While his figures could prove to be in error when the substantive dispute is determined, his efforts were not a frolic of his own but a reasoned attempt to value the work. There was no unfairness: he had given parties notice of his thinking and invited comment. Having cut to the chase, he used a broad axe with a blunt edge to reach a robust and summary conclusion.

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“Having cut to the chase, he used a broad axe with a blunt edge to reach a robust and summary conclusion.”

## SEO - CONSTRUCTION

The Minister for Employment Affairs and Retail Business has accepted the Labour Court recommendation for new minimum pay and pension contribution rates for workers in the construction sector. Further information is available in the [employment section](#).

## SUSTAINABILITY

### Fit for 55/REPowerEU

Final versions have been agreed of instruments underpinning the EU Emissions Trading System and Carbon Border Adjustment Mechanism, as we describe [here](#). A new, separate emissions trading system will apply from 2027 to distributors supplying fossil fuel to certain sectors, including buildings.

### Heat Pumps

The European Commission opened a call for evidence on initiatives to accelerate the roll-out of heat pumps including in relation to accessible financing. Feedback is invited [here](#) until 26 May 2023.

### Heat and Built Environment

The Government established a Heat and Built Environment Taskforce to accelerate and drive delivery of retrofitting, renewable heat, district heat and decarbonisation of the building stock. Further information is available [here](#).

### Standard Forms

FIDIC is [collaborating](#) with the World Business Council for Sustainable Development to accelerate transition to sustainable infrastructure and has also published an [emissions dashboard](#) to show the carbon footprint of its activities.

### Citizen-Led Renovation

The EU is to assist pilot projects whereby renewable or citizen energy communities wish to renovate buildings or install new technical or renewable energy systems. A [call for applications](#) is open until 31 May 2023.

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# Employment

"The Order will set increased rates of minimum pay and amendments to pension contribution rates for workers in the construction sector."

## NEW SECTORAL EMPLOYMENT ORDER FOR THE CONSTRUCTION INDUSTRY

On 13 April 2023 the Minister for Employment Affairs and Retail Business approved the [Draft SI Sectoral Employment Order \(Construction\) 2023](#) and referred it for approval to the Oireachtas. It is intended to commence on 18 September 2023. It will set increased rates of minimum pay and amendments to pension contribution rates for workers in the construction sector.

## REPORT ON POSTING THIRD COUNTRY NATIONALS

The posting of third country nationals is a growing phenomenon, particularly in construction, transport and agriculture. A European Labour Court [Report](#) on the cooperation practices, possibilities, and challenges between Member States provides recommendations on how to address main issues. They include:

1. developing guidelines for Member States to support the correct application of EU law;

4. making better use of the Internal Market Information System and the promotion of good practices on the use of digital tools for the exchange of information;

2. developing an information tool and a practical handbook for competent authorities on the enforcement of the applicable rules on posting of workers;

5. promoting the exchange of information and good practices between Member States; and

3. supporting the regular exchange of information between the competent authorities of the Member States;

6. providing specific training, staff exchanges and secondment schemes for competent staff in national authorities; and exploiting the potential offered by the European Labour Court for concerted or joint inspections at cross-border level.

## PROPOSED REVISION OF THE EUROPEAN WORKS COUNCIL DIRECTIVE

On 11 April 2023 the European Commission launched [a first-stage consultation](#) with European social partners on a revision of European Works Council Directive 2009/38/EC. It will be open for six weeks.

Drawing on the "Radtke Report" approved by the European Parliament on 2 February 2023, and the 2018 Commission Evaluation of the Directive, six areas for potential reform have been identified: the notion of "transnational matter"; the definition of "consultation"; "confidentiality" restrictions; the framework for setting up EWCs; enforcement (redress and sanctions); and exemptions from the scope of the recast Directive.

"...six areas for potential reform have been identified..."

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# Energy

## RENEWABLE ELECTRICITY SUPPORT SCHEME

### RESS 3 Auction

The [Terms and Conditions](#) and [Timetable](#) for RESS 3 are now available, with the qualification process opening on 30 May 2023. We look at some of the main features of RESS 3 [here](#).

### ORESS 1 Auction

Version 1.2 of ORESS 1 Terms and Conditions is available [here](#).

## EU

### Fit for 55/REPowerEU

Final versions have been agreed of instruments underpinning the EU Emissions Trading System and Carbon Border Adjustment Mechanism, as we describe [here](#). Work continues on the gas internal market and methane regulation, which we note [here](#).

### Cross-Border Renewable Energy Support

The Energy Union Governance Regulation ([EU/2018/1999](#)) established a renewable energy [financing mechanism](#) whereby the Commission coordinates contributing and hosting countries to roll-out renewable energy. A [first tender](#) has been developed, intended to support rapid development of large-scale solar PV projects in Finland, giving Luxembourg access to renewable capacity beyond its territory.

### Permit-Granting Process

EU law already requires designation of a contact point to guide through and facilitate a two-year permit-granting process for power plants. (In Ireland, the SEAI is designated as the contact point.) REPowerEU amendments seek to further accelerate and streamline the permit-granting process in a variety of ways. WindEurope reports [here](#) on a product it is supporting, called EasyPermits, to support digitalisation of the process.

### Gas Market Intervention

The AggregateEU mechanism is available for European companies to register their gas purchase needs to prepare for the joint purchasing of gas at EU level (see further [here](#) and [here](#)). Tenders will be carried out every two months over the next 12 months. Recent [figures](#) indicate that gas consumption fell by 17.7% in August 2022–March 2023 compared with the same months between 2017 and 2022.

### Project Costs

As required under the TEN-E Regulation, ACER published a set of indicators and reference values for the [comparison of unit investment costs](#) for projects in energy infrastructure categories. ENTSO-E has published a draft [Cost-Benefit Analysis Methodology 4.0](#) for assessing transmission and storage projects in the context of the selection process of Projects of Common Interest.

### Hydrogen

The [European Clean Hydrogen Alliance](#) published a [roadmap on standardisation](#) to accelerate deployment of large-scale hydrogen solutions. It identifies six key actions to pursue, such as integrating relevant topics in the standard-setting process at EU level (CEN-CENELEC) and international level (ISO-IEC). It has also published a [Learnbook](#) on Hydrogen Supply Corridors.

### Batteries

The seventh high-level meeting of the European Battery Alliance recorded [key takeaways](#), including the need for urgent evidence-based actions to ensure that the EU remains a global battery frontrunner as regards innovation, production, circularity, sustainable competitiveness, and investment attractiveness.

### Energy Efficiency

Delegated Regulation ([EU/2023/807](#)) sets the coefficient applicable for 2024 and 2025 when Member States are calculating energy savings.

## INTERNAL MARKETS

### Electricity

ACER is [consulting](#) until 11 May 2023 on TSO proposals for a harmonised cross-zonal capacity allocation methodology for procuring electricity balancing capacity. ACER has also [recommended](#) refinements to the Inter-TSO compensation mechanism. ACER is also [recommending](#) further improvements to ENTSO-E's European Resource Adequacy Assessment.

### Gas

ENTSO-E is [consulting](#) until 19 May 2023 on the draft TYNDP for gas.

## CRU BUSINESS

### Grid

The CRU is consulting on EirGrid's draft TYNDP until 23 May 2023 ([CRU/2023/20](#)). Questions include whether it provides adequate information or raises concerns around delivery capacity, and whether identified network constraints have been adequately addressed.

### Electricity Network Stakeholders Engagement Evaluation Panel

Terms of Reference for 2023 and 2024 are not substantially changed. The CRU is continuing to consider expressions of interest from stakeholders ([CRU/2023/36](#)).

### Gas Pipeline

Consent has been granted for construction of a gas transmission pipeline of approximately 0.6 km in Corduff, in County Dublin ([CRU/2023/31](#)).

### Petroleum Safety

Version 4.0 of the Petroleum Safety Levy Methodology is available ([CRU/2023/05](#)).

## DOMESTIC DEVELOPMENTS

### Offshore Grid

A new [EirGrid office](#) opened in Cork to support offshore grid and interconnector development.

### Balancing Market

EirGrid is consulting until 24 May 2022 on [amendments](#) to the Balancing Market Principles Statement. Amendments relate to scheduling and dispatch of synchronous condensers on an interim basis, as well as Temporary Emergency Generation, which will not participate in ex-ante markets or capacity auctions. There is also a statement on when Battery ESPS Units are allowed to be dispatched for energy purposes. It is indicated that there are a number of areas in scheduling and dispatch processes that require improvement to support Clean Energy Package compliance and renewables' targets, and that they are being progressed through the Scheduling and Dispatch Programme. Further information is available [here](#).

### Long-term Strategy on Emissions Reductions

DECC published the [Long-term Strategy on Greenhouse Gas Emissions Reductions](#), required by the Energy Union Governance Regulation ([EU/2018/1999](#)). The Strategy reiterates policy set out in the Climate Action Plan 2023, which we looked at [here](#), sectoral emissions ceilings, and other Government policies. It confirms that Ireland is preparing an updated National Energy and Climate Plan for submission to the Commission in draft form by 30 June 2023 to reflect new climate ambitions.

### Just Transition

A €169 million fund to support [energy transition](#) in the Midlands was launched.

## SEMC BUSINESS

### Capacity Market

The SEMC is consulting until 31 May 2023 on several proposals to amend the Capacity Market Code ([SEM-23-034](#)). They include a proposal to introduce a Remedial Action for Unforeseeable Delays Due to Extraordinary Supply Chain Impacts. The SEMC has concerns about this proposed mechanism and is minded to look at it in the context of ongoing consideration of [CMC 14 22](#).

### Trading and Settlement Code

The SEMC is consulting until 24 May 2023 on the proposed scope of the 2022 market audit and the materiality level to be applied ([SEM-23-033](#)).

## CLIMATE CHANGE FOR LAWYERS

In England and Wales, the Law Society issued [guidance](#) on the impact of climate change on solicitors. Part B considers climate related risks in the context of providing client advice.

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"EU law already requires designation of a contact point to guide through and facilitate a two-year permit-granting process for power plants."

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# Public Procurement

## NEW PROCUREMENT PLATFORMS

In Ireland, a new eTenders platform will go live on 15 May 2023. Further information is available [here](#).

In the EU, the Commission launched the [Public Buyers Community Platform](#), intended to facilitate cooperation and knowledge-sharing between public buyers across Europe. It follows launch of the [Public Procurement Data Space](#) aimed at pooling data on preparation of tenders, calls for tenders and outcome of tenders.

## NORTHERN IRELAND CASE LAW

### Court looks to well-established case law around Selection Criteria

In An Application for Judicial Review by Eddie Weir and the Chartered Institute of Architectural Technologists [2023] NIKB 4, the High Court in Northern Ireland dismissed a challenge to an awarding authority's decision to specify that the role of lead consultant in a Dynamic Shortlisting System ("DSS") had to be fulfilled by an architect, thus excluding chartered architectural technologists ("CATs") from the role.

The Court noted that the CJEU has regularly stated that contracting authorities enjoy a discretion in relation to the technical and professional ability standards fixed by any given competition. While authorities may not use selection criteria to artificially narrow competition, they can set standards by which technical and professional ability can be measured. Frequently, a particular professional qualification is required to qualify for a competition for award of a professional services contract. This is permissible, provided it relates and is proportionate to the subject matter of the contract. This discretion must also exist in below threshold procurement competitions (such as this one) which, by their very nature, are subject to a much lighter touch legal regime.

The Court did not agree that the requirements of competition and fair dealing in the NI Public Procurement Policy ("NIPPP") were breached. The evidence pointed to a conscious and informed decision having been made by the authority. There had been no artificial narrowing of competition.

The Court deemed affidavit evidence given by a chartered architect on behalf of the applicant inadmissible. He had purported to be a witness of fact rather than an expert witness, but his affidavit evidence was full of statements of opinion. He also failed to disclose to the parties certain matters such as a history of disputes with the Architects Registration Board.

"While authorities may not use selection criteria to artificially narrow competition, they can set standards by which technical and professional ability can be measured."

## UK

### Procurement of Steel in Government Contracts

[PPN 04/23](#) provides guidance on the procurement of steel for large projects, noting it is typically necessary to cascade requirements down through the contractor. It includes guidance on whole life costs and quality, including integration of social and environment considerations and a template clause aimed at ensuring data requirements are flowed upwards.

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# Real Estate

## PROPERTY TAX

### Residential Zoned Land Tax: Publication of Supplemental Maps

A number of local authorities have published supplemental maps identifying additional lands, zoned residential or mixed-use, which may be subject to the residential zoned land tax (RZLT) of 3% of the market value of the land.

The deadline for submissions to local authorities on the supplemental RZLT maps is Thursday, 1 June 2023. Final maps will be published on 1 December 2023 and will be revised annually from 2025 onwards.

The liability date for RZLT is 1 February annually, commencing in 2024. The owner of the lands on the liability date must pay the tax on or before 23 May in the relevant year.

The Department of Housing's RZLT [web page](#) includes links to each local authority RZLT webpage. Further information on supplemental maps is available [here](#).

### Land Value Sharing Tax

The Land Value Sharing and Urban Development Zones Bill provides for a new Land Value Sharing ("LVS") charge of 30% on the increase in value of land zoned for housing. A [revised General Scheme](#) of the Bill was published on 14 April 2023.

The main update of interest to landowners is that the legislation is intended to also apply to lands zoned commercial or industrial, or designated as a strategic development zone. The charge may arise not only when lands are first zoned as being in-scope, but also appears to be "refreshed" in each instance where lands are appropriately zoned in a new or revised local area or county development plan, or are designated as falling within a Strategic Development Zone or an Urban Development Zone.

The updated scheme confirms that the LVS tax will apply in addition to existing Part V and development levy costs.

The measure will come into effect for planning applications lodged from December 2024, with an additional 12-month lead-in period proposed in respect of lands transacted prior to 21 December 2021 (when the General Scheme was first published). Applications lodged in respect of lands acquired before this date will be liable for the LVS charge from December 2025.

Commercial and industrial zonings will fall into scope from March 2026, with planning applications lodged from December 2026 being required to pay the LVS tax. Further information is available [here](#).

## HOUSING

### Housing for All

The Government agreed extra measures to deal with the housing crisis including:

- scrapping development levies to stimulate more building activity;
- higher grants to bring more vacant property back into use; and
- Government financing of the construction of affordable cost rental apartment schemes.

Further information is available [here](#).

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## Want to know more?

Please contact us if you would like to know more about anything in this Horizon Scanner or if you have a matter you would like to discuss. Please click [here](#) to view recent editions of our Horizon Scanner.

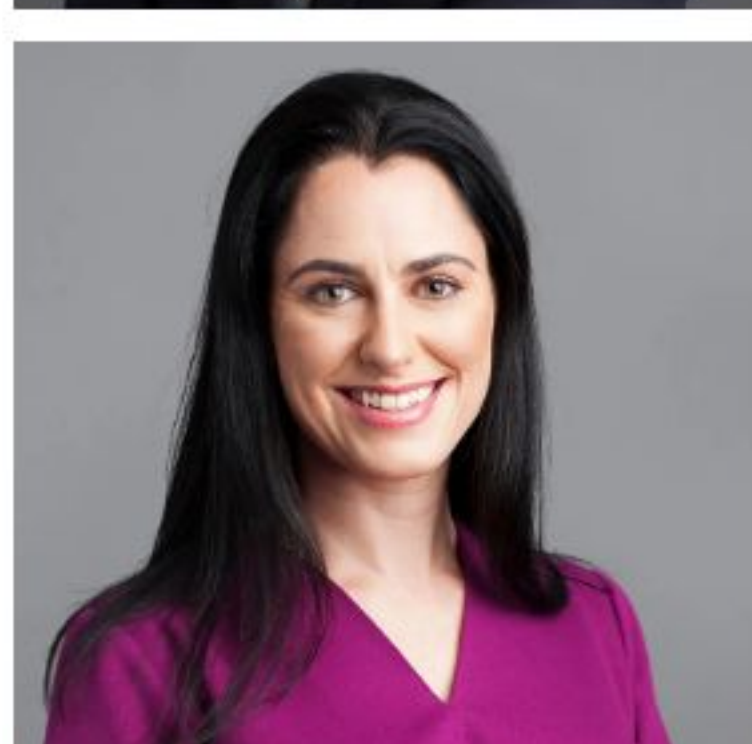
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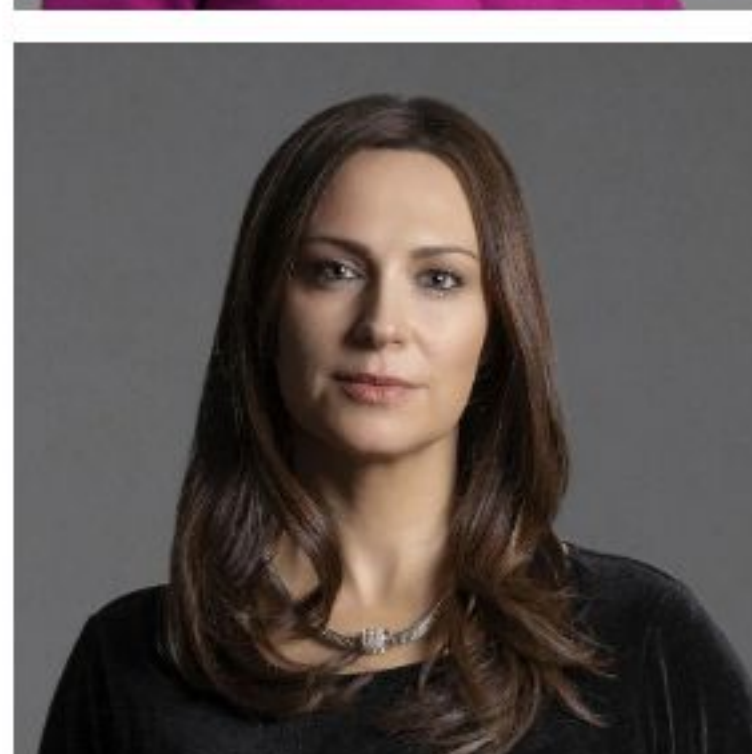
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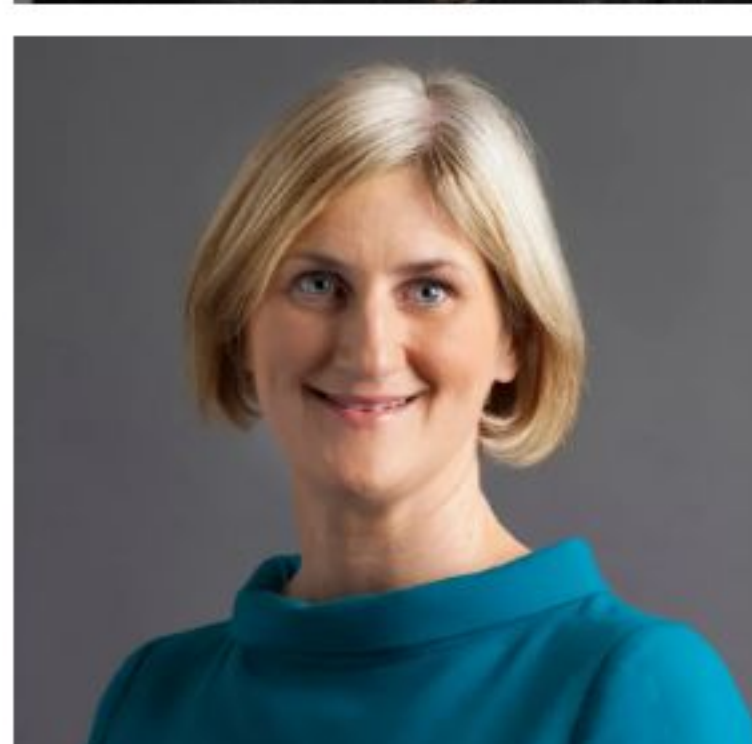
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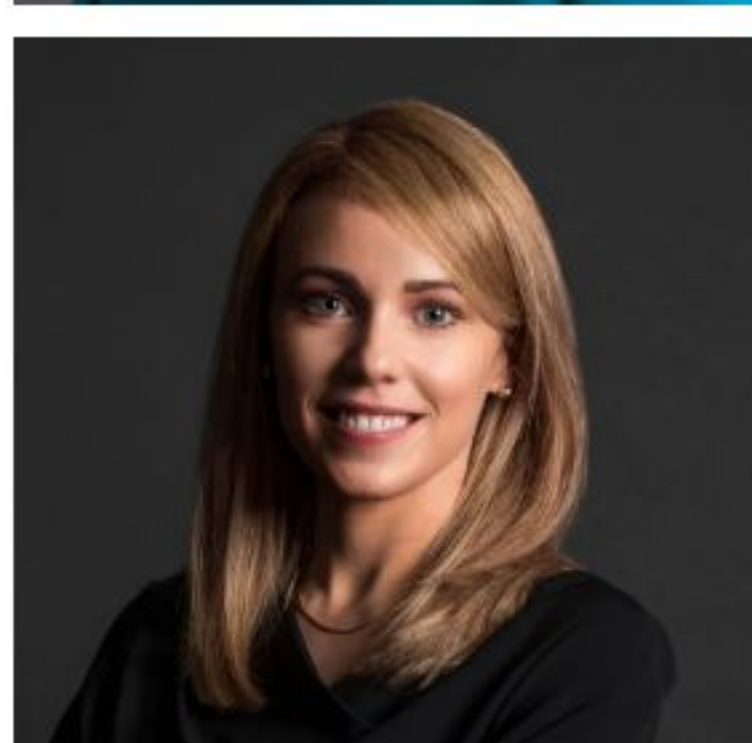
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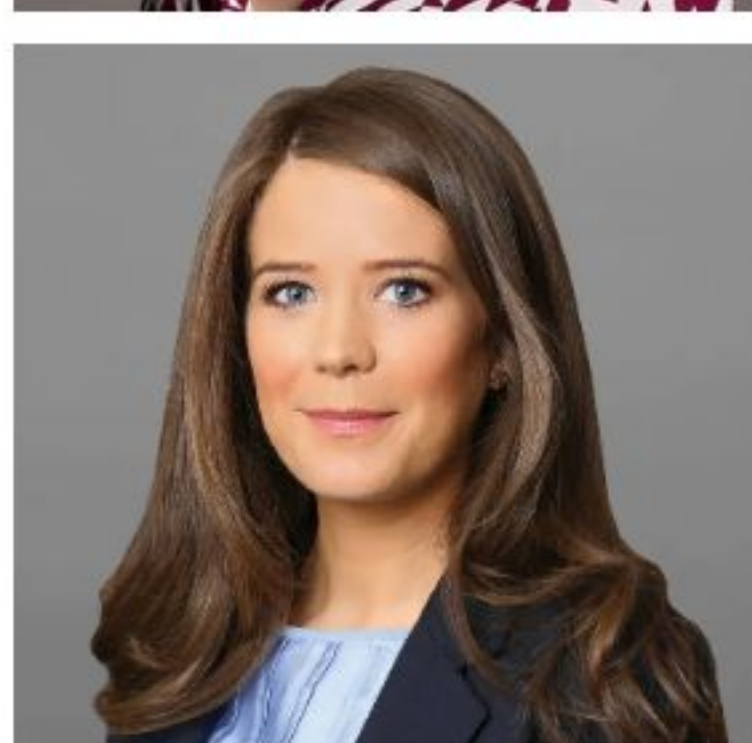
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# Digital Infrastructure

## COMREG UPDATES

### ComReg releases update on its "Do Not Originate" service initiative

The Do Not Originate (the "DNO") service has been launched by ComReg to mitigate against call-related fraud. Many organisations have numbers that are used for inbound-only calls. In some instances, this can be exploited by fraudsters who manipulate their call to appear as though it is coming from one of these trusted numbers. The DNO list will provide a database of these 'inbound-only' numbers and in the instance where calls falsely appear to originate from one of these numbers, they will be blocked. The DNO service is free to all businesses and organisations in Ireland, with several already signed up to the service. The full report is [here](#).

### ComReg publishes Draft Decision and launches consultation on 'Network Incident Reporting Thresholds'

The European Electronic Communications Code (the "EECC") requires companies operating electronic communications services and number-independent communications services to mitigate against security risks and report significant security incidents to the competent national authority. The Draft Decision presents ComReg's views on the thresholds and timescales required for reporting security incidents and the process for communicating details of incidents to ComReg. Views on the Draft Decision are invited until 25 May 2023 [here](#).

### ComReg issues Opinion of Non-Compliance to Dense Air Ireland

On 15 December 2022, ComReg notified Dense Air Ireland that it had not been compliant with the licensing requirements under Regulation 6(1) of the Wireless Telegraphy (3.6 GHz Band Licences) Regulations 2016. However, Dense Air's response indicated that it subsequently deployed Rollout Base Stations in at least four counties in the South-East Region. ComReg closed the investigation and took no further action. The full report is [here](#).

### ComReg further extends consultation deadline relating to customer charter proposals

On 16 March 2023, ComReg published a consultation document establishing its proposals for implementing a customer charter as a means of improving quality of service levels within the telecoms sector. Having previously extended the deadline for submissions to 19 April 2023, ComReg further extended the deadline to 3 May 2023. The full report is [here](#).

## LEGISLATIVE UPDATES

### EU Regulation establishing Secure Connectivity Programme for the period 2023-2027 goes live

The programme sets goals for the European Union to deploy an EU satellite constellation called 'IRIS' (Infrastructure for Resilience, Interconnectivity and Security by Satellite). IRIS will provide ultra-fast (low latency) and highly secure communications services by 2027. The programme sets out the funding that will be allocated by the EU along with specifying the rules of participation for private parties and the awarding of contracts. The instrument is available [here](#).

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"The Draft Decision presents ComReg's views on the thresholds and timescales required for reporting security incidents and the process for communicating details of incidents to ComReg."

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# Transport

"The EU ETS will now cover the maritime shipping sector, and free allowances for aviation will be phased out."

## EU

### Fit for 55/REPowerEU

Final versions of instruments underpinning the EU Emissions Trading System and Carbon Border Adjustment Mechanism have been agreed, as we note [here](#). The EU ETS will now cover the maritime shipping sector, and free allowances for aviation will be phased out. A new, separate emissions trading system will apply from 2027 to distributors supplying fossil fuel to certain sectors, including transport.

### TEN-T Regulation

The Transport Committee of the Parliament has [reported](#) on the proposal to revise the TEN-T Regulation. Proposed amendments include efforts to speed-up delivery of the [core TEN-T network](#). Further information is available [here](#).

### EV Charging Services

In Case [C-282/22](#) the CJEU stated that the VAT [Directive 2006/112/EC](#) must be interpreted as meaning that a single complex supply encompassing the following aspects constitutes a 'supply of goods' within the meaning of Article 14(1): access to recharging devices for EVs (including integration of the charger with the vehicle operating system); the supply of electricity, within duly adjusted parameters, to the batteries of that vehicle; the necessary technical support for the users concerned; and the provision of IT applications enabling the user concerned to reserve a connector, view his or her transaction history, and purchase credits which are accumulated in an e-wallet and used to pay for recharging sessions.

### Cyber Threats

A [report](#) is available on cyber threats in the transport sector, published by the EU Agency for Cybersecurity.

## DOMESTIC DEVELOPMENTS

### Road Tolls

European Union (Interoperability of Electronic Road Toll Systems) [Regulations](#) 2023 are intended to transpose into Irish law Directive (EU) 2019/520 on electronic road toll systems and the exchange of cross-border information on the failure to pay road fees.

### Demand Management

A National Demand Management [Strategy](#) will be developed over the next year with the aim of reducing traffic congestion.

### Climate Adaptation

A Climate Adaptation [Strategy](#) for Regional and Local Roads has been made available. It identifies actions required to improve climate resilience of assets.

### Long-term Strategy on Emissions Reductions

DECC published the [Long-term Strategy on Greenhouse Gas Emissions Reductions](#), required by the Energy Union Governance Regulation [\(EU\) 2018/1999](#). The Strategy reiterates policy set out in the Climate Action Plan 2023, which we looked at [here](#), sectoral emissions ceilings, and other Government policies.

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# State Aid

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## STATE AID LEVELS REMAINED HIGH IN 2021

The annual State Aid Scoreboard provides an overview of EU State aid expenditure. The 2022 Scoreboard shows that, in 2021, Member States spent approximately €335 billion under State aid measures for all objectives, excluding aid to railways and Services of General Economic Interest. Around 57% of this support (around €191 billion) was intended to help businesses seriously affected by the COVID-19 pandemic. Further information is available [here](#).

## COMMISSION APPROVES €401 MILLION CZECH SCHEME TO PROMOTE GREEN DISTRICT HEATING

The Commission approved a €401 million Czech scheme to promote green district heating based on renewable energy and waste heat. Further information is available [here](#).

## COMMISSION APPROVES €1.4 BILLION DUTCH SCHEME TO SUPPORT ENERGY-INTENSIVE COMPANIES IN THE CONTEXT OF RUSSIA'S WAR AGAINST UKRAINE

The Commission approved a €1.4 billion Dutch scheme to support energy-intensive small and medium-sized enterprises facing increased energy costs in the context of Russia's war against Ukraine. The scheme was approved under the State aid Temporary Crisis and Transition Framework. Further information is available [here](#).

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# Environment & Planning

"In upholding the judgment of the High Court, the Court of Appeal held that no planning permission is required for harvesting seaweed on the foreshore."

## RECENT DOMESTIC JUDGMENTS

- The Court of Appeal [dismissed](#) an appeal and agreed with the trial judge that the harvesting of wild kelp by mechanised means on the foreshore is not an activity that requires planning permission. [Read more...](#)
- The High Court [quashed](#) An Bord Pleanála's decision to grant planning permission for the development of a protected structure and its surrounding site into apartment blocks where the EIA was inadequate. [Read more...](#)
- The High Court [upheld](#) the constitutional validity of legislation which grants the Minister for Environment and Local Government power to issue guidelines to planning authorities. [Read more...](#)
- The CJEU [clarified](#) the scope of the SEA Directive and interpretation of the EIA Directive. [Read more...](#)
- The High Court [reaffirmed](#) that the imposition of timelines within which a judicial review must be brought are constitutional. [Read more...](#)
- The Supreme Court [granted](#) leave for a leapfrog appeal from the High Court which refused judicial review reliefs in respect of certain zoning decisions made in the respondent's County Development Plan. [Read more...](#)
- The Supreme Court [granted](#) leave for a leapfrog appeal from the High Court, which held that the nature of a Development Plan was such that a challenge to a decision made within the Plan must be accompanied by a challenge to the core strategy of the Plan. [Read more...](#)

## LEGISLATION

### Environmental Protection Agency (Designated Development) (Industrial Emissions) (Licensing) Regulations 2023

These [Regulations](#) set out the application process from an Industrial Emissions Licensing perspective in respect of designated development under the Development (Emergency Electricity Generation) Act 2022.

## DOMESTIC REPORTS, CONSULTATIONS AND DECISIONS

### Terms of reference - External Scoping Investigation

The Chairperson of An Bord Pleanála has instructed Lorna Lynch SC to carry out a scoping investigation into certain matters pertaining to An Bord Pleanála. The terms of reference of this can be found via the following [link](#).

### General Scheme Land Value Sharing and Urban Development Zones Bill 2022

The Government has approved publication of the [general scheme](#) (draft heads) of the Land Value Sharing and Urban Development Zones Bill 2022. The general scheme provides for:

- local authorities to secure a proportion of the increase in land values arising from public decisions to zone land for development including housing, or subject to an Urban Development Zone designation;
- designation of Urban Development Zones which have potential for significant development for housing and other purposes.

Pre-legislative scrutiny before the Joint Oireachtas Committee on Housing, Local Government and Heritage has commenced.

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"The Government has approved publication of the [general scheme](#) (draft heads) of the Land Value Sharing and Urban Development Zones Bill 2022."

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**The Supreme Court **granted** leave for a leapfrog appeal from the High Court which refused judicial review reliefs in respect of certain zoning decisions made in the respondent's County Development Plan**

The applicant owns a number of sites in County Meath which were "downzoned" under the new Meath County Development Plan 2021 – 2027. The applicant developer unsuccessfully challenged the downzoning before the High Court, which held that a challenge to the zoning of an individual piece of land, in isolation from the overall hierarchy and distribution of housing in the entire county, was not permissible. The developer sought leave to seek a leapfrog appeal directly to the Supreme Court. The grounds of appeal included that the High Court: (1) erred in its interpretation of the requirements and effects of the National Planning Framework by adopting a limited interpretation of the concept of "zoned land",

(2) erred in failing to apply the correct standard of review in relation to the obligations to give reasons and to address submissions, and (3) erred in its reasoning in finding that the Applicant could not challenge a zoning decision without challenging the Core Strategy of the Development Plan. In granting leave, the Supreme Court considered that the application raised points of law of general public importance concerning the nature of a Development Plan, the grounds upon which a challenge can be brought to part of a Plan, the nature and extent of any obligation to give reasons in the context of rezoning decisions and the nature and extent of any obligation to address submissions made in that context.

**The High Court upheld the constitutional validity of legislation which grants the Minister for Environment and Local Government power to issue guidelines to planning authorities**

The High Court rejected an argument that section 28(1C) of the Planning and Development Act 2000 (the obligation on the local authority / Board to comply with SPPRs), was an unauthorised delegation of legislative power in that it conferred disproportionate power on the Minister to make binding policies which restricted the powers of local authorities and the Board without the necessary principles and policies in place to limit the power.

**The High Court quashed An Board Pleanála's decision to grant planning permission for the development of a protected structure and its surrounding site into apartment blocks where the EIA was inadequate**

The High Court quashed the proposed development on two grounds. First, the Board failed to properly assess potential impacts on bats, and neither the Inspector nor Board could conclude on an objective basis by way of Preliminary Examination that there was no real likelihood of significant effect by reason of destruction of bat roosts in Stone Villa.

Second, a condition imposed by the Board, which left over the detail of works to be carried out on a protected structure to be determined by the developer's conservation architect (and did not need to be agreed with the local authority) went further than established case law, which requires that only "points of detail" can be left over.

**The Court of Appeal dismissed an appeal and agreed with the trial judge that the harvesting of wild kelp by mechanised means on the foreshore is not an activity that requires planning permission**

In upholding the judgment of the High Court, the Court of Appeal held that no planning permission is required for harvesting seaweed on the foreshore. The High Court had previously held that this activity required a licence but not planning permission, as the Planning and Development Act 2000 regulated the human use of land and there are separate legislative regimes regulating the sea, in this case, the Foreshore Act. In looking at the question of whether mechanical harvesting of wild seaweed constituted “development”, the Court was satisfied that: (i) kelp harvesting does not constitute “works” within the meaning of the 2000 Act as this activity does

not involve an alteration, or a change, to the seabed itself but rather to something attached to, and growing above, the seabed, and (ii) the licenced activity does not constitute material change in use of any structures or other land.

The Court also considered the meaning of “adjoin” in relation to the functional area of the planning authority as well as making brief reference to the widening of the definition of “development” in the Maritime Planning Act 2021 and the implication that this definition did not previously extend to the entire maritime area.

**The Supreme Court [granted](#) leave for a leapfrog appeal from the High Court, which held that the nature of a Development Plan was such that a challenge to a decision made within the Plan must be accompanied by a challenge to the core strategy of the Plan**

The applicant purchased an area of residentially zoned land, which was rezoned under the new Meath County Development Plan 2021 – 2027, against the recommendation of the Chief Executive. The rezoning decision was unsuccessfully challenged in the High Court, and the developer sought leave to seek a leapfrog appeal directly to the Supreme Court. In seeking leave, the developer argued: (a) that the elected members had an obligation to give reasons for the amending of the zoning of the applicant's lands, (b) that there is a conflict in the jurisprudence on the issue of the requirement to address submissions, (c) that the trial judge failed to take into account the linkage of the applicant developer's sites and sites owned by the notice parties, and (d) in relation to whether a challenge to a zoning decision also requires a challenge to the core strategy of a development plan. As in the McGarrigal case, in granting leave to appeal, the Supreme Court considered that the application raised points of general public importance concerning the nature of a Development Plan, the grounds upon which a challenge can be brought to part of a Plan, the nature and extent of any obligation to give reasons in the context of rezoning decisions and the nature and extent of any obligation to address submissions made in that context. The two cases will travel together before the Supreme Court.



**The High Court reaffirmed that the imposition of timelines within which a judicial review must be brought are constitutional**

The applicant sought to judicially review the DPP's decision to have his case heard before the Special Criminal Court, but he had brought his application outside the three-month time limit and so leave for judicial review was refused. The Court dismissed the argument that the order in the Rules of the Superior Courts requiring a person to bring their application for leave within three months from the date when grounds for the application first arise is ultra vires and unconstitutional.

**The CJEU clarified the scope of the SEA Directive and interpretation of the EIA Directive**

Following the decision of the CJEU, the High Court dismissed proceedings on the basis that the ruling of the CJEU was determinative of the issues and the applicants' arguments in relation to the application of the SEA Directive to non-binding masterplans could not succeed.

**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 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 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 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 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 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 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.

**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 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 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.

**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.