

Environmental, Social and Governance (ESG), and Sustainable Development

The Legal and Regulatory Framework in Ireland

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Abstract

This Spotlight:

- examines the legal and regulatory framework concerning ESG and sustainable development in Ireland;
- considers the importance of ESG for key stakeholders;
- discusses legislative and policy developments at the EU and domestic levels;
- identifies supports for companies transitioning to ESG-friendly practices; and
- compares Ireland's performance against other EU and OECD Member States in promoting sustainable development and managing ESG-related risks.



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Glossary and Abbreviations

GLOSSARY AND ABBREVIATIONS	
AIFM	Alternative Investment Fund Manager
BER	Building Energy Rating
CAP23	Climate Action Plan 2023
CEA	Corporate Enforcement Authority
CRR	Capital Requirements Directive
CRU	Commission for Regulation of Utilities
CSDDD	Corporate Sustainability Due Diligence Directive (forthcoming)
CSRD	Corporate Sustainability Reporting Directive
CTB	EU Climate Transition Benchmark
EBA	European Banking Authority
ECB	European Central Bank
EFRAG	European Financial Reporting Advisory Group
EIA	Environmental Impact Assessment
ELV	emission limit values
EPA	Environmental Protection Agency
ESAs	European Supervisory Authorities
ESG	environmental, social and governance
ESRS	European Sustainability Reporting Standards
EU ETS	EU Emissions Trading System
EUGBS	European Green Bond Standard
FMP	financial market participant
GRI	Global Reporting Initiative
IE licence	Industrial Emissions licence
IFRS	International Financial Reporting Standards
IPC licence	Integrated Pollution Control licence
LEED	Leadership in Energy and Environmental Design
MiFID II	Second Markets in Financial Instruments Directive
NFRD	Non-Financial Reporting Directive
OECD	Organisation for Economic Co-operation and Development
PAB	EU Paris-Aligned Benchmark
RED II	Renewable Energy Directive
RTS	Regulatory Technical Standards
SDG	Sustainable Development Goal
SEAI	Sustainable Energy Authority of Ireland
SFDR	Sustainable Finance Disclosures Regulation
SMEs	small and medium-sized enterprises
TCFD	Task Force on Climate-related Financial Disclosures
UCITS	Undertakings for Collective Investment in Transferable Securities
UNFCCC	United Nations Framework Convention on Climate Change
UNSDR	UN Sustainable Development Report

Summary and Key Messages

With July 2023 officially the hottest month on record,¹ global attention is again focused on the urgent need to address the climate crisis and transition to more sustainable ways of living and doing business. Environmental, social and governance (ESG) forms part of this effort. This Spotlight examines the legal and regulatory framework concerning ESG and sustainable development in Ireland.

Broadly speaking, ESG concerns the impact of an organisation's operations and products on the environment, public health and safety, and the quality of life of its employees and the wider public.

ESG extends to issues such as sustainability, waste management and greenhouse gas emissions; equality, diversity and inclusion; and governance, accountability and corruption. ESG investing, sometimes referred to as sustainable investing, has been described as “the process of making investment decisions based on the combination of financial factors along with environmental, social and governance factors”.² Andrew Michael, an editor at Forbes, observes that whilst “[o]nce dismissed as a virtuous concept that potentially compromised portfolio returns, ESG investing has moved centre-stage within the global investment arena in recent years”.³

Indeed, companies and investment management firms are facing increasing pressure from regulators, individual and institutional investors,⁴ consumers, shareholders, proxy advisory firms,⁵ rating agencies,⁶ employees and lenders to integrate ESG factors and risks into their decision-making processes and offer sustainable products and investment opportunities. In order to maintain global competitiveness and promote sustainable development, governments are also developing policies to incentivise more ESG-friendly business and investment practices.

In recent years, ESG disclosures have also become a matter of legal obligation. A comprehensive legal and regulatory framework has emerged, which requires companies, investment management firms, financial advisors and other relevant actors in the financial services sector to publicly and accurately disclose the extent to which they incorporate ESG factors into their policies and operations. The shift towards mandatory reporting largely reflects policy and legislative developments at the EU level. As observed by Derina Bannon, the legal and regulatory manager at Deloitte Ireland, “ESG is no longer the latest hot topic or buzzword in asset management, it is forming the basis of a new regulatory regime for the sector”.⁷ A core rationale for this expanding

¹ World Meteorological Organization, ‘July 2023 confirmed as hottest month on record’ (14 August 2023) available [here](#).

² Robert Sheen, ‘Why ESG isn’t just going to go away’ (*Forbes*, 28 July 2023) available [here](#).

³ Andrew Michael, ‘ESG investing: the only way is ethics - or is it?’ (*Forbes*, 6 June 2023) available [here](#).

⁴ Institutional investors are entities that invest money on behalf of others, for example, pension funds.

⁵ Proxy advisory firms advise institutional investors, including regarding how to vote at general meetings.

⁶ Credit rating and investment research agencies such as Moody’s, S&P, Fitch and MCSI have started to incorporate ESG factors into their risk assessments of governments. See: Marla Orenstein and Brendan Cook, ‘ESG: ‘Why should governments care and what can governments do’ (Canada West Foundation 2022), at p. 3, available [here](#).

⁷ Derina Bannon, ‘Environmental, Social and Governance (“ESG”): The European Regulatory Journey’ (*Deloitte Ireland*, undated) available [here](#).

ESG regulatory framework is the need to combat greenwashing and enable investors and consumers to examine the ESG credentials of businesses and financial products using reliable and easily comparable information.

Greenwashing has been described as “an attempt by a company or organisation to mislead the public about its level of positive ESG impact”.

[Chartered Accountants Ireland (2022) available [here](#)]

The results of a recent survey published by the [Compliance Institute](#), the professional body for compliance professionals in Ireland, suggests that there is strong support amongst the Irish public for legal measures to combat greenwashing.⁸

The mandatory ESG disclosures are becoming increasingly comprehensive, technical and far-reaching, with many small and medium-sized enterprises (SMEs) now falling within their scope, both directly and indirectly. However, some recent surveys (see, for example, [here](#) and [here](#)) reveal a lack of understanding amongst many Irish companies regarding the new rules. Accordingly, it is important that they have the support necessary to enable them to comply with their ESG reporting obligations and ultimately transition to more ESG-friendly business practices. It should be noted in this regard that a number of training, mentoring and financial supports have already been made available, as outlined on the [Citizens Information website](#) and discussed in this Spotlight.

This Spotlight offers definitions of core concepts and discusses the importance of ESG factors for key stakeholders, including governments, regulators, businesses, investment management firms, investors, consumers, shareholders, employees, civil society organisations and lenders.

In addition, the Spotlight compares the performance of several EU and OECD States, including Ireland, in promoting sustainable development and addressing ESG-related risks. Notably in this regard, the [2023 UN Sustainable Development Report](#) (UNSDR), which measures the progress of UN Member States in achieving the UN Sustainable Development Goals (SDGs), ranks Ireland in 17th position out of 166 States in total.⁹ In comparison, Ireland was ranked in 9th place in 2022.¹⁰ The 2023 UNSDR indicates that Ireland continues to face major challenges in achieving four SDGs: zero hunger, climate action, partnerships for the goals, and responsible consumption and production.¹¹ The Environmental Protection Agency and the Climate Change Advisory Council projected in June and July 2023 respectively that, based on the current rate of policy implementation, Ireland will not meet the targets included in its first and second five-year carbon budget periods.¹²

The UNSDR's Spillover Index measures the spillover effects of globalization, essentially when one country's actions generate benefits or impose costs on another country in the form of environmental and social impacts embodied in trade, economy and finance, and security.¹³ A

⁸ Compliance Institute, 'Widespread public support for recent EU intervention to combat greenwashing' (16 April 2023) available [here](#).

⁹ UN, *Sustainable Development Report 2023* (June 2023) at p.25, available [here](#).

¹⁰ UN, *Sustainable Development Report 2022* (June 2022) at p.14, available [here](#).

¹¹ UN, *Sustainable Development Report 2023* (June 2023) at p.37, available [here](#).

¹² EPA, 'Ireland projected to fall well short of climate targets, says EPA' (1 June 2023) available [here](#); and Climate Change Advisory Council, 'Annual Review 2023' (2023) Summary, available [here](#).

¹³ UNSDR, Spillover Rankings, see [here](#).

higher score means that a country causes more positive and fewer negative spillover effects.¹⁴ Ireland is ranked 151st on the UNSDR's [Spillover Index](#) with a score of 60.62. Some of the reasons for Ireland's poor performance are listed as: scarce water consumption embodied in imports, SO₂ (sulfur dioxide) emissions embodied in imports, CO₂ (carbon dioxide) emissions embodied in imports, nitrogen emissions embodied in imports, corporate tax haven score, and shifted profits of multinationals.¹⁵

Some recently adopted and forthcoming EU legislation, for example, the Corporate Sustainability Reporting Directive (CSRD), attempts to tackle detrimental 'spillover' effects, including by requiring affected undertakings to disclose ESG-related information for their entire value chain.

An undertaking's value chain includes *"its own operations, its products and services, its business relationships and its supply chains"*

[[CSRD](#), recital 31].

This Spotlight examines EU legislation concerning ESG. Whilst some of the EU Regulations and Directives discussed are complex and contain interrelated requirements, the Spotlight endeavours to make the overall framework as digestible and accessible as possible. In particular, it examines:

- the [Non-Financial Reporting Directive](#) (NFRD), which requires large public interest companies (for example, banks and listed companies) to annually disclose information concerning environmental matters, social and employee-related matters, respect for human rights, and anti-corruption and bribery. The NFRD reporting obligations have been in effect since 2018. The NFRD is gradually being replaced by the [CSRD](#);
- the Corporate Sustainability Reporting Directive ([CSRD](#)), which entered into force on 5 January 2023 on a phased basis. EU Member States have until 16 June 2024 to transpose it into domestic law. The CSRD imposes more qualitative and quantitative ESG reporting requirements on in-scope undertakings which must provide information concerning the impact of their operations, supply chains, business relationships and value chains on the environment, society and human rights. The CSRD significantly extends the reach of ESG reporting obligations, including to listed SMEs. Non-listed SMEs may also be called upon to provide information to an in-scope company if they fall within that company's value chain. The CSRD obligations are being introduced on a phased basis so as to afford affected undertakings time to prepare for the transition;
- the Sustainable Finance Disclosures Regulation ([SFDR](#)), which was adopted on 27 November 2019. The SFDR prescribes the sustainability disclosures required from financial advisors and financial market participants (FMPs), for example, investment firms. It imposes reporting obligations at the entity level (for example, regarding the integration of sustainability considerations and risks into the decision-making processes/advice of FMPs and financial advisors) and at the product level. At product level, FMPs must make

¹⁴ Ibid.

¹⁵ Ibid.

disclosures at the pre-contractual stage and in their periodic reporting in respect of financial products that promote environmental and/or social characteristics or have sustainable investment as an objective. The general phase 1 SFDR requirements have been applicable since 1 March 2021. The remaining phase 2 requirements have been applicable since 1 January 2023 and require adherence to [Regulatory Technical Standards](#), which specify the content, methodology and presentation of product-level SFDR disclosures;

- the [Taxonomy Regulation](#), which entered into force on a phased basis on 12 July 2020. It imposes additional reporting requirements on undertakings, which are subject to the NFRD, CSRD and SFDR. It also seeks to provide objective criteria for determining whether economic activities can be considered to contribute substantially to six environmental objectives set out in the Taxonomy Regulation. It is supplemented by delegated acts, which set out technical screening criteria. The [Taxonomy Climate Delegated Act](#) outlines the technical screening criteria for determining whether an economic activity can be considered to contribute substantially to climate change mitigation and climate change adaptation. It has applied since 1 January 2022. On 27 June 2023, the European Commission adopted a proposed Environmental Delegated Act (available [here](#)), which outlines technical screening criteria for determining whether an economic activity may be considered to be contributing substantially to the remaining four (non-climate) environmental objectives included in the Taxonomy Regulation.¹⁶ It has been transmitted to the Commission's co-legislators, the European Parliament and the Council of the EU, for scrutiny;
- the [Capital Requirements Regulation](#) (CRR), which entered into force on 1 January 2014. It requires credit institutions and investment firms to disclose prudential information on capital and risk exposures. [The European Banking Authority](#) published new implementing technical standards on disclosures concerning ESG risks on 24 January 2022 (available [here](#)). In-scope credit institutions and investment firms had to make their first disclosures under the new standards by 30 June 2023;
- the [EU Low Carbon Benchmarks Regulation](#), which entered into force on 10 December 2019. It seeks to promote uniformity and transparency in the application of low-carbon indices. It introduces two new categories of benchmark: the EU Climate Transition Benchmark (CTB) and the EU Paris-Aligned Benchmark (PAB). It outlines the distinct requirements, which must be satisfied in order for a benchmark to be classified as a CTB or a PAB respectively. The obligations imposed under the Regulation came into effect on a phased basis between 30 April 2020 and 31 December 2022;
- the Climate Law Regulation ("[European Climate Law](#)"), which entered into force on 29 July 2021. This Regulation is also relevant to the area of ESG in that it seeks to ensure that all EU policies in areas such as climate, energy, transport and taxation, are directed toward the achievement of carbon neutrality in the EU territory by 2050.¹⁷ It obliges EU institutions and Member States to implement measures aimed at achieving carbon neutrality and

¹⁶ The non-climate environmental objectives are: sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems.

¹⁷ European Commission, 'European Climate Law', available [here](#).

monitoring progress in this regard.¹⁸ At the domestic level, the [Climate Action and Low Carbon Development Act 2015](#), as amended by the [Climate Action and Low Carbon Development \(Amendment\) Act 2021](#), makes the attainment of carbon neutrality by 2050 a national climate objective; and

- the [Gender Balance on Corporate Boards Directive](#), which was adopted on 23 November 2022 and entered into force on approximately 27 December 2022.¹⁹ EU Member States have two years to transpose this Directive into domestic law.²⁰ It will require large, listed EU companies to ensure that by 30 June 2026, 40% of non-executive director positions, or 33% of all director positions, are filled by members of the under-represented sex.²¹

In addition, the Spotlight discusses proposed EU legislation concerning ESG, including:

- a proposed Directive on Corporate Sustainability Due Diligence (CSDDD) (see [here](#) and [here](#)), which seeks to impose due diligence obligations on large EU companies and certain non-EU companies concerning actual and potential adverse impacts of their operations on the environment and the enjoyment of human rights;
- a proposed regulation establishing a [European Green Bond Standard \(EUGBS\)](#) to operate as a voluntary “gold standard” for the use of green bonds by companies and public authorities seeking to raise funds on capital markets to finance large-scale investments;²²
- a possible EU social taxonomy regime, which would operate as a classification system for determining whether an economic activity is sustainable from a *social* perspective;²³ and
- a possible EU Regulation aimed at regulating the operation of ESG rating agencies.²⁴

The Spotlight also considers additional EU and domestic legislation and policy initiatives that seek to promote sustainable development, for example, the EU Emissions Trading System and the [Circular Economy and Miscellaneous Provisions Act 2022](#).

¹⁸ Ibid.

¹⁹ European Sources Online, ‘Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures’ (7 December 2022) available [here](#).

²⁰ Suzanne Kearney, ‘New Gender Balance Targets on Boards of EU Listed Companies’ (*Arthur Cox Insights Blog*, 25 November 2022) available [here](#).

²¹ Ibid.

²² European Commission, ‘Strategy for financing the transition to a sustainable economy’ (6 July 2021) available [here](#).

²³ Platform on Sustainable Finance, ‘Final Report on Social Taxonomy’ (February 2022) pp 7-8, available [here](#).

²⁴ European Commission, ‘Sustainable Finance Factsheet’ (June 2023) available [here](#).

Chronology of recent policy and legislative developments at the EU & national level

December 2014: the [Non-Financial Reporting Directive](#) (NFRD) enters into force. EU Member States have two years to transpose it into domestic law.

10 December 2015: [Climate Action and Low Carbon Development Act 2015](#) is signed into law.

19 July 2017: the [National Mitigation Plan](#) is published, which includes 100 actions for ministers and public bodies with a view to helping Ireland to transition to a low carbon, climate resilient and environmentally sustainable economy by 2050.

2018: NFRD reporting obligations commence in respect of the previous financial year.

19 January 2018: Ireland's first statutory [National Adaptation Framework](#) is published, which outlines the national strategy to reduce Ireland's vulnerability to the negative effects of climate change and to avail of positive impacts. It was developed under the Climate Action and Low Carbon Development Act 2015.

8 March 2018: the European Commission adopts an [Action Plan on Financing Sustainable Growth](#), which includes key actions and legislative proposals aimed at: (i) reorienting capital flows towards a more sustainable economy, mainstreaming sustainability into risk management, and (iii) fostering transparency and long-termism.

May 2019: Dáil Éireann declares a [climate and biodiversity emergency](#).

27 November 2019: the Sustainable Finance Disclosures Regulation ([SFDR](#)) is adopted.

December 2019: the European Commission adopts the [European Green Deal](#), which includes proposals aimed at reducing the EU's net greenhouse gas emissions by at least 55% by 2030, as compared with 1990 levels, and making the EU carbon neutral by 2050.

10 December 2019: The [EU Low Carbon Benchmarks Regulation](#) enters into force and its obligations become applicable on a phased basis from 30 April 2020 to 31 December 2022.

2020: in [Friends of the Irish Environment CLG v Government of Ireland](#), the Supreme Court quashes the Government's [National Mitigation Plan](#) for 2017-2022 because it didn't specify with sufficient clarity how the transition to a low carbon, sustainable economy by 2050 would be achieved, as required under the [Climate Action and Low Carbon Development Act 2015](#).

12 July 2020: the [Taxonomy Regulation](#) enters into force on a phased basis.

10 March 2021: the phase 1 SFDR requirements become applicable for financial market participants and financial advisors.

6 July 2021: the European Commission adopts a [Sustainable Finance Strategy](#), which includes initiatives to tackle climate change and incentivise sustainable investments.

23 July 2021: the [Climate Action and Low Carbon Development \(Amendment\) Act 2021](#) is signed into law. It provides a roadmap for achieving a 51% reduction in overall greenhouse gas emissions by 2030 (relative to 2018 levels) and achieving net-zero emissions by 2050.

Chronology of recent developments continued...

29 July 2021: Climate Law Regulation (EU) 2021/1119 (the “[European Climate Law](#)”) enters into force.

27 October 2021: the European Commission adopts a new [EU Banking Package](#), which includes proposals to strengthen the resilience of EU banks to ESG risks, including by requiring them to incorporate ESG disclosures into their risk management processes.

1 January 2022: the [Taxonomy Climate Delegated Act](#) enters into force, which outlines the technical screening criteria for determining whether economic activities may be considered to be contributing substantially to climate change mitigation and climate change adaptation under the Taxonomy Regulation. The Taxonomy Regulation provisions regarding climate change mitigation and climate change adaptation apply from this date.

21 July 2022: the [Circular Economy and Miscellaneous Provisions Act 2022](#) is signed into law and aims to support Ireland’s transition to a circular economy.

October 2022: the Government publishes Ireland’s [National Implementation Plan for Sustainable Development 2022-2024](#).

23 November 2022: the [Gender Balance on Corporate Boards Directive](#) is adopted. It enters into force on approximately 27 December 2022. EU Member States have two years to transpose it into domestic law.

13 December 2022: the [European Banking Authority](#) publishes a [roadmap](#) for integrating ESG-related risk considerations into the banking framework over the next three years.

21 December 2022: the Government launches the [Climate Action Plan \(CAP\) 2023](#), the first CAP following the introduction of carbon budgets and sectoral emissions ceilings. It recognises the need to advance ESG best practices across the financial services sector.

1 January 2023: the [Complementary Climate Delegated Act](#) enters into force, which amends the Taxonomy Climate Delegated Act so as to permit certain economic activities involving gas and nuclear energy to be considered to be contributing substantially to climate change mitigation and climate change adaptation.

1 January 2023: the phase 2 SFDR requirements become applicable for financial market participants and financial advisors.

5 January 2023: the [Corporate Sustainability Reporting Directive](#) (CSRD) enters into force on a phased basis. Ireland has until 16 June 2024 to transpose it into domestic law.

20 February 2023: amendments to the SFDR Regulatory Technical Standards enter into force in relation to SFDR disclosures concerning financial products that commit to invest in environmentally sustainable fossil gas and nuclear energy-related economic activities.

8 March 2023: [Global Risk Profile](#) publishes its 2022 global ESG Index, which measures and aggregates ESG-related risks across three areas: the environment, human rights, and health and safety. [Ireland is ranked](#) in 20th place, as compared with 14th place in 2021.

9 March 2023: the [Central Bank \(Individual Accountability Framework\) Act 2023](#) is signed into law.

Chronology of recent developments continued...

30 March 2023: the European Parliament and the Council of the EU reach [provisional agreement](#) on a proposed amendment to the [Renewable Energy Directive \(EU\) 2018/2001](#), (RED II) setting a new binding target of at least 42.5%, in terms of the overall share of energy to be derived from renewable sources across the EU by 2030.

April 2023: the [ECB's 2022 assessment of European banks](#) finds that the quality of information in disclosures concerning climate and environmental risks is inadequate.

4 April 2023: the [Work Life Balance and Miscellaneous Provisions Act 2023](#) is signed into law.

19 April 2023: the [Effort Sharing Regulation \(EU\) 2023/857](#) is adopted and has since entered into force. It imposes obligations on EU Member States with a view to reducing overall emissions from sectors not covered by the [EU Emissions Trading System](#).

25 April 2023: the Council of the EU adopts the [Fit for 55](#) package, a set of legislative and policy proposals, which seeks to ensure that EU policies correspond with EU climate goals. It includes changes to the [EU Emissions Trading System](#).

May 2023: the results of a [survey](#) by the [Compliance Institute](#) reveal a lack of understanding amongst Irish companies regarding the CSRD reporting requirements.

1 June 2023: the Environmental Protection Agency [projects](#) that the first two five-year carbon budgets will not be met by a significant margin.

21 June 2023: the [2023 UN Sustainable Development Report](#) ranks Ireland in 17th place, as compared with 9th place in 2022.

21 June 2023: Ireland is ranked 151st on the UNSDR's [Spillover Index](#).

27 June 2023: the European Commission adopts a proposed Environmental Delegated Act (available [here](#)), which outlines the technical screening criteria for determining whether an economic activity may be considered to be contributing substantially to the four (non-climate) environmental objectives, including in the Taxonomy Regulation.

30 June 2023: credit institutions and investment firms are required to make disclosures concerning ESG risks in accordance with new implementing technical standards drafted by the European Banking Authority, which supplement the [Capital Requirements Regulation](#).

25 July 2023: the Climate Change Advisory Council publishes its 2023 [Annual Report](#), which warns that at the current rate of policy implementation, Ireland will not meet the targets set in the first and second carbon budget periods.

31 July 2023: the European Commission adopts a Delegated Act (available [here](#)) containing proposed European Sustainability Reporting Standards to supplement the CSRD. It was submitted to the European Parliament and the Council of the EU for scrutiny in August 2023.

Introduction

“To achieve more sustainable growth, everyone in society must play a role. The financial system is no exception. Re-orienting private capital to more sustainable investments requires a comprehensive rethinking of how our financial system works. This is necessary if the EU is to develop more sustainable economic growth, ensure the stability of the financial system, and foster more transparency and long-termism in the economy.”

[European Commission, 8 March 2018, available [here](#)]

There has been a significant increase in the mandatory ESG reporting requirements imposed on Irish companies, investment management firms and financial advisors in recent years. The shift towards mandatory reporting largely reflects policy and legislative developments at the EU level and the enhanced importance afforded to ESG by regulators, including the [Central Bank of Ireland](#) and the [European Central Bank \(ECB\)](#).²⁵

This Spotlight examines the legal and regulatory framework concerning ESG in Ireland, focusing on existing and anticipated EU Regulations and Directives. It also discusses other relevant domestic and European legislative and policy initiatives that seek to promote sustainable development and adherence to ESG factors. Some the recently adopted and anticipated legal instruments significantly extend the nature and scope of the ESG-reporting obligations, including to SMEs. Accordingly, the Spotlight also outlines some of the supports that are available to companies in making the transition to more ESG-friendly practices.

The Spotlight offers definitions of core concepts and discusses the importance of ESG factors for key stakeholders, including governments, regulators, businesses, investment management firms, investors, shareholders, employees, consumers, civil society organisations, and lenders. In addition, it compares the performance of several EU and OECD States, including Ireland, in promoting sustainable development and addressing ESG-related risks.

What is ESG: Definitions and Concepts

DEFINITIONS AND CONCEPTS

The ESG regulatory framework is a framework of reporting obligations contained in mandatory laws and voluntary guidelines, which helps relevant stakeholders, such as investors, shareholders, regulators, employees and consumers, understand how companies, investment management firms, financial advisors and other relevant actors manage risks and opportunities related to environmental, social and governance factors.

²⁵ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (Arthur Cox, 31 August 2022) available [here](#).

Environmental factors concern the measures an organisation has in place to minimise any potential negative impact its operations might have on the environment and the organisation's overall resilience against environmental-related risks.²⁶ Examples of relevant issues include carbon emissions, waste management practices, biodiversity loss, and air and water pollution.

Social factors concern the organisation's management of its relationships with employees, customers, suppliers and other relevant actors, such as the communities within which the organisation operates.²⁷ Examples of relevant issues include human rights and equality, diversity and inclusion.

Governance factors concern the organisation's leadership and governance standards.²⁸ Examples of relevant issues include executive pay, shareholder rights, whistleblower policies and safeguards against bribery and corruption.

Sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".²⁹

Sustainable investing/ESG investing involves taking account of ESG factors when making investment decisions.³⁰

Why is ESG important and who are the main stakeholders?

Governments, policymakers and legislators

A 2022 Report by Canada Western Foundation, an independent, public policy think tank, argues that governments should pay attention to ESG because it:

- forms part of the government's mandate to protect people, the environment and social and institutional structures;
- influences business, foreign direct investment and competitiveness; and
- affects a government's credit rating and borrowing costs.³¹

²⁶ See, e.g., CFA Institute, 'ESG Investing and Analysis', available [here](#); and Kyle Peterdy, 'ESG (Environmental, Social, and Governance)' (last updated 24 November 2022) available [here](#).

²⁷ See *ibid*.

²⁸ See *ibid*.

²⁹ UN-established [World Commission on Environment and Development](#).

³⁰ Gail Hurley, 'Sustainable investing; where are we today?' (UNDP, 6 May 2019) available [here](#); and Robert Sheen, 'Why ESG isn't just going to go away' (*Forbes*, 28 July 2023) available [here](#).

³¹ Marla Orenstein and Brendan Cook, 'ESG: Why should governments care and what can governments do' (Canada West Foundation 2022), at p. 3, available [here](#).

In addition, an increasing number of international treaties and EU legislative instruments impose obligations on the State concerning ESG.

ESG touches upon multiple policy areas, for example, climate action and environment, financial services, business and trade, employment, energy and transport.

In order to maintain global competitiveness, it is necessary to ensure that policies, incentives and regulatory frameworks are in place to promote sustainable businesses and investment opportunities, minimise climate-related risks, and ensure comprehensive, transparent and reliable ESG disclosures.

“Increasingly, ESG is a point of differentiation that affects competitiveness both for jurisdictions and the companies that operate within them. Sustainability performance has become ‘table stakes,’ and governments that don’t explicitly grapple with these issues risk having others dictate how their performance will be assessed.”

[Canada West Foundation (2022), p. 2, available [here](#)]

Companies and investment management firms are facing increasing pressure from institutional investors,³² proxy advisory firms,³³ rating agencies,³⁴ shareholders, employees, jobseekers, lenders, consumers and civil society organisations to integrate ESG into all aspects of their operations, adhere to their ESG reporting obligations, and offer sustainable products and investment opportunities.³⁵

Sustainable investments amounted to over USD\$35 trillion in 2020, as compared with USD\$30.6 trillion in 2018 and USD\$22.8 trillion in 2016.³⁶ ESG assets are expected to comprise over a third (USD\$50 trillion) of the projected total global assets under management (USD\$140.5 trillion) by 2025.³⁷

An advance unedited version of the UN’s 2023 Global Sustainable Development Report calls upon governments to send “clear market signals”, which encourage more sustainable and ESG-aligned investments via new regulations, credible long-term policies and targets.³⁸

Notably in this regard, in February 2022 the Department of Finance observed in its [Ireland for Finance Action Plan 2022](#) that the “transition to a low carbon economy requires significant investment domestically, regionally, and internationally, and the international financial services sector has an indispensable role in unlocking and facilitating such investments”.

³² Institutional investors are entities that invest money on behalf of others, for example, pension funds.

³³ Proxy advisory firms advise institutional investors, including regarding how to vote at general meetings.

³⁴ Credit rating and investment research agencies such as Moody’s, S&P, Fitch and MCSI have started to incorporate ESG factors into their risk assessments of governments. See: Marla Orenstein and Brendan Cook, ‘ESG: ‘Why should governments care and what can governments do’ (Canada West Foundation 2022), at p. 3, available [here](#).

³⁵ Robert Sheen, ‘Why ESG isn’t just going to go away’ (*Forbes*, 28 July 2023) available [here](#).

³⁶ Global Sustainable Investment Alliance, ‘Global Sustainable Investment Review 2020’ (2021) available [here](#), and cited in the UN’s 2023 Global Sustainable Development Report (advance unedited version), p.105.

³⁷ Bloomberg, ‘ESG Assets Rising to \$50 Trillion Will Reshape \$140.5 Trillion of Global AUM by 2025, Finds Bloomberg Intelligence’ Bloomberg’ (21 July 2021) available [here](#).

³⁸ UN Global Sustainable Development Report (advance unedited version) (2023) p.96, available [here](#).

Furthermore, the Government's [Climate Action Plan 2023](#) explicitly recognises that:

“[g]iven the increase in regulatory focus, and increasing appetite for sustainable and green products, it is therefore crucial to develop the necessary skills and leadership capacity, and to advance Environment, Social and Governance (ESG) best practices across Ireland's financial services sector in order to promote a sustainable financial system.”³⁹

Regulatory, supervisory and enforcement bodies

European bodies

The management of climate and ESG-related risks in the financial services sector is a priority for the Banking Supervision section of the [ECB](#) and the [Central Bank of Ireland](#).

In April 2023, the ECB published the results of its 2022 supervisory assessment of the adherence of European banks to their disclosure obligations concerning climate-related and environmental risks.⁴⁰ It found that whilst most banks had expanded their disclosures, the quality of the information provided remained inadequate.⁴¹ The ECB stressed that it expects banks to address shortcomings and indicated that non-compliance with new reporting standards, including the Corporate Sustainability Reporting Directive, will trigger supervisory action.⁴²

The European Banking Authority ([EBA](#)) published a roadmap for sustainable finance and integrating ESG-related risk considerations into the EU banking framework in December 2022.⁴³ The [EBA](#) was established by the European Parliament and the Council of the EU in 2011 and operates as “an independent EU Authority which works to ensure effective and consistent prudential regulation and supervision across the European banking sector”.

³⁹ Government of Ireland, Climate Action Plan [2023, at p. 123, available here](#).

⁴⁰ ECB, ‘The importance of being transparent: a review of climate-related and environmental risks disclosures practices and trends’ (2023) available [here](#). The review focussed on significant institutions.

⁴¹ ECB Press Release, ‘Banks must continue improving climate risk disclosures as new EU rules take effect, ECB report shows’ (21 April 2023) available [here](#).

⁴² Ibid.

⁴³ EBA, ‘The EBA publishes its roadmap on sustainable finance’ (13 December 2022) available [here](#).

Infographic 1: Key Objectives of the EBA's Roadmap on Sustainable Finance⁴⁴**Greenwashing: Deutsche Bank Case Study**

The significance that national regulators attach to ESG and sustainability disclosures is apparent from their response to “greenwashing” allegations concerning Deutsche Bank AG and its asset management group, DWS. DWS was subjected to regulatory investigations by the U.S. Securities and Exchange Commission and Germany’s financial regulator, BaFin, after its former chief sustainability officer, Desiree Fixler, accused DWS of misrepresenting its ESG credentials and “green investments”. The offices of Deutsche Bank AG and DWS were raided by German prosecutors and police in May 2022. The Chief Executive Officer of DWS resigned following the raids. [See, e.g., Steven Arons, Karin Matussek and Nicholas Comfort, ‘Deutsche Bank, DWS Raided Over Allegations of Greenwashing’ (*Bloomberg Law*, 31 May 2022) available [here](#)].

⁴⁴ Available at *ibid*.

Domestic bodies

At the domestic level, the Central Bank of Ireland established a Climate Change Unit in 2021. It convened the first meeting of the Climate Risk and Sustainable Finance Forum in June 2022, which brought together relevant stakeholders from the financial services sector as well as experts on climate change.⁴⁵ It also launched a [Sustainable Investment Charter](#) in June 2022, which outlines its plans to embed climate change and sustainability considerations into its operations. The Central Bank's [Strategic Plan](#) 2022-2024 includes a commitment to act as a socially responsible and sustainable organisation, strengthen the financial system's resilience to climate-related risks, and help it in supporting the transition to a low-carbon economy. In March 2023, the Central Bank published a [Climate Action Roadmap](#), which sets out how it intends to give effect to these commitments.

The [Central Bank \(Individual Accountability Framework\) Act 2023](#) was adopted in March 2023. Once fully commenced, the Act's provisions will enable the Central Bank to strengthen individual accountability in the management and operation of regulated financial service providers.⁴⁶ The individual accountability framework will provide additional incentives for regulated financial service providers to adhere to ESG-related disclosure obligations. It has five key elements:

- a senior executive accountability regime, including a 'duty of responsibility';
- common conduct standards for persons performing controlled functions, for example, persons giving advice to customers of regulated financial service providers;
- additional conduct standards for individuals in pre-approval controlled functions, for example, executive directors and non-executive directors;
- enhancements to the Central Bank's existing fitness and probity regime; and
- amendments to the Central Bank's existing administrative sanctions procedure.⁴⁷

Other relevant domestic regulatory bodies include the [Corporate Enforcement Authority \(CEA\)](#), the [Commission for Regulation of Utilities \(CRU\)](#), and the [Environmental Protection Agency \(EPA\)](#). The CEA plays a leading role in the investigation and prosecution of corporate offences in Ireland. The CRU oversees compliance with energy market rules. The EPA is the main regulatory body, which issues, oversees and enforces licencing regimes concerning activities that impact the environment. Local authorities and [Uisce Éireann](#) (formerly Irish Water) also play a role, for example, in the issuance of certain waste licences and waste water licences.

Companies, investment management firms and financial advisors

As noted above, investors, shareholders and consumers are paying increasing attention to ESG factors and are actively seeking out sustainable products and investment opportunities. Adhering

⁴⁵ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#).

⁴⁶ For a list of existing regulated financial service providers, see the Central Bank website, available [here](#).

⁴⁷ For more information, see: McCann FitzGerald, 'Partial Commencement of Central Bank (Individual Accountability Framework) Act 2023' (21 April 2023) available [here](#). There are currently 11 prescribed controlled functions and 54 pre-approval controlled functions for regulated financial service providers other than credit unions. The relevant lists are available on the Central Bank [website](#).

to ESG disclosures is currently a legal obligation for large, public interest companies.⁴⁸ However, recently adopted and forthcoming EU legislation is extending the scope of mandatory ESG reporting requirements, both directly and indirectly, to SMEs, as well as to investment management firms and financial advisors.

Companies are also expected to adhere to voluntary principles and standards, which represent international best practice in the area. Indeed, voluntary reporting of ESG factors by companies listed in the S&P 500 Index⁴⁹ increased from 35 per cent in 2010 to 86 per cent in 2021.⁵⁰

“ESG has become highly politicized and even framed by some as part of a “woke agenda.” The debate around ESG is frequently unhinged from a simple fact: ESG-related risks are now among the greatest and most urgent threats businesses face.”

[Robert Sheen, Forbes Councils Member, 2023, available [here](#)]

Companies are now required to comprehensively integrate ESG into their business models, accounting frameworks, strategies, organisational culture, key performance indicators, and accountability and compliance mechanisms. The increasing transparency and complexity of ESG disclosures means it is no longer possible for companies to simply afford lip service to ESG factors as greenwashing allegations can have serious reputational costs. This reputational damage in turn can impact a company's share price and ability to attract consumers, investors and employees.

For companies, the primary responsibility for the implementation and oversight of ESG strategy, risk management and disclosures vests with the board of directors.⁵¹ As discussed above, the Central Bank's Individual Accountability Framework, once operationalised, will increase the pressure on directors to ensure compliance with ESG reporting obligations. Recent surveys suggest that Irish directors are taking these obligations seriously. One [survey](#), conducted jointly by [Diligent Institute](#) and the [Institute of Directors in Ireland](#), suggests that Irish directors were spending approximately 30 percent more time considering ESG issues in September/October 2021, as compared with March 2020. Furthermore, Ireland's Spencer Stuart Board Index 2022 suggests that the boards of ISEQ 20 companies⁵² are already including sustainability-related issues in their reporting and risk assessments.⁵³

⁴⁸ Public interest companies, also referred to as public interest entities, are “entities established in the EU whose securities are admitted to trading on an EU regulated market, as well as licensed credit institutions and insurance companies having their registered office in the EU and entities designated by a Member State as such”. See: European Parliament, ‘Briefing Implementation Appraisal: Non-Financial Reporting Directive’ (January 2021) at p.7, available [here](#).

⁴⁹ The S&P 500 is a stock market index, which tracks the performance of 500 of the largest publicly traded companies in the US.

⁵⁰ UN Global Sustainable Development Report (advance unedited version) (2023) p.53, available [here](#), citing: Rouen, Ethan, Sachdeva, Kundal & Yoon, Aaron, *The Evolution of ESG Reports and the Role of Voluntary Standards* (2022).

⁵¹ Maedhbh Clancy and Suzanne Kearney, ‘Ireland: Environmental, Social and Governance Regulation Comparative Guide’ (Arthur Cox, 31 August 2022) available [here](#).

⁵² ISEQ 20 companies comprise the 20 largest companies trading on the Euronext Dublin exchange, as measured by trading volume and market capitalisation.

⁵³ Spencer Stuart, ‘ESG and the board: 2022 Ireland Spencer Stuart Board Index’ (2022) available [here](#).

However, a recent survey conducted by [William Fry LLP](#) of over 400 employers and 1,000 employees in Ireland revealed that, whilst the majority of employers surveyed believed that they were compliant with their ESG obligations, in reality, only 17% actually knew what those obligations were and had no concerns surrounding their implementation.⁵⁴ The survey results were published in January 2023. Jobseekers can exert pressure on companies in a competitive job market by seeking out employers with a proven commitment to ESG.

Investors and shareholders

Investors can exert influence over market trends and company policies through their investment choices. As noted above, interest in sustainable investment products has increased significantly worldwide in recent years and this trend is expected to continue.⁵⁵ Shareholders can exert influence over company policies and management decisions through their voting rights at general meetings, for example, by vetoing the re-election of directors who fail to provide ESG disclosures.⁵⁶ To date, shareholder activism concerning ESG issues has been relatively low in Ireland as compared with jurisdictions such as the United States.⁵⁷ However, this may change in line with the shift to mandatory ESG reporting and a growing awareness amongst shareholders of the impact that ESG issues can have on the value of their investments.⁵⁸

Consumers and civil society organisations

Consumers and civil society organisations can promote sustainable policies and behaviour through their purchasing power. In April 2023, [Compliance Institute](#) published the results of a survey of over 1,000 individuals, which revealed that 38% of respondents were either actively avoiding, or would avoid, purchasing products from companies believed to be engaging in greenwashing.⁵⁹

Consumers and civil society organisations can also exert pressure through strategic litigation. A June 2023 report published by the London School of Economics indicates that 1,557 climate-related litigation cases have been filed worldwide since 2015.⁶⁰ News reports from October 2022 indicate that a German consumer group is taking legal action against Deutsche Bank AG's asset management unit, DWS, for allegedly misrepresenting the 'green credentials' of a fund in marketing materials.⁶¹

There have been some limited examples of strategic climate litigation in Ireland. In [Friends of the Irish Environment CLG v Government of Ireland](#),⁶² the Supreme Court quashed the Government's

⁵⁴ Eoin Burke-Kennedy, 'Just 17% of Irish employers aware of their ESG obligations' (*Irish Times*, 25 January 2023) available [here](#).

⁵⁵ Global Sustainable Investment Alliance, 'Global Sustainable Investment Review 2020' (2021) available [here](#), cited in the UN Global Sustainable Development Report (advance unedited version) (2023), at p.105.

⁵⁶ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Compliance Institute, 'Widespread public support for recent EU intervention to combat greenwashing' (16 April 2023) available [here](#).

⁶⁰ Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2023 Snapshot' (June 2023) p.2, available [here](#).

⁶¹ See, e.g., Karin Matussek and Steven Arons, 'Deutsche Bank's DWS Sued Over Fund Greenwashing Allegations' (*Bloomberg Law*, 24 October 2022) available [here](#).

⁶² [2020] IESC 49.

[National Mitigation Plan](#) for 2017-2022 because it didn't specify with sufficient clarity and detail how the "transition to a low carbon, climate resilient, and environmentally sustainable economy" by 2050 would be achieved, as required under the [Climate Action and Low Carbon Development Act 2015](#).⁶³ The Plan had been central to the Government's overall climate mitigation policy.

Lenders

Lenders can also incentivise businesses to promote sustainable and ESG-integrated products by offering green loans, sustainability-linked loans and social loans. Green loans require borrowers to demonstrate how the monies lent will be directed toward green projects, for example, projects concerning renewable energy.⁶⁴ They may also require the provision of periodic evidence during the loan term.⁶⁵ Sustainability-linked loans incentivise borrowers to achieve predetermined sustainability-linked performance targets, for example, targets concerning the use of recycled materials in retail products, through pricing mechanisms linked to the achievement of those targets.⁶⁶ Social loans require borrowers to demonstrate that the loan proceeds will be directed toward socially beneficial objectives, for example, the provision of affordable housing. Social loans are currently less common in Ireland than green loans or sustainability-linked loans.⁶⁷

Comparative performance of States in promoting sustainable development and ESG

The UN Sustainable Development Goals Index (UNSDG Index)

A number of indices rank the performance of States in promoting sustainable development and ESG. The UN SDG Index ranks the progress of UN Member States in achieving the 17 SDGs, affording equal weight to each Goal. The 2023 UN Sustainable Development Report (UNSDR) indicates that progress "has stalled since the outbreak of the pandemic" and estimates "that on average only around 18 percent of the SDG targets are on track to be achieved globally by 2030".⁶⁸ EU Member States are performing very well in relative terms. However, even the top performers face significant challenges in achieving several SDGs, in particular those related to climate, biodiversity and sustainable diets and food systems.⁶⁹

A score of 0 represents the worst possible outcome whereas 100 represents the best. Finland is ranked in first place on the 2023 SDG Index (86.8), followed by Sweden (2nd place - 86), Denmark (3rd place - 85.7), Germany (4th place - 83.4), and Austria (5th place - 82.3).⁷⁰ Ireland is ranked in

⁶³ Orla Kelleher, 'The Supreme Court of Ireland's decision in *Friends of the Irish Environment v Government of Ireland* ("Climate Case Ireland")' (*EJIL:Talk blog*, 9 September 2020) available [here](#).

⁶⁴ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#)

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ UN, *Sustainable Development Report 2023* (June 2023) at p.23, available [here](#)

⁶⁹ *Ibid.*, at p.27.

⁷⁰ *Ibid.*, at p.25.

17th place with a score of 80.1,⁷¹ as compared with a ranking of 9th place in 2022 with a score of 80.7.⁷² By way of comparison, the United Kingdom is ranked in 11th place on the 2023 SDG Index with a score of 81.7; the United States is ranked in 39th place with a score of 75.9; and China is ranked in 63rd place with a score of 72.⁷³ South Sudan is ranked last with a score of 38.7.⁷⁴

The UNSDR 2023 indicates that Ireland continues to face major challenges in achieving four SDGs: zero hunger, responsible consumption and production, climate action, and partnerships for the goals.⁷⁵ Indeed, it asserts that progress in achieving responsible consumption and production decreased in the past year.⁷⁶ Ireland submitted its second Voluntary National Review of the implementation of the SDGs to the UN High-Level Political Forum in June 2023 (available [here](#)).

In Ireland, a '[Whole of Government' approach](#) has been adopted for achieving the SDGs. Each Minister has responsibility for implementing targets related to their functions whilst the Department for the Environment, Climate and Communications has overall responsibility for promoting the SDGs and overseeing their implementation. An [SDG Interdepartmental Working Group](#) and an SDG Senior Officials Group also support implementation and an [SDG data hub](#) operates as a platform for collaborating, sharing information and reporting progress in achieving the goals.

Ireland's National Implementation Plan for Sustainable Development 2022-2024

The Government published Ireland's [National Implementation Plan for Sustainable Development 2022-2024](#) in October 2022. The Plan includes five strategic objectives, 51 actions and 119 individual measures to strengthen implementation of the SDGs. The five strategic objectives are:

- i. embed the SDG framework into the work of Government Departments to achieve greater policy coherence for sustainable development;
- ii. integrate the SDGs into the work of Local Authorities to better support their localisation;
- iii. develop greater partnerships for achieving the SDGs;
- iv. further incorporate the principle of "Leave No One Behind" into Ireland's Agenda 2030 implementation and reporting mechanisms; and
- v. develop strong reporting mechanisms for monitoring progress in achieving targets.

⁷¹ Ibid.

⁷² UN, *Sustainable Development Report 2022* (June 2022) p.14, available [here](#).

⁷³ UN, *Sustainable Development Report 2023* (June 2023) p.25, available [here](#).

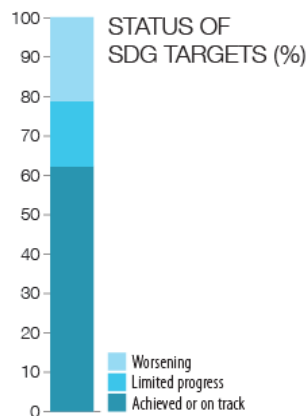
⁷⁴ Ibid., at pp 25-26.

⁷⁵ Ibid., at p. 37.

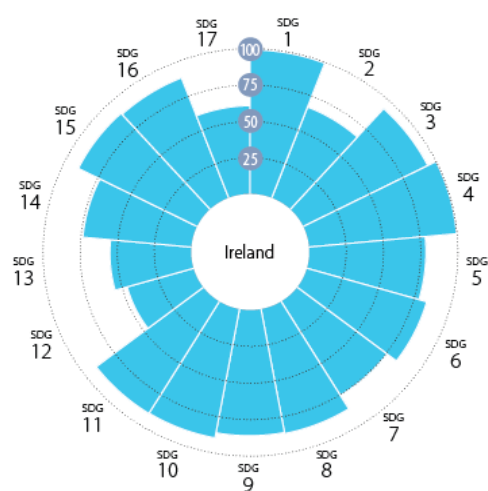
⁷⁶ Ibid.

Infographic 2: Ireland's ranking in the UN Sustainable Development Report 2023⁷⁷

OVERALL PERFORMANCE



AVERAGE PERFORMANCE BY SDG

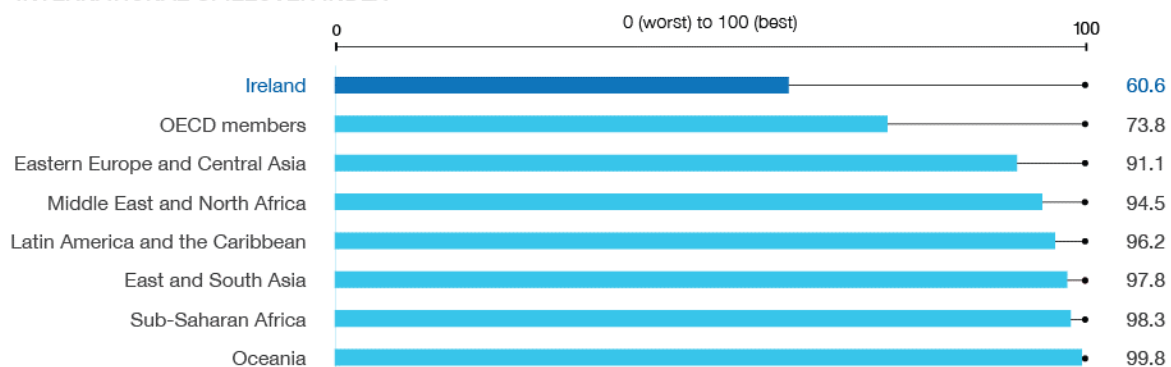


SDG DASHBOARDS AND TRENDS



Note: The full title of each SDG is available here: <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>

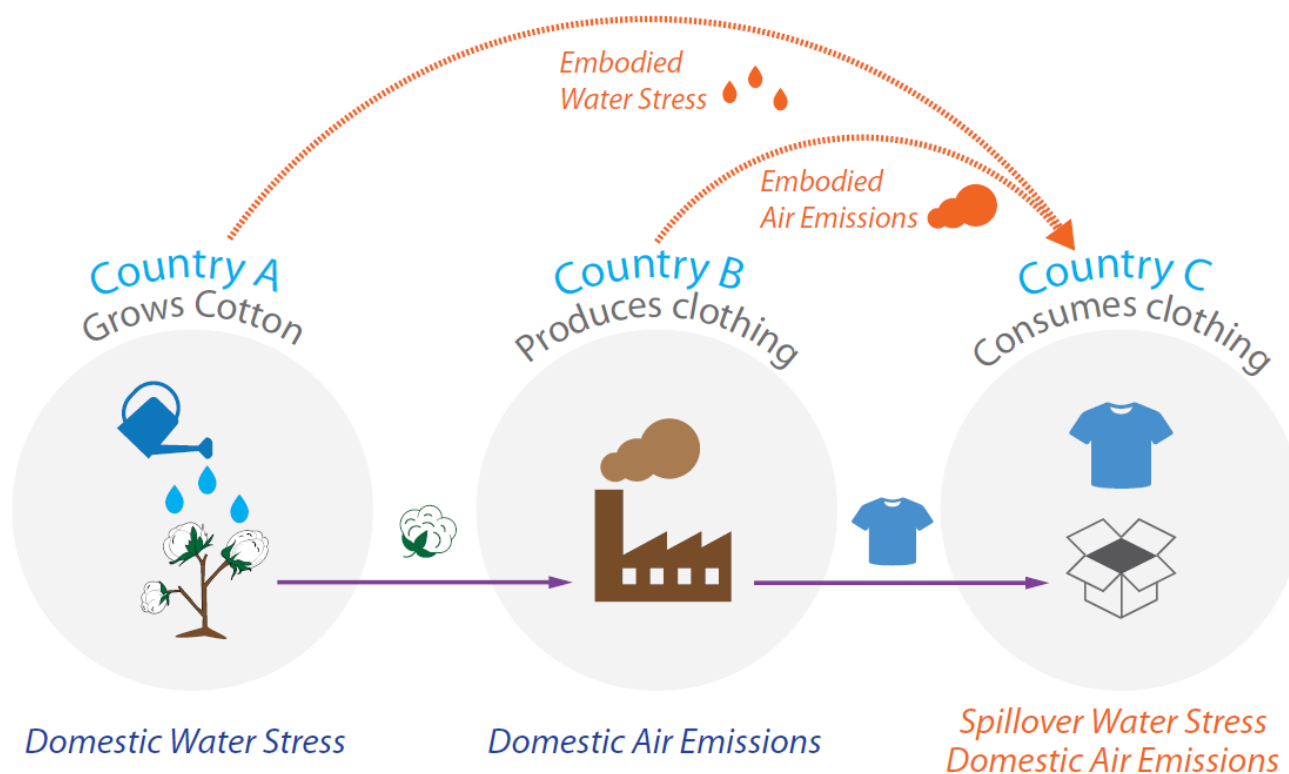
INTERNATIONAL SPILLOVER INDEX



⁷⁷ Ibid., at p.282.

The Spillover Index

Infographic 3: Environmental Impacts embodied in International Trade⁷⁸



The UNSDR has a standalone Spillover Index, which measures spillover effects, namely, “when one country’s actions generate benefits or impose costs on another country that are not reflected in market prices and therefore are not ‘internalized’ by the actions of consumers and producers”.⁷⁹ It assesses spillover effects in the form of environmental and social impacts embodied into trade, economy and finance, and security.⁸⁰ A higher score means that a country causes more positive and fewer negative spillover effects.⁸¹ Spillover indicators are also incorporated into the overall SDG Index, for example, modern slavery in international supply chains.⁸²

The 2023 UNSDR [Spillover Index](#) reveals that Ireland, with a score of 60.62 and a ranking of 151st out of a total 166 States, is performing significantly below the average for OECD States (73.8).⁸³ By way of contrast, Finland is ranked in 128th place (73.74); the United States is ranked in 138th place (67.79); Sweden is ranked in 139th place (67.31); and the United Kingdom is ranked in 142nd

⁷⁸ This infographic is replicated in *ibid.*, at p.34; and was originally produced in: SDSN, Yale Center for Environmental Law & Policy, and Center for Global Commons at the University of Tokyo. 2023, *Global Commons Stewardship Index 2022*.

⁷⁹ UN, *Sustainable Development Report 2022* (June 2022) available [here](#), citing Sachs, J. D., Schmidt-Traub, G., Kroll, C., Durand-Delacre, D., and Teksoz, K. (2017). *SDG Index and Dashboards Report 2017*. Bertelsmann Stiftung and Sustainable Development Solutions Network (SDSN).

⁸⁰ Spillover Rankings, see [here](#).

⁸¹ *Ibid.*

⁸² UN, *Sustainable Development Report 2023* (June 2023) at p.32, available [here](#).

⁸³ *Ibid.*, at p.282; and Spillover Rankings, see [here](#).

place (65.75).⁸⁴ Some of the reasons for Ireland's poor performance are listed as: scarce water consumption embodied in imports, SO₂ (sulfur dioxide) emissions embodied in imports, CO₂ (carbon dioxide) emissions embodied in imports, nitrogen emissions embodied in imports, corporate tax haven score, and shifted profits of multinationals.⁸⁵

The 2023 UNSDR asserts that high income countries tend to generate the most spillover effects due to unsustainable consumption, financial secrecy and the presence of tax havens.⁸⁶ At the same time, it observes that many national policies fail to integrate the need to address spillovers and safeguard the global commons.⁸⁷ Supply chains often extend across various countries. Spillover effects can manifest at various points in the supply chain and accumulate from country-to-country. The textiles and clothing sector is one of the biggest generators of negative environmental spill-over effects, in the form of greenhouse gas emissions, and is also a significant contributor to socio-economic spillovers, including child labour and accidents at work.⁸⁸

The 2023 UNSDR indicates that reducing negative spillover effects requires a transition to trade that is more sustainable and consistent with ESG objectives.⁸⁹ It infers that this transition can only be achieved if relevant importing and exporting countries work together to ensure that the necessary policies, metrics, technology and other supports are in place.⁹⁰

Global Risk Profile's ESG Index

[Global Risk Profile](#) (GRP), a Swiss company specialising in ethics and compliance management services, prepares an annual global ESG Index. The ESG Index measures and aggregates ESG-related risks across three core areas/sub-indices:

- the environment, for example, air pollution, greenhouse gas emissions, and biodiversity and ecosystem health indicators;
- human rights, for example, ratification of human rights treaties, social rights indicators (for example, child labour), civil and political rights indicators (for example, press freedom), and collective rights indicators (for example, the right to peace); and
- health and safety, including health indicators (for example, life expectancy), and safety indicators (for example, social protection).

The ESG Index derives its information from a variety of internationally recognised sources, for example, the International Labour Organization, the World Health Organization, the World Bank and the Global Carbon Project.⁹¹ Using 65 open-source data variables, the 2022 ESG Index offers a risk score on a 0-100 range, whereby 0 reflects the lowest risk rating and 100 the highest risk

⁸⁴ Spillover Rankings, see [here](#).

⁸⁵ Ibid.

⁸⁶ UN, *Sustainable Development Report 2023* (June 2023) at p.32, available [here](#)

⁸⁷ Ibid.

⁸⁸ Ibid., at p.33.

⁸⁹ Ibid., at p.34.

⁹⁰ Ibid.

⁹¹ GRP, 'ESG Index 2022', available to download [here](#).

rating. Based on their risk score, countries are given a global ranking in terms of ESG performance.

On a regional basis, GRP's 2022 ESG Index ranks Europe at the top with a risk rating of 29.45, followed by South America (40.33), North America (41.16), Oceania (41.77), Asia (48.17), and Africa (57.55).⁹² On a country basis, Finland is ranked in 1st place, followed by Iceland (2nd), Norway (3rd), Sweden (4th), and Portugal (5th).⁹³ Ireland is ranked in 20th place as compared with 14th place in 2021.⁹⁴ Ireland has a substantially lower ranking on the environment sub-index, as compared with the human rights, and health and safety sub-indices.⁹⁵ China and India are ranked in 118th and 145th place respectively whereas Somalia is ranked in last place (183rd).⁹⁶

The 2022 ESG Index revealed a decline in global scores as compared with 2021.⁹⁷ GRP reports that environmental impact is the core cause of the decline. It notes that this in turn may be attributed to multiple factors, including increasing economic activity in the wake of the Covid-19 pandemic with associated increases in greenhouse gas emissions and pollution, inadequate waste management practices and insufficient protection of biodiversity.⁹⁸ GRP remarks that the 2022 ESG Index "highlights the urgent need for stronger environmental policies and initiatives to mitigate the adverse effects of human activities on the natural world".⁹⁹

EU legislation imposing ESG reporting obligations

The majority of the legal obligations concerning ESG in Ireland derive from EU legislation in the form of Regulations and Directives adopted via the EU's ordinary legislative procedure. Some of the main EU Regulations and Directives that contain ESG-related obligations include:

- the [Non-Financial Reporting Directive](#) (2014/95/EU);
- the [Corporate Sustainability Reporting Directive](#) (EU) 2022/2464;
- the [Sustainable Finance Disclosures Regulation](#) (EU) 2019/2088;
- the [Taxonomy Regulation](#) (EU) 2020/852;
- the [Capital Requirements Regulation](#) (EU) No 575/2013;
- the [Low Carbon Benchmarks Regulation](#) (EU) 2019/2089;
- the [Climate Law Regulation](#) (EU) 2021/1119; and
- the [Gender Balance on Corporate Boards Directive](#) (EU) 2022/2381.

Some of these instruments are being introduced on a phased basis in recognition of the fact that certain sectors and businesses, such as SMEs, will need time and support to make the transition to more ESG-friendly practices. Some of the instruments have been amended or supplemented by delegated acts adopted by the European Parliament. To aid comprehension, the section below

⁹² Ibid.

⁹³ Ibid.

⁹⁴ GRP, 'Rankings and Scores ESGI 2022', available [here](#).

⁹⁵ Ibid.

⁹⁶ GRP, 'ESG Index 2022: a global decline of sustainability performance' (8 March 2023) available [here](#).

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

provides a brief overview of the legislative procedure through which these legal instruments were adopted at EU level. The Spotlight then proceeds to discuss the individual instruments.

The EU's ordinary legislative procedure and delegated acts

Most EU legislation is adopted via the ordinary legislative procedure: the European Commission prepares and adopts an initial draft of the proposed piece of legislation, which is then submitted to the European Parliament (representing EU citizens) and the Council of the EU (representing EU governments) for scrutiny. Both the Parliament and the Council can propose amendments and typically meet with the Commission to endeavour to agree on a package of proposed amendments. The agreement of both the Parliament and the Council is required before the proposal can be adopted into law under the ordinary legislative procedure.¹⁰⁰ Once adopted, EU Regulations are directly effective at the domestic level and become an enforceable part of national law from the date on which they enter into force. EU Directives require transposition into national law through the adoption of a piece of domestic legislation, usually by a deadline stipulated in the Directive.

Article [290](#) of the Treaty on the Functioning of the European Union provides that a Regulation or Directive may delegate to the European Commission the power to adopt 'delegated acts'. Delegated acts are non-legislative acts, which amend or supplement non-essential elements of the primary piece of legislation (the Regulation or Directive), subject to strict conditions.¹⁰¹ The Commission consults experts from EU Member States prior to adopting a delegated act.¹⁰² Furthermore, a delegated act, once adopted, can only enter into force if the Council or the Parliament does not object within a prescribed deadline, usually two months.¹⁰³ Delegated acts are typically used in the case of Directives and Regulations, which have to be frequently adapted in response to technical and scientific progress.¹⁰⁴

The Non-Financial Reporting Directive (NFRD)

The [NFRD](#) entered into force on 5 December 2014.¹⁰⁵ EU Member States had until 6 December 2016 to transpose the Directive into domestic law.¹⁰⁶ It amended [Directive 2013/34/EU \(the "Accounting Directive"\)](#) to impose annual reporting obligations concerning non-financial information and diversity on large public interest companies (for example, banks, listed companies and insurance companies) with over 500 employees and a balance sheet total of over €20 million or a net turnover of over €40 million. Affected undertakings have had to satisfy reporting requirements from 2018 onwards in respect of the previous financial year.¹⁰⁷

¹⁰⁰ For more information on the ordinary legislative procedure, see EU website ([here](#), [here](#) and [here](#)).

¹⁰¹ Eur-Lex, 'Delegated Acts', see [here](#).

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Dechert LLP, 'Overview of the EU Non-Financial Reporting Directive' (16 June 2020), available [here](#).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

Obligations imposed under NFRD

The NFRD requires undertakings that fall within its scope (“in-scope” undertakings) to include a non-financial statement in their annual management report providing information on:

- i. environmental matters,
- ii. social and employee-related matters,
- iii. matters related to respect for human rights, and
- iv. anti-corruption and bribery matters.¹⁰⁸

The information provided must incorporate certain details, including:

- a brief description of the undertaking’s business model;
- a description of the undertaking’s policies in relation to the four above-mentioned matters, and the outcomes of any such policies implemented;
- the principal risks related to the above-mentioned matters as linked to the undertaking’s operations including, where relevant and proportionate, any business relationships, products or services of the undertaking which are likely to adversely impact those matters;
- details of measures implemented to manage principal risks; and
- non-financial key performance indicators relevant to the undertaking.¹⁰⁹

In-scope undertakings must also outline their diversity policies concerning the composition of administrative, management and supervisory bodies, most notably, the board of directors.

The reporting obligations imposed under the NFRD are mandatory in nature except for the obligations concerning policies, which operate on a ‘comply or explain’ format.¹¹⁰ For example, where an undertaking has not introduced policies concerning environmental matters, it must provide a clear and reasoned explanation for not having done so.

There is some flexibility as regards how the requisite information is disclosed in that undertakings can choose from a range of European, international and national frameworks, for example, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.¹¹¹ In June 2017, the European Commission published non-mandatory guidelines to assist in-scope undertakings in fulfilling their NFRD reporting obligations. In June 2019, it published supplementary guidelines concerning reporting on climate-related information. The latter encourage undertakings to adhere to recommendations issued by the Task Force on Climate-related Financial Disclosures established by the G20’s Financial Stability Board.¹¹²

The transposition of the NFRD into domestic law

The European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 (S.I. No. 360 of 2017) transposed the NFRD into Irish law with effect from 31 August 2017. The reporting obligations concerning non-financial information imposed under these Regulations apply to large companies as defined under section 280H of the

¹⁰⁸ NFRD, Article 1.

¹⁰⁹ Ibid.

¹¹⁰ Maedhbh Clancy and Suzanne Kearney, ‘Ireland: Environmental, Social and Governance Regulation Comparative Guide’ (*Arthur Cox*, 31 August 2022) available [here](#).

¹¹¹ Denis Noonan, ‘The Evolution of NFRD into CSRD’ (Greenomy) available [here](#).

¹¹² European Commission, ‘Guidelines on non-financial reporting: Supplement on reporting climate-related information (2019/C 209/01) paras 1.1 and 2.1, available [here](#).

Companies Act 2014, which have over 500 employees on average and are ineligible to avail of exemptions and dispensations under Irish law concerning accounting disclosures.¹¹³ The reporting obligations concerning diversity apply to large 'traded companies' as defined under regulation 6 of S.I. No. 360 of 2017.

The board of directors should be able "to stand over the accuracy and completeness" of the information provided pursuant to the NFRD.¹¹⁴ Failure to comply with reporting obligations is an offence, which is punishable on summary conviction by a fine of up to €5,000 and/or imprisonment for a term of up to 6 months.¹¹⁵

The NFRD and the Taxonomy Regulation

Article 8 of the Taxonomy Regulation imposes additional disclosure obligations on in-scope undertakings regarding how, and the extent to which, their activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation. The Taxonomy Regulation is discussed in more detail in a separate section below.

Replacement of the NFRD with the CSRD

A number of deficiencies have been identified concerning the NFRD's substantive content and implementation. An inception impact assessment published by the European Commission in 2020 on the proposed revision of the NFRD indicates that the Directive's reporting requirements do not generate "enough publicly available information about how non-financial issues, and sustainability issues in particular, impact companies, and about how companies themselves impact society and the environment".¹¹⁶ In addition, it found that in-scope "[c]ompanies face uncertainty and complexity when deciding what non-financial information to report, and how and where to report such information", and that this in turn leads to "unnecessary and avoidable costs".¹¹⁷ The lack of consistency in NFRD reporting makes it difficult for investors to compare the ESG credentials of in-scope companies. In addition, the NFRD's obligations do not extend to SMEs thereby excluding a significant proportion of the economy from its reach.

The Corporate Sustainability Reporting Directive (CSRD) was developed to address the NFRD's shortcomings. The NFRD will remain in force until such a time as companies have to apply the new rules introduced under the CSRD in accordance with the latter's phased application.

The Corporate Sustainability Reporting Directive (CSRD)

The CSRD entered into force on 5 January 2023 on a phased basis. EU Member States have until 16 June 2024 to transpose the CSRD into domestic law. It imposes more qualitative and quantitative reporting requirements on impacted undertakings in respect of issues such as

¹¹³ S.I. No. 360 of 2017, regulation 4. A list of the types of undertakings that may fall within the scope of the reporting obligations concerning non-financial information is available at: Fergus Bolster *et. al.*, 'New Non-Financial and Diversity Disclosure Obligations' (Matheson, 21 November 2017) available [here](#).

¹¹⁴ PwC, 'Ireland's Non-Financial Reporting requirements: What do they mean for your business?' (PwC, 30 May 2019) available [here](#).

¹¹⁵ S.I. No. 360/2017, regulation 8.

¹¹⁶ European Commission, 'Inception Impact Assessment: Revision of the Non-Financial Reporting Directive' (2020) Document Ares(2020)580716, available [here](#).

¹¹⁷ *Ibid.*

environmental rights, social rights, human rights and governance. Undertakings that fall within the CSRD's scope must disclose their strategy and business model, and explain how sustainability informs same.¹¹⁸ They must also provide information, to the extent possible, concerning the impact of their operations, supply chains, business relationships and value chains, both inside and outside of the EU, on the environment, society and the enjoyment of human rights.¹¹⁹

The purpose of the CSRD is to enable relevant stakeholders such as investors, consumers and civil society organisations to evaluate how sustainable in-scope undertakings are in reality. Accordingly, the information provided must be "relevant, comparable, reliable, and accessible".¹²⁰

Some key changes under the CSRD as compared with the NFRD

Table 1: NFRD versus CSRD

	NFRD	CSRD
SCOPE	Approximately 11,500 large public interest companies (listed companies, banks, and insurance companies)	Approximately 49,000 companies, including listed SMEs and some non-European companies
CONTENT	General disclosures concerning ESG issues	More comprehensive disclosures concerning ESG
FORMAT	No mandatory standardised format	Mandatory standardised format
AUDIT	No mandatory external audit	Mandatory external audit

The CSRD significantly extends the reach of ESG reporting obligations. Over four times as many undertakings will be required to provide sustainability reporting under the CSRD as compared with the NFRD (an estimated 49,000 under the CSRD versus approximately 11,600 under the NFRD).¹²¹ The CSRD imposes reporting obligations on:

- (i) all large undertakings as defined under the CSRD;
- (ii) non-EU undertakings with at least one EU subsidiary or branch, which generated a net turnover of €150 million in the EU for each of the last two consecutive financial years; and
- (iii) SMEs, apart from micro undertakings, whose securities are listed on an EU regulated market.¹²²

¹¹⁸ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#).

¹¹⁹ Ibid; and McCann Fitzgerald, 'Parliament adopts the Corporate Sustainability Reporting Directive' (11 November 2022) available [here](#).

¹²⁰ EBU, 'Sustainability Rulebook: The Corporate Sustainability Reporting Directive', available [here](#).

¹²¹ 'EU Corporate Sustainability Reporting Directive Signed into Law – Implications and Near-term Compliance Steps for U.S.-based Multinationals' (Ropes & Gray, 20 December 2022) available [here](#).

¹²² Ibid.

Large undertakings are defined under the CSRD as EU entities or EU consolidated groups that exceed at least two of the following criteria: balance sheet total of €20 million, net turnover of €40 million, and average of 250 employees during the financial year.¹²³

Whereas auditing is voluntary under the NFRD, reporting provided under the CSRD must be certified by an accredited independent auditor or independent assurance provider and published in a specific section of the undertaking's annual management report (typically the directors' report).¹²⁴

In order to enhance the consistency and comparability of the information provided, the European Financial Reporting Advisory Group (EFRAG) was mandated to prepare draft European Sustainability Reporting Standards (ESRS) for the European Commission to supplement the CSRD.¹²⁵ EFRAG published a first set of twelve draft standards in November 2022. It includes two cross-cutting general standards, five standards concerning environmental factors, four standards concerning social factors, and one standard concerning governance matters.¹²⁶ The draft ESRS implement a "double materiality" approach whereby in-scope undertakings must report on: (i) the impacts of their operations on the environment and society, and (ii) on the extent to which social and environmental issues generate financial risks and opportunities for the undertaking.

On 9 June 2023, the European Commission issued a draft delegated regulation containing draft ESRS based on EFRAG'S initial version. These draft ESRS were subject to a public consultation process, which ended on 7 July 2023. On 31 July 2023, the European Commission adopted a Delegated Act (available here) containing updated draft ESRS, which was submitted to the European Parliament and the Council of the EU for scrutiny for a two-month period in August.¹²⁷ The review period is extendable by a further two months.¹²⁸ The Parliament or the Council may reject the Delegated Act; however, they may not amend it.¹²⁹ In-scope undertakings will be required to provide reporting in accordance with the ESRS, once finalised. The World Wide Fund for Nature (WWF), a member of EFRAG, criticised the updated draft ESRS contained in the Delegated Act, which it argued "substantially weakens key parts of the proposal put forward in November 2022 by the experts in the European Financial Reporting Advisory Group (EFRAG)".¹³⁰

As noted above, article 8 of the Taxonomy Regulation imposes disclosure obligations on undertakings that are subject to the NFRD regarding how and the extent to which their activities are associated with environmentally sustainable economic activities. These obligations will apply to companies subject to the CSRD as it gradually replaces the NFRD.

¹²³ Ibid.

¹²⁴ EBU, 'Sustainability Rulebook: The Corporate Sustainability Reporting Directive', available here.

¹²⁵ Ibid. The EFRAG is a private association established with the support of the European Commission to serve the public interest

¹²⁶ EFRAG, 'First Set of draft ESRS' (November 2022) available here.

¹²⁷ European Commission, 'Questions and Answers on the Adoption of European Sustainability Reporting Standards' (31 July 2023) available here.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ WWF, 'Commission undermines standards for corporate sustainability reporting under industry pressure' (31 July 2023) available here.

Application of CSRD

The CSRD will apply on a phased basis:

- for financial years starting on or after **1 January 2024**, for large public interest companies already subject to the NFRD, with reports due in 2025;
- for financial years starting on or after **1 January 2025**, for other large undertakings as defined under the CSRD, with reports due in 2026;
- for financial years starting on or after **1 January 2026**, for listed SMEs, with reports due in 2027. SMEs can effectively opt-out for a two-year transitional period until 2028 if they explain in their management report why sustainability reporting was not provided; and
- for financial years starting on or after **1 January 2028**, for in-scope non-EU undertakings, with reports due in 2029.¹³¹

In recognition of the difficulties companies may face in obtaining the requisite information from companies in their value chain, articles 19a(3) and 29a(3) of the CSRD provide that, during the first three years of its operation, where undertakings are unable to obtain and provide all the necessary information regarding their value chain, they may outline in their management report:

- the efforts they have undertaken to obtain the necessary information,
- the reasons why all of the necessary information could not be obtained, and
- their plans to obtain the necessary information in the future.¹³²

In addition, the sustainability reporting obligations applicable to listed SMEs will be “proportionate to their capacity and resources and relevant to the scale and complexity of their activities”.¹³³

While non-listed SMEs do not directly come within the scope of the CSRD, they may be called upon to provide information to an in-scope large company if they fall within that company’s value chain.

Ireland and the CSRD

As noted above, Ireland has until 16 June 2024 to transpose the CSRD into domestic law. The results of a recent survey conducted by the [Compliance Institute](#) reveal a lack of understanding amongst Irish companies regarding the CSRD reporting requirements.¹³⁴ The results, which were published in May 2023, suggest that 41% of the companies surveyed will struggle to provide the information required.¹³⁵ Almost 60% of the companies surveyed indicated that the CSRD will have a significant or huge impact on their business.¹³⁶

¹³¹ ‘EU Corporate Sustainability Reporting Directive Signed into Law – Implications and Near-term Compliance Steps for U.S.-based Multinationals’ (Ropes & Gray, 20 December 2022) available [here](#).

¹³² McCann Fitzgerald, ‘Parliament adopts the Corporate Sustainability Reporting Directive’ (11 November 2022) available [here](#).

¹³³ *Ibid.*

¹³⁴ Compliance Institute, ‘Lack of understanding of new EU anti-greenwashing rules, research shows’ (8 May 2023) available [here](#).

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

The results of another survey conducted by the Compliance Institute, which were published in April 2023, suggest that a strong majority of the Irish public supports the CSRD.¹³⁷ 85% of over 1,000 participants in the survey believe that the CSRD is necessary to combat greenwashing.¹³⁸

The [Department of Enterprise, Trade and Employment](#) is advising companies to take the following steps to prepare for the CSRD:

- assess whether the company falls within the scope of the CSRD or forms part of the value chain of an in-scope company;
- assess and analyse the company's existing ESG reporting processes, internal controls and governance;
- for in-scope companies with reports due in 2025, discuss the CSRD obligations and European Sustainability Reporting Standards with the company's auditor, accountant or business adviser;
- for other companies that could fall within the value chain of an in-scope company, engage with the company's business advisor and the in-scope company regarding the information the company in the value chain may need to supply;
- assess the company's current ability to provide the information required, either as an in-scope company or a company within the value chain of an in-scope company;
- sign up to the Department mailing list by emailing csrd@enterprise.gov.ie to stay up to date with developments on the transposition of the CSRD; and
- avail of government supports, for example, the [Green Transition Fund](#) and the [Climate Toolkit 4 Business](#), discussed in more detail below.

The Sustainable Finance Disclosures Regulation (SFDR)

The SFDR was adopted on 27 November 2019 pursuant to the European Commission's Action Plan on Financing Sustainable Growth. Together with the Taxonomy Regulation, discussed below, it seeks to harmonise sustainability reporting requirements across the EU's financial services sector by prescribing the sustainability disclosures required from financial advisors and financial market participants (FMPs), as defined under article 2 of the SFDR. By enhancing the transparency, consistency and comparability of the information provided, the SFDR seeks to help sustainability conscious investors make more informed investment decisions.

Actors subject to the SFDR

The SFDR applies to financial advisers and FMPs, as defined under article 2 of the SFDR. FMPs include:

- investment firms and credit institutions which provide portfolio management,
- insurance undertakings which make available insurance-based investment products,
- institutions for occupational retirement provision,

¹³⁷ Compliance Institute, 'Widespread public support for recent EU intervention to combat greenwashing' (16 April 2023) available [here](#).

¹³⁸ Ibid.

- Alternative Investment Fund Managers (AIFMs),¹³⁹
- management companies of undertakings for collective investment in transferable securities (UCITS management companies),
- manufacturers of pension products,
- pan-European personal pension product providers,
- managers of qualifying venture capital funds registered in accordance with article 14 of Regulation (EU) No 345/2013, and
- managers of qualifying social entrepreneurship funds registered in accordance with article 15 of Regulation (EU) No 346/2013.

Obligations imposed under the SFDR

The SFDR imposes sustainability-related disclosure obligations at the entity level (regarding the policies and processes of FMPs and financial advisors) and at the product level (regarding the financial products that FMPs offer and that financial advisors advise upon).

Article 3 of the SFDR obliges FMPs and financial advisors to make disclosures on their websites about the policies they have in place concerning the integration of sustainability risks into their investment decision-making processes and investment/insurance advice respectively.

FMPs and financial advisors are also required under [article 5](#) to include information in their remuneration policies regarding the extent to which those policies are consistent with the integration of sustainability risks, and to publish that information on their websites.

A sustainability risk is “an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment” [article 2, SFDR].

Some of the disclosure obligations imposed under article 4 are expressed in a ‘comply or explain’ format. For example, [article 4\(1\)\(a\)](#) provides that where FMPs consider principal adverse impacts of investment decisions on sustainability factors, they must publish and maintain on their websites a statement concerning the due diligence policies they have in place with respect to those impacts. Alternatively, where an FMP does not consider principal adverse impacts, they must provide clear reasons for not doing so, including, where relevant, information as to whether and when they intend to consider such adverse impacts in the future (article 4(1)(b)). Article 4(2) outlines the information that must, at a minimum, be included in the statement required under article 4(1)(a).

¹³⁹ An AIFM is a legal person, which is authorised in accordance with the European Communities (Alternative Investment Fund Managers Directive) Regulations 2013 to provide portfolio management and risk management services to one or more Alternative Investment Fund (AIF) schemes. See Central Bank, ‘Introduction to Alternative Investment Fund (AIF) Managers’, available [here](#).

Principal adverse impacts are “those impacts of investment decisions and advice that result in negative effects on sustainability factors” [[recital 20, SFDR](#)].

Sustainability factors are “environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters” [[article 2, SFDR](#)].

A similar, albeit not identical, obligation of disclosure is imposed on financial advisors under article 4(5) of the SFDR concerning the consideration that is afforded in their investment advice/insurance advice to the principal adverse impacts of investment decisions on sustainability factors.

Obligations imposed at the product level

Financial products can be divided into three categories for the purposes of the SFDR, as outlined in the table below.

Table 2: SFDR Financial Product Categories¹⁴⁰

SFDR Financial Product Categories		
Category	Relevant Article(s)	Description
General Product Category	Article 6	Products that have no ESG-related focus and make no ESG or sustainability claims.
Light Green Category	Article 8 (and must also adhere to articles 6 and 10-11)	Products that promote environmental or social characteristics but do not exclusively target sustainable developments.
Dark Green Category	Article 9 (and must also adhere to articles 6 and 10-11)	Products that specifically target sustainable developments.

[Article 6](#) of the SFDR requires FMPs and financial advisors to include a description in pre-contractual disclosures of how sustainability risks are integrated into their investment decisions and investment advice/insurance advice respectively, and of the likely impacts of sustainability risks on the returns of the financial products they make available/advise upon. Where FMPs/financial advisors consider that sustainability risks are not relevant, they must include a clear and concise explanation of why they consider this to be the case.

[Article 7](#) of the SFDR requires disclosures from FMPs concerning whether and, if so, how the financial products they make available consider principal adverse impacts on sustainability factors.

¹⁴⁰ This table is derived from a table included in: Carolyn Cole, 'SFDR: Product Level Disclosures' (Greenomy) available [here](#).

Where no such consideration is afforded to principal adverse impacts, a clear explanation must be provided.¹⁴¹

[Article 8](#) of the SFDR requires additional specific disclosures from FMPs at the pre-contractual stage, in accordance with article 6, in respect of financial products that promote environmental and/or social characteristics.

[Article 9](#) the SFDR requires specific disclosures from FMPs at the pre-contractual stage, in accordance with article 6, in respect of financial products that have sustainable investment as an objective.

[Articles 10 and 11](#) of the SFDR require specific disclosures from FMPs on their websites and in their periodic reporting, in respect of financial products that promote environmental and/or social characteristics or have sustainable investment as an objective.

Marketing materials

[Article 13](#) the SFDR requires FMPs and financial advisers to ensure that their marketing communications do not contradict any of the information disclosed pursuant to the SFDR.

Regulatory Technical Standards

The European Supervisory Authorities (ESAs)¹⁴² are mandated under the SFDR to develop draft Regulatory Technical Standards (RTS), which include comprehensive specifications concerning the content, methodology and presentation of the disclosures required under articles 8-11 in respect of financial products that promote environmental and/or social characteristics or have sustainable investment as an objective. The ESAs are also mandated under article 13 to draft RTS concerning the presentation of marketing communications. The SFDR clarifies that any draft RTS prepared by the ESAs are to be submitted to the European Commission for its consideration and adoption as a delegated act.

RTS, based on an initial draft prepared by the ESAs, were adopted by the European Commission via its Delegated Regulation (EU) 2022/1288 of 6 April 2022, which entered into force on 1 January 2023. This Regulation has since been amended by [Delegated Regulation \(EU\) 2023/363 of 31 October 2022](#), which entered into force on 20 February 2023. The amendments introduced primarily relate to the content and presentation of disclosures concerning financial products that purport to invest in fossil gas and nuclear energy-related economic activities that qualify as environmentally sustainable under the Taxonomy Regulation.¹⁴³ The RTS include mandatory templates for pre-contractual and periodic reporting disclosures.¹⁴⁴

Application of the SFDR

The SFDR came into force on 10 March 2021 on a phased basis. The Phase 1 SFDR requirements have been applicable since this date. They include:

¹⁴¹ SFDR, article 7.

¹⁴² The ESAs are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA). See European Commission, 'European System for Financial Supervision', available [here](#).

¹⁴³ ESA, 'Final Report on draft RTS regarding fossil gas and nuclear energy investments' available [here](#).

¹⁴⁴ Mason, Hayes and Curran, 'Sustainable Finance Disclosure Regulation – Where Are We Now?' (22 October 2022) available [here](#).

- the implementation of a policy concerning the integration of sustainability risks into the investment decision-making process,
- the updating of remuneration policies to ensure the integration of sustainability risks,
- the inclusion of sustainability related disclosures on websites and fund offering documents, and
- the inclusion of periodic reporting in annual reports concerning sustainability.¹⁴⁵

The Phase 2 SFDR requirements entail adherence to the RTS, which have been in force since 1 January 2023. The amendments to the RTS, discussed above, have been in force since 20 February 2023.

The SFDR and the Taxonomy Regulation

Articles 5 and 6 of the Taxonomy Regulation impose additional disclosure obligations in respect of:

- financial products referred to in article 9(1), (2) and (3) of the SFDR, which commit to invest in an economic activity that contributes to an environmental objective, as defined under article 2(17) of the SFDR; and
- in respect of financial products referred to in article 8 of the SFDR, which promote environmental characteristics.

These additional disclosure obligations are discussed in more detail in the section below concerning the Taxonomy Regulation.

The Taxonomy Regulation

The Taxonomy Regulation entered into force on 12 July 2020 on a phased basis. It serves as an important complement to the NFRD, CSRD and SFDR, and expands upon the disclosure and reporting obligations contained in these instruments. In particular, it provides objective criteria for determining whether an investment in an economic activity, which is marketed as environmentally sustainable, is environmentally sustainable in reality.

Definition of an environmentally sustainable economic activity

Article 3 of the Taxonomy Regulation provides that an economic activity shall be considered environmentally sustainable if it:

- contributes substantially** to one or more of the **environmental objectives** set out in article 9 of the Regulation (in accordance with articles 10-16 of the Regulation), namely:
 - Climate change mitigation,
 - Climate change adaptation,
 - The sustainable use and protection of water and marine resources,
 - The transition to a circular economy,
 - Pollution prevention and control, and
 - The protection and restoration of biodiversity and ecosystem;
- does not significantly harm** any of the above environmental objectives;¹⁴⁶

¹⁴⁵ Ibid.

¹⁴⁶ In accordance with Article 17 of the Taxonomy Regulation.

- c) is carried out in **compliance with minimum safeguards** as laid down in article 18 of the Taxonomy Regulation; and
- d) **complies with technical screening criteria** established by the European Commission in accordance with articles 10(3), 11(3), 12(2), 13(2), 14(2) or 15(2) of the Taxonomy Regulation.

Technical Screening Criteria

As indicated above, the Taxonomy Regulation requires the European Commission to adopt supplementary delegated acts, which outline the technical screening criteria that must be satisfied in order for an economic activity to be considered environmentally sustainable.

The Commission's Delegated Regulation (EU) 2021/2139 of 4 June 2021 (the "Taxonomy Climate Delegated Act") establishes the technical screening criteria for determining the conditions under which economic activities listed in Annexes I and II to the Delegated Act, for example, forestry-related activities, may be considered to be contributing substantially to climate change mitigation and climate change adaptation, and for determining whether these economic activities cause no significant harm to any of the other environmental objectives included in the Taxonomy Regulation. The Taxonomy Climate Delegated Act has been in force since 1 January 2022. Accordingly, the provisions of the Taxonomy Regulation in respect of climate change mitigation and climate change adaptation have applied since this date.

On 9 March 2022, the European Commission adopted the Complementary Climate Delegated Act, which amends the Taxonomy Climate Delegated Act so as to permit certain economic activities involving gas and nuclear energy to be considered to be contributing substantially to climate change mitigation and climate change adaptation, subject to strict conditions being satisfied.¹⁴⁷ This Delegated Act entered into force on 1 January 2023 and is aimed at accelerating decarbonisation.¹⁴⁸

On 27 June 2023, the European Commission adopted the text of proposed amendments (available [here](#)) to the Taxonomy Climate Delegated Act, which set out technical screening criteria for additional economic activities, including activities in the manufacturing and transport sectors, to be considered to be contributing substantially to climate change mitigation and climate change adaptation.¹⁴⁹ The proposed amendments have been transmitted to the Commission's co-legislators, the European Parliament and the Council of the EU, for scrutiny.

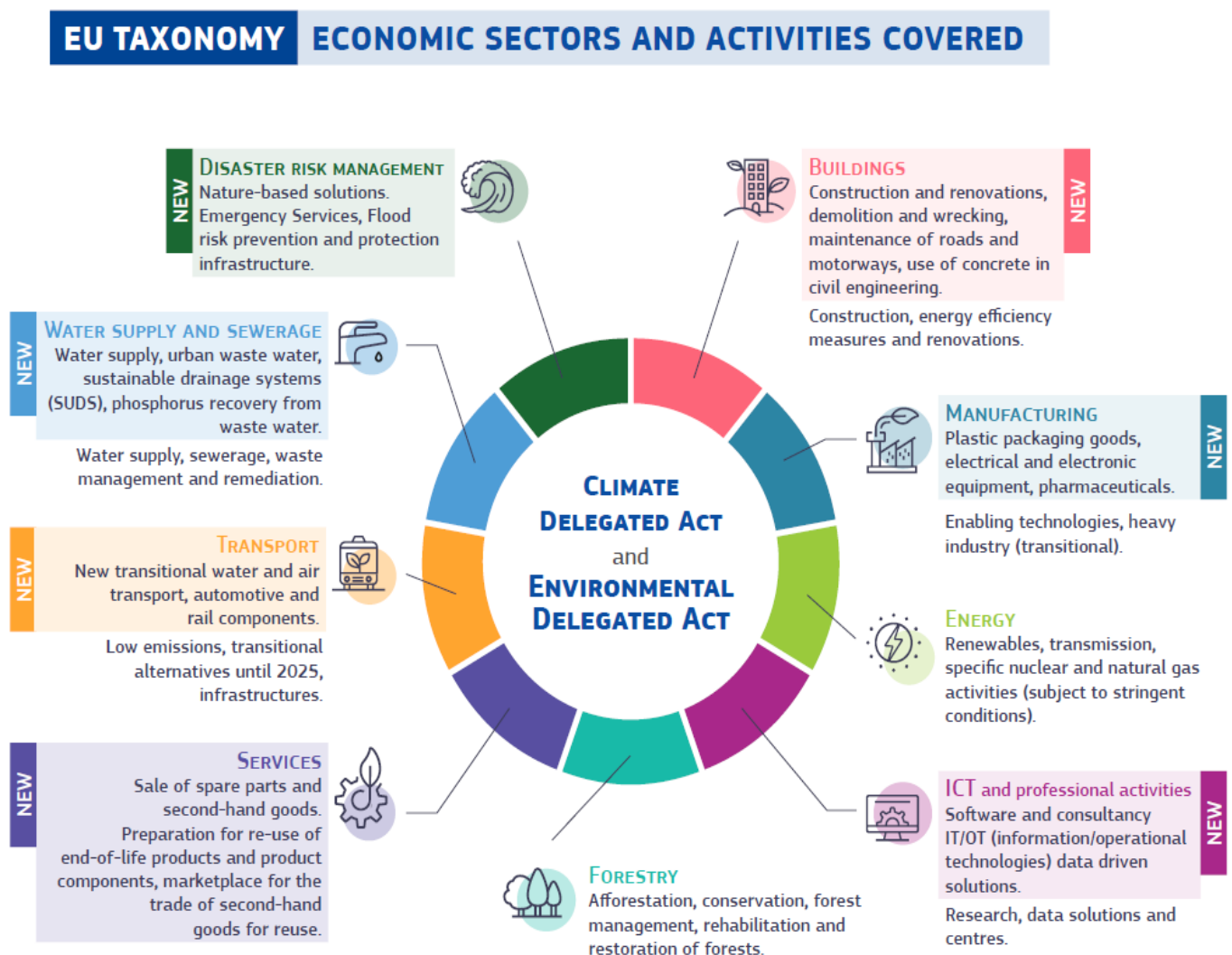
On 27 June 2023, the European Commission also adopted the text of a proposed Environmental Delegated Act (available [here](#)), which outlines the technical screening criteria for determining whether an economic activity may be considered to be contributing substantially to the remaining four (non-climate) environmental objectives under the Taxonomy Regulation, namely, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and/or protection and restoration of biodiversity and ecosystems. The proposed Environmental Delegated Act has been transmitted to the Commission's co-legislators, the European Parliament and the Council of the EU, for scrutiny.

¹⁴⁷ Aisling O'Malley and Alanna Hannon, 'Publication of EU Taxonomy Climate Complementary Delegated Act in the Official Journal: Implications for Funds' (*Dillon Eustace*, 18 July 2022) available [here](#).

¹⁴⁸ For more information, see: *ibid*; and European Commission, 'EU taxonomy: Complementary Climate Delegated Act to accelerate decarbonisation', available [here](#).

¹⁴⁹ For more information, see: Arthur Cox, 'EU Taxonomy Regulation: Commission Publishes Draft Environmental Delegated Act' (*Insights Blog*, 14 June 2023) available [here](#).

Infographic 4: European Taxonomy: Economic Sectors and Activities Covered¹⁵⁰



Scope of application of the Taxonomy Regulation

Obligations imposed on undertakings subject to the NFRD and CSRD

[Article 8](#) of the Taxonomy Regulation imposes disclosure obligations on undertakings that are subject to the NFRD (namely, large public interest undertakings) regarding how, and the extent to which, their activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation. These disclosure obligations will apply to undertakings that are subject to the CSRD as it gradually replaces the NFRD.

Article 8(2) requires in-scope non-financial undertakings (for example, non-financial, large, listed companies) to disclose information on the proportion of their turnover, which is derived from environmentally sustainable economic activities, and the proportion of their capital expenditure and operating expenditure, which is related to assets or processes associated with environmentally

¹⁵⁰ See European Commission, 'Sustainable Finance Factsheet' (June 2023) available [here](#).

sustainable economic activities (“key performance indicators”). It doesn’t specify key performance indicators for in-scope financial undertakings (for example, credit institutions, investment firms, asset managers and insurance and reinsurance undertakings).

Article 8(4) of the Taxonomy Regulation requires the European Commission to adopt a supplementary delegated act specifying the content and presentation of the information to be disclosed under article 8 and the methodology to be used, taking into account the specificities of both financial and non-financial undertakings and the technical screening criteria. Accordingly, the Commission adopted [EU Commission Delegated Regulation \(EU\) 2021/2178](#) of 6 July 2021 (the “Disclosures Delegated Act”), which has applied on a phased basis since 1 January 2022. The Disclosures Delegated Act specifies key performance indicators for financial undertakings that fall within the NFRD’s scope. On 27 June 2023, the European Commission adopted proposed amendments to the Disclosures Delegated Act, which seek to ensure its compatibility with the proposed Environmental Delegated Act. The proposed amendments have been forwarded to the European Parliament and the Council of the EU for scrutiny.




Infographic 5: The Taxonomy Regulation and the SFDR¹⁵¹

HOW DOES THE EU TAXONOMY FIT WITHIN THE SUSTAINABLE FINANCE FRAMEWORK?

Two examples when the taxonomy will be used:
in disclosures of financial products and reporting by large companies and listed companies

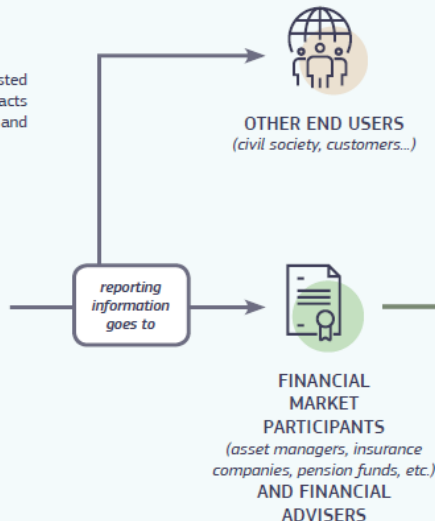
Proposed CSRD (Corporate Sustainability Reporting Directive):
reporting done by large companies and listed companies on their sustainability risks and impacts i.e. impact of their business on the climate and impact of climate change on their business

Other CSRD information on environmental, social and governance issues

% of activities aligned with 
Companies to report the % of their current revenues coming from activities aligned with  and % of their future revenues (capital expenditure) coming from activities aligned with 


LARGE COMPANIES AND LISTED COMPANIES

have to publicly report



SFDR (Sustainable Finance Disclosure Regulation):
disclosure when selling sustainable financial products

Products with environmental or social characteristics
may partially pursue 'sustainable investment' as objective - the 'light green' products'

Products with 'sustainable investment' objective
Activities aligned with  are included in the definition of 'sustainable investment' (investment contributing to an environmental or social objective)

WHAT IS THE EU TAXONOMY?

EU Taxonomy: a common classification of economic activities significantly contributing to environmental objectives, using science-based criteria

¹⁵¹ This infographic/factsheet entitled 'How does the EU Taxonomy fit within the sustainable finance framework' is available to download on the European Commission website, see [here](#).

Obligations imposed on undertakings subject to the SFDR

Articles 5 and 6 of the [Taxonomy Regulation](#) impose disclosure obligations in respect of:

- financial products referred to in article 8(1) of [the SFDR](#), which promote environmental characteristics; and
- financial products referred to in article 9(1), (2) and (3) of [the SFDR](#), which commit to invest in an economic activity that contributes to an environmental objective as defined under article 2(17) of the SFDR.

[Articles 5 and 6](#) stipulate that the disclosures, which FMPs are required to make in respect of the above financial products at the pre-contractual stage and in their periodic reporting under articles 6(3) and 11(2) of [the SFDR](#) respectively, must include:

- information on the environmental objective(s), as set out in article 9 of the [Taxonomy Regulation](#), to which the investments underlying the financial product contribute; and
- a description of how, and to what extent, the investments underlying the financial product are in economic activities that qualify as environmentally sustainable under article 3 of the [Taxonomy Regulation](#).

Article 7 of the [Taxonomy Regulation](#) clarifies that for financial products other than those subject to article 8(1) or article 9(1), (2) or (3) of the SFDR, a statement must be included in pre-contractual disclosures and periodic reporting provided pursuant to articles 6(3) and 11(2) of the SFDR that: “[t]he investments underlying this financial product do not take into account the EU criteria for environmentally sustainable economic activities”.

Delegated acts that incorporate sustainability into EU legislation

A number of Delegated Regulations adopted by the European Commission, which have been directly effective in Ireland since August 2022, incorporate sustainability considerations into several existing Directives, including [the Second Markets in Financial Instruments Directive](#) (MiFID II), the [Alternative Investment Fund Managers Directive](#), the [Insurance Distribution Directive](#) and the [Solvency II Directive](#).¹⁵² Furthermore, statutory instruments have been adopted to transpose into domestic law several Delegated Directives adopted by the Commission, which incorporate sustainability considerations into MiFID II's product governance rules and the UCITs regime.¹⁵³

The Capital Requirements Regulation (EU) No 575/2013

The [Capital Requirements Regulation](#) (CRR) entered into force on 1 January 2014. It requires credit institutions (for example, large listed banks) and investment firms to disclose prudential information on capital and risk exposures. Together with the [Capital Requirements Directive](#) (2013/36/EU), the CRR seeks to give effect to the [Basel III Agreement](#) and strengthen the overall resilience of banks across the EU territory. The Basel III Agreement forms part of the [Basel](#)

¹⁵² Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (Arthur Cox, 31 August 2022) available [here](#).

¹⁵³ See: [European Union \(Markets in Financial Instruments\) \(Amendment\) \(No. 3\) Regulations 2022](#) (S.I. No. 363 of 2022); and [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) \(No.2\) Regulations 2022](#) (S.I. No. 442 of 2022).

[Framework](#), a set of global standards for the prudential regulation of banks developed by the Basel Committee on Banking Supervision. The Basel Framework has three pillars: Pillar I - minimum capital requirements, Pillar II - supervisory review process, and Pillar III - enhanced risk disclosure and market discipline.

Article 434a of the CRR mandates the EBA to develop draft implementing technical standards specifying uniform formats for Pillar III disclosures, including ESG disclosures required under article 449a of the CRR. The EBA published its final draft implementing technical standards on Pillar 3 disclosures concerning ESG risks on 24 January 2022 (available [here](#)). The [EBA press release](#) announcing their publication states that:

“The standards put forward comparable disclosures and KPIs [Key Performance Indicators], including a green asset ratio (GAR) and a banking book taxonomy alignment ratio (BTAR), as a tool to show how institutions are embedding sustainability considerations in their risk management, business models and strategy and their pathway towards the Paris agreement goals.”

Affected institutions had to make their first disclosures under the new standards by 30 June 2023.

The Low Carbon Benchmarks Regulation (EU) 2019/2089

Several low-carbon indices have emerged over the years, which can be used as benchmarks for determining the value, and measuring the performance, of supposedly low-carbon financial instruments (for example, bonds or shares) and investment portfolios. However, these indices can have quite different aims and levels of ambition. This in turn can give rise to ambiguity and the potential for greenwashing.

The [EU Low Carbon Benchmarks Regulation](#) seeks to address this shortcoming and promote uniformity and transparency in the application of low-carbon indices. It amends [Regulation \(EU\) 2016/1011](#) (the “Benchmark Regulation”), which established uniform rules for benchmarks across the EU, by introducing two new categories of benchmark: the EU Climate Transition Benchmark (CTB) and the EU Paris-Aligned Benchmark (PAB). It outlines the distinct requirements, which must be satisfied in order for a benchmark to be classified as a CTB or a PAB respectively.

The [EU Low Carbon Benchmarks Regulation](#) obliges benchmark administrators (subject to some exceptions) to provide certain disclosures, including details of how their benchmarks’ methodologies reflect ESG factors. It entered into force on 10 December 2019. The obligations imposed under the Regulation came into effect on a phased basis from 30 April 2020 to 31 December 2022.

European Climate Law

The Climate Law Regulation (EU) 2021/1119 (the “[European Climate Law](#)”) entered into force on 29 July 2021. It is relevant to the area of ESG in that it seeks to ensure that all EU policies in areas such as climate, energy, transport and taxation, are directed toward the achievement of carbon neutrality in the EU territory by 2050.¹⁵⁴ It obliges EU institutions and Member States to implement measures aimed at achieving carbon neutrality and monitoring progress in this regard.¹⁵⁵ It also

¹⁵⁴ European Commission, ‘European Climate Law’, available [here](#).

¹⁵⁵ *Ibid*.

provides for the establishment of a [European Scientific Advisory Board on Climate Change](#) to provide independent advice.

Ireland's Climate Action Plan

At the domestic level, the [Climate Action and Low Carbon Development Act 2015](#), as amended, makes the attainment of carbon neutrality by 2050 a national climate objective. In this regard, it also implements a commitment included in the [Programme for Government](#). [Section 6A](#) requires the Government to approve three back-to-back five-year carbon budgets with the first commencing on 1 January 2021. The first two budgets should provide for a 51% reduction in greenhouse gas emissions by the end of 2030 relative to 2018 levels. [Section 4](#) requires the Minister for the Environment, Climate and Communications to prepare an update to the Climate Action Plan every year and a long-term national climate action strategy every five years. The annually updated Climate Action Plan must specify the sector specific measures necessary to ensure adherence to the carbon budget and sectoral emissions ceilings for the period concerned. [Section 14B](#) requires local authorities to prepare five-year local authority climate action plans. The *2015 Act, as amended*, also provides for national adaptation frameworks and sectoral adaptation plans.

[Section 4\(11\)](#), [section 6B\(13\)](#), and [section 6C\(9\)](#) of the [Climate Action and Low Carbon Development Act 2015](#), as amended, require Ministers, insofar as is practicable, to perform their functions in a manner consistent with the Climate Action Plan, national long-term climate action strategy, carbon budget and/or carbon emissions ceiling for the sector concerned, as relevant. [Section 14A](#) requires the Minister for the Environment, Community and Local Government to report annually to the relevant Oireachtas joint committee on progress achieved in discharging the targets included in the Climate Action Plan, including any policies, mitigation measures and adaptation measures adopted. Other relevant Ministers may also be required under [section 14A](#) to provide climate reporting to the joint committee concerning the achievement of sector specific targets and compliance with sectoral emissions ceilings. [Section 14A](#) also permits the joint committee to make recommendations to Ministers, where it considers it appropriate to do so.

The [Climate Action Plan 2023 \(CAP23\)](#) was launched on 21 December 2022 and comprises the second annual update to the 2019 Climate Action Plan. CAP23 is the first Climate Action Plan to be prepared following the introduction of carbon budgets and sectoral emissions ceilings under the [Climate Action and Low Carbon Development \(Amendment\) Act 2021](#). It provides a roadmap for achieving a 51% reduction in overall greenhouse gas emissions by 2030 (relative to 2018 levels) and ultimately achieving net-zero emissions by 2050.

[Section 8](#) of the [Climate Action and Low Carbon Development Act 2015](#), as amended, provides for the establishment of the [Climate Change Advisory Council](#) as an independent statutory body. The Council's functions include providing advice and recommendations to the Government in relevant areas, as set out in the Act, and preparing an annual report on progress achieved in achieving reductions in greenhouse gas emissions and other climate-related goals.

On 25 July 2023, the Climate Change Advisory Council published its 2023 Annual Report.¹⁵⁶

¹⁵⁶ Climate Change Advisory Council, 'Annual Review 2023' (2023) Summary, available [here](#).

The Climate Change Advisory Council asserted that:
“at the current rate of policy implementation, Ireland will not meet the targets set in the first and second carbon budget periods unless urgent action is taken immediately and emissions begin to fall much more rapidly”.

[Climate Change Advisory Council, 2023 Annual Report, Summary, available [here](#)]

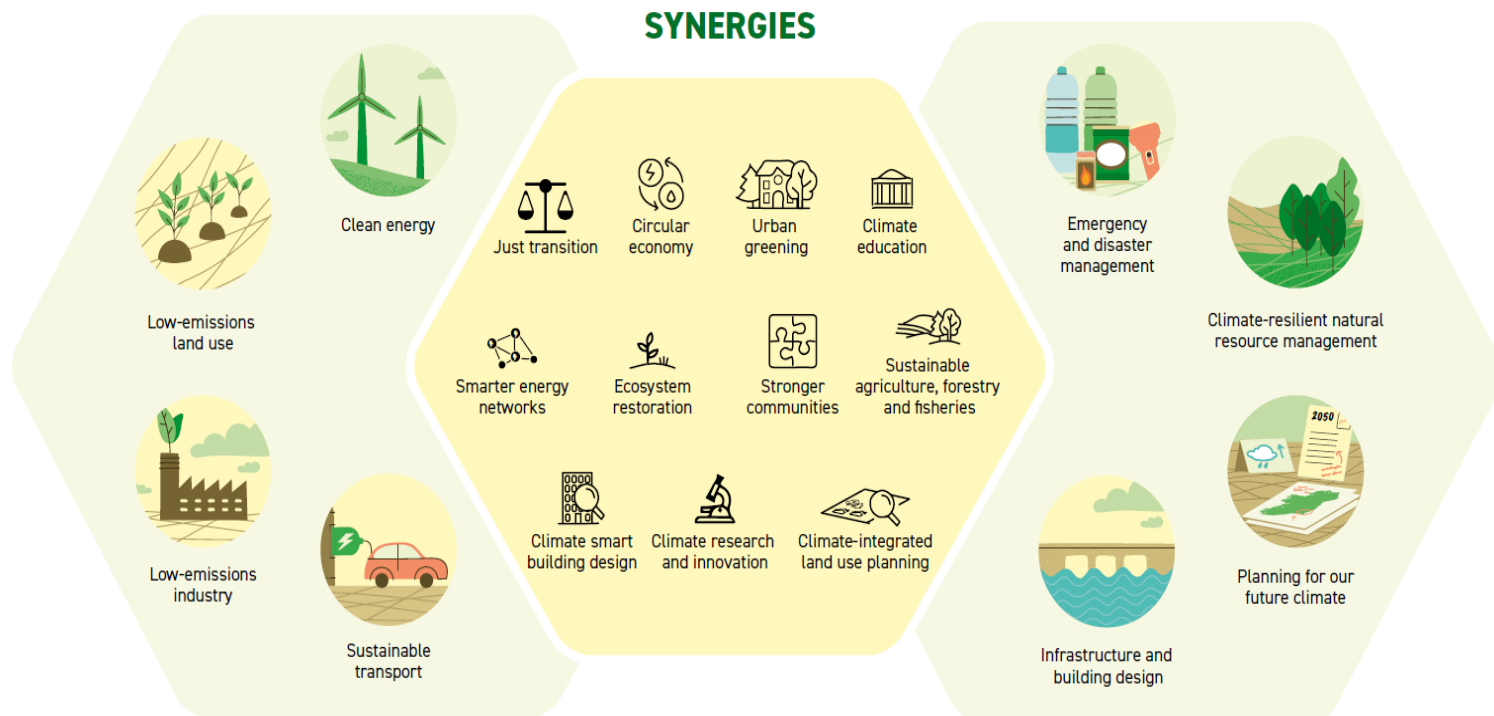
The Climate Change Council stressed in its 2023 Annual Report that the “first task is to reduce and ultimately prevent emissions of greenhouse gases”, including through engagement with communities so as to ensure a fair and equitable transition.¹⁵⁷ It made several general and sector-specific recommendations.¹⁵⁸ It identifies opportunities for synergies and co-benefits from integrated adaptation and mitigation actions, as outlined in the infographic below.

Infographic 6: Opportunities for Synergies and Co-benefits from Integrated Adaptation and Mitigation Actions¹⁵⁹

MITIGATION

SYNERGIES

ADAPTATION



¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ This table is taken from Climate Change Advisory Council, ‘Annual Review 2023’ (2023), available [here](#).

In June 2023, the EPA published its greenhouse gas emissions projections for 2022-2040. It anticipates that:

- Ireland will only achieve a 29 per cent reduction in greenhouse gas emissions by 2030;
- almost all sectors will exceed their national sectoral emissions ceilings for 2025 and 2030, including agriculture, electricity, transport and industry; and
- the first two five-year carbon budgets will not be met by a significant margin.¹⁶⁰

“Ireland will miss its 2030 climate targets unless all sectors of the economy deliver emission reductions in the short term and sustain this delivery into the future. ... A continued lack of delivery of large-scale practical actions to decarbonise activities in all sectors will see us exceed our carbon budgets.”

[Laura Burke, Director General, EPA, 1 June 2023, available [here](#)]

The Oireachtas Library and Research Service has published [Environmental Indicators for Quarter 2, 2023](#), which include information on Ireland’s greenhouse gas emissions since 1990.

As part of [Ireland’s Green Deal](#), the European Commission is working with the Government to help achieve shared goals concerning climate change and sustainability, for example, by encouraging the government to enhance the protections afforded to Irish peat bog habitats.

Gender Balance on Corporate Boards Directive

EU Directive 2022/2381 on improving the gender balance on boards of directors of large, listed companies (the “[Gender Balance on Corporate Boards Directive](#)”) was adopted on 23 November 2022. It entered into force on approximately 27 December 2022.¹⁶¹ EU Member States have two years to transpose the Directive into domestic law.¹⁶² The Directive will require large companies that are listed on an EU stock exchange to ensure that by 30 June 2026, 40% of non-executive director positions, or 33% of all director positions, are filled by members of the under-represented sex.¹⁶³ In-scope companies will be required to report annually on the composition of their boards of directors and, if the Directive requirements have not been satisfied, outline the steps they will undertake to achieve them. SMEs with less than 250 employees do not come within the scope of the Directive.¹⁶⁴

Anticipated EU legislation concerning ESG

This section discusses some anticipated developments at the EU level in the area of ESG.

¹⁶⁰ EPA, ‘Ireland projected to fall well short of climate targets, says EPA’ (1 June 2023) available [here](#).

¹⁶¹ European Sources Online, ‘Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures’ (7 December 2022) available [here](#).

¹⁶² Suzanne Kearney, ‘New Gender Balance Targets on Boards of EU Listed Companies’ (*Arthur Cox Insights Blog*, 25 November 2022) available [here](#).

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

Proposed EU Social Taxonomy Regime

In February 2022, the Platform on Sustainable Finance, an advisory body to the European Commission, published a final report on a potential EU social taxonomy regime, which would operate as a classification system for determining whether an economic activity is sustainable from a *social* perspective. The report identifies criteria that could potentially be applied for the purposes of making such a determination, including whether the activity: offers decent work, including for value-chain workers; promotes adequate living standards and wellbeing for end-users; and contributes to inclusive and sustainable communities and societies.¹⁶⁵

Notwithstanding a demonstrated demand amongst investors for socially beneficial investment opportunities, recent reports suggest that the European Commission has indefinitely postponed its plans to develop a social taxonomy regime in response to the Russian invasion of Ukraine.¹⁶⁶ Some commentators suggest that part of the problem derives from the absence of international standards for determining social impact, a dearth of reliable data and the fact that social impact tends to be qualitative in nature and therefore difficult to measure.¹⁶⁷ However, the proposed Directive on Corporate Sustainability Due Diligence could help to overcome some of these obstacles.

Proposed Corporate Sustainability Due Diligence Directive

In February 2022, the European Commission published a proposed Directive on Corporate Sustainability Due Diligence (CSDDD) (see [here](#) and [here](#)), which seeks to impose due diligence obligations on large EU companies and certain non-EU companies concerning actual and potential adverse impacts of their operations on the environment and the enjoyment of human rights.

“For businesses these new rules will bring legal certainty and a level playing field. For consumers and investors they will provide more transparency.”

[European Commission [press release](#), dated 23 February 2022]

The Council of the EU adopted its negotiating [position](#) on the proposed CSDDD in November 2022 whereas the [European Parliament adopted its position](#) on 1 June 2023. The latter suggests a number of amendments to the text originally proposed by the Commission. It envisages that the CSDDD obligations will apply after three or four years, depending on the company's size, and that smaller companies would be able to delay implementing the new rules by an additional year.¹⁶⁸

¹⁶⁵ Platform on Sustainable Finance, 'Final Report on Social Taxonomy' (February 2022) pp 7-8, available [here](#).

¹⁶⁶ Elizabeth Meager, 'Why the social taxonomy is no longer an EU priority' (*Capital Monitor*, 12 September 2022) available [here](#).

¹⁶⁷ Benjamin David, 'Social taxonomy: Is the shelving of the EU's social taxonomy all gloom for the financial sector?' (*Funds Europe*, October 2022) available [here](#).

¹⁶⁸ European Parliament Press Release, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#).

[Trilogues](#) (official negotiations between the European Parliament and the Council, which are mediated by the European Commission) are now taking place and it is hoped that a final agreement will be reached on the CSDDD by the end of 2023.

Proposed Scope of Application of the CSDDD

Large, limited liability companies, which are incorporated in EU Member States and satisfy applicable thresholds concerning turnover and staff numbers, will fall within the scope of the CSDDD. These in-scope EU companies may be further sub-divided into two categories: “Group 1” companies and “Group 2” companies.

Parent companies with at least 500 employees and a net worldwide turnover of at least €150 million are classified as Group 1 companies. Companies with at least 250 employees and a net worldwide turnover of at least €40 million are classified as Group 2 companies. Under the text initially proposed by the European Commission, Group 2 companies had to have operations in defined high impact sectors such as textiles, agriculture and mineral extraction in order to fall within the Directive’s scope. However, the European Parliament is proposing that this requirement be deleted thereby extending the scope of the CSDDD to companies in the financial services sector. In contrast, the Council of the EU wishes to give individual EU Member States the capacity to choose whether or not to extend the regime to the financial services sector when they transpose the Directive into national law.¹⁶⁹ This is one of the issues that will be addressed during the Trilogues.

Companies incorporated in a third State outside of the EU territory, which generate a net worldwide turnover of at least €150 million will also be subject to the proposed CSDDD provided that at least €40 million of their net worldwide turnover is generated within the EU.¹⁷⁰

Micro companies and SMEs do not directly fall within the scope of the proposed CSDDD. Nevertheless, the draft text provides for supporting measures for SMEs as they may be indirectly affected given that the proposed disclosure obligations extend to a company’s supply chain, as discussed below.¹⁷¹ Over 220 civil society groups have issued a statement calling for the proposed CSDDD to be strengthened, including by bringing SMEs directly within its scope.¹⁷²

Obligations under the proposed CSDDD

The due diligence obligations imposed on in-scope companies include identifying any actual and potential adverse impacts on the environment or the enjoyment of human rights as a result of the operations of the company or its subsidiaries, or as a result of any other activities in the company’s value chain (including direct and indirect established business relationships). Where necessary, the company will need to take measures to prevent, end, mitigate and account for adverse impacts.

¹⁶⁹ Linklaters, ‘European Parliament agrees negotiating position on CSDDD - let the trilogues commence’ (1 June 2023) available [here](#).

¹⁷⁰ Ibid.

¹⁷¹ European Commission, ‘Corporate Sustainability Due Diligence’, see [here](#).

¹⁷² A&L Goodbody, ‘Proposed Directive on Corporate Sustainability Due Diligence’ (27 June 2022) p.2, available to download [here](#).

Adverse impacts could include, for example, biodiversity loss, environmental degradation or adverse impacts arising from the burning of fossil fuels, the use of child labour or general labour exploitation [[European Parliament Press Release](#), June 2023].

The inclusion of activities within the company's overall value chain means that in-scope companies will be required to monitor and assess the activities of partners involved in areas such as supply, transport, sale, distribution, storage and waste-management.¹⁷³ In-scope companies will also have to incorporate relevant due diligence obligations into the company's corporate strategy.

The CSDDD, as originally proposed by the European Commission, requires Group 1 companies and non-EU companies that satisfy the Group 1 turnover threshold to prepare a climate transition plan, which is aligned with the goal of limiting global warming to 1.5°C as set out in the [Paris Agreement](#).¹⁷⁴ The European Parliament's proposed amendments seek to extend this obligation to all in-scope companies.¹⁷⁵ The Parliament is also proposing that the amount of variable remuneration (i.e. bonuses) payable to directors of large companies with over 1,000 employees be made contingent upon progress achieved in meeting targets set out in the climate transition plan.¹⁷⁶ In contrast, the draft CSDDD as initially proposed by the Commission, requires companies to have regard to obligations related to climate action plans when setting variable remuneration for directors; however, only where variable remuneration is linked to a director's contribution to the company's business strategy, long-term interests and sustainability.¹⁷⁷

The draft CSDDD, as proposed by the European Commission, requires EU Member States to designate a national authority to supervise and enforce its implementation, including through the imposition of proportionate sanctions. The European Parliament is proposing that these sanctions include "naming and shaming" non-compliant companies, removing the goods of non-compliant companies from the market, and fines of at least 5% of a company's net worldwide turnover.¹⁷⁸ It is also proposing that non-EU companies who are non-compliant be prohibited from engaging in public procurement within the EU territory.¹⁷⁹ Non-compliant companies will also be susceptible to civil liability and may be required to pay compensation to victims in the form of damages for any harm/loss endured as a result of their failure to adhere to their due diligence obligations.¹⁸⁰

The European Parliament is also proposing that in-scope companies be required to: engage with parties affected by their activities, including human rights and environmental activists; introduce a grievance mechanism; and regularly monitor the effectiveness of their due diligence policy.¹⁸¹

¹⁷³ European Parliament Press Release, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#)

¹⁷⁴ A&L Goodbody, 'Proposed Directive on Corporate Sustainability Due Diligence' (27 June 2022) p.7, available to download [here](#).

¹⁷⁵ European Parliament Press Release, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#).

¹⁷⁶ *Ibid.*

¹⁷⁷ A&L Goodbody, 'Proposed Directive on Corporate Sustainability Due Diligence' (27 June 2022) p.7, available to download [here](#).

¹⁷⁸ European Parliament Press Release, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#).

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

Article 25 of the proposed CSDDD requires directors of in-scope EU companies to take into account the human rights, climate and environmental implications of their decision making when fulfilling their fiduciary duty to act in the company's best interests. Article 26 of the proposed CSDDD, as initially published by the European Commission, requires directors of in-scope EU companies to monitor compliance with the CSDDD due diligence obligations. However, the European Parliament is proposing that this provision be deleted.¹⁸²

In order to enhance transparency for investors, it is envisaged that information about a company's due diligence policy will be made available on the [European Single Access Point \(ESAP\)](#).¹⁸³ The ESAP is meant to operate as a single access point for all publicly available financial and sustainability-related information in respect of EU companies and EU investment products.

Proposed European Green Bond Standard Regulation

On 6 July 2021, the European Commission published a proposed regulation establishing a [European Green Bond Standard \(EUGBS\)](#). In February 2023, the European Parliament and the Council of the EU reached provisional agreement on the text of the proposed EUGBS (available [here](#)). The Regulation still has to be formally ratified by the Parliament and Council, and is expected to apply 12 months after ratification.¹⁸⁴

Once adopted, the Regulation will operate as a voluntary "gold standard" for the use of green bonds by companies and public authorities seeking to raise funds on capital markets to finance large-scale investments, whilst also meeting rigorous sustainability requirements.¹⁸⁵ Issuers of green bonds covered by the EUGBS will have to ensure that at least 85% of the funds raised through the bond are allocated to economic activities that align with the Taxonomy Regulation.¹⁸⁶ The EUGBS is intended to make it easier for investors purchasing the bonds to assess and trust the sustainability of investments and accordingly, minimise the risk of greenwashing.¹⁸⁷

Proposed changes to the EU Securitisation Framework

Proposed changes to the [EU Securitisation Framework](#) concerning ESG disclosures are also under consideration. Securitisation is "the practice of pooling together various types of debt instruments (assets) such as mortgages and other consumer loans and selling them as bonds to investors".¹⁸⁸ Currently, ESG disclosures are required in respect of simple, transparent and standardised (STS) securitisations where the underlying exposures are residential loans, auto

¹⁸² Linklaters, 'European Parliament agrees negotiating position on CSDDD - let the trilogues commence' (1 June 2023) available [here](#).

¹⁸³ European Parliament Press Release, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#).

¹⁸⁴ Arthur Cox, 'Green Bonds: Update on EU Green Bond Standard Regulation' (*Insights blog*, 1 June 2023) available [here](#).

¹⁸⁵ European Commission, 'Strategy for financing the transition to a sustainable economy' (6 July 2021) available [here](#).

¹⁸⁶ Arthur Cox, 'Green Bonds: Update on EU Green Bond Standard Regulation' (*Insights blog*, 1 June 2023) available [here](#).

¹⁸⁷ European Commission, 'Strategy for financing the transition to a sustainable economy' (6 July 2021) available [here](#).

¹⁸⁸ Peter Bondarenko, 'Securitization', in Britannica Money Glossary, available [here](#).

loans and leases.¹⁸⁹ For such STS securitisations, the originators and sponsors are required under Regulation (EU) 2017/2402 (the “[EU Securitisation Regulation](#)”) to publish the available information related to the environmental performance of the underlying assets.¹⁹⁰

In 2021, the EU Securitisation Regulation was amended to permit originators and sponsors to publish the available information related to the principal adverse impacts of the underlying assets, instead of information regarding environmental performance.¹⁹¹ The European Supervisory Authorities (ESAs) were mandated to prepare regulatory technical standards (RTS) on the content, methodology and presentation of the information required concerning principal adverse impacts based, insofar as possible, on those set out in the RTS for the SFDR.¹⁹² In May 2023, the ESAs submitted final draft RTS to the European Commission for consideration.¹⁹³ The European Commission is expected to approve the draft RTS within three months.¹⁹⁴ Once the RTS come into effect, originators of in-scope STS securitisations may elect to either provide disclosures concerning: (i) the environmental performance of the underlying assets, or (ii) the principal adverse impacts of the underlying assets in accordance with the RTS.¹⁹⁵

Potential EU Regulation on ESG Ratings

The EU is also considering ways of increasing transparency surrounding the ESG ratings market, including the potential introduction of rules concerning the operation of ESG rating agencies.¹⁹⁶ As explained on the European Commission’s Sustainable Finance Factsheet, ESG ratings assess the ESG characteristics, exposure to ESG risks or impact on the environment and society in general of an entity, a financial instrument or a financial product.¹⁹⁷

¹⁸⁹ Maedhbh Clancy and Phil Cody, ‘ESG and Securitisation: ESG disclosures for certain STS securitisations’ (*Arthur Cox Insights*, 31 May 2023) available [here](#).

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ European Commission, ‘Sustainable Finance Factsheet’ (June 2023) available [here](#).

¹⁹⁷ See *ibid.*

Other relevant EU legislation that promotes sustainable development and business practices

The EU Emissions Trading System

Infographic 7: EU ETS¹⁹⁸



The EU Emissions Trading System (the “EU ETS”) commenced in January 2005 and is currently in its fourth phase (2021 to 2030). It is provided for under EU Directive 2003/87/EC, as amended, and was transposed into national law under the *European Communities (Greenhouse Gas Emissions Trading) Regulations 2012* (*Statutory Instrument (SI) No. 490 of 2012*) as amended, and the *European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010* (*SI No. 261 of 2010*), as amended.

The EU ETS seeks to reduce the greenhouse gas emissions from airlines and certain stationary installations (for example, power stations and heavy energy-using industrial plants) in EU Member States, Norway, Iceland and Liechtenstein. It operates on a cap-and-trade basis whereby a limit (cap) is placed on the overall emissions that can be produced by participating companies in the countries covered by the Directive. The cap is set at EU level and is reduced over time in accordance with the ultimate objective of achieving carbon neutrality by 2050.

Companies participating in the EU ETS must acquire emission allowances by purchasing them at an auction or from a carbon broker or trader.¹⁹⁹ Some companies are afforded certain free allowances by the European Commission. Companies regulated by the EU ETS are required to open Union Registry accounts to hold their carbon allowances.²⁰⁰ They must surrender sufficient carbon allowances from their respective accounts each year to cover their greenhouse gas

¹⁹⁸ This infographic is reproduced from: European Council, ‘Fit for 55: reform of the EU Emissions Trading System’, available [here](#).

¹⁹⁹ EPA, ‘Auctioning of Carbon Allowances’, available [here](#).

²⁰⁰ EPA, ‘The EU Emissions Trading System’. available [here](#).

emissions or face heavy penalties.²⁰¹ A company that reduces its emissions will have excess carbon allowances that it can maintain for future use or sell to another company that has insufficient allowances to offset its emissions.²⁰² The EPA administers Ireland's EU ETS scheme.

In July 2021, the European Commission proposed a set of legislative proposals known as the 'Fit for 55' package, which were ultimately adopted by the European Parliament and the Council of the EU during April 2023. The reforms:

- introduce more ambitious emissions reduction goals for existing areas, for example, by requiring a reduction in emissions of 62% by 2030 as compared with 41%;
- reduce and phase out certain allowances;
- extend the existing EU ETS to maritime transport (between 2024 and 2026);
- create a new ETS for buildings, road transports and fuels for additional sectors;
- increase funding for decarbonising ETS sectors; and
- provide for contributions to the social climate fund with a view to protecting the most vulnerable people and companies from the carbon pricing impact of the reforms.²⁰³

Several of the legislative instruments that together comprise the 'Fit for 55' are already in force.²⁰⁴

The [Effort Sharing Regulation \(EU\) 2023/857](#) was adopted on 19 April 2023 and has entered into force.²⁰⁵ It imposes obligations on EU Member States with a view to reducing overall emissions from sectors not covered by the EU ETS, including transport, buildings, agriculture and waste, by 40% by 2030, as compared with 2005 levels.²⁰⁶ It requires Ireland to limit its overall emissions by at least 42% by 2023, as compared with 2005 levels.²⁰⁷ The Commission will adopt delegated acts establishing annual emission allocations for individual EU Member States.²⁰⁸

The Renewable Energy Directive II

The [Renewable Energy Directive \(EU\) 2018/2001](#), (RED II) is a recast of the Renewable Energy Directive (2009/28/EC). It establishes a target of 32% in terms of the overall share of energy to be derived from renewable sources across the EU by 2030. It requires EU Member States to prepare national energy and climate plans for 2021-2030 in which they outline their national contribution to the overall EU target.

The Russian invasion of Ukraine provided a further incentive for the EU to reduce its overall dependence on fossil fuels. Accordingly, the European Commission proposed to amend REDII to increase the applicable target to 45%. On 30 March 2023, the European Parliament and the Council of the EU reached [a provisional agreement](#) on a new binding target for 2030 of at least 42.5%, whilst still aiming for 45%.

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Council of the European Union, 'Infographic – Fit for 55: reform of the EU emissions trading system', text version, available [here](#).

²⁰⁴ See discussion in: Katrina Donnelly, 'Fit for 55 and REPowerEU: New legislation in force and sign-off awaited on remaining proposals' (*Arthur Cox Insights Blog*, 14 June 2023) available [here](#).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

The Energy Labelling Regulation

The Energy Labelling Regulation (EU) 2017/1369 established a framework for national rules on energy labelling, which applies to a wide range of products.

International standards and codes that promote ESG

A number of international standards, guidelines and principles offer examples of international best practice concerning ESG.

TCFD Recommendations

The Task Force on Climate-related Financial Disclosures (TCFD) was created in 2015 and current has 31 members from the G20 countries. It has developed recommendations in four core areas: governance, strategy, risk management, and metrics and targets, which are intended to:

- help companies incorporate climate-related risks and opportunities into their risk management and strategic planning processes; and
- enhance the transparency, quality and consistency of climate-related financial disclosures.

Marcel Meyer, who leads Deloitte Switzerland's sustainability services, reports that "1,700 organisations worldwide, in the public and private sectors, as well as government entities, support the TCFD".²⁰⁹ Meyer believes that "[m]ore governments will shift from recommending the TCFDs as guidance to enacting laws and policies to embed the recommendations into mandatory legislation and regulation".²¹⁰ Irish-domiciled companies with a premium or standard listing on the London Stock Exchange are obliged to disclose climate-related financial information in accordance with the TCFD recommendations on a 'comply or explain' basis.²¹¹ Other Irish companies may voluntarily disclose such information.²¹²

UK Corporate Governance Code

Companies with an equity listing on Euronext Dublin or a premium listing on the London Stock Exchange are required to adhere to relevant provisions of the UK Corporate Governance Code concerning ESG.²¹³

IFRS Sustainability Disclosure Standards and SASB Standards

The International Sustainability Standards Board, which is part of the International Financial Reporting Standards (IFRS) Foundation,²¹⁴ published its first two IFRS Sustainability Disclosure Standards in June 2023: IFRS S1 General Requirements for Disclosure of Sustainability-related

²⁰⁹ Marcel Meyer, 'What is the TCFD and why does it matter?: Understanding the various layers and implications of the recommendations' (*Deloitte Switzerland*, undated) available [here](#).

²¹⁰ *Ibid.*

²¹¹ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#).

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ The IFRS Foundation is a "not-for-profit, public interest organisation established to develop and promote high-quality, understandable, enforceable and globally accepted accounting and sustainability disclosure standards—IFRS Standards". See IFRS, 'Who We Are', available [here](#).

Financial Information and IFRS S2 Climate-related Disclosures.²¹⁵ These IFRS Standards are intended to provide a global baseline for company disclosures concerning sustainability.

The SASB Standards are also within the remit of the IFRS. They identify the ESG issues of most relevance to the financial performance of 77 categories of industries with a view to assisting companies in disclosing the most financially material sustainability information to their investors.

GRI Standards

The GRI Standards were developed by the Global Reporting Initiative (GRI), an independent, international organisation, to provide organisations with a common terminology for reporting publicly on the economic, environmental and social impacts of their operations.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct are a set of non-binding principles and standards agreed by governments, which are addressed to multinational enterprises operating in or from adhering states.

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights are a non-binding, but authoritative, set of 31 principles, which define the duties of states and businesses concerning human rights under three pillars: Protect, Respect and Remedy. In Ireland, the National Plan on Business and Human Rights (2017-2020) seeks to give effect to the Guiding Principles. In 2021, the Department of Foreign Affairs launched new guidance on business and human rights for Irish businesses. On 27 July 2023, the Tánaiste, Minister for Foreign Affairs and Minister for Defence, Micheál Martin, T.D., and the Minister of State with responsibility for Trade Promotion at the Department of Enterprise, Trade and Employment, Dara Calleary, T.D., launched a [public consultation](#) on the development of Ireland's second National Plan on Business and Human Rights.

UN Global Compact

Companies may voluntarily sign up to the UN Global Compact and incorporate the Compact's Ten Principles concerning human rights, workers' rights, environmental protection and anti-corruption into their strategies, policies and procedures. Participating companies are also encouraged to take strategic action to achieve broader societal objectives such as the UN SDGs. In terms of incentives, companies are offered guidance, tools and training materials to assist them in fulfilling their obligations under the Compact, as well as access to partnerships and knowledge sharing opportunities with a range of stakeholders.

ISO 26000 Standard

The ISO 26000 Standard provides guidance for organisations concerning social responsibility and the integration, implementation and promotion of socially responsible behaviour with a view to achieving sustainable development. It was launched in 2010 following five years of negotiations with representatives of governments, NGOs, industry, consumer groups and labour organisations.

²¹⁵ IFRS, 'ISSB issues inaugural global sustainability disclosure standards' (26 June 2023) available [here](#).

Obligations concerning ESG and sustainable development under International Law

This section offers some examples of treaties ratified by Ireland, which impose obligations on the State concerning ESG and sustainability under international law.²¹⁶ For example, Ireland has ratified treaties that seek to combat climate change, including:

- the [United Nations Framework Convention on Climate Change](#) (UNFCCC);
- the [Kyoto Protocol](#) to the UNFCCC; and
- the [Paris Agreement](#).

The Kyoto Protocol and the Paris Agreement require the State to reduce its total national greenhouse gas emissions in order to help meet the Paris Agreement target of limiting the global temperature increase to 1.5 degrees Celsius above pre-industrial levels.

Ireland has also ratified several UN, Council of Europe and International Labour Organization treaties, which promote human rights, labour rights and equality, for example:

- the [European Convention on Human Rights](#);
- the [International Covenant on Civil and Political Rights](#);
- the [International Covenant on Economic, Social and Cultural Rights](#);
- the [Convention on the Elimination of All Forms of Discrimination Against Women](#);
- the [International Convention on the Elimination of All Forms of Racial Discrimination](#);
- the [Convention on the Rights of Persons with Disabilities](#);
- the [Equal Remuneration Convention, 1951 \(No. 100\)](#), and
- the [Forced Labour Convention, 1930 \(No. 29\)](#).

Additional domestic legislation of relevance

This section discusses some additional domestic legislation of relevance to the area of ESG, sustainability, emissions reduction and environmental protection more generally.

The Circular Economy and Miscellaneous Provisions Act 2022

The [Circular Economy and Miscellaneous Provisions Act 2022](#) was signed into law on 21 July 2022 and aims to support Ireland's transition to a circular economy. Some of its substantive provisions of the Act have yet to be commenced.²¹⁷

[Section 6](#) defines a circular economy as: "an economic model and the policies and practices which give effect to that model in which

- (a) production and distribution processes in respect of goods, products and materials are designed so as to minimise the consumption of raw materials associated with the production and use of those goods, products and materials,

²¹⁶ By ratifying a treaty (legal agreement between States), Ireland is bound to implement the provisions of the treaty under international law. This list of treaties included in this section is in no way exhaustive.

²¹⁷ See Ireland's online Statute Book, available [here](#).

- (b) the delivery of services is designed so as to reduce the consumption of raw materials,
- (c) goods, products and materials are kept in use for as long as possible thereby further reducing the consumption of raw materials and impacts harmful to the environment,
- (d) the maximum economic value is extracted from goods, products, and materials by the persons using them, and
- (e) goods, products and materials are recovered and regenerated at the end of their useful life”.

[Section 7](#) requires the Minister for the Environment, Climate and Communications to prepare, and submit to the Government for approval, a circular economy strategy at least every three years. Before preparing the strategy, the Minister must consult with the public and other relevant actors, including bodies representing economically or socially disadvantaged persons or persons who have a disability. The strategy should include targets for relevant sectors, including construction, agriculture, retail, packaging, textiles and electronic equipment. These targets should incorporate specific goals, for example, increases in the use of re-usable products and materials. The strategy must also promote the use of criteria relating to the circular economy in public procurement. Every year, the Minister must publish a report on the implementation of the strategy on the Departmental website. The first circular economy strategy, [The Whole of Government Circular Economy Strategy 2022-2023](#), was published in December 2021.

[Sections 8](#) and 9 provide for the creation of a Circular Economy Fund, in place of the Environment Fund, whose proceeds shall be directed toward the promotion of the circular economy.

[Section 10](#) requires the EPA to establish a circular economy programme, outlining the measures it will take to give effect to the objectives set out in the circular economy strategy. It stipulates that the programme must be reviewed at least every 6 years. The [Circular Economy Programme 2021-2027](#) was launched in December 2021.

[Section 15](#) places the National Food Waste Prevention Strategy on a statutory footing.

[Sections 11](#) and 12 authorise the Minister for the Environment, Climate and Communications, subject to government approval, to introduce regulations imposing an environmental levy on retailers in respect of certain single-use items, including beverage cups, food containers and packaging. [Section 13](#) provides that failure to pay the levy and/or adhere to certain regulatory provisions surrounding the levy payment will constitute an offence punishable:

- on summary conviction by a €5,000 fine and/or up to 12 months imprisonment; and
- on conviction on indictment by a fine of up to €50,000 and/or imprisonment for up to two years.

[Section 14](#) provides for the introduction, by way of regulations, of a prohibition on the supply of certain single-use items and plastic bags. In making such regulations, the Minister must “have regard to the level of material wastage associated with the single-use item or, as the case may be, the class or classes of single-use item, concerned” (*section 14(2)*). Failure to comply with the regulations will constitute an offence to which the sanctions applicable in respect of breaches of the environmental levy regulations, outlined above, shall apply.

The Act introduces measures to combat illegal fly-tipping and littering, including measures involving the use of CCTV and mobile recording devices, albeit subject to data protection legislation. It also provides for various waste management measures, including mandatory

segregation. [Section 29](#) introduces a new waste recovery levy which shall apply, for example, to waste sent for incineration. Failure to pay the levy will constitute an offence. In order to reduce reliance on fossil fuels, [Part 5 of the Act](#) amends the [Minerals Development Act 1940](#) and the [Minerals Development Act 2017](#) to prohibit the granting of new licences to prospect for coal, lignite and oil shale.²¹⁸

exception is

that the Act provides for a ban on licences for oil and gas exploration through repeal of certain provisions of the Petroleum and Other Minerals Development Act 1960 (Section 21)

Licensing of activities with an environmental impact

Activities, which can impact the environment, may require a licence or permit granted by the EPA, a local authority or Uisce Éireann. These licences may be issued subject to strict conditions.

Industrial Emissions and Integrated Pollution Control Licences

In accordance with the [Industrial Emissions Directive](#) (2010/75/EC) and its domestic implementing regulations, the EPA grants and enforces Industrial Emissions (IE) licences for specified agricultural and industrial activities listed in the [First Schedule to the Environmental Protection Agency Act 1992, as amended](#).²¹⁹

The EPA also grants Integrated Pollution Control (IPC) licences, which cover all emissions from a facility, for specified agricultural and industrial activities listed in the [First Schedule of the Protection of the Environment Act 2003](#).²²⁰ Before issuing an IPC licence, the EPA must be satisfied that the emissions will not cause a significant adverse environmental impact.²²¹

Under the [Environmental Protection Agency Act, 1992, as amended](#), the EPA cannot grant an IPC licence or an IE licence if the emissions from the proposed activity would cause pollution.²²²

Waste Licences and Permits

The EPA also grants and enforces waste licences for waste activities listed in [the 3rd and 4th Schedule to the Waste Management Act 1996, as amended](#), including transfer stations, landfills, ship recycling, and hazardous waste disposal.²²³ Before granting the licence to either a local authority or a private operator, the EPA must be satisfied that the activity will not cause environmental pollution.²²⁴ Local authorities grant and enforce Waste Permits and Certificates of Registration, which are issued to private operators in respect of waste activities listed in the *Third*

²¹⁸ [Section 21](#) of the *Climate Action and Low Carbon Development (Amendment) Act 2021* provides for a ban on licences for oil and gas exploration by repealing relevant sections of the [Petroleum and Other Minerals Development Act 1960](#)

²¹⁹ Some activities only require an EPA licence above specified thresholds. See: EPA, 'Industrial Emissions licensing' available [here](#).

²²⁰ Some activities only require an EPA licence above specified thresholds. See: EPA, 'Integrated Pollution Control licensing' available [here](#).

²²¹ *Ibid.*

²²² *Ibid.*

²²³ EPA, 'Waste Licensing' available [here](#).

²²⁴ *Ibid.*

*Schedule to the Waste Management (Facility Permit & Registration) Regulations (S.I. No. 821 of 2007), as amended.*²²⁵

Environmental Impact Assessments

Large-scale projects usually require an Environmental Impact Assessment (EIA) before they are granted an IPC licence, IE licence or a waste licence by the EPA, or planning permission.²²⁶ An EIA is usually mandatory for projects involving crude oil refineries, chemical and food manufacturing, waste and infrastructure, and large-scale housing and tourism.²²⁷

Licensing regimes concerning water emissions, pollution and abstractions

IE licences, IPC licences and waste licences can be issued by the EPA subject to water emission limits values (ELVs).²²⁸ Where ELVs are not included in the licence terms, the licence holder is still bound by the applicable water pollution legislation, including the [Local Government \(Water Pollution\) Act 1977, as amended](#).²²⁹

Discharges to the aquatic environment from sewerage systems operated by Uisce Éireann require a waste water discharge licence or certification of authorisation from the EPA. The issuance of such licences and certifications is subject to the requirements of [applicable waste water discharge legislation](#). Discharges of effluent to waters and sewers, subject to limited exceptions, require a discharge licence issued in accordance with [sections 4 and 16](#) of the [Local Government \(Water Pollution\) Act 1977, as amended](#). The discharge of trade and sewage effluent to surface water or groundwater requires a licence issued by a local authority under [section 4](#) of this Act. Commercial activities, which discharge trade effluent to public sewers, require a licence under [section 16](#), which is issued by either Uisce Éireann or the EPA depending on the type and scale of activity.

The [Water Environment \(Abstractions and Associated Impoundments\) Act 2022](#) provides for a licensing regime for water abstractions and the conferral of licensing and certain enforcement functions on the EPA. More generally, it provides for the regulation of water abstractions and their associated impoundments, and for the establishment of a register of water abstractions.

Air emissions licensing regimes

IPC licences and waste licences issued by the EPA include air emission limits.²³⁰ Other activities may require separate air emission licences granted by local authorities.²³¹ The [Air Pollution Acts](#) constitute the primary legislation concerning air pollution, and provide that causing or permitting a pollutant to enter the atmosphere in a quantity that could damage public health, flora, fauna, property and/or amenity value generally is an offence.²³² Emissions from boilers and other

²²⁵ Ibid.

²²⁶ Alan Roberts, Mark Thuillier and Chris Stynes (of A&L Goodbody), 'Environmental Law and Practice in Ireland: Overview' (Thompson Reuters Practice, last updated 1 November 2021) available [here](#).

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

stationary combustion plants are regulated under the [European Union \(Medium Combustion Plant\) Regulations 2017](#).²³³

Offences

Non-compliance with the licencing regimes and rules surrounding emissions, discharges and abstractions can attract significant penalties, including in some cases fines of up to €5,000 and/or up to 12 months imprisonment upon summary conviction; and fines of up to €15 million and/or imprisonment for up to 5 years upon conviction on indictment.²³⁴ In addition, directors, officers and managers of licenced companies, whose acts or omissions caused the breach, can be held individually responsible and, in respect of some indictable offences, sentenced to up to ten years in prison.²³⁵ Licences may also be withdrawn, and clean-up orders may be imposed.²³⁶

Miscellaneous domestic legislation

The [Work Life Balance and Miscellaneous Provisions Act 2023](#) amends existing legislation to afford certain employees an entitlement to take leave for medical care purposes and to request flexible working arrangements for caring purposes.

A number of regulations promote energy efficiency in the construction and property sectors, including the [Building Regulations \(Part L Amendments\) Regulations 2017](#) (S.I. No. 538 of 2017), the [EU \(Energy Performance of Buildings\) Regulations 2019](#) (S.I. No. 183 of 2019) and the [EU \(Energy Performance of Buildings\) \(No. 2\) Regulations 2019](#) (S.I. No. 292 of 2019). A [Building Energy Rating](#) (BER), which measures the energy efficiency of a building, is compulsory for new builds and buildings for sale or rent (both commercial and domestic) subject to some exemptions. Voluntary certification schemes also exist, for example the [Leadership in Energy and Environmental Design \(LEED\) certification](#), which provide energy efficiency and sustainability ratings based on factors such as waste efficiency, sustainability, materials and design.

The Habitats Directive (1992/43/EC) and Birds Directive (2009/147/EC), which afford protection to habitats and species of European importance and provide for the Natura 2000 network of designated conservation areas, have been transposed into domestic law primarily via *Part XAB* of the [Planning and Development Act 2000, as amended](#).

A list of additional relevant legislation is included in Appendix I.

Supports for Irish companies in making the transition to more ESG-friendly practices

A number of training, mentoring and financial supports, including tax incentives, are available to assist Irish companies in reducing their carbon emissions and making the transition to more ESG-

²³³ Ibid.

²³⁴ See, *ibid*; and, for example, sections 4 or 16 of the [Local Government \(Water Pollution\) Act 1977, as amended](#).

²³⁵ Alan Roberts, Mark Thuillier and Chris Stynes (of A&L Goodbody), 'Environmental Law and Practice in Ireland: Overview' (Thompson Reuters Practice, last updated 1 November 2021) available [here](#).

²³⁶ Ibid.

friendly practices. Many of these supports are outlined on the [Citizens Information website](#). For example, financial supports are available under Enterprise Ireland's [Green Transition Fund](#) (comprised of (i) the Climate Planning Fund for Business and (ii) the Enterprise Emissions Reduction Investment Fund); and the [Excellence in Energy Efficiency Design \(EXCEED\) grant scheme](#) administered by the Sustainable Energy Authority of Ireland (SEAI). An [energy efficiency grant](#) of up to €5,000 is available via the Local Enterprise Office for small businesses with up to 50 employees for the purchase of energy-efficient technology and equipment.

A [Climate Action Fund](#) was established in 2020, as required under the *National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Act 2020*. The Fund is financed by levies imposed on certain petroleum products. The Department of the Environment, Climate and Communications is responsible for the Fund's implementation and has indicated that at least €500 million in government funding will be allocated to it up to 2027.²³⁷ The Fund is used to support projects and initiatives in regions and sectors of the economy impacted by the transition to a low carbon economy, as well as projects, research, initiatives and innovations that seek to:

- reduce, or support the reduction of, greenhouse gas emissions in the State;
- increase the production, or use, of renewable energy in the State; and
- improve energy efficiency in the State.²³⁸

Sustainability training schemes and resources available include the [Green for Micro](#) programme available via Local Enterprise Offices, the [Climate Ready](#) programmes offered by Skillnet Ireland, the [Energy Academy](#) e-learning service offered by the SEAI, the guidance available on Uisce Éireann's [Water Conservation for Business hub](#), and the resources available on the webpage of the EPA-led [Circular Economy Programme](#). The EPA also offers a [Carbon Footprint Calculator](#), which is free to use for small businesses, and a [Tool for Resource Efficiency](#). The Government has developed a [Climate Toolkit 4 Business](#) website, which offers advice on how companies can reduce their carbon emissions.

A number of private sector initiatives and public-private initiatives also promote ESG and sustainable investments.

The [International Sustainable Finance Centre of Excellence](#) promotes sustainable finance both in Ireland and overseas in accordance with the Government's International Financial Services Strategy 2025 ([Ireland for Finance strategy](#)), and the [Sustainable Finance Roadmap](#), which outlines measures that seek to position Ireland as a leading sustainable finance centre by 2025.

[Green Team Network](#) is a voluntary network, which promotes and facilitates knowledge sharing and collaboration in the sustainability and climate space across the Irish funds industry.

The [Irish Green Building Council](#) is a non-profit organisation launched in 2011 encompassing various stakeholders from the value chain of the "built environment". One of its [core objectives](#) is to provide "leadership for sustainability and quality in the built environment".

²³⁷ Department of Environment, Climate and Communications, 'Climate Action Fund', available [here](#).

²³⁸ *Section 15, of the National Oil Reserves Agency (Amendment) and Provision of Central Treasury Services Act 2020*

‘Sustainability’ clauses in company contracts and constitutions

The Chancery Lane Project (TCLP), a collaborative initiative involving a global network of lawyers and industry professionals, is seeking to make it easier for companies to incorporate climate and sustainability clauses into their contracts and constitutional documents. It has drafted template Green Company Articles (Ragnar’s Clause), which are accessible on its website and are intended to provide “an underlying framework of green obligations, which target a company’s decision making, internal investments and reporting in addressing material environmental issues for the company”.²³⁹ They require companies to:

- “(i) consider environmental outcomes and targets as part of ordinary-course decision making; [and]
- (ii) to take active steps to develop environmental sustainability and achieve specific targets hand-in-hand with business development.”²⁴⁰

They are designed to be inserted as new articles within a company’s existing articles of association/constitutional documentation subject to any adjustments/amendments necessary to cater for the company’s specific needs.²⁴¹ They were drafted for use by UK-domiciled private limited companies with water intensive operations.²⁴² However, they can be adapted so as to apply to other company types and include other sustainability considerations.²⁴³

On its website, TCLP also offers a selection of readymade climate clauses, which can be incorporated into law firm precedents and commercial contracts. Contributors to TCLP offer to assist lawyers in implementing these clauses across a variety of industries and jurisdictions. The website also offers a Net Zero Toolkit, comprised of clauses, tools and a glossary of terms, which are together aimed at promoting a decarbonised economy. In accordance with their guiding principles, all of the content offered on the TCLP website is free to use.

Conclusion

As this Spotlight has demonstrated, a comprehensive legal and regulatory framework exists in Ireland, which imposes mandatory ESG reporting obligations on companies, investment management firms, financial advisors and other relevant actors. Some of the EU legislation has yet to enter into force at the domestic level or is still under negotiation so its full impact has yet to be seen. However, it is already apparent that these new instruments significantly expand the extent of reporting required, in qualitative and quantitative terms, and extends its reach to SMEs, both directly and indirectly.

The shift towards mandatory ESG reporting largely reflects policy and legislative developments at the EU level, which are directed toward achieving carbon neutrality across the EU territory by 2050 and making the transition to more sustainable societies. The Government has responded to EU-level developments through the introduction of legislation and policies that seek to enable Ireland

²³⁹ TCLP, ‘Green Company Articles [Ragnar’s Clause]’ (last updated 1 October 2021) p.2, available [here](#).

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid., p.3.

²⁴³ Ibid, p.4.

to play its part in achieving shared goals, for example, the [Climate Action and Low Carbon Development Act 2015](#), as amended, and the [Climate Action Plan 2023](#). However, recently published projections by the EPA and the Climate Change Advisory Council indicate that, unless urgent and immediate action is taken, Ireland will not meet the targets set out in its first and second carbon budget periods.²⁴⁴ In addition, the 2023 UNSDR asserts that Ireland continues to face difficulties in meeting four of the SDGs: zero hunger, climate action, partnerships for the goals, and, in particular, responsible consumption and production.²⁴⁵

The mandatory ESG reporting regimes also represent an effort to combat greenwashing, including by harmonising reporting standards and enabling investors to compare the 'ESG credentials' of financial products and companies. Regulators at the national and EU levels, for example, the [Central Bank of Ireland](#) and the [European Central Bank](#), attach considerable importance to ESG factors.²⁴⁶ Indeed, the regulatory investigations and consumer litigation that occurred in response to allegations of greenwashing concerning Deutsche Bank AG and its asset management group, DWS, offer an example of the legal consequences that companies and investment management firms could potentially face if they fail, or are perceived to have failed, to adhere to their obligations surrounding ESG disclosures.

Many EU legal instruments, for example, the [NFRD](#) and the proposed CSDDD (see [here](#) and [here](#)), impose specific obligations on company directors concerning ESG. Indeed, in some cases the failure by directors to adhere to mandatory ESG reporting obligations constitutes a criminal offence.²⁴⁷ Directors of Irish companies can also be held individually responsible where their acts or omissions give rise to breaches of relevant licensing regimes concerning activities that impact the environment.²⁴⁸ Recent surveys (see, for example, [here](#)) suggest that Irish directors are attaching increasing significance to their ESG obligations. Furthermore, once fully commenced, the provisions of the [Central Bank \(Individual Accountability Framework\) Act 2023](#) will enable the Central Bank to strengthen individual accountability in the management and operation of regulated financial service providers.

In addition to regulators, companies and investment management firms are facing increasing pressure from other relevant stakeholders, including investors, shareholders, employees, consumers and civil society organisations to voluntarily disclose ESG-related information and prioritise ESG factors.²⁴⁹ ESG reporting can potentially set a company apart and either augment or impair its reputation and brand.²⁵⁰

Recent surveys (see, for example, [here](#) and [here](#)) suggest that the enhanced ESG disclosures may pose a challenge for some companies, including SMEs. As noted above, over 220 civil society

²⁴⁴ EPA, 'Ireland projected to fall well short of climate targets, says EPA' (1 June 2023) available [here](#); and Climate Change Advisory Council, 'Annual Review 2023' (2023) Summary, available [here](#).

²⁴⁵ UN, *Sustainable Development Report 2023* (June 2023) p.37, available [here](#).

²⁴⁶ Maedhbh Clancy and Suzanne Kearney, 'Ireland: Environmental, Social and Governance Regulation Comparative Guide' (*Arthur Cox*, 31 August 2022) available [here](#).

²⁴⁷ See, e.g., [S.I. No. 360/2017](#), regulation 8.

²⁴⁸ Alan Roberts, Mark Thuillier and Chris Stynes (of A&L Goodbody), 'Environmental Law and Practice in Ireland: Overview' (*Thompson Reuters Practice*, last updated 1 November 2021) available [here](#).

²⁴⁹ See, e.g., Derarca Dennis and Nicola Ruane, 'Will ESG reporting become a new licence to operate?' (*Chartered Accountants Ireland*, 8 August 2022) available [here](#).

²⁵⁰ *Ibid*.

groups have issued a statement calling for the CSDDD to be strengthened, including by bringing SMEs directly within its scope.²⁵¹ Derarca Dennis and Nicola Ruane of EY Ireland stress the importance of seeking the correct balance by ensuring “that ESG impact is considered and embedded throughout their operations without the requirement for undue or excess reporting”.²⁵² Of relevance in this regard, there are a number of public and private sector initiatives, which offer support to companies seeking to make the transition to more sustainable business operations.

Finally, the UNSDR Spillover Index indicates that many developed countries, including Ireland, generate detrimental socioeconomic and environmental spill-over effects, including as a result of unsustainable trade and supply chains. The CSRD may go some way toward enhancing transparency regarding these practices by requiring disclosures, to the extent possible, concerning the environmental and societal impact of affected companies’ operations, including their supply chains, business relationships and value chains – both inside and outside of the EU. Also of relevance, the proposed CSDDD’s due diligence obligations include identifying, preventing, mitigating and accounting for any adverse impacts on the environment or human rights as a result of the operations of an affected company or the company’s subsidiaries, or any other activities in the company’s overall value chain.²⁵³

In conclusion, Dennis and Ruane may not be incorrect in surmising that “[w]e are at the dawn of a new era in sustainability reporting and better ways of doing business for people and planet.”²⁵⁴

Suggested further reading

- A&L Goodbody, ‘Proposed Directive on Corporate Sustainability Due Diligence’ (27 June 2022) available [here](#) [last accessed 3 August 2023].
- Alan Roberts, Mark Thuillier and Chris Stynes (of A&L Goodbody), ‘Environmental Law and Practice in Ireland: Overview’ (*Thompson Reuters Practice*, last updated 1 November 2021) available [here](#) [last accessed 3 August 2023].
- Arthur Cox, ‘EU Taxonomy Regulation: Commission Publishes Draft Environmental Delegated Act’ (*Insights Blog*, 14 June 2023) available [here](#) [last accessed 3 August 2023].
- Arthur Cox, ‘Green Bonds: Update on EU Green Bond Standard Regulation’ (*Insights blog*, 1 June 2023) available [here](#) [last accessed 3 August 2023].
- Citizens Information, ‘Supports for businesses going green’ (last updated 11 July 2023) available [here](#) [last accessed 3 August 2023].
- Climate Change Advisory Council, ‘Annual Review 2023’ (2023) Summary, available [here](#) [last accessed 3 August 2023].

²⁵¹ A&L Goodbody, ‘Proposed Directive on Corporate Sustainability Due Diligence’ (27 June 2022) p.2, available to download [here](#).

²⁵² Derarca Dennis and Nicola Ruane, ‘Will ESG reporting become a new licence to operate?’ (*Chartered Accountants Ireland*, 8 August 2022) available [here](#).

²⁵³ A&L Goodbody, ‘Proposed Directive on Corporate Sustainability Due Diligence’ (27 June 2022) available [here](#).

²⁵⁴ Derarca Dennis and Nicola Ruane, ‘Will ESG reporting become a new licence to operate?’ (*Chartered Accountants Ireland*, 8 August 2022) available [here](#).

- Government of Ireland, 'Climate Action Plan 2023', available [here](#) [last accessed 3 August 2023].
- Derarca Dennis and Nicola Ruane, 'Will ESG reporting become a new licence to operate?' (*Chartered Accountants Ireland*, 8 August 2022) available [here](#) [last accessed 3 August 2023].
- Environmental Protection Agency, 'Ireland projected to fall well short of climate targets, says EPA' (1 June 2023) available [here](#) [last accessed 3 August 2023].
- 'EU Corporate Sustainability Reporting Directive Signed into Law – Implications and Near-term Compliance Steps for U.S.-based Multinationals' (*Ropes & Gray*, 20 December 2022) available [here](#) [last accessed 3 August 2023].
- European Commission, 'European Climate Law', available [here](#) [last accessed 3 August 2023].
- European Banking Authority, 'The EBA publishes its roadmap on sustainable finance' (13 December 2022) available [here](#) [last accessed 3 August 2023].
- European Central Bank Press Release, 'Banks must continue improving climate risk disclosures as new EU rules take effect, ECB report shows' (21 April 2023) available [here](#) [last accessed 3 August 2023].
- European Commission, 'Strategy for financing the transition to a sustainable economy' (6 July 2021) available [here](#) [last accessed 3 August 2023].
- European Commission, 'Sustainable Finance Factsheet' (June 2023) available [here](#) [last accessed 3 August 2023].
- European Commission, 'EU taxonomy: Complementary Climate Delegated Act to accelerate decarbonisation', available [here](#) [last accessed 3 August 2023].
- European Council, 'Fit for 55: reform of the EU Emissions Trading System', available [here](#).
- European Parliament, 'MEPs push companies to mitigate their negative social and environmental impact' (1 June 2023) available [here](#) [last accessed 3 August 2023].
- Global Risk Profile, 'ESG Index 2022: a global decline of sustainability performance' (8 March 2023) available [here](#) [last accessed 3 August 2023].
- Katrina Donnelly, 'Fit for 55 and REPowerEU: New legislation in force and sign-off awaited on remaining proposals' (*Arthur Cox Insights Blog*, 14 June 2023) available [here](#) [last accessed 3 August 2023].
- Kyle Peterdy, 'ESG (Environmental, Social, and Governance)' (last updated 6 June 2023) available [here](#) [last accessed 3 August 2023].
- Linklaters, 'European Parliament agrees negotiating position on CSDDD - let the trilogues commence' (1 June 2023) available [here](#) [last accessed 3 August 2023].
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Appendix I: List of additional relevant legislation

- *Environmental (Miscellaneous Provisions) Acts 2011 and 2015,*
- *Waste Management (Collection) Regulations 2007 (as amended),*
- *Waste Management (Shipment of Waste) Regulations 2007 (as amended),*
- *European Communities (Waste Directive) Regulations 2011,*
- *European Union (Waste Electrical and Electronic Equipment) Regulations 2014,*
- *European Union (Batteries and Accumulators) Regulations 2014,*
- *European Communities (Environmental Liability) Regulations (2008 to 2011),*
- *EC (Access to Information on the Environment) Regulations 2007 to 2018,*
- *European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015,*
- *Water Services Acts 2007 to 2017,*
- *Waste Water Discharge (Authorisation) Regulations 2007 (as amended),*
- *European Union (Energy Efficiency) Regulations 2014 to 2019,*
- *The European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017, and*
- *European Union (Water Policy) (Abstractions Registration) Regulations 2018.*²⁵⁵

²⁵⁵ This list is taken from Alan Roberts, Mark Thuillier and Chris Stynes (of A&L Goodbody), 'Environmental Law and Practice in Ireland: Overview' (Thompson Reuters Practice, last updated 1 November 2021) available [here](#).

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