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1 Setting the Scene – Sources and Overview

1.1 What are the main substantive ESG-related regulations and who is driving the regulatory agenda in your jurisdiction?

As the human impact on our environment has become clearer and long-standing social issues have been highlighted and exposed, the drive to integrate sustainability into public policy, business activities, and personal behaviour and consumption has never been greater.

This has led to an unprecedented wave of new policies being introduced at national and EU level which are related to the achievement of Ireland and the EU's broader environmental and social goals. At the EU level, the European Commission announced the European Green Deal in December 2019, with the ambition of becoming the first climate-neutral bloc in the world by 2050. That ambition was enshrined in law pursuant to an EU Climate Law in 2021 (2021/1119). In Ireland, the Climate Action and Low Carbon Development (Amendment) Act 2021 codifies Ireland's commitment to net-zero carbon emissions by 2050. Ireland has also committed to reducing economy-wide carbon emissions by 51% by 2030, with specific targets set in respect of each economic sector.

Laws introduced to implement these and other ESG-related policies affect all major sectors of the economy, and involve, among other things, enhanced disclosures, tougher standards, setting targets, and internalising the costs of environmentally damaging activities.

Given the ESG dimension applicable to all economic sectors, and by extension the laws that apply to them, a discussion of all ESG-related legislation is beyond the scope of this chapter. Instead, our focus is on ESG-focused legislation relating to corporate disclosures and governance, as well as financial services and asset management for which the European Commission's Action Plan for Financing Sustainable Growth (published in 2018) and the Renewed Strategy for Financing the Transition to a Sustainable Economy (published in 2021) have been the most relevant policy statements.

In this context, Ireland's ESG-related legal framework has largely been driven by EU policy initiatives. The most significant regulatory measures are the following:

- **The Corporate Sustainability Reporting Directive** ("**CSRD**") (2022/2464) was transposed into Irish law in July 2024 by the European Union (Corporate Sustainability Reporting) Regulations 2024, which amended the Irish Companies Act 2014 and the Transparency Regulations 2007. The CSRD replaces the existing non-financial reporting framework introduced by the Non-Financial Reporting Directive ("**NFRD**") (2014/95/EU). In accordance with the Irish transposing Regulations, the CSRD will apply domestically, on a phased basis, to in-scope Irish-incorporated companies and issuers of securities on an EU regulated market. The CSRD amends the Accounting Directive (2013/34/EU) to revise the existing reporting rules that were introduced by the NFRD, and to ensure a consistent flow of sustainability information from companies, which will be available to banks, insurance companies, asset managers, end investors, non-governmental organisations, and others that wish to scrutinise corporate entities' social and environmental impact. The CSRD widens the scope of the reporting obligations, with disclosures also being subject to external assurance (initially on a limited assurance basis).
- **The Taxonomy Regulation** (2020/852) creates a unified EU classification system to define what it means to carry on an "environmentally sustainable economic activity". The Taxonomy Regulation seeks to achieve this by providing that to be classified as an "environmentally sustainable economic activity", the economic activity in question must contribute to at least one of six specified environmental objectives; cause no significant harm to any of the other environmental objectives; meet minimum social safeguards; and satisfy detailed technical criteria developed by the European Commission. The Taxonomy Regulation contains certain obligations, including an obligation for in-scope entities to disclose how and to what extent their activities are "taxonomy-aligned".
- **The Sustainable Finance Disclosure Regulation** ("**SFDR**") (2019/2088) contains specific and significant firm-level disclosures for asset managers and other financial market participants and advisers relating to the integration of sustainability risks into the investment decision-making process and policies put in place to consider the principal adverse impacts of investment decisions on "sustainability factors" (i.e. environmental, social or employee issues, human rights, anti-corruption and anti-bribery matters). In addition, SFDR introduced specific pre-contractual and periodic product disclosure requirements depending on the sustainability profile of the financial product. In the past year, the European Securities and Markets Authority ("**ESMA**") has issued Guidelines on funds' names using ESG or sustainability-related terms. These Guidelines apply from 21 November 2024 (in respect of new funds) and from 21 May 2025 (in respect of funds that existed before 21 November 2024). In addition,

in the context of an ongoing review of the sustainability disclosures framework established by SFDR, the European Supervisory Authorities (EBA, EIOPA and ESMA) published a joint opinion, on 18 June 2024, on the assessment of the Sustainable Finance Disclosure Regulation, which included amongst its recommendations the introduction of a formal product classification system replacing the current disclosure categorisation under Article 8 and Article 9 of SFDR.

- **The Corporate Sustainability Due Diligence Directive** ("**CS3D**") (2024/1760) introduces new obligations for in-scope companies to identify and, where necessary, prevent, end, or mitigate the adverse impacts of their activities on human rights and the environment. The rules concern not only the companies' operations, but also the activities of their subsidiaries, and those of their business partners along the companies' chain of activities. CS3D entered into force in July 2024 and is required to be transposed into national law by EU Member States by 26 July 2026. Substantive obligations will apply on a phased basis, from July 2027, depending on a company's size and turnover. In-scope companies will have to establish complaints mechanisms and make disclosures as regards risk-based human rights and environmental due diligence. The CS3D will require EU Member States to introduce civil liability mechanisms to hold companies liable where they intentionally or negligently fail to comply with obligations under the Directive.
- **The EU Green Bond Regulation** (2023/2631) introduces a new voluntary "European green bond" or "EuGB" label, which may be used to market environmentally sustainable bonds that align with the EU Taxonomy Regulation. Issuers that choose to market their bonds as "European green bonds" will be subject to uniform requirements that aim to harmonise the EU market for green bonds. The EU Green Bond Regulation will take direct effect across EU Member States from 21 December 2024.
- **The Recast Energy Performance of Buildings Directive** (2024/1275). As part of the EU's "Fit for 55" package, the recast Energy Performance of Buildings Directive ("**EPBD**") was published in the Official Journal of the EU in May 2024. EU Member States have until 29 May 2026 to transpose the Directive. The recast EPBD provides for a range of measures aimed at reducing energy emissions from buildings across the EU. It will make zero-emission buildings the new standard for all new buildings (both residential and non-residential). All new public buildings should be zero-emission buildings by 2028, with a deadline of 2030 for all other new buildings. Among other measures, the Directive also provides for minimum energy performance standards that will apply to existing buildings.

Targeted EU legislation has been or will be introduced aimed at credit institutions, benchmark administrators, investment firms, ESG ratings providers, EU regulated funds, insurance companies, and other financial institutions, to require, amongst other things, enhanced ESG-related disclosures and risk-management.

In addition, the **Gender Balance on Boards Directive** (2022/2381) aims at improving gender balance among directors of listed companies, by requiring EU listed companies to ensure that, by 2026, at least 40% of non-executive director positions are held by members of the "underrepresented sex" (i.e. women), or at least 33% if all board members are included. Furthermore, the **EU Pay Transparency Directive** (2023/970) came into effect on 6 June 2023; EU Member States have until 7 June 2026 to transpose its provisions. The Pay Transparency Directive introduces wide-ranging pay transparency measures, including mandatory gender pay gap reporting in all EU Member States, pre-employment pay transparency obligations, employee information rights to pay data, and a ban on pay secrecy clauses.

In Ireland, the **Gender Pay Gap Information Act 2021** has been introduced, requiring certain employers to publish information relating to the remuneration of employees by reference to gender. The reporting requirements under this Act are similar to the reporting requirements that will be introduced by the EU Pay Transparency Directive, although the Directive goes further in certain respects.

On a broader note, Ireland's equality laws protect individuals from certain types of discrimination and harassment in an employment context, as well as when accessing goods, services, facilities and accommodation.

1.2 What are the main ESG disclosure regulations and how have they evolved during the past 12 months?

As outlined above, many of the ESG-focused regulations include disclosure requirements. The key pieces of legislation where disclosure is the primary focus include:

- the CSRD;
- the SFDR;
- the Taxonomy Regulation;
- the Gender Pay Gap Information Act 2021; and
- the EU Pay Transparency Directive.

Over the past 12 months, the most notable evolution of Ireland's ESG disclosures framework is the domestic transposition of the CSRD, with the making of the European Union (Corporate Sustainability Reporting) Regulations 2024. In accordance with the Irish transposing Regulations, the CSRD will apply domestically, on a phased basis, to in-scope Irish-incorporated companies and issuers of securities on an EU-regulated market. For in-scope companies, the directors' report that accompanies the company's annual financial statements must include a clearly identifiable section containing: (i) information necessary to understand the company's impacts on sustainability matters (i.e. inside-out impacts); and (ii) information necessary to understand how the sustainability matters affect the company's development, performance and position (i.e. outside-in impacts). Reporting in respect of the 2024 financial year will begin in 2025. In the first instance, reporting will be required of "large companies" and "large undertakings", as defined under the transposing Regulations.

To enhance consistency and comparability, sustainability information under the CSRD must be reported in accordance with the European Sustainability Reporting Standards (the "**ESRS**"). There are 12 ESRS, covering the full range of sustainability issues, comprising two cross-cutting standards (ESRS 1 and ESRS 2) and 10 topical standards. In April 2024, the Council of the EU gave final approval to the postponement of the application of the sector-specific ESRS to EU companies, and the application of the general ESRS to non-EU companies, by two years – until 30 June 2026. In-scope EU companies remain obliged to report in line with the general ESRS, in accordance with agreed CSRD timelines.

1.3 What voluntary ESG disclosures, beyond those required by law or regulation, are customary?

Companies, in particular large companies, increasingly make voluntary ESG disclosures, usually by way of sustainability reporting or reporting (annually or otherwise) in respect of ESG-related matters. In this context, it is common for large companies to set various targets in respect of sustainability, diversity and other ESG-related goals, and to report on progress in relation to those targets. Such disclosures are increasingly recognised as being important as firms seek to satisfy stakeholder demands for strong ESG-related performance.

Voluntary disclosure can be made by firms on the basis of a number of recognised standards, frameworks and methodologies produced by organisations and bodies such as the Taskforce on Climate-Related Financial Disclosures (“**TCFD**”), the Taskforce on Nature-Related Financial Disclosures (“**TNFD**”), the Global Reporting Initiative (“**GRI**”), and the Science-Based Targets Initiative (“**SBTi**”). The International Sustainability Standards Board (“**ISSB**”), established by the International Financial Reporting Standards (“**IFRS**”) Foundation, has also developed standards aimed at establishing a global baseline of high-quality sustainability disclosure standards to enable investors to examine companies' sustainability-related risks and opportunities.

The methodology employed by a particular firm will depend on various factors, such as the firm's specific ESG focus, industry norms and targets, and its stakeholders' expectations. The Companies (Corporate Governance, Enforcement and Regulatory Provisions) Act 2024, which is awaiting commencement, introduces a mechanism by which companies may provide information on the gender composition of its board of directors on a voluntary basis. The information requested will be prescribed by the Minister for Enterprise, Trade and Employment in the company's B1 Form annual return and is for statistical purposes only (including to feed into global assessments for the purposes of gender balance on boards legislation).

Certain jurisdictions with mandatory sustainability reporting requirements will require disclosures to be in accordance with a specified framework or set of standards. In Ireland, reporting under the CSRD will be required to be in accordance with the ESRS, as detailed above.

1.4 Are there significant laws or regulations currently in the proposal process?

In the past year, much of the focus has been on the development of the existing regulatory framework for sustainable finance and ESG-related matters, though some notable proposals include the following:

- **The EU Green Claims Directive**. The proposal for a Directive on substantiation and communication of explicit environmental claims was adopted by the European Commission in March 2023, and is expected to commence in the latter part of 2024. Once in force, the Green Claims Directive will have to be transposed by EU Member States within two years. The main objective of the Directive is to protect consumers from greenwashing risks (i.e. the risk that they will be misled by companies over the purchase of products with environmental claims). Existing consumer legislation may offer some protection with regard to false sustainability-related claims (through the general prohibition on misleading commercial practices). However, the Green Claims Directive – together with the Directive (EU) 2024/825 empowering consumers for the green transition – is specifically addressed towards protecting consumers from greenwashing practices.
- **The EU Regulation on ESG Rating Agencies**. The proposal for an EU Regulation on the transparency and integrity of ESG rating activities was approved by the European Parliament in April 2024, and is awaiting formal approval by the Council of the EU. The proposal aims to improve the reliability, comparability and transparency of ESG ratings, including by improving transparency of ESG ratings characteristics and methodologies, by ensuring increased clarity on operations of ESG rating providers, and through the prevention of risks of conflicts of interest at the ESG rating providers' level.
- **The EU Forced Labour Regulation**. In April 2024, the European Parliament gave its final approval to the proposed Regulation on prohibiting products made with forced labour on the Union market. Subject to its final approval by the Council of the EU, the proposal will cover all industry sectors, and will prohibit all products manufactured using forced labour from being placed and made available on the market in the EU, or exported from the EU. The new rules aim to bolster consumer confidence and guarantee adherence to robust human rights standards within the EU market.
- **The EU Deforestation Regulation**. The EU Deforestation Regulation (2023/1115) aims to ensure that a set of key goods placed on the EU market will no longer contribute to deforestation and forest degradation in the EU and elsewhere in the world. The Regulation, which has been adopted and published in the Official Journal of the EU, had been due to take effect from 30 December 2024. However, the European Commission recently proposed a 12-month delay, to make the Regulation applicable from 30 December 2025 for large companies, and from 30 June 2026 for micro- and small enterprises. According to the European Commission, this delay is to ensure proper and effective implementation of the Regulation.

1.5 What significant private sector initiatives relating to ESG are there? To what extent are private companies reporting on ESG issues?

Globally, particularly in a climate context, there are numerous financial sector initiatives aimed at encouraging responsible investment and banking practices. These include the relevant reporting and disclosure initiatives referred to above, but also include the Net-Zero Banking Alliance (“**NZBA**”), an industry-led and UN-convened network of global leading banks committing to financing climate transition efforts, and the UN-supported Principles for Responsible Investment (“**PRI**”), an independent body that encourages investors to use responsible investment to enhance returns and better manage risks.

The Irish Government acknowledges that the public sector cannot achieve climate-related targets by itself. Private sector actors have a key role to play in the green transition, and private finance can be a key enabling factor. To this end, private sector entities are scaling up climate- and other ESG-related efforts, and have launched several important initiatives. These include:

- **Sustainable Finance Ireland**: Sustainable Finance Ireland is Ireland's leading public-private initiative related to the promotion of sustainable finance. It works to advance the sustainable finance agenda domestically,

and to strengthen Ireland's position internationally, with the involvement of both the public and private sectors.

- **Green Team Network**: The Irish funds industry has its own Green Team Network, which has been formed to promote sustainability and knowledge-sharing across the industry.
- **Business in the Community Ireland**: Business in the Community Ireland is a network for businesses committed to sustainable practices. It offers education and employment programmes, as well as a certified standard for companies, the Business Working Responsibly Mark, which is the leading business standard for sustainability in Ireland.
- **Balance for Better Business**: Balance for Better Business is an independent, business-led review group, established to improve gender balance on the boards and senior management of companies based in Ireland.

It is also common for companies to sign up to various initiatives and networks focused on diversity and inclusion, and there are also sectoral initiatives with an ESG focus, such as in the real estate and energy sectors. Notably, in Ireland, the Women in Finance Charter is an industry initiative supported by the Irish Government, which underpins the ambition of the Irish financial services industry to see increased participation by women at all levels of the workforce, particularly in leadership and management, and at board level.

The extent to which the private sector has embraced voluntary reporting frameworks, as well as various industry initiatives, reflects the sector's understanding that not only is strong ESG-related performance an ethical priority; it is essential to ensuring continued market success and relevance. Thus, private companies have demonstrated a strong willingness to report on ESG issues, whether on a voluntary or mandatory basis.

2 Principal Sources of ESG Pressure

2.1 What are the views and perspectives of investors and asset managers toward ESG, and how do they exert influence in support (or in opposition) of those views?

The EU is widely recognised as the leading jurisdiction for investment in ESG funds globally, and the industry has been supportive in progressing the sustainability agenda, both in terms of the allocation of capital and ongoing engagement with policymakers. The EU's status as a key location for sustainable investment is due to several factors, which include:

- a supportive regulatory and policy framework promoting transparency and accountability in investment (such as SFDR and the Taxonomy Regulation) as well as driving the business case for investment through policy frameworks like the European Green Deal; and
- the huge demand from investors and the asset management community for investments related to the promotion or achievement of ESG objectives, which has led to significant innovation in financial products and services that cater to that demand.

As noted above, concerns expressed by industry about shortcomings in the SFDR regime have led to consultations being launched by the European Commission, with a view to identifying these shortcomings and considering improvements to the regime. In June 2024, the European Supervisory Authorities (the "**ESAs**") issued a Joint Opinion (JC/2024/06) in the context of the ongoing review of the SFDR. The Opinion contained several recommendations, which could ultimately lead to significant revisions to the current framework.

2.2 What are the views of other stakeholders toward ESG, and how do they exert influence in support (or in opposition) of those views?

Beyond investor demand for ESG-related financial products, there is increased demand at all levels of society for corporate entities to be proactive in relation to ESG considerations. The public has been empowered by the increased availability of ESG-related information, facilitated by the regulatory reporting regimes detailed above. From a consumer perspective, purchasing decisions are increasingly being made based on, or at least influenced by, a company's ESG credentials. Similarly, a company's supply chain is increasingly assessed from an ESG perspective. Employees increasingly take ESG factors into account when considering whether to take up or remain in employment with an organisation. This strong stakeholder demand for positive ESG-related performance has created an incentive for companies to adopt better practices with regard to ESG considerations (e.g. diversity and inclusion (including board composition), environmental performance, and corporate governance factors). The public demand for ESG issues to be addressed, manifested through the democratic process, has also led to the Irish Government adopting a range of policies with an ESG focus, particularly aimed at addressing the climate emergency (as described above).

2.3 What are the principal regulators with respect to ESG issues, and what issues are being pressed by those regulators?

At the European level, the relevant regulatory authorities are the European Supervisory Authorities (the "**ESAs**") – those being the European Banking Authority (the "**EBA**"), the European Securities and Markets Authority ("**ESMA**") and the European Insurance and Occupational Pensions Authority ("**EIOPA**") – along with the European Central Bank (the "**ECB**"). In accordance with their specific mandates, those agencies actively contribute towards EU sustainability and ESG-related ambitions, developing standards and various proposals, along with drafting various reports and policy roadmaps.

As a key objective, the EBA is working towards embedding ESG considerations into the prudential framework, in line with the EBA's broader objective of contributing to the stable, resilient and orderly functioning of the financial system. Additionally, it provides guidance for firms and institutions as they seek to incorporate ESG considerations within their activity. The EBA also carries out risk assessments and monitoring exercises, including stress testing.

For its part, ESMA is contributing to the development of the sustainable finance rulebook, along with its consistent application and effective supervision. ESMA additionally engages in risk assessment and market monitoring exercises, focused on concerns related to financial stability risks and investor protection, which stem from ESG-related risks.

With regard to ESG, EIOPA's focus is on: (i) integrating ESG risks in the prudential framework of insurers and pension funds; (ii) consolidating the macro and micro prudential risk assessment of ESG risks; (iii) promoting sustainability disclosures and a sustainable conduct of business framework; (iv) supporting the supervision of ESG risks and supervisory convergence in the EU; (v) addressing climate protection gaps;

(vi) promoting the use of open source modelling and data in relation to climate change risks; and (vii) supporting international convergence for the assessment and management of sustainability risks.

The ECB's focus is on: (i) assessing macroeconomic impacts of climate change and of mitigation policies on inflation and the real economy; (ii) improving the availability of meaningful ESG-related data; (iii) enhancing the ESG-related financial risk assessment; (iv) assessing ESG impacts on monetary policy; (v) formulating policies to scale up green finance; and (vi) increasing transparency and promoting best practices to reduce negative environmental impacts.

Domestically, the Central Bank of Ireland (the "**CBI**") is the Irish regulatory authority for financial services. In line with its mandate, it works to promote ESG integration in the financial services sector, and to increase the resiliency of the financial system in respect of ESG-related risk. The CBI's supervisory expectations, in relation to ensuring compliance with environmental and wider ESG-related statutory and reporting obligations, are focused on five key areas. Those are: (i) corporate governance; (ii) risk management; (iii) scenario analysis and stress testing; (iv) strategy and business model assessment; and (v) disclosures and mitigating greenwashing risks. The CBI has established its own Climate Change Unit, which works to gradually embed climate risk and sustainable finance considerations into the daily operations of the CBI. With regard to ESG more generally, the CBI promotes sounds governance practices in firms, including through its Fitness and Probity regime, and through the Individual Accountability Framework. The CBI has also highlighted that the promotion of diversity and inclusion in regulated firms is pertinent to its mandate.

Corporate activity is monitored in Ireland by the Corporate Enforcement Authority (the "**CEA**"), whose main function is to monitor compliance with the requirements of the Companies Act 2014, including corporate governance requirements, as well as to bring actions for non-compliance in relation to corporate reporting obligations.

Ireland's Competition and Consumer Protection Commission (the "**CCPC**") has a range of enforcement powers related to consumer law, including the power to bring enforcement actions against traders for false or misleading product information. Greenwashing falls under the remit of the CCPC, as well as the Advertising Standards Authority of Ireland (the "**ASAI**"). In a recent opinion published on green advertising in response to increased complaints about greenwashing, the ASAI cautioned that environmental claims in advertisements must be truthful and based on the full lifecycle of the advertised product.

Ireland's domestic energy sector is regulated by the Commission for Regulation of Utilities ("**CRU**"), which operates within the regulatory framework to ensure Ireland's energy and water supplies are safe, secure and sustainable. Furthermore, the Environmental Protection Agency's (the "**EPA's**") Office of Environmental Enforcement ensures that major industrial, waste and wastewater operations in Ireland comply with environmental law and that they do not endanger human health or harm the environment.

2.4 Have there been material enforcement actions with respect to ESG issues?

Although there has been a number of high-profile actions in Europe and elsewhere, enforcement actions have been limited to date. However, the CBI has indicated that addressing greenwashing is a key priority. This is in line with the focus at European level. In June 2024, the ESAs (the EBA, ESMA and EIOPA) each published final reports on greenwashing in the financial sector, reiterating that mitigating greenwashing risks should be a supervisory priority. This, together with legislative measures addressed towards greenwashing (detailed above), could increase the possibility of material enforcement actions in future.

2.5 What are the principal ESG-related litigation risks, and has there been material litigation with respect to ESG issues, other than enforcement actions?

Limited ESG litigation in Ireland has focused, to date, on climate change policy and litigation arising out of environmental events. However, the range of matters that can give rise to ESG litigation is much broader, and there can be multiple causes of action (e.g. tort, statute, criminal cases, breach of contract, equitable claims, administrative law). The subject matter of litigation can be varied: from national governments (with respect to climate policy), to infrastructure projects (on environmental or social grounds) and listed companies (accused of misleading corporate disclosures, corporate governance failings, shareholder activism, business operations leading to adverse environmental or social impact, and so on).

There has been an uptick in ESG-related litigation globally. A notable example is *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, in which the European Court of Human Rights ("**ECtHR**") found a violation of Article 8 of the European Convention on Human Rights ("**ECHR**"), and said that states have a positive duty to adopt measures to mitigate the effects of climate change, and must observe international commitments, including the Paris Agreement.

The uptick in ESG-related litigation is expected ultimately to be followed in Ireland, particularly with increased disclosures, both voluntary and mandatory, giving public bodies, citizens, shareholders and other stakeholders insights into the activities and impacts of companies and their business models.

Notable Irish cases include *Friends of the Irish Environment v. Government of Ireland* [2020] IESC 49, in which the Supreme Court held that the Irish Government's own national climate mitigation plan, adopted pursuant to the Irish Climate Act 2015, was insufficient to meet the Act's targets, and therefore contravened it. Other cases have included challenges to decisions of public bodies, such as planning authorities based on alleged inconsistencies with Government policy or environmental legislation. An ongoing dispute has arisen in relation to the Irish Government's fifth Nitrates Action Programme. An Taisce, a non-governmental organisation active in the areas of the environment and built heritage, has challenged the programme on the basis of an alleged failure to adequately protect Ireland's waterways. In July 2024, the Irish High Court referred aspects of the dispute to the Court of Justice of the European Union.

There are, of course, other types of litigation with environmental or social dimensions (such as employment disputes, consumer protection, general environmental legislation, and so on) but we have not considered them in this context.

Significant in this context is the CS3D (detailed above). The CS3D introduces a new sanctions and civil liability regime, with companies being held potentially liable if they fail to comply with their obligation to prevent and mitigate potential adverse impacts, or to minimise or bring actual adverse impacts to an end, if as a result of any such failure an adverse

impact that should have been identified, prevented, mitigated, brought to an end, or its extent minimised through the appropriate measures occurred and led to damage. The focus by policymakers on greenwashing, together with measures being adopted to minimise the practice, such as in the proposed EU Green Claims Directive, and in financial services and consumer legislation, is increasing the risk of actions being taken against companies and penalties being imposed.

In Ireland, the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 came into force in April 2024. The Act allows for actions to be brought on behalf of groups of consumers by "qualified entities" for infringements of a range of EU consumer laws, including those relating to sustainability. The legislation may prove significant in the context of the EU Green Claims Directive and could lead to an increase in the number of consumer claims being advanced.

Thus, in the global context of an upward trend in ESG-related litigation, recognising and mitigating ESG-related risks has become a business imperative for firms that wish to reduce their exposure to litigation risk.

2.6 What are current key issues of concern for the proponents of ESG?

Given the enormity and complexity of the challenges posed by ESG issues, particularly in the context of the climate emergency, there are many areas of concern. On a non-exhaustive basis, they include concerns that ambitious climate targets set by the Irish Government will not be achieved, the difficulties in delivering in a timely manner major infrastructural projects (such as major renewable energy projects) needed to transition the economy, uncertainty as to how Ireland plans to reduce emissions to meet targets in certain sectors, the significant public and private investment involved in achieving ESG objectives, and increasing signs of fatigue amongst the public and legislators at the volume and impact of new ESG legislation, particularly those that might impose costs on the public or involve significant changes to current behaviours.

2.7 Have ESG issues attracted shareholder activism, and from whom?

Shareholders can exercise influence and assert their particular ESG-related preferences over a company in which they are investing, through exercising their voting rights at general meetings. Shareholder activism in respect of ESG-related issues remains relatively low in Ireland, particularly in comparison to other jurisdictions. This may be reflective of Ireland's relatively small market for equities. However, as ESG-related concerns become more prominent, the likelihood is that shareholders will become more activist (following trends internationally), particularly in a context where shareholder rights have been strengthened by the Shareholder Rights Directive II (2017/828) and its transposition into Irish law by the European Union (Shareholders' Rights) Regulations 2020.

Shareholder plaintiffs may claim that they invested in reliance on sustainability pledges that prove to be false. The investment products in question may not be in scope of the Green Claims Directive, for example, but its provisions or those of other sustainability regulations could be relied upon by analogy, broadening the scope of their effect.

3 Integration of ESG into Strategy, Business Operations and Planning

3.1 Who has principal responsibility for addressing ESG issues? What is the role of the management body in setting and changing the strategy of the corporate entity with respect to these issues?

The board of directors is responsible for setting company strategy. The dynamic landscape of evolving ESG issues is forcing organisations to examine how they govern themselves, manage risk, and engage with stakeholders. The global trend towards greater transparency and sustainability is driving a more intense focus on corporate culture and accountability within organisations. With the ever-present threat to corporate reputations, boards are increasingly aware of the need to maintain the highest standards of governance and risk compliance. There is a growing recognition among boards, in particular, that ESG issues are inextricably linked to a variety of areas for which the board already has oversight, so these issues cannot be viewed in isolation. Instead, ESG issues must be evaluated as one component of what the board considers in overseeing key areas such as strategy, risk, and compliance. As shareholders become more activist, and as ESG issues become integrated into mainstream investing, pressures to change business models and provide sufficient disclosure are increasing.

3.2 What governance mechanisms are in place to supervise management of ESG issues? What is the role of the board and board committees *vis-à-vis* management?

Governance arrangements will depend on factors such as the size of the company, whether it is public or private, the sector in which it operates and how prominent ESG issues are in that sector, how evolved the company's position is on integrating ESG into its business, and so on. Increasingly, boards have taken overall responsibility for ESG oversight, including the company's overall strategy. Existing committees, such as the audit committee and the nominating committee, are also often allocated roles such as with respect to ESG reporting and ensuring the company has a diverse board with relevant expertise. ESG committees can also be established, focusing exclusively on the development and implementation of the ESG strategy, engaging with other committees where necessary, and reporting directly to the board. With respect to the establishment of specific board committees, the constitution of a company will usually empower it to establish committees with matters such as who can be on a particular committee, and how committees regulate their meetings, usually being dealt with in the constitution. Each committee's status and functions should be specified clearly in written terms of reference.

To ensure effective implementation of ESG strategy, a senior executive, often the Chief Executive Officer, will need to take responsibility for it, and ensure that management integrate ESG considerations into how business is conducted and, where necessary, develop specific policies and practices. Progress should be reported to the ESG committee where one has been established. Strategies should also be developed for engagement with stakeholders such as customers, employees, investors and lenders, including by devising internal and external communication approaches.

3.3 What compensation or remuneration approaches are used to align incentives with respect to ESG?

The practice of linking executive bonuses to the achievement of ESG-related targets has become more common among publicly listed companies in Ireland in recent years. However, there is some evidence more generally amongst companies that this practice may be less prevalent in Ireland than in other jurisdictions. This is notwithstanding ESG increasingly becoming a key priority for boards in Ireland.

At the EU level, there is an increasing focus on this at supervisory levels within certain sectors, such as banks and investments firms, with ESG increasingly being required under the applicable prudential regime to be taken into account when setting remuneration policies. Under SFDR, financial market participants and financial advisers are required to include in their remuneration policies information on how those policies are consistent with the integration of sustainability risks, and to publish that information on their websites. There have also been moves to include provisions linking directors' variable remuneration to the extent to which they implement climate transition plans under CS3D, although this has been strongly opposed.

3.4 What are some common examples of how companies have integrated ESG into their day-to-day operations?

The actions taken by companies to respond to the challenge of integrating ESG into their businesses depend in a large part on the size of the company and the sector in which it operates. In addition to seeking to understand and digest complex new ESG laws from a compliance perspective, companies will focus on how new policies will affect their business models, their markets, their products, and their supply chain. Common approaches include the following:

- Developing ESG strategies and governance arrangements, as described above.
- Implementing ESG training, for board members and for staff.
- Putting in place systems to collect and process ESG data.
- Publishing sustainability reports (see above) (which will increasingly be on a mandatory basis).
- Adopting various internal measures within the workplace designed to improve ESG performance, including by reducing energy use and investing in energy efficiency measures and renewable energy generation (such as through on-site solar generation or through corporate power purchase agreements with renewable energy generators).
- Reviewing supply chains for ESG-related risks and taking into account ESG considerations into procurement decisions.
- Integrating ESG considerations into travel policies.
- Employing specific personnel, often within the compliance function, responsible for ESG-related efforts.
- Signing up to various voluntary initiatives which commit the firm to the achievement of ESG-related goals.
- Engaging with the community to support community-based initiatives.
- Linking executive compensation to ESG-related performance.
- Promoting various initiatives and causes, as well as employee networks focused on particular ESG goals such as diversity and inclusion.

3.5 How have boards and management adapted to address the need to oversee and manage ESG issues?

As set out above, boards have increasingly undertaken primary responsibility for ESG oversight, have more regular discussions on ESG-related matters, have adopted ESG strategies, and have implemented governance arrangements to ensure that such strategies are operationalised. As new ESG-related legislation, particularly with respect to reporting, has started to apply, there has been a greater focus on the need for a proactive approach at board level.

4 Finance

4.1 To what extent do providers of debt and equity finance rely on internally or externally developed ESG ratings?

The reliance placed on internal and external ESG ratings or scores will vary, in many cases, depending on the size and sophistication of the provider of finance. Data is becoming increasingly important in the context of ESG investing as the greater volume, granularity, quality and standardisation of information allows for greater comparability between investments with technological advances in data analytics, artificial intelligence and machine learning enabling a more efficient and detailed analysis than was previously possible. This has enabled investors to adopt more tailored investment strategies pursuing specific and sometimes bespoke objectives, and also enabled the development of more evolved and sophisticated ESG ratings and benchmarks.

4.2 Do green bonds or social bonds play a significant role in the market?

There have been a number of significant green and social bond issuances by Irish issuers over the past number of years, including green bond issuances by the Irish sovereign and certain utilities and banks. Green and social bonds issued by Irish issuers have raised significant sums to fund green and social projects, including in the case of bonds issued by banks, by on-lending the proceeds through green and social loan programmes. However, the number of Irish issuers accessing the public bond markets is comparatively small, and therefore a significant proportion of sustainability-related financing happens at loan level.

The introduction of a voluntary "European Green Bond" or "EuGB" label by the EU Green Bond Regulation (detailed above), which will apply from 21 December 2024, may help to develop the Irish and wider EU green bond market.

4.3 Do sustainability-linked bonds play a significant role in the market?

Sustainability-linked bonds issued by Irish issuers have not been a significant feature of the Irish bond market to date, though this can to some degree be attributed to the small number of public bond issuers in the Irish market (as mentioned above). Their loan equivalent is increasingly prevalent as companies seek to align their financing strategies with their sustainability strategies.

4.4 What are the major factors impacting the use of these types of financial instruments?

Most sustainability-linked bonds are expressed to be aligned to the Sustainability Linked Bond Principles ("**SLBP**") produced by the International Capital Markets Association ("**ICMA**"). The SLBP are voluntary best practice guidelines that recommend structuring features, disclosure and reporting and to drive the provision of information needed to increase capital allocation to such financial products. The SLBP have five core components: (1) Selection of Key Performance Indicators ("**KPIs**"); (2) Calibration of Sustainability Performance Targets ("**SPTs**"); (3) Bond characteristics (usually a variation to the coupon); (4) Reporting; and (5) Verification.

See also below with respect to voluntary guidelines to be published by the European Commission to standardise pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds.

4.5 What is the assurance and verification process for green bonds? To what extent are these processes regulated?

The vast majority of green bonds are expressed to be aligned to the Green Bond Principles produced by ICMA. In summary, those Principles recommend that issuers appoint an external reviewer to assess, through a pre-issuance external review, their alignment with the four core components of the Green Bond Principles. In addition, following issuance, an issuer's management of proceeds should be supplemented by the use of a third party, to verify the internal tracking and the allocation of funds. Those external reviews should be made publicly available.

Where issuers issue European green bonds under the EU Green Bond Regulation, the relevant European green bond factsheet will be subject to a mandatory pre-issuance review with a positive opinion to be given by an external reviewer. In addition, the European green bond allocation report produced by issuers will be subject to a post-issuance review by an external reviewer of the allocation report drawn up after the full allocation of the proceeds of the European green bond. Where, following the publication of the allocation report, the allocation of proceeds is corrected, issuers of the European green bonds concerned must, without undue delay, amend the allocation report and obtain a post-issuance review by an external reviewer of that amended allocation report. In addition, issuers of European green bonds must, after the full allocation of the proceeds of such bonds, and at least once during the lifetime of the bond, draw up and make public a European green bond impact report on the environmental impact of the use of the bond proceeds. Issuers of European green bonds may obtain a review by an external reviewer of the impact report. The EU Green Bond Regulation also contains provisions relevant to the registration with ESMA, organisational and governance requirements, and supervision of external reviewers. In addition, the EU Green Bond Regulation provides that the Commission shall publish guidelines with a view to establishing voluntary templates for pre-issuance disclosures for issuers of bonds marketed as environmentally sustainable and sustainability-linked bonds (but which are not European Green Bonds) which will specify what information will be required to be disclosed by those templates, depending on the type of bond.

4.6 What other developments and factors are driving or hindering the financing of green projects?

Delays in bringing infrastructure projects to financial close remains a key issue in Ireland with the limited amount of fully consented and "shovel-ready" projects reducing the amount of capital being deployed to finance green projects. In addition, the high-interest rate environment, supply-chain issues, and inflation have all increased the cost of delivery and dampened the attractiveness of financing certain green projects. In addition, in some sectors, there is a continuing misalignment of market and economic incentives with sustainability objectives, particularly with the fall in energy prices in recent months.

5 Trends

5.1 What are the material trends related to ESG?

Notable trends include the increased focus on disclosures and data, with the first wave of in-scope companies being required to report under CSRD for FY2024 and with the publication of sustainability standards by the ISSB. These are in addition to disclosure obligations already imposed in the EU pursuant to the Taxonomy Regulation and SFDR. In 2024, rather than the introduction of new measures, there was a greater focus on developing and implementing the existing regulatory framework. As mentioned above, there is also an increasing focus on greenwashing as a key area for supervisory attention, with the ESAs having published their final reports on greenwashing, and the progression of EU proposals to protect consumers from false green claims. There is also an increasing focus on transition finance. The European Commission has published recommendations on transition finance, showing how companies can use the various tools of the EU sustainable finance framework on a voluntary basis to channel the investments into the transition and manage their risks stemming from climate change and environmental degradation. Supply chains are under scrutiny from an ESG perspective, but also as a result of geopolitical tensions, the vulnerabilities exposed by the COVID-19 pandemic, and the impact that supply chain delays have had on infrastructure projects. Finally, inflation and rising interest rates have had a dampening effect on ESG-related investments and financings.

Éamon Ó Cuív is an expert on sustainable finance, including debt capital markets and lending transactions, having advised on many of the landmark sustainable financing transactions in the Irish market. In addition to advising on sustainability-related transactions and undertaking related advisory work, Éamon also frequently delivers presentations to industry organisations and clients on the latest developments in sustainable finance, and also publishes regularly in this space. Éamon is also an adjunct professor within the School of Law, University College Cork where he has co-developed a new sustainability-focused curriculum.

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