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IRELAND

Ian Conlon, Niamh O'Shea & Richard O'Donoghue
Maples Group

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1. Have there been any significant changes, developments or emerging trends in ESG regulation in Ireland over the last 12 months?

ESG and sustainable finance in Ireland is an area that is continuously evolving and growing to meet the expectations of a wide number of stakeholders, including shareholders, policymakers, regulators and central banks. In recent years, there have been a series of legislative initiatives and regulations introduced in Ireland principally to support the European Union's Green Deal. The Green Deal is the EU's ambitious plan to achieve climate neutrality by 2050, foster sustainable growth and accelerate the transition to a low-carbon, more sustainable economy.

This series of legislative initiatives and regulations include the Sustainable Finance Disclosure Regulation (the SFDR), the Taxonomy Regulation, the Low Carbon Benchmark Regulation and the supporting secondary legislation regarding the implementation of delegated acts.

Over the past 12 months, the ESG and sustainable finance agenda has continued to evolve, most notably with the implementation of the Corporate Sustainability Reporting Directive (the CSRD). The CSRD entered into force on 5 January 2023, and requires companies to include mandatory EU sustainability reporting disclosures in their annual financial statements and undergo limited audit assurance on their climate and environmental data. The CSRD is a key part of the Green Deal.

The CSRD applies on a phased basis, and only listed Irish companies with more than 500 employees will need to make the sustainability disclosures in their 2025 financial statements with respect to the 2024 reporting period. Following the recent publication of the European Commission's Omnibus Package (which proposes amendments to both CSRD and CS3D), it is proposed that the scope for CSRD going forward would be limited to companies with more than 1,000 employees.

Another significant regulatory development in Europe is the Corporate Sustainability Due Diligence Directive (CS3D), which came into force on 25 July 2024. CS3D will require large EU companies (EU-incorporated companies with more than 1,000 employees and net worldwide turnover of more than EUR 450 million) and large non-EU companies (those that have generated more than EUR 450 million of net turnover in the EU in two consecutive financial years) to conduct environmental and human rights due diligence across their chain of activities. It should be noted, however, that CS3D will apply on a phased basis, with the final details of both this phasing and due diligence to be agreed following publication of the Omnibus Package proposals.

2. How is ESG defined in a corporate/commercial context, and what are its major elements?

The term ESG does not have a specific meaning and is not defined in Irish regulations. The major laws/regulations that are related to ESG and applicable to Ireland are those at a European level that push the sustainability and green finance agenda in Ireland. These include the SFDR and the Taxonomy Regulation (as further detailed in Question 3 below).

In particular, the SFDR requires asset managers to provide more transparency on how they integrate sustainability risks into their investment decisions and the consideration of how principal adverse sustainability impacts the investment process. The SFDR identifies three types of funds and distinguishes between them depending on the extent of environmental, social and governance integration. The three fund types are colloquially known as:

- an Article 6 fund, being a fund that either does or does not integrate the consideration of sustainability risks into its investment decision making process;
- an Article 8 fund, being a fund that promotes environmental or social characteristics, investing in companies which follow good governance practices; and
- an Article 9 fund, being a fund that has a sustainable investment objective.

3. What, if any, are the major laws/regulations specifically related to ESG?

The major laws/regulations specifically related to ESG currently are:

- the SFDR;
- the Taxonomy Regulation (Regulation (EU) 2020/852);
- the Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing the SFDR;
- the CSRD;
- Commission delegated regulations and Commission delegated directives which integrate sustainability issues and considerations into the following EU legislative regimes:
  - the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive 2009/65/EC, amended by Commission Delegated Directive (EU) 2021/1270;
  - the Alternative Investment Fund Managers Directive (AIFMD) 2011/61/EU, amended by Commission Delegated Regulation (EU) 2021/1255;
  - the Markets in Financial Instruments Directive (MiFID II) 2014/65/EU, amended by Commission Delegated Regulation (EU) 2021/1253 and Commission Delegated Directive (EU) 2021/1269;
  - Solvency II Directive 2009/138/EC, amended by Commission Delegated Regulation (EU) 2021/1256; and
  - Insurance Distribution Directive EU/2016/97, amended by Commission Delegated Regulation (EU) 2021/1257; and
- the Low Carbon Benchmark Regulation (Regulation (EU) 2019/2089).

4. What other laws/regulations touch on ESG themes?

There are a number of other laws in Ireland which touch on ESG themes. From an environmental perspective, the Climate Action and Low Carbon Development (Amendment) Act 2021 commits Ireland to 2030 and 2050 targets for reducing greenhouse gas emissions and providing the governance framework. Ireland is now on a legally binding path to net-zero emissions no later than 2050, and to a 51% reduction in emissions by the end of this decade.

From a social perspective, the Criminal Law (Human Trafficking) Act 2008 (as amended) creates offences concerning trafficking and sexual exploitation and applies to Irish corporate bodies. Of significance in Ireland is the Gender Pay Gap Act 2021, which seeks to address gender representation within organisations. It requires organisations to publish information on the gender pay gap in their organisations and a statement setting out:

- the reasons for such differences; and
- measures to reduce such differences.

Furthermore, the Employment Equality Acts 1998-2015 prohibit discrimination under the nine grounds in employment.

From a governance perspective, most notable is the Irish Companies Act 2014, which requires directors of Irish companies to act in good faith in what the director considers to be the interests of the company. The European Union (Corporate Sustainability Reporting) Regulations, which implement the CSRD in Ireland, amend certain provisions of the Irish Companies Act 2014 to reflect the requirements of the CSRD and to introduce new obligations for directors of Irish companies with respect to sustainability reporting. In addition, the Central Bank of Ireland, through its fitness and probity regime, imposes additional requirements that must be adhered to by directors of regulated entities to ensure they are competent and capable, honest, ethical and of integrity, and are also financially sound.

5. What, if any, litigation or enforcement activity has been related to ESG?

To date, there have been limited reported decisions by the Irish courts in relation to ESG issues. Further, while Ireland has a number of active environmental non-governmental organisations (NGOs), climate-related claims by such NGOs have tended to be in the area of planning and environmental law. Nonetheless, the trend of ESG-related litigation, which is continuing to build elsewhere, is likely to surface to some degree in Ireland in the near future.

The prevalence of such claims by groups of investors or consumers in Ireland may be tempered somewhat as, unlike other jurisdictions that have seen a rise in such litigation, especially the United States, Ireland does not currently have a formal class action procedure. While in certain circumstances it may be open to a party to bring a test case, where there are multiple claims arising from the same circumstances and a select claimant's case is heard, or a representative action, where a claimant brings a case on behalf of a group that shares the same interest, these procedures are restrictive and do not facilitate group claims as efficiently as the class action system that exists in the United States.

However, such barriers have been alleviated with the EU Collective Redress Directive, which was transposed into Irish law by the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 on 11 July 2023. The legislation provides for a more accessible and cost-efficient framework for consumer class actions in Ireland and across the EU in relation to breaches of EU law, by allowing a representative organisation to be classified as a "Qualified Entity" (QE) provided it meets minimum criteria and standards. To be designated as a QE, an organisation may apply to the Minister for Enterprise, Trade and Employment. The Irish Council for Civil Liberties (ICCL) is the first entity to be designated as a QE in Ireland.

6. What are the major non-law/regulatory drivers of ESG trends and developments?

Beyond legal and regulatory frameworks, several non-law drivers shape ESG trends in Ireland. For example, the voluntary regimes that are currently in existence with respect to ESG include the Global Reporting Initiative, the Financial Stability Board's Task Force on Climate-related Financial Disclosures, and the International Sustainability Standards Board (ISSB) (which consolidates the Climate Disclosures Standards Board, the Sustainability Accounting Standards Board and Integrated Reporting). In addition, certain ESG-related regulations have introduced voluntary disclosures; for example, the Low Carbon Benchmark Regulation has introduced two new categories of low-carbon benchmarks, namely:

- a climate-transition benchmark; and
- a specialised benchmark that brings investment portfolios in line with the Paris Climate Agreement regarding the goal to limit the global temperature increase.

The categories are voluntary labels designed to assist investors who are looking to adopt a climate-conscious investment strategy.

Furthermore, investors are increasingly looking to align their investment decisions with their personal priorities. Investors are now not only focused on financial returns but also on non-financial outcomes. They are seeking to invest in companies that have the capabilities to both achieve and maintain strong financial and ESG performance. Asset managers are embracing ESG to better align with stakeholders' interests. The focus has turned to long-term incentives aligning investment practices with social responsibilities and principles in order to meet investor demands. Investors are also recognising the potential for ESG factors to affect the valuation and performance of companies they invest in, and this has resulted in investors pressuring companies to increase the amount of information disclosed to investors on ESG-related matters.

7. Are the laws, regulations and obligations highlighted in Question 3 primarily related to corporate disclosure?

The laws and regulations described in Question 3 are primarily related to corporate disclosure. As referenced above, most notably the CSRD applies to large Irish companies and Irish listed SMEs and introduces new rules concerning the social and environmental disclosures companies are required to make in their financial statements, whilst also expanding the scope of reporting requirements to include a broader range of companies. These new rules will have significant implications for companies' reporting processes, internal controls and governance, as well as for their relations with their shareholders, customers, suppliers and other stakeholders.

8. Which sectors are most impacted by ESG? How significant is ESG investment?

Hedge funds/asset managers

The asset management industry has been most impacted by ESG in Ireland. Ireland has emerged as a leader in sustainable finance, being home to 1,778 Article

8 funds (funds that promote environmental or social characteristics) and 183 Article 9 funds (funds that have a sustainable investment objective). Assets in Irish sustainability funds now stand at over EUR 1.2 trillion assets under management (AUM). This represents almost one-third of the total AUM in Ireland.

The SFDR is playing a crucial role in meeting the ambitions of the Green Deal. The increased flow of capital towards sustainable activities is a direct consequence of the SFDR, thereby accelerating the transition to a low-carbon, more sustainable economy.

As notable as the growth in both the number and AUM of sustainable funds is the diverse range of asset classes across which managers are delivering sustainable investment strategies. Asset managers are structuring sustainable funds across all asset classes, demonstrating that the Article 8 and Article 9 categorisations are not constraining managers in terms of investment portfolio construction.

This variety of asset classes indicates that the SFDR is achieving one of its key objectives, namely the redeployment of capital sustainably across a broad spectrum of asset and fund types, which will be a key step in achieving the net zero goals of the Green Deal.

9. What are the trends regarding ESG governance?

In terms of other trends in Ireland regarding ESG governance, boards play an important role in driving ESG development within their companies, and board oversight on ESG issues can help businesses better manage their ESG-related risks and opportunities. This includes a board's oversight responsibilities. Boards also play an essential role in assessing an organisation's environmental and social impacts and understanding the impact of ESG issues on the organisation's operating model. Boards have a crucial role to ensure that companies are aware of, and can navigate, the ever-changing landscape and exercise oversight in this respect; such oversight should be informed, strategic and aligned with the company's business model to create long-term value. The board will also play a role in identifying the issues as well as evaluating and recommending steps to be taken with respect to ESG issues.

Investors are increasingly turning to the boards of companies for accountability with respect to ESG. Key performance indicators (KPIs) are also in place to supervise the management of ESG issues, used as a tangible measurement to quantify the extent to which a company is achieving its goals. Investors expect board members to be competent in the area of ESG matters.

With regard to providing oversight and supervision in this area, consideration should be given to allocating oversight responsibilities to consider:

- which activities should be overseen by the board and which should be delegated to a committee, for example, a sustainability committee, which could include providing guidance to management;
- disclosure of information with regard to information that should be shared between the board and management, including, for example, KPIs and metrics in order to understand the importance of certain ESG issues; and
- ESG as part of the board's oversight and strategy by incorporating ESG initiatives into the overall company strategy, and establishing metrics to include ESG initiatives to assess these performance indicators against the overall company strategy and ensuring oversight of ESG integration.

10. To what extent are ESG ratings or ESG benchmarks relied upon?

ESG ratings play a crucial role in Ireland as investors, companies, and policymakers increasingly focus on sustainability. Issuers of debt and equity finance rely on both internally and externally developed ESG ratings, and not just financial data, to add value by both improving performance and reducing volatility returns.

In the past decade, there has been a significant increase in the use of ESG information in the investment process, with issuers and investors alike recognising that ESG ratings have real value in driving investment performance. ESG ratings can complement existing factors such as liquidity, volatility and performance. Investors are increasingly considering a company's ESG rating when making investment decisions. Investment in companies that have low ESG ratings can be subject to criticism and as a result investors seek to avoid being associated with entities that have poor environmental practices, social responsibility, or governance issues. On the other hand companies that have high ESG ratings may see an increase in investor demand and investment flows. The European Parliament's adoption of the Regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities (the ESGR) on 24 April 2024 makes the EU the first jurisdiction to formally regulate the growing ESG ratings market. The ESGR applies to ESG ratings issued by ESG rating providers operating in the EU and will play a key role in providing transparency to investors when considering a company's ESG rating.

11. What is the role of the private markets versus public markets in driving ESG developments?

In Ireland, both private and public markets play distinct roles in driving ESG developments.

Public companies in Ireland are subject to strict regulatory requirements, such as the CSRD, which mandates comprehensive ESG reporting. Entities may have up to 30 new standards to report on, with quantitative metrics and qualitative disclosure requirements — all of which will be subject to mandatory assurance. This pushes public companies to have more robust ESG practices.

Aside from regulatory compliance, public companies in Ireland are facing pressure from investors and shareholders as they are increasingly prioritising ESG factors. Also, due to their size and public nature, these companies have a significant influence on market trends and can set industry standards for ESG practices.

Private companies in Ireland are not immune to ESG regulation either, despite in some cases being much smaller than their public counterparts. For example, regulations such as the CSRD and the Taxonomy Regulation also apply to private companies.

ESG has become a common term among private fund providers, including those in private equity and debt sectors. Private companies should at least develop an ESG narrative to avoid missing out on opportunities.

While many private equity firms in Ireland consider ESG as a non-financial risk in their investment decisions, some also use it to identify value creation opportunities throughout the deal lifecycle. By thoroughly addressing and integrating ESG in their long-term strategies, companies can enhance their exit value and compete for capital with publicly listed companies.

12. What are the major challenges in terms of compliance for companies under ESG obligations?

In terms of the major challenges for compliance by companies with their ESG obligations, the lack of comparable ESG data remains a key concern for companies in adhering to their ESG obligations. Robust, comparable and reliable ESG data is key to identifying and assessing sustainability risks and to steer companies towards the objectives of the Paris Climate Agreement and the Green Deal. The availability of high quality, comparable, reliable and public ESG data is currently limited but is improving over time. It is also often expensive, leading to unnecessary costs and competition concerns. The availability of raw, harmonised ESG data would allow for better comparability, increase transparency, lower barriers and costs, generate efficiency, reduce complexity and attract new players.

13. What information sources are most relevant for ESG considerations?

The information sources that are most relevant for ESG considerations in Ireland are:

- the regulatory guidance provided by the Irish regulator, the Central Bank of Ireland – this includes the Central Bank of Ireland's Climate Action Roadmap;
- the European Commission;
- the European Securities and Markets Authority (ESMA);
- the European Banking Authority; and
- the Commission Technical Expert Group on Sustainable Finance.

In addition, as highlighted in Question 6, there are voluntary regimes that are currently in existence which are used as information sources in Ireland with regard to ESG considerations, including the Global Reporting Initiative, the Financial Stability Board's Task Force on Climate-related Financial Disclosures, and the ISSB

14. Has Ireland developed a Taxonomy related to ESG?

As noted above, the Taxonomy Regulation is one of the cornerstones of the EU's Green Deal.

The Taxonomy Regulation provides for a framework to classify environmentally sustainable economic activities. It sets out the criteria and factors to be considered for a product or activity to be deemed "environmentally sustainable". It seeks to increase transparency and establish clarity on what activities are deemed "green" or "sustainable".

The Taxonomy Regulation also sets out a list of economic activities with performance criteria for their contribution to six environmental objectives (the Environmental Objectives), namely:

- climate change mitigation;
- climate change adaptation;
- 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.

For an activity to qualify as being "environmentally sustainable", it must substantially contribute to one of the Environmental Objectives, while also complying with each of the following criteria:

- no significant harm — the activity must not significantly harm any of the Environmental Objectives;
- technical screening criteria — the activity must comply with technical screening activity in respect of each of the Environmental Objectives; and
- minimum social and governance safeguards — the activity must comply with minimum social and governance safeguards in the Taxonomy Regulation.

15. What does the future hold for ESG in Ireland?

ESG and sustainable finance remains a core focus for the Irish government. This is evident in the Ireland for Finance Strategy published by the Irish government, which has sustainable finance as one of its core themes, with the aim of embedding environmental, social and governance principles into the financial system by encouraging longer term investments in sustainable economic projects.

The Irish government remains focussed on matters that maintain and develop Ireland as a centre of excellence for sustainable finance and that encourage ESG investment. Having a prominent place at the table in Europe remains key for discussing sustainable finance issues and developing policy and legislation in this area, which is necessary to ensure that Ireland has an opportunity to influence and shape the sustainable finance agenda for the future.

Ireland has also recently established its International Sustainable Finance Centre of Excellence, the aim of which is to become an international hub from which the finance industry in Ireland will develop its response to sustainability demands and deliver on Ireland's own net-zero ambitions.

AUTHOR BIOGRAPHIES

Ian Conlon
Ian is a partner of Maples and Calder's Funds & Investment Management team in the Maples Group's Dublin office. Ian is recognised as a leading lawyer in the ESG and sustainable finance space and is head of the Maples Group Irish Sustainable Investing Group. He regularly advises clients on the establishment of sustainability focused investment funds, as well as global asset managers looking to integrate ESG as part of their organisational and operational frameworks. Ian is a regular contributor and speaker at industry conferences and events on ESG and sustainable finance, as well as the broader Irish and European regulatory space. Ian is recommended by Chambers Global, ILFR and Legal 500. Clients describe Ian as "exceptional, he has incredible knowledge of the ESG and sustainable investment space".

Niamh O'Shea
Niamh is a partner of Maples and Calder's Funds & Investment Management team in the Maples Group's Dublin office. Niamh has particular expertise in the ESG and sustainable investment space. She regularly advises asset managers on the implementation of and compliance with the SFDR, the Taxonomy Regulation and the CSRD. Niamh is a frequent speaker at industry events, where she shares her insights on ESG matters.

Richard O'Donoghue
Richard is a partner of Maples and Calder's Funds & Investment Management team in the Maples Group's Dublin office. He advises in respect of the establishment, authorisation and ongoing operation of Irish regulated investment funds. Richard has extensive experience on the implementation of and ongoing compliance with the SFDR, the Taxonomy Regulation and the CSRD. He has a particular focus on SFDR pre-contractual and periodic reporting requirements and frequently contributes to and authors sustainable finance publications.