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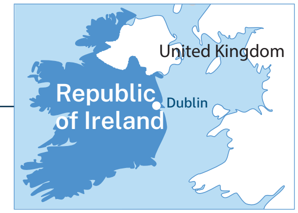

Trends and Developments

Contributed by:
Vincent McConnon, William Foot, John Adams, Michelle Holligan,
Nicole Burke and Graham Bloomfield
Matheson LLP

Matheson LLP was established in 1825 in Dublin, Ireland and has offices in Cork, London, New York, Palo Alto and San Francisco. Almost 900 people work across Matheson's six offices, including 127 partners and tax principals and over 600 legal, tax and digital services professionals. Matheson services the legal needs of internationally focused companies and financial institutions doing business in and from Ireland. The firm's clients include over half of the world's 50 largest banks, seven of the world's ten largest asset managers and seven of the top ten global technology brands, and it has advised the majority of the Fortune 100 companies.

Authors

Vincent McConnon is a partner in the finance and capital markets department at Matheson. Vincent's experience covers a range of structured finance work, including substantial experience in various types of asset-backed securitisations, advising in relation to the financing of alternative lenders, corporate bond issuances, collateralised loan obligation transactions, green bonds, project and infrastructure finance, loan portfolio disposals, noteholder consent solicitations, MTN programmes, securitisation terminations and other forms of structured finance products. Vincent previously worked in the securitisation practice of a Magic Circle law firm in London for several years.

William Foot is a partner in Matheson's finance and capital markets department. William advises financial institutions, asset managers, originators, arrangers, issuers, trustees and investors on a range of debt capital markets, ETP programmes and other structured finance transactions. William also advises clients on the EU prospectus, transparency and market abuse law, and listing queries relating to the listing of debt securities in Dublin, London, Vienna and Luxembourg. William's industry experience includes senior in-house legal roles at a major CLO manager and other regulated entities where he provided regulatory advice relating to MiFID II, AIFMD, CRR, EMIR and the Securitisation Regulation.

John Adams is a professional support lawyer in Matheson's finance and capital markets department. John has a broad range of experience in various aspects of banking and finance law. He has particular expertise in debt capital markets, securitisations, structured finance, loan sales, derivatives, financial regulation and syndicated lending. As well as extensive experience as a private practice lawyer working on transactions and other matters, John's industry experience includes senior in-house legal roles at an Irish pillar bank.

Michelle Holligan is a senior associate in the finance and capital markets department at Matheson. Michelle advises several leading international investment banks, asset managers, arrangers, private equity firms, issuers and financial services providers on all aspects of securitisation, debt capital markets and structured finance transactions. Michelle regularly advises on the establishment of Irish investment vehicles for the purposes of acquiring and/or originating a range of financial assets across Europe and the USA.

Nicole Burke is a senior associate working in the finance and capital markets department at Matheson. Nicole has experience advising on a broad range of structured finance transactions, including trade receivables securitisations, collateralised loan obligation transactions, asset-backed commercial paper programmes, synthetic securitisation transactions, corporate bonds issuances and separately managed account structures. Nicole's industry experience includes an in-house legal role at a major CLO manager, where she worked on a variety of transactions such as CLOs, risk retention structures and separately managed accounts, and provided regulatory advice on the Securitisation Regulation, MiFID II, AIFMD, CRR and EMIR.

Graham Bloomfield is a senior associate in Matheson's finance and capital markets department focusing on structured finance. Graham has experience advising on a broad range of structured finance transactions, including the launch of a variety of exchange-traded products, bond issuance and repack programmes. His experience also includes a variety of collateralised loan obligation, commercial paper and synthetic risk transfer transactions. Graham also regularly advises clients on regulatory issues relating to the Securitisation Regulation, Market Abuse Regulation and Transparency Regulations, as well as on matters related to the custody of electronic assets, derivatives, set-off and netting.

Contributed by: Vincent McConnon, William Foot, John Adams, Michelle Holligan, Nicole Burke and Graham Bloomfield, **Matheson LLP**

Matheson LLP

70 Sir John Rogerson's Quay
Dublin 2
Ireland

Tel: +353 1232 2000
Fax: +353 1232 3333
Email: dublin@matheson.com
Web: www.matheson.com

Introduction

In 2024, renewed political support for a well-functioning EU securitisation market contributed to a positive year for capital markets across Europe. The securitisation markets proved resilient to the various challenges in 2024, and with the anticipated "maturity wall" for many securitisation refinancings due in 2025, the authors expect a busy year ahead.

Meanwhile, regulatory evolution continued apace in 2024. This article will explore some of the main legal and regulatory developments that impacted the securitisation market in Ireland in 2024 and that are likely to further impact this market in 2025. As a major hub for securitisation activity in the EU, the legal framework in Ireland tracks both EU and domestic Irish legislation. The impact of new and proposed EU laws and regulations on Irish issuers of securitisation debt, and which will be of interest to market participants generally, are considered below. The firm also advised on the Irish tax implications of such structures, and on the listing of debt securities on various stock exchanges throughout 2024 – although such matters are outside the scope of this article.

Credit Servicing Directive

The Directive on Credit Servicers and Credit Purchasers (Directive (EU) 2021/2167; the "Credit Servicing Directive") applies to the sales and servicing of non-performing loans (NPLs) issued by a credit institution established in the EU. Ireland transposed the Credit Servicing Directive via the European Union (Credit Servicers and Credit Purchasers) Regulations 2023 (the "Credit Servicing Regulations") on 21 December 2023, with an effective date of 30 December 2023.

The Credit Servicing Regulations clarify a few important points as part of the transposition of the Credit Servicing Directive under Irish law, as follows.

- A purely domestic regime for credit servicing firms under Part V of the Irish Central Bank Act 1997 (as amended; the "Credit Servicing Firms Regime") has been in force in Ireland since July 2015, and the Credit Servicing Firms Regime remains in force following the transposition of the Credit Servicing Directive into Irish law. The Credit Servicing Firms Regime operates alongside the new regime under the Credit Servicing Regulations – effectively creating two parallel regulatory frameworks. The Credit Servicing Firms Regime continues to apply to matters and agreements not expressly covered by the scope of the Credit Servicing Regulations.
- There are two separate authorisation regimes for credit servicing in Ireland. The first is the

Credit Servicing Firms Regime. Unless they are regulated financial service providers authorised to provide credit in Ireland, credit servicing firms need to be authorised under the Credit Servicing Firms Regime if they carry out credit servicing activities that come within the scope of the Credit Servicing Firms Regime and that go beyond the scope of the Credit Servicing Regulations. The second is the regime for authorised credit servicers under the Credit Servicing Regulations. If credit servicers carry out credit servicing activities that fall within the scope of the Credit Servicing Regulations (ie, the servicing in Ireland of NPLs originated by EU credit institutions on behalf of purchasers who are not EU credit institutions) and are not otherwise exempt, they need to be either (i) authorised as a credit servicer under the Credit Servicing Regulations or (ii) authorised as a credit servicer under the equivalent transposing regulations for the Credit Servicing Directive in a different EU member state, and must passport that authorisation into Ireland under the terms of the Credit Servicing Regulations.

- Credit servicing firms that were authorised under the Credit Servicing Firms Regime before 30 December 2023 are deemed to be authorised as credit servicers under the Credit Servicing Regulations. This was an important concession for the (approximately 20) Irish credit servicing firms operating under the Credit Servicing Firms Regime.
- The Central Bank of Ireland has been designated as the national competent authority under the Credit Servicing Regulations.

The Listing Act

Regulation (EU) 2024/2809, Directive (EU) 2024/2810 and Directive (EU) 2024/2811 (together, the "Listing Act") were published in the Official Journal of the European Union on 14 November 2024 and entered into force on 4 December 2024 (although in some cases the obligations will be introduced on a staggered timeline and will not come into effect until 14 to 24 months following entry into force).

The Listing Act is relevant for Irish issuers. Its overall objectives are to make the EU's public capital markets more attractive, facilitate the listing of smaller companies by streamlining the listing process (which should ultimately reduce regulatory compliance costs) and enhance legal clarity, while ensuring an appropriate level of investor protection and market integrity.

Amongst other matters, the Listing Act amends the Prospectus Regulation, the Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation. The Prospectus Regulation amendments include:

- allowing future annual/interim financials to be incorporated by reference into a base prospectus without a supplement;
- extending the walkaway right period for investors from two to three working days where a supplement is published, or the final offer price/amount of securities being offered cannot be disclosed;
- expanding prospectus exemptions, including the exemption for secondary issuances of securities fungible with securities already admitted to trading;
- making the EUR150 million higher exemption threshold permanent for non-equity securities offers by credit institutions;
- permitting more documents to be incorporated by reference;
- relaxing the risk factor ranking requirement slightly;

- clarifying that prospectuses should not contain risk factors that are generic, only serve as disclaimers or are insufficiently clear; and
- clarifying that new securities cannot be added into a base prospectus by way of a supplement.

Prospectus Regulation amendments to be introduced on a staggered timeline include:

- amendments to the standardised prospectus format;
- ESG disclosure requirements for EU Green Bond Standard-compliant and EU Green Bond Standard "opt-in" bonds, as well as other green/sustainable bonds that rely on market-based/International Capital Market Association (ICMA) principles; and
- introducing a harmonised threshold for exempting small public offers of securities by replacing the current discretionary EUR8 million threshold with a uniform EUR12 million exemption (aggregated over 12 months), except where offered cross-border. Member states will have discretion inter alia to set a lower threshold of EUR5 million.

The MAR amendments clarify that market-sounding procedures are optional rather than mandatory. Disclosing market participants complying with such procedures still benefit from the current safe harbour; however, non-compliance will not create a presumption of unlawful disclosure. The amendments also simplify the cleansing process by removing the obligation to inform recipients where information has already been publicly announced, and clarify that the definition of market sounding covers disclosures not followed by an announcement of a transaction.

Separately, the permitted delayed disclosure of inside information where the delay is not likely to mislead the public has been replaced by a specific condition that the inside information is not contrary to the most recent public announcement or other relevant issuer communication.

Securitisation Regulation

There were a number of developments regarding Regulation (EU) 2017/2402 (as amended; the "Securitisation Regulation") throughout 2024 that are of relevance to Irish issuers. Some of the most important are outlined below.

The Securitisation Consultation

On 9 October 2024, the European Commission launched a targeted consultation on the current EU securitisation framework (the "Securitisation Consultation"). The Securitisation Consultation looked for feedback from stakeholders (including institutional investors, issuers, originators, sponsors, arrangers and retail investors) on the EU securitisation framework. It asked general questions of stakeholders concerning:

- the effectiveness of the securitisation framework;
- the impact on SME finance;
- the scope of application of the Securitisation Regulation;
- the functioning of the securitisation market; and
- wider aspects that may affect securitisation activity and various segments of the securitisation market.

The Securitisation Consultation also asked more specific questions of stakeholders, including in relation to:

- costs incurred by investors in complying with due diligence requirements;
- the definition of public securitisation;

- potential amendments to the transparency requirements applicable to private securitisations;
- the streamlining of supervision by national competent authorities;
- increasing the attractiveness of the simple, transparent and standardised (STS) label;
- the potential establishment of a pan-European securitisation platform;
- capital requirements and the conditions to be met for the synthetic risk transfer (SRT) tests;
- the treatment of insurers in the securitisation market; and
- restrictions on the ability of certain pension funds to invest in securitisations.

The Securitisation Consultation closed on 4 December 2024.

Guidelines on synthetic securitisations

On 27 May 2024, the European Banking Authority (EBA) published its final guidelines on the criteria for on-balance-sheet (ie, synthetic) securitisations to be recognised as STS securitisations under the Securitisation Regulation (the "STS Guidelines"). The STS Guidelines have applied since 9 December 2024.

The STS Guidelines contain a range of clarifications and interpretations, including further details regarding:

- the requirements for synthetic excess spread committed by the originator and available as credit enhancement for investors;
- the expertise of the servicer and the requirement for servicers to have well-documented policies, procedures and risk management controls;
- the requirement for underlying exposures to be subject to verification by an independent party prior to closing; and
- certain representations and warranties required to be provided by the originator in the securitisation documentation in respect of the characteristics of the underlying exposures.

While introducing the STS Guidelines, the EBA also made a limited set of targeted amendments to the existing EBA guidelines on asset-backed commercial paper, and on non-asset-backed commercial paper for STS securitisations. These amendments were targeted to ensure appropriate consistency across all three sets of guidelines.

The EU Green Bond Standard

There has been a significant recent development in the international green bond market. Regulation (EU) 2023/2631 (as amended; the "Green Bond Standard Regulation") was published in the *Official Journal of the European Union* on 30 November 2023 and came into force on 21 December 2024. While the European Green Bond Standard (EuGBS) provided for in the Green Bond Standard Regulation is a voluntary standard, it has the potential to become the leading standard in the international green bond market. It is an ambitious standard that goes well beyond existing guidelines and labels in the international green bond market. The new EuGBS is open to any issuer of green bonds, including Irish issuers and issuers located outside of the EU.

The key terms of the Green Bond Standard Regulation include the following:

- the funds raised by EuGBS bonds must be allocated to projects aligned with the taxonomy outlined in the EU Taxonomy Regulation (the "EU Taxonomy");

- transparency requirements on how EuGBS bond proceeds are allocated through detailed reporting requirements – there are pre-issuance and post-issuance reporting requirements in this regard;
- all EuGBS bonds must be checked by an external reviewer to ensure compliance with the Green Bond Standard Regulation and that funded projects are aligned with the EU Taxonomy; and
- external reviewers providing services to issuers of EuGBS bonds will need to be registered with and supervised by the European Securities and Markets Authority (ESMA).

As well as corporate bond issuers, the Green Bond Standard Regulation is also relevant to the issuers, sponsors and originators of securitisations. In 2022, both the EBA and the European Commission expressed the view that, rather than developing a specific framework for sustainable securitisations in the EU, legislators should ensure that the EuGBS is appropriate for use by securitisations. This has been reflected in the final text of the Green Bond Standard Regulation, which includes the provision that certain of the EuGBS requirements apply to the originator rather than the issuer. This ensures that rather than being limited to including green collateral at the issuer level, a securitisation may now benefit from looking at the originator's role in sourcing green assets and still meet the EuGBS.

However, the final text of the Green Bond Standard Regulation also confirms that bonds issued for the purpose of synthetic securitisation shall not be eligible to meet the EuGBS. The European Supervisory Authorities will review and report on possible changes to this exclusion by December 2028, subject to which the European Commission may produce a further report and possibly a legislative proposal. The Green Bond Standard Regulation also contains some exclusions for securitised exposures and additional specific disclosure requirements for securitisations.

The EU Capital Markets Union

The Eurogroup of EU Finance Ministers (the "Eurogroup") issued a statement (the "Eurogroup Action Plan") on the Capital Markets Union (CMU) on 11 March 2024, identifying three priority action areas and 13 specific measures to improve the functioning of European capital markets for the EU legislative term running from 2024 to 2029.

The CMU is a plan to create a single market for EU capital, with the aim of getting investments and savings flowing across the EU to benefit consumers, investors and companies, regardless of their location.

The Eurogroup has identified the following three priority action areas:

- architecture – develop a competitive, streamlined and smart regulatory system allowing funds to be better channelled into innovative EU businesses, with greater liquidity, risk-taking and risk-sharing together with higher resilience and financial stability;
- business – ensure better access to private funding for EU businesses to invest, innovate and grow in the EU; and
- citizens – create better opportunities for EU citizens to accumulate wealth and improve financial security by increasing direct and indirect retail participation through access to profitable investment opportunities.

The specific measures suggested in the Eurogroup Action Plan include the following, which the Eurogroup requested that the European

Commission prioritise and then bring forward proposals to deal with:

- securitisation – assess all the factors negatively impacting the development of the EU securitisation market and take into account similar international standards;
- supervisory convergence – assess ways to improve supervision in the EU through further developing a common rulebook and enhancing supervisory convergence;
- reducing regulatory burden – consider how to reduce regulatory and cost burdens for EU financial market participants;
- national corporate insolvency frameworks – assess the need for additional measures to facilitate convergence in specific features of insolvency frameworks that could deter cross-border capital markets/investments; and
- sustainable finance – enhance the usability of the EU sustainable finance framework and support stakeholders with its implementation.

Stakeholders including the Banking & Payments Federation Ireland and the Association for Financial Markets in Europe have welcomed the Eurogroup Action Plan.

Separately, in September 2024 the European Commission published a report authored by Mario Draghi entitled "The future of European competitiveness". The report called for the completion of the CMU, including by transitioning ESMA into the single common regulator for all EU securities markets and reviewing the current EU securitisation framework.

Given the reaction to the Eurogroup Action Plan, together with the Securitisation Consultation referenced above, the authors expect further progress on the CMU to be a key focus for policymakers and legislators. Financial market participants should continue to monitor CMU-related developments in 2025.

ESG Ratings Regulation

Regulation (EU) 2024/3005 (the "ESG Ratings Regulation") was published in the *Official Journal of the European Union* on 12 December 2024 and will apply from 2 July 2026. It aims to increase transparency and confidence in sustainability-related information.

The ESG Ratings Regulation will apply to ESG ratings issued by ESG rating providers operating in the EU. An "ESG rating provider" is any legal person whose occupation includes (i) the issuance and (ii) publication or distribution of ESG ratings on a professional basis.

The concept of "operating in the Union" covers either (i) issuing and publishing ratings on the provider's website or through other means or (ii) issuing and distributing ratings through subscription or other contractual relationships to certain entities, such as regulated financial undertakings in the EU, entities within the scope of the EU Accounting Directive or EU Transparency Directive, and certain EU bodies or public authorities in an EU member state. Providers established outside the EU will only be within scope where they engage in the activities referenced in (ii).

ESG ratings are defined widely as an opinion, score or combination of both regarding a rated item's profile or characteristics with regard to environmental, social and human rights or governance factors, exposure to risks, or the impact on environmental, social and human rights or governance factors based on both an established methodology and a defined ranking system of rating categories, irrespective of whether such ESG rating is explicitly labelled as an “ESG rating”, “ESG opinion” or “ESG score”. The list of ESG ratings that are explicitly out of scope has been expanded substantially since the originally proposed exemptions due to input from relevant stakeholders, and includes private ESG ratings as well as certain types of Sustainable Finance Disclosure Regulation (SFDR) disclosures and/or EU Taxonomy disclosures.

Any legal person that wishes to operate as an ESG ratings provider in the EU must obtain authorisation from ESMA if it is established in the EU. Once authorised, there are various governance, transparency, conflict of interest and methodology requirements that will apply, such as the obligation on the ESG ratings provider to publish on its website prescribed information pertaining to the methodologies, models and key rating assumptions used.

Third-country ESG rating providers who wish to operate in the EU typically must (i) be authorised and supervised in that third country and (ii) benefit from an equivalence opinion in respect of that jurisdiction by ESMA. A non-EU entity will need to make a notification to ESMA and will be included on a specific ESMA register. There are also other routes to market for small non-EU ESG rating providers in the absence of an equivalence decision, involving the establishment of a legal representative in the EU and separately for non-EU ESG rating providers in certain reverse solicitation scenarios, or where an authorised EU ESG ratings provider endorses the ratings of a third-country ESG ratings provider in the same group.

ESMA has significant powers of supervision in relation to compliance with the ESG Ratings Regulation, such as the power to carry out on-site inspections, withdraw or suspend the relevant provider’s authorisation, and issue public notices or impose fines. It is therefore incumbent on in-scope providers in Ireland and elsewhere to assess the potential impact of the ESG Ratings Regulation, including whether their current governance, transparency and methodology processes and procedures need to be updated.