



An Roinn Dlí agus Cirt
Department of Justice

Review of structures and strategies to prevent, investigate and penalise economic crime and corruption

Report of the Review Group



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Foreword

It was a great honour for me to have been requested by the former Minister for Justice and Equality, Deputy Charlie Flanagan, to chair the Review Group on Anti-Fraud and Anti-Corruption, and I now have the pleasure to present this Report to the Minister for Justice, Deputy Helen McEntee.

The Review Group was established as part of a package of measures to enhance Ireland's ability to combat economic crime. It comprised members from the key State agencies responsible for the prevention, investigation and prosecution of economic crimes and corruption as well as a small number of experts from outside the public service, and was assigned a specific mandate to review the criminal justice structures for combatting economic crime and corruption in this State. The membership of the Group is set out in Appendix B and its terms of reference are set out in full in the Introduction to this Report.

The Review Group met on more than a dozen occasions and held extensive discussions. The findings contained in this Report are based on the practical experience and expertise of the members of the Review Group. Submissions received in the course of the public consultation carried out by the Review Group as part of the review process were of great assistance to its work.

The Report identifies a number of strengths and weaknesses in the existing structures for dealing with economic crime and corruption. On the positive side the Report finds that the principal agencies charged with the investigation and prosecution of crime function well given the limitations imposed by their resources which in some cases, in particular in the case of the Garda National Economic

Crime Bureau, are inadequate to meet existing demands as well as the increasing demands which will arise in the future. Co-operation between agencies is generally good but can be too dependent on personal factors and needs to be more structured and co-ordinated, particularly in the areas of prevention of corruption and public education. By and large legislation in the area of economic crime is of recent origin and up-to-date but there are some serious gaps, notably in relation to the delay in enacting updated legislation concerning standards in public office and the continuing failure to legislate in the area of pre-trial criminal procedure as recommended by the Fennelly Report as long ago as 2003. Overall, therefore, the approach of the Report is to build on our strengths and address the weaknesses identified rather than to attempt to create an entirely new structure.

This Report sets out in detail a set of recommendations including legislative, structural and resourcing measures to enhance agency and multi-agency prevention and enforcement capacities in the sphere of economic crime. Furthermore, the report highlights the significance of the task assigned to the Review Group and why it is imperative that the Government implement as much and as soon as possible, the recommendations contained herein.

To put it in context, Ireland is a relatively small country with a population approaching 5 million. However, Ireland is listed as the fifth largest provider of wholesale financial services in the EU with more than 400 international financial institutions located here. According to the most recent Eurostat figures (2018), Ireland had the fifth largest proportion of workers in the financial services and insurance activities (NACE group K) at

approximately 95,000. CSO data indicates that this had increased in 2019 to 102,000. There is no contesting the fact that Ireland punches well above its weight in the world economy. In particular, with reference to the financial services sector and global technological companies situated in this jurisdiction.

The vulnerability of the financial services sector to economic crime and corruption cannot be over-emphasised. The human cost in terms of loss of livelihoods and lives is difficult to quantify in monetary terms. While significant progress has been made with measures to enhance Ireland's ability to prevent and respond effectively to economic crime and regulatory crime in recent years, much remains to be done.

Crime statistics for the first quarter of 2020 show an almost 15% increase in recorded incidents of fraud and deception over the previous year. The capacity and agility of perpetrators of this type of crime underscore the need to properly coordinate, support and resource the investigative bodies and the recommendations contained within this Report are made with that particular focus in mind.

This Report was almost complete when the Covid-19 pandemic struck Ireland. A minor consequence was to delay the finalisation of the Report. One of the effects of the pandemic has been to accelerate the move towards on line transactions and sales and to reduce the dependence on cash with a corresponding increase in contactless payments. It need hardly be emphasised that all of this increases the opportunities for cybercriminals and the risks of computer crime. Many members of the public have had personal experience of various types of on line scams during the period of lockdown. The need for effective

measures to prevent, detect and punish criminality in this area has never been greater and the State must not neglect its duty to protect those who do business with financial institutions established in the State, including but not limited to its own citizens, as well as to protect itself from the reputational risk which a failure to properly regulate financial institutions based in the State could represent.

Finally, I would like to thank all the members of the Review Group for the work they put into this project. The secretariat of the Group was provided by the Department of Justice and Equality and I would like to thank in particular Ms Yvonne Furey, Principal Officer in the Department who acted as the Review Group's secretary during most of the project and Ms Mernan Femi-Oluyede, Assistant Principal Officer, who was responsible for much of the necessary research which informed the Group's recommendations.



James Hamilton
9 November 2020

Executive summary

Introduction

In the wake of the 2008 financial crisis, a number of legislative and other measures were introduced by Government to improve the ability of relevant state bodies and agencies to prevent and respond effectively to economic and regulatory crime.

In November 2017, the Government published a suite of regulatory, corporate governance and law enforcement measures – the ‘White-collar crime Package’ – aimed at enhancing Ireland’s ability to combat corporate, economic and regulatory crime.¹ This included a commitment to “review and strengthen anti-corruption and anti-fraud structures in criminal justice enforcement”. To that end, the Minister for Justice and Equality appointed Mr. James Hamilton, former Director of Public Prosecutions and anti-corruption expert, to act as independent chair of a multi-agency Review Group. As well as representatives from the principal State agencies concerned with the investigation and prosecution of corruption offences and from relevant regulatory authorities, the Group includes members from outside of the public sector.²

There are a large number of Government Departments and State agencies not specifically dealt with in this Report which have some supervisory or regulatory role in tackling economic crime and corruption. However, as the purpose of this review is to examine specifically, anti-fraud and anti-corruption structures and procedures in criminal law enforcement, the Report concentrates on the following organisations: An Garda Síochána, the Office of the Director of Public Prosecutions (ODPP), the Office of Director of Corporate Enforcement (ODCE), the Central Bank of Ireland (CBI), the Competition and Consumer Protection Commission (CCPC), the Standards in Public Office Commission (SIPO) and the Office of the Revenue Commissioners.

Since its establishment as a consequence of the Government’s White-collar crime Package, the Review Group, whose membership consists of various relevant organisations (Appendix B), including the organisations listed above, has met regularly, carried out deliberations and conducted a public consultation.³ The Review Group has examined the State’s anti-fraud and anti-corruption structures and procedures in criminal law enforcement in line with its terms of reference.

¹ Government of Ireland, *Measures to enhance Ireland’s corporate, economic and regulatory framework: Ireland combatting “White-collar crime”* (2 November 2017), https://merriestreet.ie/MerrionStreet/en/ImageLibrary/20171101_Measures_to_Enhance_Regulatory_Framework.pdf.

² See Appendix A for the full membership of the Review Group.

³ Submissions were received from, among others, academia, legal practitioners, interest groups and members of the public.

The Review Group's terms of reference are as follows:

- To identify the scope and extent of the structures and strategies within An Garda Síochána and other relevant agencies to prevent, investigate and penalise fraud and corruption and identify what gaps exist, by reference to international standards.
- To recommend options or potential solutions to any gaps or deficits identified during the analysis (e.g. whether a stand-alone anti-fraud/anti-corruption agency should be established, or improved cross-agency working/secondments, or thematic time bound joint-agency task forces set up as required).
- To review the extent of potential cross-over of any new structure with the evolving role of the Office of the Director of Corporate Enforcement and the work of the Cost of Insurance Working Group, and make recommendations to minimise risk of duplication.
- To review the adequacy of the legal basis for sharing of information/evidence between relevant bodies (national and international) necessary to tackle fraud and corruption, and make recommendations for any areas where additional legislation may be required.
- To assess the levels of resourcing and expertise or experience in relevant bodies and make any relevant recommendations.

Having regard both to the Review Group's terms of reference and to the specific commitment in the White-collar crime Package, this Report focuses primarily on legislative, structural and resourcing measures to enhance agency and multi-agency enforcement and prevention capacity in the criminal justice sphere. The non-criminal justice aspects (i.e. regulatory, civil aspects of company law, corporate governance and other civil law matters) of tackling economic crime and corruption are addressed elsewhere in the White-collar crime Package.

The types of offences with which this Report is concerned encompass corporate and non-corporate economic crime including fraud, money laundering, market abuse, criminal breaches of company law, cartel activity, and corrupt activity as prescribed in criminal law. The Government separately established a cross-sectoral Working Group on the Cost of Insurance which, as part of its wider remit, examined possible measures to address the problem of fraudulent insurance claims. This Report does not deal specifically with the area of insurance fraud. However, some of its recommendations are intended to support the investigation and prosecution of fraud in general, which includes insurance fraud.

Notably, a number of the recommendations put forward by the Cost of Insurance Working Group (CIWG) bear relevance to some recommendations of the Hamilton Review Group and

the significant progress made with the relevant recommendations are acknowledged. For instance, an anti-fraud forum established in response to one of the recommendations of the CIWG is somewhat similar to the proposed forum of senior representatives recommended by the Hamilton Review Group, with the major distinction being that, the former focuses solely on insurance fraud. As part of the progress made in implementing the recommendations of the CIWG, there has been an increased interaction between An Garda Síochána and Insurers and also, an increased focus on the part of the former, in tackling insurance fraud.

The Review Group notes that the new divisional model of policing includes the reorganisation of Garda regional units with a focus on economic crime. Under the new divisional model of policing, the GNECB will guide divisions and provide training in the area of economic crime including insurance fraud. This approach is in alignment with the Hamilton Review Group's recommendation for the development of a formal and continuous joint training programme for investigators of economic crime and corruption. Earlier in the year, the Minister for Finance, noted the increased coordination and cooperation between An Garda Síochána and the insurance industry in tackling insurance fraud, as one of the key achievements CIWG. With regard to the additional resourcing that has been made available to An Garda Síochána, the Review Group welcomes this development while distinguishing its resourcing recommendation for its particular focus on the GNECB. An Garda Síochána's on-going policing reforms and the review carried out by the Garda Inspectorate on corruption within An Garda Síochána fall outside the remit of this report, albeit, with obvious potential intersections.

Terminology used in this report

Various terms and phrases are commonly used to describe the types of criminality addressed in this Report. Some of these terms are not defined in statute law, are often used interchangeably and may be subject to differing interpretations. For the purposes of clarity, the Review Group considers it worthwhile to set out some of these terms, to identify those best suited to the Group's mandate, and to explain how it has used such terms for the purposes of this Report.

'White-collar crime' is often used as a catch-all term for corruption, fraud and related offences committed by corporations or by professionals in the context of their work. While all such offences come within the scope of this Report, so too do various types of fraud which would not generally be considered as white-collar crime, such as social welfare fraud or insurance fraud perpetrated by individuals acting outside the course of their profession or employment. Neither of these forms of fraud are captured in the term 'corporate crime'. The Review Group therefore prefers to use the term 'economic crime' as a more comprehensive collective term for corruption offences and the various forms of fraud and related offences

such as money-laundering and cartel activity with which this Report is principally concerned. Of course, the term ‘fraud’ is also frequently used in its own right, including in this Report.

While the term ‘white-collar crime’ usually includes both fraud and corruption, these are not in fact the same thing. It is certainly the case that an action can be both fraudulent and corrupt and, in Ireland, it appears that certain actions could be classed as offences under both the Criminal Justice (Theft and Fraud Offences) Act 2001 and the Criminal Justice (Corruption Offences) Act 2018. However, this does not imply that fraud and corruption are in all circumstances one and the same. There remain some fundamental differences between the two concepts:

Firstly, while fraud necessarily involves a deception perpetrated with the aim of financial gain at the direct expense of another, corruption may not necessarily involve a deception and neither does it invariably involve a financial gain for one party or a direct pecuniary loss to another.

Secondly, unlike corruption, fraud does not always – or even typically – involve ‘the abuse of entrusted power’. Some of the most common forms of fraud – such as the fraudulent use of another’s credit card, invoice redirection, insurance and social welfare fraud – do not generally involve corruption, unless there happens to be a co-conspirator who is actively assisting or facilitating the fraud through their role as a company employee or a public official.

It is probably reasonable to conclude that, while a substantial proportion of corruption offences may also involve fraud, the opposite is not the case.

The Group prefers to distinguish between these concepts by referring separately to corruption and fraud as appropriate. As neither of these key concepts is defined in Irish statute law and as they are often used interchangeably, the Group considers it worthwhile to set out below what it means by each of these terms and what it views as the similarities and the differences between them.

Fraud has been described as being where ‘a person is financially cheated by another person... when an individual deceives another by inducing them to do something or not do something that results in a financial loss.’⁴ This definition essentially captures the two key elements present in fraudulent activity: the deception of a person, whether natural or legal, with the purpose of making a financial gain at the expense of that person or of another person.

The Criminal Justice (Theft and Fraud Offences) Act 2001, which is the primary statutory provision dealing with fraud in this State, does not define fraud. However, the offences proscribed in the Act include a range of actions which have the common feature of being

⁴ ‘Fraud’, *An Garda Síochána*, <https://www.garda.ie/en/Crime/Fraud/>.

carried out dishonestly with the intention of making a gain or causing a loss and which would normally be regarded as fraudulent in nature, such as: obtaining services by deception; unlawful use of a computer; false accounting; and suppression or destruction of documents. Company law defines the offence of fraudulent trading as 'carrying on the business of a company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose'.⁵

There is no universally accepted definition of corruption. The United Nations' Global Programme against Corruption defines corruption as 'the abuse of power for private gain', while Transparency International defines corruption as 'the abuse of entrusted power for private gain'. These two definitions recognise not only that corruption involves the improper use of power or influence but also encompass its occurrence in either the public or private sector. This stands in contrast to definitions offered by other international instruments which restrict their scope to the abuse of power by public officials, or which acknowledge corrupt behaviour in the private sector only to the extent that it involves the corruption of public officials.

Instruments dealing with corruption frequently distinguish between active corruption, meaning the giving or offering of a bribe or other inducement, and passive corruption, meaning its receipt.

The Criminal Justice (Corruption Offences) Act 2018 deals with corrupt behaviour (both active and passive) in both the public and private sectors. While it does not define the term 'corruption', the Act defines the adverb 'corruptly' as follows:

Acting with an improper purpose personally or by influencing another person, whether -

- (a) by means of making a false or misleading statement,
- (b) by means of withholding, concealing, altering or destroying a document or other information, or
- (c) by other means

Finally, there are other public bodies or processes at present tasked with examining aspects of fraud and corruption and where this is the case, these aspects are generally not addressed in this Report so as to avoid unnecessary duplication of effort. For instance, this Report does not consider anti-corruption measures within the Garda Síochána. This issue is the subject of a separate process with the Garda Inspectorate due to complete and publish an inspection of Garda counter corruption practices.

⁵ Section 722 Companies Act 2014.

Summary of recommendations

This Report details the findings made following the Review Group's assessment of the extent to which the various State bodies involved in tackling economic crime and corruption are working effectively together and identifies gaps and impediments in that regard. The Review Group has recommended a broad range of short, medium and long term measures to enhance the capacities of the relevant agencies and Government Departments to combat economic crime and corruption across legislative, policy and regulatory fields. It is important to point out here that any recommendations made in this Report in respect of resourcing are subject to the annual estimates process.

1. **The Review Group recommends the establishment on a permanent basis, of a cross sectoral, partnership-based Advisory Council against Economic Crime and Corruption.** The Advisory Council should be headed by a person of appropriate experience and expertise and should be independent. The Council should consist of senior persons drawn from the public service, commercial, industrial and financial bodies, as well as persons representing the interests of consumers and workers and bodies with an expertise in anti-corruption activities. It should meet at least once a year and should advise and make proposals to the Government on strategic and policy responses to all forms of economic crime and corruption. A small executive should support the work of the Advisory Council and should co-ordinate and lead the delivery of the whole-of-government approach to economic crime and corruption. The Advisory Council should serve as a 'centre of excellence' for coordinating research and analysis, training and generally promoting best practice in relation to anti-corruption activities. It should be responsible for public education and raising awareness in relation to corruption and economic crime. The Review Group recommends that, to help ensure and sustain a whole-of-government focus, the Advisory Council should be established at the centre of Government.
2. Notably, Ireland has at present, no national strategy for combating economic crime and corruption. Given the range of agencies involved, **the Review Group recommends the development of a multi-annual strategy to combat economic crime and corruption and an accompanying action plan.** This will facilitate a joined-up and cohesive approach to combating economic crime and corruption in this jurisdiction and provide a basis for measuring progress. Without purporting to prescribe its content, the Review Group considers that such a strategy and action plan could be used to support many of the recommendations elsewhere in this Report including, in particular, the recommendations in relation to multi-agency collaboration, information-sharing, resourcing, training, awareness raising and legislative reform. The strategy should be adopted by the Government following receipt of advice from the Advisory Council referred to in recommendation 1.

3. Among the key challenges identified by the Review Group is a need to support information sharing among relevant agencies. **In order to facilitate greater inter-agency co-ordination, collaboration and information-sharing, the Review Group recommends the establishment, on a formal and permanent basis, of a forum of senior representatives from the relevant bodies.**⁶ This forum should meet on at least a quarterly basis to discuss trends and developments of common concern, share knowledge, ideas and best practice, and flag significant new or upcoming investigations that may require structured bi-agency or multi-agency collaboration. While the forum would serve primarily to ensure the maximum co-operation between and co-ordination of the activities of the law enforcement bodies it could also provide, where appropriate, expert assistance and advice to the Advisory Council.
4. **The Review Group recommends that a comprehensive analysis be conducted as to the precise nature and scope of any legislation necessary to facilitate the optimal exchange of information and intelligence between investigative agencies, under a Joint Agency Task Force (JATF) model and to ensure the necessary clarity on the respective roles and powers of agency personnel under a JATF.** The Review Group considers that this work could appropriately be led by the proposed Advisory Council in close consultation with relevant Government Departments and State bodies and agencies (the forum).
5. Resourcing of the Garda National Economic Crime Bureau (GNECB) has for some time been an impediment to the ability of the bureau to carry out its functions effectively. **The Review Group recommends that consideration be given to prioritising the GNECB with a substantial, sustained and ring-fenced increase in resources (including both additional Garda Detectives and civilian specialists).** The Group is satisfied that this is necessary if the GNECB is to meet current and future investigative demands, develop its specialist expertise and capacity across all forms of economic crime and corruption, and provide crucial advice, training and (as required) seconded personnel to other investigative bodies.
6. The Review Group recommends increasing the resourcing for the prosecution of financial crime to include additional prosecutors, along with a seconded specialist in digital forensics and a seconded forensic accountant. This is necessary to enable the prosecution services to deal with the larger economic crime cases submitted to the ODPP which do not fall within the remit of the Special Financial Crime Unit. It will enable the ODPP to meet anticipated additional demands arising both from the Corporate Enforcement Authority Bill and from the recommended expansion in GNECB capacity and provide more frequent training (as part of the recommended

⁶ The reference to relevant bodies here is to all bodies which have some supervisory, preventative, regulatory, prosecutorial or investigative role in tackling economic crime and corruption.

joint training programme) to other law enforcement bodies as well as provide additional access to necessary legal advice in larger investigations while respecting the independence of both prosecutors and investigators.

7. **The Review Group recommends the development of a formal and continuous joint training programme for investigators of economic crime and corruption.** This will help to build vital longer-term capacity, expertise and consistency of approach across the rest of An Garda Síochána and in all other agencies that have identified a need for training of this type.
8. **The Review Group recommends the development of a centralised Government framework for the procurement of electronic documentary analysis and e-disclosure systems, which can be accessed by the relevant law enforcement bodies (and by the Chief State Solicitor’s Office) on a shared basis as required.** This will reduce the scope for delays and errors in investigations and prosecutions.
9. **The Review Group recommends that the publication and enactment of the Criminal Procedure Bill be expedited.** There has been significant delay in the progress made with this Bill since the publication of the General Scheme of the Bill in 2014. One of the recommendations of the Fennelly report,⁷ published in 2003, is the establishment of a preliminary pre-trial hearing procedure in criminal trials. Among numerous other cost-saving measures, this Bill includes provisions on pre-trial hearings which would be vital in ensuring the efficient and timely progress of criminal trials in complex economic crime and corruption cases.
10. **Expedite the reform and strengthening of Ethics in Public Office legislation.** The Public Sector Standards Bill 2015 (PSSB) proposed the consolidation of some of the legislation relating to Ethics in Public Office. It would also have further enhanced the existing regime on asset declaration extending the obligation on all members of Parliament to disclose their interests. However, the PSSB (as with all Bills) lapsed with the dissolution of the Dáil in January 2020. Following the subsequent general election in February, a new Government was formed in June 2020. The associated Programme for Government (published June 2020) entitled ‘Our Shared Future’ contained a commitment to ‘reform and consolidate the Ethics in Public Office legislation’. In order to progress this commitment, the Minister for Public Expenditure and Reform confirmed that a new full review of Ireland’s current ethics legislation was to commence to inform the drafting of a new consolidated Ethics Bill. Following this review, a proposed new consolidated Ethics Bill will be brought forward for consideration by the Oireachtas. In the interim, the existing ethics

⁷ Working Group on the Jurisdiction of the Courts, *The Criminal Jurisdiction of the Courts* (Dublin, Stationery Office, 2003), [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/92E26C802274604280257888003CFD32/\\$FILE/WGJC%20Report.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/92E26C802274604280257888003CFD32/$FILE/WGJC%20Report.pdf).

framework of the Ethics Acts (i.e. Ethics in Public Office Act 1995; Standards in Public Office Act 2001) remains in force. While this commitment is welcome, any delay in implementing the proposed reforms will not only pose a set-back to the progress made in the context of Ireland's evaluations by the relevant international monitoring bodies, but will also have adverse implications for the State's anti-corruption regime.

11. **The Review Group recommends that the independence and capacity of SIPO be enhanced by ensuring that resources allocated to the Ombudsman under Vote 19 for the purpose of meeting the budgetary needs of SIPO, are ring-fenced for use, for that purpose alone.** The rationale behind this recommendation is that improving resourcing to SIPO will enable it fulfil its mandate. At present, current staffing levels at SIPO mean that an analysis of submitted returns is not possible. SIPO should be a strong, effective and independent body and this requires adequate autonomy and resourcing. Costs can be reduced by sharing services such as HR, accommodation and ICT with other organisations.
12. **The Review Group recommends that consideration be given to further strengthening the criminal law in the area of public sector ethics, including the possibility of amending the Ethics Acts to create offences in such areas as nepotism** in the hiring or contracting of elected and appointed public officials, preferential treatment based on a person's identity, and the improper use of influence. This recommendation may be carried forward in the proposed review, consolidation and reform of ethics in public office legislation.
13. **The Review Group recommends engaging with the judiciary on the development of judicial training in respect of complex economic crime /corruption cases,** and on the possibility of judicial specialisation in this area. The recently established judicial council with responsibility for developing and managing schemes for the education and training of judges may have a role in this regard.
14. **The Review Group recommends that section 17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 be amended to allow judges exercise the discretion to impose a timeframe of up to six months** for a freezing order, based on evidence presented in Court as to the scale and complexity of the criminal investigation concerned.
15. **The Review Group recommends that the powers at present conferred on An Garda Síochána and the Revenue Commissioners under the Criminal Justice (Surveillance) Act 2009 be extended to other bodies that have a statutory remit to investigate economic crime or corruption, such as ODCE and CCPC, in line with international best practice.** The Review Group considers that this would be a

balanced and proportionate measure to counteract the clandestine and conspiratorial nature of much corruption and economic crime, which has been made easier to conceal by technological developments.

16. **The Review Group recommends Irish legislation relating to warrants should be amended in line with technological advancements to address issues relating to privacy rights.** Legislation relating to warrants needs to be updated to reflect technological advancements particularly with reference to material held in the cloud and to provide clarity around evolving issues of privacy. The proposal to codify the laws relating to An Garda Síochána's powers of search, arrest and detention, recognises the need to modernise the search powers of An Garda Síochána to address concerns relating to privacy rights in the context of digital searches.
17. **The Review Group recommends that Irish competition law be amended to create a specific offence of bid-rigging or, in the alternative, specify bid-rigging as an offence** as a form of market sharing. The consequences of hard core cartel bid-rigging go beyond that of a standard cartel, warranting the creation of a specific offence of bid-rigging or, in the alternative, the amendment of Section 4 of the Competition Act 2002 to specify bid-rigging as an example of a hard core cartel activity.
18. **The Review Group recommends that specific legislation be introduced to enable the collection, collation and analysis of all public procurement data to detect and deter bid-rigging.** The rationale behind the recommendation is that modern technology and social networking have provided enhanced means to enable cartel conspirators to accomplish their goals and that a screening system that leverages the informational advantage of the public sector is required to detect and deter bid-rigging. **The Review Group further recommends that a multi-pronged approach which will include the provision of guidance, awareness raising and education for procurers on bid-rigging and collusion in public procurement approach be taken to complement the introduction of a bid-rigging screening system.**
19. There is a lacuna in the Ethics Acts in that there are currently no provisions for examining possible contraventions of the Ethics Acts by ex-members of the Oireachtas who were not office holders during their tenure e.g. Minister or Minister of State. **The Review Group recommends that the Ethics Act be amended to expressly deal with situations where former members of the Oireachtas may have contravened their obligations under the Ethics Acts** and the matter only comes to light after the member has left office. This recommendation can be taken forward with the proposed reform and consolidation of legislation relating to ethics in public office in line with commitments in the Programme for Government.

20. There are good domestic co-operation structures in place between the various Departments and agencies which have responsibility for tackling economic crime and corruption. While there are legal restrictions on the sharing of sensitive and personal data, to the extent possible, arrangements should be made to support the sharing of information and joint inspections. **The Review Group recommends putting in place a statutory framework to allow various relevant agencies to enter agreements or sign up to Memoranda of Understanding (MOU) that refer explicitly to information sharing and joint inspections.**
21. **The Review Group recommends that the “Custody Regulations” be amended to allow An Garda Síochána to engage an expert from any statutorily-mandated regulatory or investigative body, or an independent expert, to participate in interviewing a detained suspect.**⁸ The Review Group believes that such interviews, particularly in the more complex investigations, could be rendered more efficient and effective (without compromising the rights of suspects) by allowing the participation of such an external officer or expert where their knowledge or expertise is relevant to the investigation and to the intended line of questioning.
22. **The Review Group recommends that the Criminal Justice (Corruption Offences) Act 2018 be amended to include a provision for standalone search warrants that will allow any investigating member(s) of An Garda Síochána to require persons subject to arrest warrants to provide the passwords to electronic devices owned or controlled by them.**
23. **That the recommendation of the Law Reform Commission (LRC) to amend the relevant provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001 to enhance the prosecution of fraud offences in this jurisdiction be implemented.** Currently fraud offences require proof of intention, and the LRC has recommended the amendment of the relevant provisions by inserting a standard of recklessness into fraud offences which would widen the behaviours given rise to liability.
24. **The Review Group recommends that the provisions for a search warrant in section 10 of the Criminal Justice (Miscellaneous Provisions) Act, 1997 be amended** to require the owner(s) or controller(s) of electronic devices to provide the passwords to members of An Garda Síochána carrying out searches. An Garda Síochána advise that the requirement for the provision of computer passwords is of great benefit when investigating theft and fraud cases.
25. **The Review Group recommends that section 50 of the Criminal Justice Act 1997 (as amended) be extended to all arrestable offences** i.e. any offence that

⁸ Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 (S.I. No. 119/1987).

carries a term of imprisonment of five years or more. This will enable a suspect for any such serious offence to be detained – subject to judicial authorisation – for Garda questioning for a maximum of seven days. This recommendation seeks to address the difficulty faced by An Garda Síochána in putting vast amounts of evidential material to suspects within the very limited time available for questioning under section 4 of the Criminal Justice Act 1984 (as amended).

Some of the recommendations contained in this Report require the amendment of legislation relating to An Garda Síochána's powers of search, arrest or detention and a process of consolidation of these powers is underway. Some members of the Review Group have been involved in the consultations leading up to the codification of the relevant powers of An Garda Síochána.

It should be noted that the Review Group does not recommend the creation of a single standalone agency to deal with all issues relating to the prevention, investigation and prosecution of corruption. The reasons for this are set out in Chapter 5 below.

The challenge for Government now is to establish robust structures and procedures for the effective prevention, detection, investigation and prosecution of economic crime and corruption offences in the State. Enhanced structures and procedures within the relevant Government Departments and agencies involved in tackling fraud and corruption will consolidate ongoing reforms aimed at strengthening the State's response to economic crime.

Chapter 1. Responding to the evolving nature, risks and costs of economic crime and corruption

1.1 Economic crime

Ireland's exposure to and risk from economic crime, especially fraud, is substantial. Ireland is a major international hub for financial services, with Irish-based companies administering funds valued at approximately €1.8 trillion.⁹ According to the most recent Eurostat figures (2018), Ireland has the fifth largest proportion of workers engaged in financial services and insurance activities (NACE group K) at approximately 95,000.¹⁰ Central Statistics Office (CSO) data indicate that this figure had increased to 102,000 in 2019, however, no comparative EU data is available for this year. This sector is vulnerable to fraud from external sources but also from within. In the absence of effective measures to prevent, investigate and prosecute corruption in this sector, Ireland's position as a major financial service centre could be called into question to the detriment of our national interest.

Ireland is now also the location of the headquarters or regional headquarters of a significant number of major international companies particularly in the fields of information and communications technology and pharmaceuticals. It is essential for the reputation of Ireland and the maintenance of its position that it have the capacity, including the necessary resources, powers and procedures, to ensure the proper regulation of all companies and persons within its jurisdiction and, where necessary, to investigate and prosecute corporate as well as personal wrongdoing including all forms of economic crime. To fail to do so adequately would create a huge potential reputational risk for Ireland.

While a variety of regulatory reforms have been implemented in recent years, this Report therefore examines where further reforms need to be made.

Smaller businesses are perhaps even more vulnerable than large ones to the impact of economic crime such as invoice redirection fraud, insurance fraud or 'phishing'. Ordinary citizens are also at significant risk from such activities and from other fraudulent enterprises such as pyramid schemes. Tax fraud and social welfare fraud, meanwhile, impose substantial costs on the taxpayer and divert scarce exchequer resources away from those in need. Offences under competition law, including price-fixing and bid-rigging, are further manifestations of economic crime that cause losses to business, the consumer and, where they occur in relation to public procurement, the taxpayer. Again, it is vital to ensure that the

⁹ 'Financial Services Sector Profile', *Enterprise Ireland*, <https://www.enterprise-ireland.com/en/Start-a-Business-in-Ireland/Startups-from-Outside-Ireland/Key-Sectors-and-Companies-in-Ireland/Financial-Services-sector-profile.html>.

¹⁰ NACE is the statistical classification of economic activities in the EU. The abbreviation is derived from a French nomenclature.

relevant law enforcement and regulatory bodies have sufficient powers and capacity to tackle these forms of criminal behaviour swiftly and effectively.

Reports from An Garda Síochána indicate that the levels of economic crime investigated and prosecuted in Ireland is steadily increasing, as it is elsewhere. This is borne out by CSO crime statistics which indicate that the level of recorded fraud and related offences grew by 18.4% in 2018.¹¹ This upward trend has continued, with the CSO statistics for Quarters 1, 2 and 3 of 2019 showing increases of 28.5%, 34% and 35% in such offences respectively, over the previous 12 months.¹² While there was an overall decrease in recorded criminal offences in the year to Quarter 1 of 2020, an increase of 14.9% in fraud and related offences was recorded for the same period. It goes without saying that the opportunities for fraud and economic crime have increased with the increase in on-line transactions necessitated by the current public health crisis. A number of high profile international Covid-19 cyber related fraud investigations have already been embarked on by the GNECB with one involving a transaction by the German authorities to purchase face masks with an approximate value of €15 million.¹³

While comprehensive official data on the costs of economic crime is not currently available, the Review Group understands that the sums involved in individual fraud cases dealt with by An Garda Síochána have also risen in recent decades. An assessment that the then Garda Fraud Squad carried out for the 1992 Government Advisory Committee on Fraud estimated at IR£26 million the total amount at issue across the Squad's top fifty investigations which were taking place at that time. GNECB has advised the Review Group that this figure is now regularly exceeded by the sums involved in any single investigation. To give just one example, a relatively recent investigation involved the theft of over €52 million from financial institutions and home owners through fraudulent property deals, resulting in a 12-year prison sentence following conviction. GNECB indicates that it has many other cases currently under investigation where the total amount at risk runs into hundreds of millions of euro, and that even a single case of invoice redirection fraud can result in a significant financial loss to an injured party.

Technological developments have undoubtedly brought many benefits to Irish citizens and businesses, with a marked increase in the digital economy and a proliferation of available payment technologies. However, these new payment opportunities have also increased the opportunities for economic crime, both domestic and international. Economic crime, especially of the cyber-enabled variety, is relatively unimpeded by jurisdictional boundaries.

¹¹ 'Recorded Crime Q4 2018', Central Statistics Office, <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42018/>.

¹² 'Recorded Crime Q1 2019', CSO, <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq12019/>; 'Recorded Crime Q2 2019', <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq22019/>; 'Recorded Crime Q3 2019', <https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq32019/>.

¹³ A joint investigation was launched by the authorities in Germany, Netherlands and Ireland with the support of Interpol. Documents and electronic devices were obtained by the GNECB as part of the investigation and an Irish citizen was interviewed in connection with monies suspected to have been laundered to this jurisdiction as part of that transaction.

Its perpetrators often operate at a safe distance from their victims, making their crimes difficult to detect and prosecute. Such factors negatively affect the growth of the digital market by making consumers more reluctant to carry out online transactions. The Covid-19 cyber related fraud case mentioned above is an example of how jurisdictional boundaries do not pose an impediment to perpetrators and may even confer an advantage on them.

It should also be remembered that fraud is not only targeted at the corporate sector but that the ordinary citizen is frequently the target of criminals engaged in cybercrime. While the sums involved in such cases may be lower than in the case of frauds perpetrated against companies, for the individual citizen they can be devastating and involve the theft of all or a substantial part of an individual's hard-earned savings.

Fraud also increases national and global security risks, as its proceeds are often used, frequently via money laundering, to fund serious organised crime and terrorism.

The former Minister for Justice and Equality, Mr. Charlie Flanagan, T.D., stated at a conference in 2019, that:¹⁴

If Ireland is to maintain its open economy and status as a favourable destination for Foreign Direct Investment, the Government, relevant state agencies, stakeholders and the wider society, must work together to combat fraud and economic crime generally. Efficient legislative and other measures must be put in place to provide reassurance for both the business community and the wider community of citizens, so that everyone can feel secure conducting their business and living their lives in this State... The truth is, we all pay the price for fraud. Fraudulent acts and practices are a drain on the exchequer, drive up costs for businesses and, ultimately, for all those who live and work in this country.

A variety of Government Departments have policy responsibility for different aspects of economic crime and corruption in accordance with their wider mandates. Similarly, a number of State agencies have competence to prevent, detect, investigate and prosecute specific forms of economic fraud and corruption in accordance with their individual specialist mandates. The range of bodies involved, and the complexity and rapid evolution of economic crime, present significant challenges to planning and co-ordinating policy and law enforcement in a way that is comprehensive, cohesive and proactive. National economic crime and anti-corruption strategies, and cross-cutting structures for their delivery, are internationally recognised as appropriate vehicles for this purpose.¹⁵

¹⁴ Speech by the Minister for Justice and Equality at the International Fraud Prevention Conference, Dublin, 17 May 2019.

¹⁵ Ibid.

1.2 Corruption

The EU Anti-Corruption Report (2014), using Eurobarometer survey data, reported that 81% of Irish respondents felt that corruption was widespread in the State compared with an EU average of 76%.¹⁶ However, the perception of high levels of corruption and the actual experience of corruption are often inconsistent and this observation is underlined by the findings of the 2014 report. Thus, despite the evidently widespread belief amongst the population that corruption was endemic to Ireland, Ireland had among the lowest percentage of respondents in the 2014 report who knew someone who was taking or had taken bribes at just 8%, as compared with an EU average of 12%. In a similar vein, only 3% of Irish respondents admitted that over the previous 12 months preceding the survey, they were asked or expected to pay a bribe for services. The European average in this regard was 4%. However, only 24% of Irish respondents felt that Government's efforts to combat corruption had been effective and only the same percentage felt that there had been enough successful prosecutions in Ireland to serve as a deterrent against corruption. On a positive note, the report acknowledged that the Irish Government had undertaken substantial reform of its anti-corruption policies including new legislation on corruption, whistleblowing, freedom of information and regulation of lobbying.¹⁷ The EU Commission's 2017 Eurobarometer on Corruption found that 81% of Irish people think corruption is unacceptable, the 5th highest in the EU after Finland and Portugal (both 84%), Spain and Malta (both 83%). The EU average is 70%.

Transparency International's Corruption Perceptions Index (CPI) scores countries and territories by their perceived levels of public sector corruption amongst experts and business people. The most recent iteration of the CPI published on 23 January 2020 ranked Ireland as the 18th least corrupt country out of 180 countries assessed with a corruption score of 74 out of 100.¹⁸ The CPI uses a scale of 0 to 100 with 0 indicating highly corrupt and 100 indicating very clean.

In recent years, various international anti-corruption monitoring bodies have carried out periodic evaluations of Ireland's legal and regulatory framework for combatting economic crime and corruption. Many of the recommendations made by these bodies have been implemented with on-going work to strengthen Ireland's legal and regulatory framework for combatting economic crime and corruption. On the whole, Ireland is recognised as having

¹⁶ *Annex 7 Ireland to the EU Anti-Corruption Report*, COM (2014) 38 final (Brussels: European Commission, 3 February 2014) p.3, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_ireland_chapter_en.pdf.

¹⁷ The relevant statutes include: Criminal Justice (Corruption Offences) Act 2018, Data Protection Act 2018, Regulation of Lobbying Act 2015, Protected Disclosures Act 2014, Freedom of Information Act 2014.

¹⁸ Transparency International, *Corruption Perceptions Index 2019* (Berlin: Transparency International, 2020), <https://www.transparency.org/cpi2019>.

systems in place for combatting economic crime and corruption that are relatively good by international standards.¹⁹

1.3 The domestic legislative framework for the investigation and prosecution of crime

There have been a number of legislative and other reforms in recent times some of which have been necessitated by Ireland's obligations as an EU Member State subject to European policy and its range of initiatives. Other recent legislative developments have been driven by the State's duty of compliance with its obligations under international Conventions and Instruments as well as existing protocols. The comprehensive set of actions developed under the Government's 'White-collar crime Package' have also been a major driver for some of the legislative developments outlined below.

1.3.1 Criminal Justice (Theft and Fraud Offences) Act 2001

The principal substantive legal statutes which deal with the offences of fraud and corruption are of relatively recent origin. The Criminal Justice (Theft and Fraud Offences) Act 2001 (the "2001 Act") defines the principal fraud offences of making gain or causing loss by deception, obtaining services by deception, making off without payment, unlawful use of a computer, false accounting, suppression of documents, forgery, offences relating to false instruments, counterfeiting and fraud affecting the financial interests of the European Communities, as well as active and passive corruption.

Currently fraud offences under the 2001 Act require proof of intention in order to secure a conviction. The Law Reform Commission (LRC) has recommended the amendment of the relevant provisions of the 2001 Act to enhance its effectiveness in the prosecution of fraud offences.²⁰ It proposes inserting a standard of recklessness into fraud offences which would widen the range of behaviours that can result in liability for the various offences contained in the 2001 Act. The LRC suggests that the relevant sections of the 2001 Act could be repealed and replaced with new fraud offences or that new provisions could be inserted into the relevant sections of the Act to expand the fault element of the fraud offences.²¹ The approach of amending specific elements of the offences to widen the range of behaviour which is criminalised in line with the specific conditions applying to each individual offence would minimise the risk of legal challenges whereas a "one size fits all" approach could lead to disproportionate results in some cases. Members of the review group support this approach as it is believed that a simplistic approach would be unhelpful. The Hamilton Review Group recognises the challenge of framing an offence of reckless trading without

¹⁹ This assessment is based on Ireland's rating by various international monitoring bodies including the assessment of specific systems such as the anti-money laundering system and peer reviews.

²⁰ Law Reform Commission, *Report on Regulatory Powers and Corporate Offences*, LRC119-2018, R. 11.03, vol. II (Dublin: LRC, 2018).

²¹ Ibid.

having the unintended consequence of penalising normal business risk taking. It notes the significant work undertaken by the Law reform Commission in its report in which it recommends the amendment of the relevant provisions of the 2001 Act in order to enhance the prosecution of fraud offences in this jurisdiction.²² **The Review Group agrees in principle with the LRC’s recommendation in this regard.**

1.3.2 Criminal Justice Act 2011

The Criminal Justice Act 2011 was enacted to facilitate the more effective investigation of serious economic crime including money laundering, fraud and corruption. It introduced new provisions that facilitate Garda access to information and documentation that assist investigations. Fraud and corruption offences by their very nature can be complex and time consuming to investigate. The Criminal Justice Act 2011 goes some way towards assisting in this regard as it includes a number of useful investigative tools. It contains a schedule of offences to which the Act applies all of which are what could be described as “White-collar crimes”. For example, section 15 of the 2011 Act enables members of An Garda Síochána, including those seconded to other agencies such as the Office of the Director of Corporate Enforcement (ODCE), to apply to the court to require unwilling or reluctant witnesses to cooperate with an investigation into a scheduled offence. Section 19 of the same Act makes it an offence to withhold information in certain circumstances in relation to scheduled offences and places an obligation to report these matters to An Garda Síochána as soon as is practicable.²³

1.3.3 Protected Disclosures Act 2014

The Protected Disclosures Act (often referred to as the whistle-blower legislation) was introduced in 2014 to protect people who raise concerns about possible wrongdoing in the workplace. The 2014 Act is generally regarded as providing a robust protection for whistleblowing employees. An amendment to section 5 of the Act in June 2018, introduced for the first time a public interest test to the scheme requiring whistle-blowers who use or reveal a trade secret in the course of their disclosure, to prove that their disclosure was made in the public interest. This amendment has been the subject of some criticism as limiting the scope of the legislation. However, it was necessitated by the introduction of EU Directive 2016/943 which provides for civil redress remedies and measures in the event that a trade secret is unlawfully acquired, used or disclosed. The European Union (Protection of Trade Secrets) Regulation 2018 transposes EU Directive 2016/943. In this context, it is worth noting that the ODCE’s investigation into Independent News & Media plc, which subsequently resulted in the appointment of High Court Inspectors to further investigate several aspects of the company’s affairs, was initiated on foot of a disclosure made under this Act, thereby underscoring the importance of this legislation. Additionally, Directive

²² Ibid.

²³ Section 19 of the Criminal Justice Act 2011 was given further impetus by the Supreme Court ruling in the case of *Sweeney v Ireland* (2019) IESC 39 in which the Court upheld the constitutionality of the provisions therein.

2019/1937 (Whistle blowing Directive) was introduced on 23 October 2019 to enhance protections for those who make protected disclosures including disclosures in the area of fraud and internal markets. This Directive is in the process of being transposed into Irish law with completion required by 21 December 2021. The Directive will require further amendments to the Protected Disclosures Act to ensure Ireland's compliance with the personal and material scope of the Directive.

1.3.4 Criminal Justice (Corruption Offences) Act 2018

The Criminal Justice (Corruption Offences) Act 2018 repealed and replaced the Prevention of Corruption Acts 1889-2010. It provided a long-overdue and much-needed simplification and consolidation of Ireland's corruption law. The 2018 Act strengthens and clarifies the main corruption offences and introduces stronger penalties for individuals found guilty of corruption. It also introduces some additional offences to give better effect to the UN Convention against Corruption (UNCAC), the Council of Europe Criminal Law Convention on Corruption, and the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions. The Act also implements certain recommendations of the Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal).

The 2018 Act creates several new offences to strengthen the law on corruption in Ireland, including:

- A new offence of trading in influence.
- Making use of confidential information obtained in the course of duties by an official in order to gain an advantage.
- Giving a gift, consideration or advantage where a person knows or reasonably ought to know that the gift will be used to facilitate a corruption offence.
- A new strict liability offence for corporate bodies whose management, employees or subsidiaries commit a corruption offence with the intention of securing an advantage for the company. It shall be a defence for the body corporate to prove they took reasonable steps to prevent this. The penalty for conviction on indictment is an unlimited fine.

In line with UNCAC recommendations made following the evaluation of the Ireland's compliance with the Convention, the 2018 Act also criminalises national and foreign bribery of public officials. It also makes provision for corporate criminal liability which is not dependent on the prior establishment of liability on the natural persons with sufficient control over the legal entity. This provision is also in line with UNCAC recommendations.

As recommended by the Mahon Tribunal, the 2018 Act extends to family members and close business associates the classes of persons to whom existing presumptions relating to corrupt donations will apply. It also creates a presumption of corrupt enrichment in circumstances where a public official who has not declared an interest in land or other property, when under a legal obligation to do so, can be presumed, until the contrary is proved, to have obtained it as an inducement or reward for doing an act in relation to his or her office.

Penalties under the 2018 Act aim to be sufficiently strong to reflect the serious social and economic harm that corruption can cause, particularly where it is committed by public officials. Sentences of up to 10 years are provided for, along with unlimited fines upon conviction on indictment. The Act provides for a penalty of forfeiture of office if an Irish official is found guilty of corruption on indictment, as recommended by UNCAC. It also provides for the making of a Court order prohibiting an individual seeking any unelected public office following conviction on indictment for a corruption offence.

The OECD has recently completed an evaluation of Ireland in respect of the Criminal Justice (Corruption Offences) Act 2018. Consideration was given as to whether the 2018 Act adequately addresses Ireland's obligations under the OECD Foreign Bribery Convention and whether it addresses various gaps and other legal issues that the OECD had identified in previous reviews. One aspect of the Act which was reviewed is the requirement for dual criminality contained in section 12. The relevant provisions deal with cases of corruption occurring outside the State and stipulate that an act of bribery carried out abroad is punishable in Ireland only if it is a criminal offence both in Ireland and in the jurisdiction where it occurred. There were concerns that the effect of the dual criminality requirement may be that in foreign countries where laws against bribery are ineffective or non-existent, Irish citizens could engage in bribery with impunity. However, the OECD examined whether the provision of the 2018 Act is consistent with the provisions of Article 4.2 of the OECD *Convention on Bribery of Public Officials in International Business Transactions (OECD Bribery Convention)* and concluded that the provision in question appears to be consistent with the OECD Bribery Convention.²⁴

While acknowledging that the 2018 Act represents a significant milestone in the fight against bribery and other forms of corruption, the OECD states that a number of outstanding issues will be given further consideration under its Phase 4 evaluation. Full details of the OECD

²⁴ Ireland is a party to the OECD Bribery Convention which requires State parties to criminalise bribery of foreign officials in national law. The dual criminality requirement provided for in both the Criminal Justice (Corruption Offences) Act 2018 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 are in compliance with the requirement of the OECD Bribery Convention in relation to foreign bribery. OECD Working Group on Bribery, *Implementing the OECD Anti-Bribery Convention, Phase 1bis Report: Ireland* (Paris: OECD, 11 October 2019), <https://www.oecd.org/corruption/anti-bribery/Ireland-Phase-1bis-Report-ENG.pdf>.

Phase 1bis report is to be found in appendix D of this Report.²⁵ The recommendation on dual criminality exception for money laundering offences made in the Phase 3 OECD report was also found to be fully implemented under the Phase 1bis report.²⁶

1.3.5 Data Protection Act 2018

The question of sharing of information between official bodies for the prevention, detection, investigation and prosecution of Fraud and Corruption offences is referred to specifically in the Terms of Reference of the Review Group. Recent significant changes to European law in regard to data protection are reflected in Ireland in the Data Protection Act 2018.

Part 5 of the Data Protection Act 2018 transposes the Law Enforcement Directive into national law. It applies, with limited exceptions, to the processing of personal data by or on behalf of a competent authority (controller) where processing is carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences, including the safeguarding against, and the prevention of, threats to public security, or the execution of criminal penalties and the data are processed wholly or partly by automated means or where the data form part of, or are intended to form part of, a relevant filing system.

Part 5 imposes statutory requirements in relation to the lawfulness of data processing and transparency in respect of such processing.

Section 71(2) of the 2018 Act sets out the legal basis for the processing of personal data, providing that processing is lawful where, and to the extent that, it is necessary for the performance of a statutory function of a controller falling within the scope of Part 5 and, to a lesser and much more limited extent, where a data subject has given consent to such processing.

Section 71(5) of the 2018 Act provides the legal basis for the sharing of personal data between competent authorities. It provides that where a competent authority collects personal data for a purpose falling within the scope of Part 5, that competent authority or another competent authority may process those data for a purpose falling within the scope of Part 5 other than the purpose for which the data were collected in so far as the competent authority concerned is authorised to process such data for such a purpose under EU or national law, and the processing is necessary and proportionate for that purpose.

Section 79 of the 2018 Act imposes transparency requirements in the case of joint controllers i.e. where two or more controllers jointly determine the purpose and means of processing. To ensure the protection of the rights of data subjects “joint controllers” must determine their respective responsibilities in a transparent manner in a written agreement unless their responsibilities are set out in law. The agreement must set out the respective

²⁵ Ibid.

²⁶ Ibid.

responsibilities of the joint controllers in relation to the exercise by data subject of their rights, including the duties of the joint controllers as regards the provision of information to data subjects, and may designate a single point of contact for data subjects where this is not determined by law.

Notwithstanding the above, many members of the Hamilton Review Group hold the view that further legislation may be needed to ensure a robust basis for optimising the sharing of information across all relevant investigative bodies.

1.3.6 Judicial Council Act 2019

In 2014, the Council of Europe Group of States against Corruption (GRECO) recommended that an independent statutory council be established in Ireland for the judiciary and provided with adequate funding for its organisations and operations.

Furthermore, in 2018, Ireland underwent the second cycle evaluation of its compliance with the United Nations Convention against Corruption (UNCAC). The UNCAC evaluation report also identified the absence of a judicial council that would be responsible for establishing a code of conduct for judges as a significant gap in the State's anti-corruption framework.²⁷ The Judicial Council Act 2019 was signed into law on 23 July 2019 and provides for the establishment of a Judicial Council with a mandate to adopt a code of conduct for judges. This is a comprehensive piece of legislation addressing issues including the adoption of sentencing guidelines and the training of judges including the preparation and dissemination of information and materials among judges for use in the exercise of their functions. This could be useful in terms of providing education and training to judges or developing relevant material that may assist in criminal trials involving large scale complex economic crimes. There are peculiar challenges associated with the investigation and prosecution of large scale economic crimes. The volume and complexity of evidence involved often gives rise to frequent applications for interlocutory relief followed by lengthy trials. The challenges associated with the investigation and prosecution of large scale economic crimes are not unique to Ireland and have been experienced in many other jurisdictions. It is the view of some members of the Review Group that providing Judges with specific expertise in dealing with large scale economic crime cases would better equip them to deal with such cases. The idea of judicial training, in the context of keeping pace with the evolving nature of economic or other crimes including technological advancements, is not new and is highlighted by the

²⁷ Implementation Review Group, Conference of the State Parties to the United Nations Convention Against Corruption, 'Review of implementation of the United Nations Convention against Corruption', CAC/COSP/IRG/III/2/1/Add.3 (Vienna: UNCAC, 1 February 2019), <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1900570e.pdf>.

ninth International Conference on the training of the Judiciary held in Cape Town, South Africa in September 2019.²⁸

1.3.7 Arrest and Detention of Suspects and Search and Seizure

The Criminal Justice Act 1984 sets out a maximum period of 24 hours for which a person arrested on suspicion of having committed a relevant criminal offence can be detained. While this appears to be an appropriate period of detention for most types of offences, including many fraud and corruption cases, for the more complex cases, the detention period can be too short to satisfactorily complete an investigation. The actual time available for interview can be reduced in various ways. For instance, the time set aside to await the arrival of a solicitor at the Garda Station, and to consult with a solicitor throughout the detention period are included in the 24 hours.

In many fraud and corruption cases, as with drugs legislation, the matter of extending the detention period in large scale, complex economic crime cases would require judicial approval and oversight to ensure the necessity for any extended detention is justified. There is an ongoing process of consolidating the powers of An Garda Síochána in relation to the search, arrest and detention of powers and this may be an opportunity to consider the appropriate extension of those powers with respect to certain complex fraud and corruption cases.

A criticism of the Criminal Justice (Corruption Offences) Act 2018 is that it failed to include a provision for a search warrant, requiring investigators to rely instead on the provisions of section 10 of the Criminal Justice (Miscellaneous Provisions) Act, 1997. Unlike the warrant under section 48 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, this warrant does not require the owner or controller of a computer to provide computer passwords to members carrying out searches. An Garda Síochána advise that the requirement for the provision of computer passwords is of great benefit when investigating theft and fraud cases. However, this requirement is not available when investigating bribery and corruption cases and in respect of other arrestable offences also. The Review Group is satisfied of the need to introduce a requirement for the provision of computer passwords possibly in Section 10 of the Criminal Justice (Miscellaneous Provisions) Act, 1997 to cover all such eventualities. The proposal to codify the laws relating to An Garda Síochána's powers of search, arrest and detention, recognises the need to modernise the search powers of An Garda Síochána in the context of digital searches. There may be scope for the codification of the powers of search, arrest and detention to address the problem.

Another issue regarding the interview of suspects relates to section 37(5) of the Competition and Consumer Protection Act 2014 which provides that officers of the Competition and

²⁸ International Organisation for Judicial Training (IOJT), 9th International Conference on the Training of the Judiciary [Conference Program], <http://www.eitn.eu/PageFiles/18980/IOJT-Program-2019-English.pdf>.

Consumer Protection Commission (CCPC) may attend and participate, when asked to do so by An Garda Síochána, in the questioning of suspects arrested and detained under the Criminal Justice Act 1984 on suspicion of having committed competition law offences. Section 37(5) of the 2014 Act aims to enhance the investigation and prosecution of competition law offences by reducing the investigative burden on the members of An Garda Síochána by allowing authorised officers from the CCPC who are familiar with both competition law and the facts of the case at hand to participate in the questioning of suspects.

However, Regulation 12 of S.I. No. 119 of 1987, the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (the “Custody Regulations”) limits the participation in interviews of arrested persons during investigations for suspected criminal activity to members of An Garda Síochána.²⁹ An amendment to this provision in line with the provisions of section 37(5) of the CCPC Act 2014, would facilitate joint investigations by the CCPC and the An Garda Síochána ensuring that expertise from both agencies, are utilised effectively in investigating suspected competition law offences. The Review Group recommends that an amendment be made to the Custody Regulations to allow relevant agencies, such as ODCE or CPPC, to participate in interviews during investigations of suspected criminal activity that fall within their area of expertise.

1.3.8 Other Statutory Provisions

The principal legislation dealing with money laundering and terrorist financing is the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “2010 Act”) with further proposed amendments contained in the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2019 which are discussed below in section 1.4 of this Report.

The passage into Irish law of the European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 gave full effect to a key requirement of the majority of Article 30 of the Fourth EU Money Laundering Directive, as amended by Article 1(15) of the Fifth Money Laundering Directive. The Regulations require corporate or other legal entities incorporated in the State to obtain and hold adequate, accurate and current information in respect of their beneficial owners, and to state the nature and extent of the control exercised by them. The Regulations also establish a central register of beneficial ownership, and require corporate entities incorporated under the Companies Acts, and societies registered under the Industrial and Provident Societies Acts 1893 to 2014 to transmit their beneficial ownership information to the central register. The Registrar of Companies has been appointed as the Registrar of Beneficial Ownership of Companies and Industrial & Provident Societies.

²⁹ The CCPC has sought an amendment to the provisions of Regulation 12 of S.I. No. 119 of 1987 so as to allow for the application of Section 37(5) of the 2014 Act when investigating suspected economic crime in Garda Stations.

The Central Register of Beneficial Ownership (RBO) opened to accept filings on 29 July 2019 and companies and societies had up to 22 November 2019 to comply with their filing obligations without being in breach of their statutory duty to do so.³⁰

It is an offence for a relevant entity to fail to keep and maintain a register which contains the information referred to in Regulation 5(2)(a) and (b) and (3) of the Regulations. A person who fails to comply with their disclosure obligations under the Regulations shall be liable to a class A fine on summary conviction or imprisonment for a term not exceeding 12 months or both.³¹

Officers of designated ranks in An Garda Síochána, FIU Ireland (Ireland's Financial Intelligence Unit), the Revenue Commissioners, the Criminal Assets Bureau, an Inspector appointed by the Director of Corporate Enforcement³² and competent authorities have access to the Central Register.³³ The information in a beneficial ownership register may be disclosed by the listed agencies to any corresponding competent authority of another Member State in the event of there being a request made for such information. The provisions seek to ensure that individuals with significant economic interests in a relevant entity can be identified for the purpose of due diligence and to combat terrorist financing and money laundering. The outcome of a recent Financial Action Task Force (FATF) review of Ireland's compliance with international Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) rules and standards was broadly positive with only limited areas for improvement identified.³⁴ The FATF review found that Ireland has a sound and substantially effective AML/CFT regime but could do more in the area of securing convictions and confiscating the proceeds of crime.³⁵

Part 5 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013 increased the number of jurors to serve in complex criminal trials likely to last more than two months to avoid jury loss due to long drawn out trials. This legislative reform specifically addresses the challenge identified with lengthy complex criminal trials where there is the risk of jurors becoming unavailable due to the time commitment required.

The Electoral Act 1997, as amended, sets out the regulatory regime for political donations and the funding of political parties as well as providing for the establishment of election

³⁰ 'Beneficial Ownership', *Companies Registration Office*, <https://www.cro.ie/Registration/Beneficial-Ownership>.

³¹ Regulations 14(3) S.I No. 110/2019.

³² Under section 764(1) of the Companies Act 2014.

³³ Regulations 24 S.I No. 110/2019.

³⁴ 'Ireland's measures to combat money laundering and the financing of terrorism and proliferation', *FATF*, last modified 7 September 2017, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-ireland-2017.html>.

³⁵ Financial Action Task Force, *Anti-Money Laundering & Counter-Terrorist Financing Measures – Ireland*, Fourth Round Mutual Evaluation Report (Paris: FATF, 2017), <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Ireland-2017.pdf>.

expenditure limits and the disclosure of election expenditure in respect of election campaigns.

The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, provides for the disclosure of interests by certain elected officials and certain public servants. Other relevant pieces of legislation are the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014 and the Regulation of Lobbying Act 2015. The Regulation of Lobbying Act requires those who lobby designated public officials to register and report on their lobbying activities, as specified under the legislation, every four months on the Register of Lobbying. SIPO manages the Register of Lobbying, monitors compliance with the Act, provides guidance and assistance, and investigates and prosecutes offences under the Act. SIPO has identified what it considers to be a number of gaps in the various pieces of legislation, details of which will be discussed in the body of this Report.

The Programme for Government includes a commitment to reform and consolidate the ethics in public office legislation. The Minister for Public Expenditure and Reform confirmed that a new full review of Ireland's current ethics legislation was to commence to inform the drafting of a new consolidated Ethics Bill. Following this review, a proposed new consolidated Ethics Bill will be brought forward for consideration by the Oireachtas. In the interim, the existing ethics framework remains in force.

Broad reforms designed to assist the investigation of economic crime and corruption are also contained in various other statutes including the Companies Act 2014. The enactment of the Central Bank (Supervision and Enforcement) Act 2013 greatly increased the investigative powers of the Central Bank by consolidating and strengthening its information gathering and authorised officer powers. The Central Bank exercises these powers where it is necessary to do so for the purpose of the performance of the Central Bank's functions under financial services legislation relating to the proper and effective regulation of financial service providers, without prejudice to other information gathering powers of the Central Bank (e.g. for statistical or economic analysis purposes). The Central Bank also has investigative powers in various pieces of securities and markets regulations including in the European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016) which allows the Central Bank to investigate contraventions of market abuse legislation and market abuse offences.

The provisions criminalising the evasion of tax and duty in general work very well and are updated when necessary in the annual Finance Acts.

1.4 Recent legislative proposals

There have also been a range of other legislative proposals which are outlined below. As previously stated, some of these have been necessitated by Ireland's obligations as an EU Member State, while others are driven by the State's obligations under international

Conventions and Instruments as well as the Government's commitments under the White-collar crime package.

1.4.1 Anti-Money Laundering Legislation

In August 2020, the cabinet approved the publication of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020. This will transpose many of the provisions of the 5th EU Money Laundering Directive, which aim to strengthen the EU's legal framework for combatting money laundering and terrorist financing. The Bill is currently making its way through the Houses of Oireachtas and has completed the Dáil Éireann first stage.

1.4.2 Companies (Corporate Enforcement) Authority Bill 2018

In December 2018, the Government published the General Scheme of the Companies (Corporate Enforcement) Authority Bill 2018. The Bill proposes to develop the Office of the Director of Corporate Enforcement (ODCE) as an independent standalone agency with a commission structure as opposed to its current configuration as an office of the Department of Business, Enterprise and Innovation. This will build upon the organisational and procedural reforms that have been implemented by the Director of Corporate Enforcement since 2012. Furthermore, the reforms contained in the Bill will provide the ODCE with greater autonomy and flexibility to adapt to the challenges it faces in investigating and prosecuting increasingly complex breaches of company law including the ability to recruit staff with the requisite skills and expertise.

1.4.3 Perjury and Related Offences Bill 2019

The Cost of Insurance Working Group, established in July 2016 to review the cost of insurance, identified fraud as a cost factor for insurance companies albeit not the main reason why insurance costs had increased in the previous 12 months.³⁶

In part as a response to the problem of insurance fraud, the Perjury and Related Offences Bill 2018 was introduced to place the common law offence of perjury on a statutory footing, with the intention of making it easier to prosecute. The Minister for Justice and Equality proposed to amend the Bill so that the maximum penalty on indictment would be harmonised with the equivalent maximum penalties for largely similar offences in the Civil Liability and Courts Act 2004. The latter stipulates that a person who commits an offence is liable on summary conviction to a class B fine or to imprisonment for a term not exceeding 12 months or to both; and on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 10 years or to both. The Bill which lapsed with the

³⁶ Cost of Insurance Working Group, *Report on the Cost of Motor Insurance* (Dublin: Department of Finance, 10 January 2017), p. 120, <https://www.gov.ie/en/publication/466182-report-on-the-cost-of-motor-insurance/> and the Cost of Insurance Working Group, *Report on the cost of Employer and Public Liability Insurance* (Dublin: Department of Finance, January 2018), <https://assets.gov.ie/6256/060219173306-502d0dda6b644e7db5d019dd44ac49b6.pdf>

dissolution of the Dáil Éireann in January 2020, has since been restored to the Dáil Order paper and has full Government support regarding the prospect of its early passage through the house to enactment.

1.4.4 EU Directive on combating fraud and counterfeiting of non-cash means of payment

EU Directive 2019/713 on combating fraud and counterfeiting of non-cash means of payment addresses significant gaps and differences in Member States' laws in the areas of fraud and of counterfeiting of non-cash means of payment.³⁷ It includes common definitions and extends criminal liability to virtual currencies and digital wallets. Member States must implement the Directive by 31 May 2021.

1.4.5 Ethics in public office legislation

The Public Sector Standards Bill 2015 (PSSB) (as with all Bills) lapsed with the dissolution of the Dáil in January 2020. Following the subsequent general election in February, a new Government was formed in June 2020. The associated Programme for Government (published June 2020) entitled 'Our Shared Future' contained a commitment to 'reform and consolidate the Ethics in Public Office legislation'. In order to progress this commitment, the Minister for Public Expenditure and Reform confirmed that a new full review of Ireland's current ethics legislation was to commence to inform the drafting of a new consolidated Ethics Bill.

An effective standards framework remains integral to the quality and efficacy of public governance. The minimisation of corruption risks, and the regulation of conflicts of interests, is central to maximising the value generated by the public sector and to the contribution it can make. In carrying out a full review of Ireland's current ethics legislation, consideration should be given to adopting the progressive elements of the lapsed Bill in any new proposed reforms, as these elements had been acknowledged and welcomed by GRECO in its evaluation of Ireland. The Review Group reiterates the need to implement measures to enhance the legislative and administrative framework that governs public sector ethics as expeditiously as possible, given the delay in introducing proposed measures in the past. The failure to do so could have significant implications for the State's anti-corruption regime. Furthermore, any delay would pose a setback to the progress made so far in the context of the evaluations that have been carried out by the relevant international monitoring bodies.

1.4.6 The Criminal Procedure Bill 2015

A revised General Scheme of this Bill was published in 2014. Publication of the Bill itself has since been deferred on several occasions. The reason given was that this was owing to

³⁷ Directive (EU) 2019/713 of the European Union Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, OJ L123, 10.5.2019: 18-29.

other Government priorities. The main purpose of this legislation is to provide greater efficiency to the criminal trial process and to reduce delays in the criminal justice system generally. The legislation will address the challenges posed by a lack of pre-trial process for hearings and overly complex rules to prove electronic and documentary evidence raised by prosecutorial bodies in the review process. The need to expedite action on the Criminal Procedure Bill 2015 cannot be over emphasised as the Bill has the potential to significantly enhance the ability of the relevant prosecutorial bodies to effectively prosecute economic crimes and corruption as well as to enhance the efficiency of criminal trials generally. The need for the introduction of pre-trial procedures is discussed further in Chapter 2 when discussing the Office of the Director of Public Prosecutions.

1.5 Other policy considerations

1.5.1 Legal professional privilege

Submissions received by the Review Group from some of the agencies indicate that issues associated with legal professional privilege contribute to the complexity of investigations.

Legal professional privilege is a fundamental aspect of the rule of law which protects communications between a professional legal adviser and his or her client. The risk of unjustifiable claims being used to hinder or delay investigations is a real one. Legislative mechanisms for the expeditious determination of claims of privilege have been introduced and are welcomed. However, while legal professional privilege has a high level of protection, it is not an absolute right and may be subject to exceptions in certain circumstances.

Section 33 of the Central Bank (Supervision and Enforcement) Act 2013 provides that, where a person refuses to produce information or give access to it on the basis of privilege, the Bank may within 6 months of the date of refusal or any such longer period as the Court may allow apply to the Court for a determination as to whether the information or any part of it is privileged legal material.

Other relevant legislative measures introduced to deal with this issue can be found in section 33 of the Competition and Consumer Protection Act 2014 (CCPC Act 2014) and section 795 of the Companies Act 2014 which requires the Director to apply to the High Court for a determination on the status of potentially privileged material within seven days of the ODCE's coming into possession of the material. The Courts retain the power to determine whether information or material is privileged and the CCPC Act 2014, for example, allows for the Courts to obtain the expertise of an independent, suitably qualified legal professional in making a determination.

There are a number of exceptions to privilege and instances where it can be lost.³⁸ These include communications made for a fraudulent or criminal activity, conduct that is injurious to the administration of justice, such as instituting frivolous and vexatious proceedings, cases where statute distinctly overrides it, as well as where privilege is waived either expressly or implicitly such as would be the case in a so called 'Fyffes Agreement'.

In *Smurfit Paribas Bank v AAB Export Finance Ltd*, Finlay CJ affirmed that privilege should only be granted in circumstances "which have been identified as securing an objective which in the public interest in the proper conduct of the administration of justice can be said to outweigh the disadvantages arising from the restriction of disclosure of all the facts".³⁹

It remains to be seen how well in practice these provisions will assist in dealing with the challenges caused by the invocation of legal professional privilege in the course of investigations or prosecution of economic crimes.

1.5.2 Privacy Rights

While the constitutional right to privacy itself is long standing and settled, its precise interaction with regulatory investigations is not. The imperative of safeguarding an individual's constitutional right to privacy is an important principle in the conduct of any investigation, albeit a qualified one. A proportionate and necessary limitation or incursion in to an individual's right to privacy can be justified when weighed in the balance with the public interest to investigate and prosecute criminal wrongdoing.

The right to privacy was the subject of the *CRH plc v the Competition and Consumer Protection Commission*⁴⁰ case in 2015. In that case, the CCPC had been found to have conducted a seizure in a manner that breached the privacy rights of the plaintiff under Article 40.3 of the Constitution and/or in breach of the right to respect for private life under Article 8 of the European Convention on Human Rights.

The judgments of the Supreme Court upholding the High Court decision emphasise the role of proportionality in searches and that searches should be focussed and targeted where possible. The full implications of the judgments remains a live issue, especially in the context of the seizure of material stored electronically.

In order to ensure the exclusion from examination by an investigator of material out-of-scope of their authority to examine such material, and to vindicate the privacy rights of an affected party, the decision in *CRH* appears to suggest: -

³⁸ Ibid.

³⁹ *Smurfit Paribas Bank Ltd v AAB Export Finance Limited* [1990] 1 IR 469.

⁴⁰ *CRH Plc, Irish Cement Ltd & ors v The Competition and Consumer Protection Commission* [2017] IESC 34

- (a) The introduction of a legislative amendment, analogous to S. 795 of the Companies Act 2014, requiring oversight by an independent person of whether material is private;
- (b) The necessity to proactively engage with an affected party asserting a claim of privacy with respect to seized material, such as the consideration of representations from the affected party or the use of a keyword search process; and
- (c) The destruction or deletion of material found to be irrelevant.

In considering this matter, the Review Group consider that the potential relevance of material to an investigation is – and can only be – a matter for the investigator to determine. This is because the investigator – who has knowledge of the investigation and other information currently in their possession – is best placed to hold a reasonable suspicion that the material is potentially relevant. In this regard there is a particular concern about material that may not be ostensibly relevant – but may ultimately be probative. This determination cannot properly be made – at an early stage of the investigation – by an independent individual outside the investigation who is not in a position to know whether material is relevant, not relevant, or potentially relevant without disclosing the progress or direction of that investigation – which is clearly highly undesirable, from an investigation perspective.

Equally, the use of key words in conducting searches gives rise to a potential risk that material relevant to investigations may not be identified upon an initial deployment of the key search word process, where material relevant to an investigation is not identified (because the title of the material does not reflect its content) or where the material is not captured by the use of the search term.

An associated challenge is that where affected parties seek to engage in the formulation of search terms, this engagement can be protracted and can result in delay to the conduct of investigations. Any requirement for investigators to engage with affected parties in such a proactive manner requires careful consideration.

In terms of the conduct of an investigation, the separation of relevant from irrelevant material within electronic devices and/or data can prove challenging, if not impossible, from a practical perspective. And in circumstances in which original evidence must be retained for the purposes of furthering criminal prosecutions, a requirement to separate and potentially destroy irrelevant material is simply not feasible.

Currently, therefore, investigative agencies are required to address issues of significant complexity and risk in dealing with issues concerning the assertion of privacy rights. This complexity can and does, give rise to delays in the efficient and timely conduct of investigations and has the potential to increase uncertainty regarding the processes to be deployed. It is desirable that the processes for determining these issues be improved in a manner that makes their determination easier and capable of being dealt with in a more timely fashion. In light of these complexities, the manner in which investigation and

enforcement agencies resolve issues where privacy rights have been asserted very probably requires— in light of its complexity and its interaction with constitutional rights – legislative resolution.

The codification of An Garda Síochána’s powers in relation to search, arrest and detention is of relevance to issues of privacy. The proposal to codify the law recognises the need to modernise search powers to address the concerns around potentially privileged or potentially private material, and the mechanisms whereby private but potentially relevant material can be evaluated. Similarly, legislation relating to warrants would need to address issues of determining the relevance of ostensibly private in the context of material stored in the cloud.

1.5.3 Deferred Prosecution Agreements (DPAs)

Deferred Prosecution Agreements (DPAs) have been described by the Law Reform Commission (LRC) in the following way:

DPAs are agreements entered into between a prosecuting authority and a defendant to a possible criminal prosecution. Under such agreements, the prosecution is suspended for an agreed period, in exchange for the defendant complying with certain conditions during that time. If these conditions are complied with, the prosecution is suspended for an agreed period, in exchange for the defendant complying with certain further conditions during that time. If these further conditions are complied with, the prosecution will be brought to an end without the defendant receiving a conviction.⁴¹

The LRC’s recommendation for the introduction of DPAs in this jurisdiction by way of an enactment of a statutory DPA model similar to that in the United Kingdom was considered by the Review Group. DPAs were introduced in the United Kingdom on a statutory basis by the Crime and Courts Act 2013 and are subject to judicial oversight. They are limited to corporations and subject to a number of stringent criteria that must be met before they are approved. This is in contrast to the type of DPA regime adopted in the USA which extend to cover individuals and which are not placed on a statutory footing.

Concern has been expressed in some quarters about the practical and legal difficulties that might arise if DPAs are to be introduced in this jurisdiction given what is described by some as an underdeveloped system of corporate criminal liability. It has been suggested that if DPAs are to be introduced in this jurisdiction, it should be done on a statutory basis and offered only to corporate organisations who accept their guilt, in a similar manner such as obtains in the juvenile diversion and adult caution programmes.⁴² Furthermore, it has been

⁴¹ LRC, *Report on Regulatory Powers and Corporate Offences, LRC 119-2018, vol. 1, p.7, para.24.*

⁴² The Juvenile Diversion Programme allows young offenders who accept responsibility for their offences a second chance by allowing them enter into the programme thereby avoiding incurring a criminal record.

argued that the optics of applying DPAs to individuals, in the event that DPAs are introduced, would be very poor. This is because, while corporations by their nature cannot be imprisoned and must necessarily be sanctioned by way of fines or restrictions on their ability to do business, extending DPAs to Directors of corporations would effectively allow the Directors to buy off the consequences of their criminal liability at the expense of shareholders. The extension of DPAs to individuals, it is further contended, could be used as a tool to deter witnesses who might otherwise be willing to give evidence if given immunity from prosecution. It has been submitted that, when applied to corporations, DPAs provide accountability for corporate fraud without posing an existential threat to potentially large scale employers, a benefit which does not apply to individuals. There is also the view that DPAs are only successful when followed up with the prosecution of the individuals responsible for the wrong doing.

Submissions from the public consultations have indicated varied opinions on the utility of DPAs in this jurisdiction. From a private practitioner perspective, concern was expressed about the potential impact of DPAs on individual rights if DPAs are introduced and extended to cover individuals in this jurisdiction. Reference was made to the relatively recent collapse of the Tesco fraud case in the United Kingdom.⁴³ In that case, three individuals charged in relation to allegations of false accounting against Tesco were acquitted. However, a DPA resulting in huge fines against Tesco, entered into prior to the trial on the basis of the allegations, named the three individuals publicly, notwithstanding their subsequent acquittal.⁴⁴ Furthermore, there has been criticism of the UK DPA regime on the basis that there appears to be no mechanism within the current DPA framework to alter or redress a change of facts once the DPA is signed.⁴⁵ The potential reputational damage to individuals who may be acquitted in subsequent trials would amount to an infringement of constitutional rights in this jurisdiction. The Hamilton Review Group does not recommend the establishment of a DPA regime in this jurisdiction at this time as it is not convinced that the introduction of a DPA regime will yield any significant benefit given the UK experience so far.

1.5.4 Directors' Compliance Statements (DCS)

Section 225 of the Companies Act 2014 places an obligation on directors of Public Limited Companies (PLCs) and other large companies, to put in place Directors' Compliance Statements (DCSs) in their annual reports. The DCSs are made by the directors, acknowledging responsibility for securing the company's compliance with the relevant provisions of the Companies Act 2014. Submissions received during the consultation process are critical of the DCS regime introduced by section 225 of the Companies Act

⁴³ 'Tesco PLC, *Serious Fraud Office*, last modified 10 April 2020, <https://www.sfo.gov.uk/cases/tesco-plc/>.

⁴⁴ *Ibid.*

⁴⁵ Joanna Dimmock, Jonathan Pickworth and Tom Hickey, 'Deferred Prosecution Agreements 5 Years On – the Americanisation of UK Corporate Crime Enforcement', Client Alert (White & Case LLP, May 2019), <https://www.whitecase.com/sites/default/files/2019-05/deferred-prosecution-agreements-5-years-on-the-americanisation-of-uk-corporate-crime-enforcement-v2.pdf>.

2014, describing it as inadequate and favouring instead, the more robust form of DCS recommended by the 2000 Review Group on Auditing. The DCS regime recommended by the 2000 Review Group included an oversight of compliance by external auditors as well as appending non-disclosure to annual financial statements.

In response to this criticism, submissions received state that the Company Law Review Group (CLRG) in 2005 considered the recommendations of the 2000 Review Group amid concerns that the more stringent form of DCS recommended by it, could impose additional costs on the business community and potentially have adverse effects on competitiveness, investment and job creation. Following a cost benefit analysis and extensive consultations, a mitigated DCS regime was introduced. It is worth noting that it was also considered appropriate at the time, to await EU initiatives rather than introduce the more robust DCS regime recommended by the 2000 Review Group. In light of the significant relevant developments since 2005 and in particular, the 2008 financial crisis, the Review Group considered reviewing the suitability of the current DCS regime. However, the Hamilton Review Group noted that the Company Law Review Group's 2020-2022 Work programme includes at point 9, " Review the obligations outlined in relation to the Directors' Compliance Statement in the Companies Act 2014, and, if appropriate, make recommendations as to how these might be enhanced in the interest of good corporate governance". In circumstances where the Company Law Review Group is the expert forum for company law, the Hamilton Review Group considers the CLRG to be the expert forum on this matter.

1.5.5 Cartels and Bid Rigging

Public procurement rules oblige State bodies to use competitive tendering as a tool to obtain value for the taxpayer and to minimise the risks of corruption and other malpractice in the procurement process. In essence, competitive tension is used to give each bidder an incentive to reveal how little they are willing to charge for the works outlined in the request for tender (RFT).

Bid-rigging is a criminal activity carried out by cartels as a means of subverting this process and ensuring that the tenderer does not get value for money.

The experience of the CCPC (and other competition authorities around the world) is that bid-rigging is normally organised through 'cover bidding'. This entails the cartelists agreeing, on a rotating basis, which of them should 'win' the tender. Typically, the designated 'winner' draws up the various 'losing' bids for the other cartel members (as cartel members who know in advance that they will 'lose' have little incentive to complete the often onerous process of submitting bids). The winner may also make side payments to cartel members who agree to submit uncompetitive bids⁴⁶, or may systematically sub-contract to fellow

⁴⁶ Such side payments raise a number of other concerns in relation to breaches of other legislation, potentially including anti-money laundering legislation.

cartelists. The international experience is that corruption offences may sometimes accompany bid-rigging, for example where a responsible official is enticed to exclude non-cartel tenderers or to provide inside information that might enable cartelists to successfully ‘up’ their asking price (particularly where a selection process is not wholly price-driven).

Research indicates that the average overcharge in detected cartels is in the order of 20% to 30% internationally. On this evidence, and given the value of many public contracts, even a small number of such cartels can have a substantial impact on the public purse.⁴⁷ The CCPC advised the Review Group that bid-rigging accounts for a majority of the files that it sends to the ODPP and of the cases subsequently heard in Court. Bid-rigging also accounts for a high proportion of cases taken by competition authorities internationally.

A key means of both detecting and deterring bid-rigging in the public contracts arena is to screen procurement processes for indications that bid-rigging may be taking place. This builds on the work of Rosa Abrantes-Metz, who was one of the first to statistically investigate suspicious trading activity on the Libor exchange.⁴⁸ Screening public contracts leverages the informational advantage available to the public sector – given its size, it would typically be interacting numerous times per year with the same providers in a given sector. Screening for bid-rigging was pioneered by South Korea’s Bid Rigging Indicator Analysis System (BRIAS), which produced some success in identifying cartels but was also instrumental in pushing some firms to seek leniency before they were detected.⁴⁹ In 2012 the OECD issued a recommendation that procurement authorities should be allowed to conduct appropriate analysis of bidding behavior and bid data⁵⁰.

Other countries have followed suit and are developing more and more sophisticated screening mechanisms, often with the aid of tailored legislation to enable the collection, collation and analysis of data from all firms that receive requests for tender documents and/or submit bids in any public procurement process. While further analysis of the legal basis would be required, it is likely that the introduction of public procurement screening in Ireland would require specific legislation to enable the data already captured in the e-tenders

⁴⁷ John M. Connor, ‘Price-Fixing Overcharges: Revised 3rd Edition (SSRN, 24 February 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2400780; John M. Connor and Yuliya Bolotova ‘Cartel Overcharges: Survey and Meta-analysis’, *International Journal of Industrial Organization* 24, no. 6 (November 2006):1109-1137.

John M. Connor and Robert H. Lande, ‘The Size of Cartel Overcharges: Implications for US and EU Fining Policies’, *The Antitrust Bulletin*, 51, no. 4 (Winter 2006): 983-1022; Florian Smuda, ‘Cartel Overcharges and the Deterrent Effect of EU Competition Law’ ZEW – Centre for European Economic Research, Discussion Paper No. 12-050 (29 July 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2118566.

⁴⁸ Rosa Abrantes-Metz, Luke Froeb, John Geweke and Christopher T. Taylor, ‘A Variance Screen for Collusion’, *International Journal of Industrial Organization*, 24, no. 3 (2006): 467-486.

⁴⁹ OECD, ‘Country Case: Korea’s Bid Rigging Indicator Analysis System (BRIAS)’, Public Procurement Toolbox (OECD, 2016), <https://www.oecd.org/governance/procurement/toolbox/search/korea-bid-rigging-indicator-analysis-system-brias.pdf>.

⁵⁰ See: OECD, ‘Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement’ (OECD, 2016), <https://www.oecd.org/daf/competition/RecommendationOnFightingBidRigging2012.pdf>.

system to be made available to the CCPC and GNECB for screening with a view to the detection of any cartel behaviour and any accompanying corruption offences.

The CCPC believes that there would be minimal set-up and ongoing costs involved in establishing a database to screen the data that is housed on the e-tenders server. The CCPC also makes the point that the collation and analysis of this information would be useful even in the absence of any detected bid-rigging, as it would enable the detection of patterns and trends and provide enhanced competitiveness benchmarks for procurement officials.

The Review Group considers that the vast amounts spent annually by the State on procurement warrant systematic screening of the process in order to better detect – and deter – any bid-rigging or related criminal activity. The Review Group therefore **recommends enabling (through legislation as required) the CCPC and other relevant bodies to access and process e-tenders data for the purposes of detecting potential criminal activity including bid-rigging, fraud and corruption. A multi-pronged approach that includes the provision of guidance and education for procurers on bid-rigging/collusion in public procurement as well as awareness raising, should be adopted to complement the bid-rigging screening system.**⁵¹

An amendment to the Competition and Consumer Protection (CCPC) Act 2014 to specify bid-rigging as an example of a hard core cartel activity, or the enactment of legislation to create a specific offence of bid-rigging has been proposed. Submissions received indicate that such an approach would be helpful to the work of the CCPC as bid-rigging is the most common form of cartel activity encountered in its work. Bid-rigging impacts on both the public and private sectors and acts as a potentially significant drag on competitiveness.

Modern technology and social networking have provided enhanced means to enable cartel conspirators to accomplish their goals. The CCPC seeks the introduction of specific legislation to enable the collection, collation and analysis of all public procurement data in the State to detect and deter bid-rigging. Surveillance powers, will also assist the CCPC's ability to uncover this type of activity.

1.6 Overview of findings

The Review Group considered which aspects of Ireland's current fraud and corruption enforcement regime – including in the area of interagency co-operation – worked effectively.⁵² A number of organisations represented on the Group, including ODCE, Department of Employment Affairs and Social Protection (D/EASP), Revenue and CBI,

⁵¹ The OECD's Public Procurement Tool box acknowledges that awareness raising and education can enhance the benefits of a bid-rigging screening system. See OECD, 'Country Case: Korea's Bid Rigging Indicator Analysis System (BRIAS)'.

⁵² An example of effective cooperation of national agencies is set out in the case study at the end of this section.

expressed general satisfaction with their powers and their scope to co-operate with other relevant bodies for investigative purposes. Revenue described interagency co-operation as one of the key strengths of the current regime for investigating tax fraud, noting in particular, its close links to GNECB and the successful arrangements for seconding Revenue staff as an integral part of CAB. The CCPC also advised that it has satisfactory joint arrangements with Revenue, the ODCE and CAB in relation to the exchange of knowledge and expertise (e.g. in digital forensics). D/EASP also advised that it has excellent interagency co-operation with Revenue and other enforcement agencies. It also noted the successful arrangements it has for the secondment of its inspectors who play a very important role in CAB.

The Review Group also agrees that the current arrangements whereby Gardaí are seconded to various other investigative agencies (including the ODCE, D/EASP and CCPC) have proved to be of mutual benefit in terms of building investigative skills, transferring specialist knowledge, enhancing training and facilitating the exchange of information. Secondments to the ODCE are placed on a statutory footing with the relevant legislation and the associated Government decision providing for the assignment of seven members of An Garda Síochána to the ODCE. An Garda Síochána members assigned to the ODCE are traditionally seconded from the GNECB. However, the aforementioned Government decision provided for the creation of new inspector and sergeant roles respectively, ensuring that members assigned at that level are cost neutral to An Garda Síochána.

There is an undoubted perception among many members of the public that the investigation and prosecution of fraud and corruption offences in Ireland does not function properly. A frequently expressed view in that regard is that after the financial collapse in 2008 and the following years few prosecutions took place. This view is, however, at variance with the facts. It has been pointed out on many occasions that the causes of this collapse were primarily those of bad decision-making and poor, or non-existent, risk management in key financial institutions and poor or in some cases non-existent financial regulation with little evidence that the crisis was caused by criminal activities.⁵³ The principal exceptions to this were the prosecutions relating to the former Anglo-Irish Bank in relation to which a series of high-profile criminal trials took place resulting in a number of convictions for Companies Acts offences secured against two former Anglo directors including some acquittals. Some convictions were secured despite a variety of legal, resourcing and expertise constraints faced by the key investigative agencies involved. While some of those constraints have since been addressed or partially addressed, others remain and indeed some have become more acute as economic crime continues to increase, evolve and become more complex. These challenges, and the Review Group's recommendations to address them, are detailed elsewhere in this Report. The cases also showed that the Irish jury system was more robust

⁵³ LRC, *Report on Regulatory Powers and Corporate Offences*, volume 1, paras. 1.30-1.38.

than some commentators had predicted and that it is possible to successfully prosecute in complex financial cases before a jury of randomly-selected citizens.

The Review Group also noted some externally-cited examples of Ireland dealing effectively with economic crime, including through inter-agency collaboration. A review by the Financial Action Task Force (FATF) found that Ireland had a number of strengths in dealing with crimes such as Money Laundering and Terrorist Financing, and that overall *'Ireland has a generally sound legislative and institutional (AML/CFT)'*.⁵⁴ The FATF Mutual Evaluation report found that national co-ordination and co-operation is a strong point of the Irish AML/CFT system. In particular, it found that national coordination mechanisms such as the Anti-Money Laundering Steering Committee (AMLSC),⁵⁵ the Cross-Departmental International Sanctions Committee and the Private Sector Consultative Forum were found to be fruitful in broadening the understanding of relevant risks across all relevant agencies and within the private sector.

Some challenges identified relate to resourcing levels in key bodies, such as the GNECB, being inadequate to deal effectively with the growth in economic crime and the increasingly complex and resource-intensive nature of its investigation. The investigation of serious economic crime typically requires years of investigative work to bring a case to fruition. Such cases frequently involve thousands of documents and terabytes of computer data, all of which must be examined in order to carry out the investigation properly and to comply with the State's obligation to seek out and preserve all relevant evidence, including exculpatory evidence. This also results in onerous disclosure obligations on the State. Resourcing of relevant agencies is of course a matter for consideration during the annual estimates process. The analysis of computer data and mobile phones, the evolving use of cloud based servers, the emergence of the paperless office, and evolving privacy and legal privilege issues, as ventilated in the Courts,⁵⁶ also present formidable challenges to investigators and prosecutors. Other challenges identified include:

- Outdated, unduly cumbersome or inadequate agency powers of investigation, rules of evidence, and court procedures.
- The need for better and more comprehensive data as to the overall incidence and costs of economic crime and corruption.

⁵⁴ The Financial Action Task Force (FATF) (2017) Anti-money laundering and counter-terrorist financing measures – Ireland, Fourth Round Mutual Evaluation Report, FATF, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-ireland-2017.html>

⁵⁵ The AMLSC is a cross governmental, inter-agency steering committee whose primary role lies in facilitating domestic collaboration between stakeholders to ensure effective implementation of AML and CFT measures under the legislative framework and international standards.

⁵⁶ The codification of An Garda Síochána' powers of search, arrest and detention recommended by the CoFPI report provides an opportunity to modernise search powers in line with technological advancements and address issues relating to privacy rights in the context of digital searches.

- The absence of public information and education about anti-corruption and the absence of an agency with responsibility in this area.
- Finding a mechanism to ensure that anti-corruption agencies are properly resourced.

These challenges are elaborated in Chapter 2 of this Report, with corresponding recommendations where applicable.

Another challenge identified relates to Information-sharing, particularly under the Joint Agency Task Force (JATF) model. There is uncertainty as to the legal parameters for information sharing among the relevant agencies. Difficulties experienced in the pilot joint agency task force on invoice redirection and fraud illustrates the challenge with information sharing where there is no underlying legal basis for doing so.⁵⁷ Information received from members of the Review Group support the view that where there is no clear statutory basis for information sharing and where confidentiality obligations prevent it, challenges arise. Other related difficulties that may arise with JATFs are lack of clarity about whether seconded staff retain access to the internal systems of their home agency while seconded to a host agency. Issues around the ring-fencing of staff and resources may also arise. An underlying statute for information sharing amongst participating members of any proposed joint agency task force is, therefore, considered the most effective approach for establishing JATFs. Submissions received state that increased cooperation between regulators should be encouraged, particularly in areas such as the investigation and prosecution of economic crimes which may encompass a variety of connected offences including embezzlement, money laundering and tax evasion. The establishment of information-sharing structures such as the Financial Stability Group (FSG) will allow the most senior officials of the relevant Government Departments and agencies to come together to facilitate greater cooperation including information sharing and joint inspections. Such arrangements may require a legislative basis or structures similar to the FSG. Submissions received suggest that it would be advantageous to any JATF if seconded members retain the powers from their various home agencies and utilize such powers in the joint investigations of relevant cases.

⁵⁷ The Review Group understands that this legal uncertainty, combined with certain logistical difficulties, prevented the development of the pilot JATF (as envisaged in the White-collar crime Package) beyond an initial exploratory stage.

Case study: An Garda Síochána and Office of Director of Public Prosecutions Joint Anti-Money Laundering/Counter-Terrorist Financing Project

Background

Established in 2015, the purpose of the joint Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Project between the Garda National Economic Crime Bureau (GNECB) and the Office of the Director of Public Prosecutions (ODPP) was to review the systems and procedures for investigating and prosecuting money laundering and terrorist financing and to identify and, where possible, remedy any impediments or obstacles.

The project was facilitated by bilateral contacts between the Money Laundering Investigation Units in GNECB and the specialist units of the ODPP, but also by multi-lateral contacts via the Anti Money Laundering Steering Committee (AMLSC) subgroups of which prepare the National Risk Assessment and sectorial risk assessments for money laundering and terrorist financing.

Methods

Investigative capacity building

Throughout 2015 and 2016, GNECB focused on building capacity and capability to investigate both money laundering and terrorist financing offences. Two dedicated Money Laundering Investigation Units were established, and increased organisational awareness of such offences was achieved via various training and educational initiatives aimed not only at frontline investigators but also at senior management within the National Units charged with investigating serious crimes. An increased emphasis was placed on the interrelationships between money laundering and terrorist financing and other types of serious and organised crime. Closer collaboration between GNECB and the financial institutions in identifying unusual movements of money has also reaped dividends in identifying cases of this nature. This has also led to enhanced co-operation with the ODPP as the prevalence and detection of such offences increase.

Prosecutorial capacity building

On the prosecutorial side, the project was managed by a Project Leader in ODPP reporting directly to the Deputy Director of Public Prosecutions. This involved enhanced co-ordination and collaboration between the AML/CFT Units in the Directing Division which manage the decision making process, the Circuit Court Section which presents the cases in court, the Special Financial Unit, the Asset Seizing Section and the Policy and Training Units. The object was to raise awareness across the ODPP by way of internal seminars

and presentations, with a particular emphasis on legal presumptions or other measures which may assist in prosecuting.

Interagency cooperation & relationship building

Strong professional networks were forged between the AML/CFT units in the ODPP's Directing Division, Asset Seizing Section and Special Financial Crime Unit (SFU) and the newly formed Money Laundering Investigation Units of the GNECB. Regular contact and feedback between these areas in relation to trial and investigative issues has demonstrably helped to improve the investigation and prosecution of these offences. The number of money laundering prosecutions doubled in one year from 2016-2017 and the first prosecution for terrorist financing offences was directed. While there had already been numerous convictions for money laundering, the first such convictions following a trial have since been achieved.

Key performance indicators

While the project has not yet fully concluded, there has been an observable increase in the number of cases investigated where money laundering charges have been directed. There are also encouraging initial signs that investigations and prosecutions are becoming more effective, and there is heightened awareness as regards the potential for prosecuting the offence of money laundering. In 2019, there were 129 cases where charges of money laundering were directed by the ODPP. The vast majority of the prosecutions for money laundering have ended in a plea of guilty but there have also been successful prosecutions following trial. However, a formal evaluation of the progress made with the project is planned for October 2020. Two appeals to convictions secured as a result of the work of the project were lodged and while one of the appeals was allowed, the other remains outstanding. GNECB and ODPP jointly intend to formally evaluate progress agree recommendations for legislative or procedural reforms in the area following the determination of the Court of Appeal in the case mentioned.

Chapter 2. National criminal justice structures to combat economic crime and corruption

2.1 National framework

The responsibility for tackling fraud and corruption does not lie with any one body. The role and powers of the various agencies and Government Departments involved in the prevention, detection, investigation and prosecution of fraud and corruption are outlined in this chapter. Some of the agencies such as An Garda Síochána and the ODCE are currently undergoing substantial structural reforms.

The issue of resources, including specialist expertise and technology are a matter of concern to a large albeit varying degree for most agencies and bodies. Resourcing may not necessarily be an issue with respect to the ordinary or day-to-day type of cases, but could become a very significant issue in dealing with large or complex cases, in particular, those requiring specialist expertise. Steps are being taken to address some of these gaps and, in particular, the proposed legislative measures to enhance the ODCE's autonomy are welcome.

That said, there are key agencies which have significant gaps in resources which substantially undermines their ability to carry out their function and ultimately to adequately combat fraud and corruption. A number of recommendations are made in this Chapter to address the issues identified.

2.1.1 An Garda Síochána

An Garda Síochána is Ireland's national police and security service, responsible for preserving peace and order. The role of An Garda Síochána is broad and includes protecting human rights, protecting lives and property, protecting the security of the State, investigating, detecting and preventing crime, community policing as well as road traffic regulation. Subject to constitutional and legislative provisions, An Garda Síochána also has powers of arrest, detention, surveillance, including the powers to enter and search buildings and land and to search people.⁵⁸

The responsibility for prosecuting indictable crimes and for deciding whether to opt for summary trial of indictable offences rests with the Director of Public Prosecutions. Summary offences may be prosecuted by An Garda Síochána subject to any directions which the

⁵⁸ The Powers of An Garda Síochána are spread across various pieces of legislation and a codification process is under way in respect of An Garda Síochána's powers of search, arrest and detention.

ODPP may give.⁵⁹ A number of other State bodies and agencies have the power to prosecute certain summary offences, including the Office of the Director of Corporate Enforcement, the Central Bank of Ireland and the Revenue Commissioners, and the Competition and Consumer Protection Commission. The various State bodies and agencies involved in tackling corruption and economic crime have a broad range of roles and powers which will be examined in this Report.

In December 2018, the Report of the Commission on the Future of Policing (CoFPI) was concluded and has been welcomed by the Government. The implementation of its recommendations will see a new operating model of policing. Its stated aim is to provide a new Divisional model of policing which would address inefficient district deployment barriers and provide a more consistent approach to the deployment of resources. In the new policing model, the Divisional Chief Superintendent will be the lead person responsible and accountable for delivering policing services in each area. These proposals were brought forward in the Garda Modernisation and Renewal Programme and piloted in a number of divisions nationwide including: Galway, Mayo, Dublin Metropolitan Region South Central Division and Cork City.⁶⁰

€1.89 billion was allocated to the Garda Vote for 2020. The allocation for the Garda Vote in 2021 is €1.95 billion, an increase of €63 million (3%) on the 2020 allocation. The Government has agreed a plan to achieve an overall Garda workforce of 21,000 personnel by 2021. Almost 2,800 recruits have attested as members of An Garda Síochána since the reopening of the Garda College in September 2014 and a further 197 Gardaí passed out of the Garda College by the end of 2019. Recruitment of civilian staff is also allowing for redeployment of Gardaí to operational policing duties. As a result, as of 30 September 2020, there are now over 14,500 Gardaí nationwide, supported by over 3,300⁶¹ civilian Garda staff.⁶² These figures compare with 13,551 Garda members and 2,192 Garda staff on 1 January 2018.

These organisational and structural reforms aim to provide increased capabilities for tackling economic crime within Garda Divisions across the country. Among the reforms are the modernisation of the core technology platform used by An Garda Síochána and the introduction of the newly developed Investigation Management Systems. These reforms have implications for the existing structures and strategies for combatting economic crime and corruption within An Garda Síochána.⁶³

⁵⁹ Garda Síochána Act 2005, section 8.

⁶⁰ The Garda Modernisation and Renewal Programme was launched in June 2016.

⁶¹ This figure relates to Full Time Equivalents (FTEs) not individual Garda staff who actually exceed the number provided.

⁶² 'Garda Workforce', *Department of Justice and Equality*. http://www.justice.ie/en/JELR/Pages/Garda_Workforce.

⁶³ Commission on the Future of Policing in Ireland, *The Future of Policing in Ireland* (Dublin: CoFPI, 18 September 2018).

Other related bodies whose work is relevant to the investigation and prosecution of economic and financial crimes are the Criminal Assets Bureau (CAB), a multi-agency body which includes an An Garda Síochána component, and the Garda National Bureau of Criminal Investigation (NBCI) which is an integral part of An Garda Síochána. However, this Report is principally concerned with the activities of the Garda National Economic Crime Bureau (**GNECB**) and the Garda National Cyber Crime Bureau (**GNCCB**) and these will now be discussed.

2.1.2 Garda National Economic Crime Bureau

The GNECB (formerly the Garda Bureau of Fraud Investigation) was established in 1995 and is a division of An Garda Síochána's Special Crime Operations (SCO) and is headed by a Detective Chief Superintendent.

The GNECB is the national unit within An Garda Síochána tasked with the assessment and investigation of the more serious cases of economic crime as well as providing specialist support, guidance and high level training to regional and local economic crime investigators throughout the jurisdiction. It consists of a number of separate units which are set out in further detail below with each Unit made up of a small cohort of staff supported by forensic accountants and administrative staff. A number of GNECB investigators are also permanently seconded to the Office of the Director of Corporate Enforcement (ODCE) and the Competition and Consumer Protection Commission (CCPC). The secondment of members of An Garda Síochána to the ODCE is done on a statutory basis on foot of a Government decision with positions established to that end.

The core role and objectives of the Garda National Economic Crime Bureau (GNECB) are;

- To investigate serious and complex economic crimes.
- To investigate financial crimes which are of major public concern.
- To provide support and assistance to local and regional investigators.
- To play a pro-active role in the prevention, detection and disruption of economic crime.
- To investigate all cases of foreign bribery and corruption over which Ireland can exercise criminal jurisdiction.
- To act as a central repository for economic crime related intelligence.
- To operate a Financial Intelligence Unit in line with legislation and FATF guidelines.

The operation of GNECB is outlined below and it was clear from discussions within the Review Group that significant additional staffing requirements are required throughout the Bureau.

2.1.2.1 Assessment Unit

The primary function of the Assessment Unit within the GNECB is to analyse and review complaints received at the Bureau. Complaints which are deemed suitable for local investigation are referred to the relevant district officers for local investigation. This ensures that GNECB can focus on investigations which fall within its remit, including the review of completed complex economic crime investigations undertaken by other Garda Units or Districts. In order to meet current Assessment Unit workload demands, additional staff are required.

2.1.2.2 Serious Economic Crime Investigation Units

There are currently four Serious Economic Crime Investigation Units (SECIUs). The SECIUs focus on the more serious and complex economic crime investigations. Each SECIU has a possible strength of one Detective Sergeant and a number of Detective Gardaí. Based on the types and complexity of cases under investigation there is an argument to increase the size of these teams but also to add to the number of Units. In addition, each unit should have administrative staff, to allow investigators focus on operational rather than administrative duties, and financial analysts to analyse the data collected and report on same.

There are currently detective sergeants and detective Gardaí assigned to the SECIUs. The GNECB have indicated that there should be an increase in the number of units to 6 in which case, an additional number of staff would be required.

2.1.2.3 Anti-Corruption Unit

The Anti-Corruption Unit was established in 2017 and is allocated investigations by Detective Superintendent, GNECB as appropriate. Its functions include the investigation of credible allegations of bribery and corruption, supporting local investigations and providing anti-corruption advice to businesses and the public generally.

There are currently not enough staff assigned to the Anti-Corruption Unit. With such a wide brief and mindful of the level of alleged corruption both globally and nationally as measured by reputable surveys, there is an argument to increase the size of this unit which is dwarfed by its international partners. In order to meet the current anti-corruption unit work load demands and comply with commitments made to the OECD, additional Detective Gardaí

and Garda staff are required urgently. This will allow the Unit to function effectively and bring it in line with its international partners.

2.1.2.4 Regional Divisional Liaison Unit (included in the 2019 National Policing Plan)

In accordance with the National Policing Plan 2019, it is intended to set up the Regional/Divisional Liaison Unit. The majority of cases of economic crime are reported and investigated locally. However, it is accepted that many investigations are complex in nature and may require assistance or support from GNECB. The purpose of this unit will be to provide assistance and support on request to investigators conducting complex economic crime investigations. GNECB submits that in order to establish this unit, additional staff are required.

2.1.2.5 Payment Card and Counterfeit Currency Unit (PCCCU)

The Payment Card and Counterfeit Currency Unit (PCCCU) has many functions in relation to payment card fraud including prevention, educating the public, and disrupting this type of criminality. Their primary role, however is the investigation of serious economic crimes that target the financial payment industry.

The PCCCU is also the unit that has the greatest responsibility for cyber-enabled fraud which accounts for much of the payment crime activity that is committed. This basically means that instead of writing a letter, or making a phone call or engaging directly, the criminal uses a computer or other electronic device to communicate either through social media, email or other electronic means of communication. Cyber- dependent crime can only be committed using a computer and is not investigated by this Bureau as a matter of course. This requires input from the Garda National Cyber Crime Bureau.

Investigations undertaken by the PCCCU generally fall into the category of organised criminality and can be multi-faceted, transnational and resource intensive. Many investigations relate to the removal of large sums of money from injured parties through payment frauds,⁶⁴ including Romance Fraud,⁶⁵ CEO Fraud, Invoice Redirection Fraud and Account Takeover Fraud, to name but a few.

⁶⁴ Typically invoice re-direction, credit card fraud and other forms of fraud requiring payments to fictitious accounts, individuals, businesses or transactions as a result of deception.

⁶⁵ Romance fraud involves perpetrators scamming their victims into believing they have met their perfect match online and obtaining money from them fraudulently. 'Romance Scammers Steal Hearts, then Money', *An Garda Síochána*, <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/news-media/romance-scammers-steal-hearts-then-money-.html>.

These investigations are often lengthy with a large number of actions needed for completion in other jurisdictions. They frequently involve Mutual Legal Assistance requests which are time consuming and resource intensive. The PCCCU currently has some Detective Sergeants, Detective Gardaí and Clerical staff.

However, given the considerable volume and range of work that the PCCCU endeavours to undertake and the substantial increase in both cyber- enabled and traditional payment crime both globally and nationally in recent years, it is easily acknowledged that the resources of this unit are pitched much too low if a proactive approach is to be taken to disrupt the activities of organised criminals in this sphere. An ability for a team to mobilise at short notice with additional resources is required, so more and bigger teams are required to conduct operations and deal with the subsequent administration of these cases. To endeavour to provide a quality service to the public and to service all the commitments of this unit, additional staff are urgently needed. The total number of staff in this unit are not sufficient to meet the work demands.

2.1.2.6 Financial Intelligence Unit

The Financial Intelligence Unit (FIU) is the central reception point for the receipt of Suspicious Transaction Reports (STRs) and other reports submitted by 'designated persons' and 'competent authorities' pursuant to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

The FIU must comply with relevant EU Directives concerning the combating of money laundering and terrorist financing. Due to Ireland's membership of the Financial Action Task Force (FATF), the FIU is obliged to adopt and follow the relevant Recommendations pertaining to anti-money laundering (AML) and countering the financing of terrorism (CFT).⁶⁶ Ireland's progress in strengthening measures to tackle money laundering and terrorist financing are referenced in FATF's follow up 2019 Report.⁶⁷

In accordance with FATF Recommendations and prior to their evaluation in 2016, the FIU acquired a new IT software solution system called *goAML* (Government Offices Anti Money Laundering). This system ensures FIU compliance with FATF standards and has also

⁶⁶ Ireland's measures to combat money laundering and the financing of terrorism and proliferation', FATF, last modified 7 September 2017, <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-ireland-2017.html>.

⁶⁷ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Follow-Up-Report-Ireland-2019.pdf>.

enhanced the FIUs analysis and statistical capabilities. While this is a welcome development, resourcing within the Unit remains a concern.

The current staffing of the FIU comprises of Detective Sergeants, Detective Gardaí and Garda civilian staff who are at Clerical Officer level. However, this is not adequate to meet the demand on the Unit.

Suspicious Transaction Reports are analysed in two stages before being actioned. The first line of examination is conducted by Garda staff who forward any STRs that require more detailed analysis to the sworn officers.

In 2018 the unit processed 23,939 Suspicious Transaction Reports (STRs) which meant that every member of Garda staff was assigned approximately 4,788 STR's for examination. There are no trained financial analysts assigned to the Financial Intelligence Units which means that the Garda staff have responsibility for ensuring that the right STRs are subsequently evaluated by the members of the FIU. While every effort is made to process the STRs as efficiently and effectively as possible a review of STRs still to be examined by the sworn members identifies an approximate backlog of over 2,000 to be further analysed, which is a rolling figure and is of concern as these unanalysed reports may contain evidence of significant criminality.

In that context it is clear that to successfully analyse STRs in a timely manner, considerably more Garda staff and sworn staff supported by financial analysts are required. In that regard it would be reasonable to consider doubling the number of staff currently attached to the FIU with supplementation by financial analysts, possibly more and the provision of supervisory Garda staff to manage first line analysis.

2.1.2.7 Terrorist Financing Intelligence Unit (TFIU)

The role and functions of the Terrorist Financing Intelligence Unit (TFIU) are similar to that of the FIU with the obvious distinction being that the TFIU deals primarily with matters relating to suspected terrorist financing. Commitments were made by the relevant parent authorities at the time of the Financial Action Task Force (FATF) Mutual Evaluation review of Ireland to increase the staff numbers at the Terrorist Financing Intelligence Unit (TFIU). The Department of Justice has also made a commitment regarding the appointment of a Detective Sergeant.

This very important unit is under resourced and the increased general STR levels meant that staff had to be and were allocated to FIU resulting in a resource gap in TFIU.

Mindful that this unit is a fairly recent development, the previously suggested resource,⁶⁸ supplemented by administrative support as well as a financial analyst would provide a much more efficient and effective service. There is a huge international element in this and having adequate resources to show that Ireland is playing its part in this area is critical. In order to have an efficient Terrorist Financing Intelligence Unit (TFIU), additional Detective Gardaí and Detective Sergeants are required in the short term.

2.1.2.8 International Liaison Office

This is a new role required by the 4th AML/CFT Directive. In order for Ireland and all Member States (MS) to comply with this Directive the FIU's must disseminate any STRs received which have a link with another Member State. In order to comply with this an International Liaison Office must be established. The increasing numbers of STRs and international enquiries will be addressed more effectively and efficiently by this office. Staff deployed to this specialised office will deal with all enquiries of an international nature.

Ireland predicts an increase in the FIU workload when it shares an increasing number of STRs containing cross-jurisdictional links with other member states. A properly staffed International Liaison Office will meet the demands placed on the FIU. The International Liaison Office will analyse the additional reports and will lead out on international cooperation with FIU's worldwide. An increased staff strength will assist the International Liaison Office perform its role effectively.

2.1.2.9 Money Laundering Investigation Units (MLIU)

There are currently two Money Laundering Investigation Teams attached to the Garda National Economic Crime Bureau. The role of the Money Laundering Investigation Units is to investigate cases involving suspected money laundering activities which are serious and complex in nature. These investigations commonly have a national and transnational dimension to them. The investigations in themselves are complex and invariably require the obtaining of multiple court orders, the requesting of information from other jurisdictions either through Police to Police channels or the MLA process and the analysis of financial documentation.

⁶⁸ Details provided to the Hamilton Review Group in submissions received from the GNECB.

The Money Laundering Investigation Units play a significant role in supporting the Financial Intelligence Unit (FIU) and a significant proportion of investigations are initiated directly from FIU referrals. It is often the case that the MLIU units are required to commence cases on a reactive basis arising from a referral by the FIU where immediate restraint actions are required.

Members from the MLIU are required to advise specialist units and An Garda Síochána generally. MLIU resources are constricted in the level of assistance that they provide to these units/investigations due to limited resources.

The MLIU is often tasked with conducting preliminary investigations of complex matters, executing MLAT requests and providing written advice on complaints. D/Sergeants attached to the MLIU also contribute to a number of international forums and are national points of contact.

There is no doubt that a huge deficit exists in relation to the ability to investigate these cases due to a lack of staff. These investigations are potentially huge and two units with the existing resources is just not adequate. Similar to SECIUs these units also require both administrative and analyst support as well as additional investigators. It is suggested that at least four well-resourced money laundering units are required to conduct these investigations as many of the investigations that these units are investigating could take up the resources of a full team for many years. To properly resource these units, additional Gardaí would be required. The MLIU consisting of four units should have additional Detective Sergeants, Detective Gardaí and Garda staff including an analyst.

2.1.2.10 Multi-Disciplinary Investigation Team

On occasion, a Multi-Disciplinary Investigation Team (MDIT) is established to target the activities of particular individuals. The multi-disciplinary approach means that cooperation from other sectors within An Garda Síochána and outside the organisation is more available with required resources seconded to the investigation from the outset. However it would be more appropriate if there was sufficient trained resources within GNECB to allow these Investigation teams to be formed as needed, especially where input from other investigative agencies is likely. A targeted proactive approach is critical in many serious economic investigations and certain cases fall into a category that is not exclusively confined to a Garda investigation.

As these types of investigation teams that can form at short notice are so important, it is critical that they are properly resourced, as the limitations on the investigation when outside support diminishes is clear. GNECB should be in a position to set up a team of trained investigators if a large-scale investigation ensues without seconding the services of An Garda Síochána members who have little experience in this area of investigation. This is only possible with adequate resources allowing other units to release expertise for critical investigations. Currently there are very few members of An Garda Síochána assigned to the Multi-Disciplinary Investigation Team.

GNECB members are seconded to the ODCE and their principal function is to investigate breaches of Company Law as directed by the Director of Corporate Enforcement. Gardaí attached to this office also provide support to other members of An Garda Síochána requiring assistance in relation to investigations where information relating to companies may be useful.

One detective sergeant from the GNECB is on full-time secondment to the CCPC and is resourced by the Commission. In that context any other resources allocated to that office would also be resourced by the Commission.

2.1.2.11 Criminal Intelligence Office (CIO)

The Criminal Intelligence Office was set up in 2018 within the Bureau and carries out the functions of assessing, evaluating and managing intelligence. It also has responsibility for actioning Europol and Interpol requests, carrying out crime analysis, delivering training and dissemination of information. Currently, not all of these functions are being carried out as the Bureau does not have adequate staff numbers in this office. Intelligence led operations are the key to proactive policing and adequate resources in this area will dramatically increase the capacity and capability of An Garda Síochána to tackle economic crime.

2.1.2.12 Economic Crime Prevention Office

This post does not exist at present, however, it is very clear that all units within the GNECB carry out this function in the absence of a dedicated officer. The establishment of this office is urgently required to perform duties including research, communication on fraud prevention, training and advice.

2.1.2.13 GNECB resources including specialist expertise and technology

It is clear that the investigation of economic crime is resource heavy, frequently requiring years of investigative work to bring a case to fruition. Large scale cases often involve thousands of documents and terabytes of computer data, all of which has to be examined in order to carry out the investigation properly and to comply with the obligation to seek out and preserve all relevant evidence, including exculpatory evidence.

The analysis of computer data and mobile phones, the evolving use of cloud based servers and the dawning of the paperless office also present new challenges to the investigator.

2.1.2.14 The Maguire Report 1992

In relation to the adequacy of resources dedicated to the investigation of fraud within the An Garda Síochána, a report of the Government Advisory Committee on fraud published in December 1992, made a number of recommendations relating to the status and resourcing of investigation of fraud.⁶⁹ One notable finding of the 1992 report was the recommendation to establish a stand-alone bureau with a ring fenced budget dedicated to the investigation of fraud.

At that time, the committee noted that the Garda Fraud Squad which was a part of the Central Detective Unit had a staff of 1 Superintendent, 3 Detective Inspectors, 10 Detective Sergeants and 31 Detective Gardaí (45 sworn Garda staff in total) and recommended that a stand-alone Bureau be set up to ensure that these resources were ring-fenced and not allocated to other non-fraud investigations according to the exigencies of the service which was happening at that time. An assessment carried out in February 1992 by the Fraud Squad of its top fifty files identified a total amount involved of approximately £26 million, and the top twenty cases each involved losses in excess of £100,000. The Fraud Squad consisted of forty-five permanent sworn members of staff in 1992 and a national fraud investigation bureau was subsequently set up in 1995 in line with the recommendations of the Advisory Committee.

The committee made a number of recommendations in relation to personnel attached to that unit to encourage the development of a level of expertise within it. Twenty-seven years later, the type of economic criminality prevalent has increased significantly both in size and complexity from that witnessed in the past. Given the transnational nature of many of the newer cases, the level of investigation required in relation to many cases has increased, with hundreds of witnesses being interviewed in such cases and enquiries being conducted across jurisdictions all over the world. The amount at risk of loss is also much higher today with many single investigations now exceeding the total at risk for all cases in 1992. One recent investigation lasted nine years, involving the uplifting and analysis of over one million

⁶⁹ Peter D. Maguire, Advisory Committee on Fraud, *Report of the Government Advisory Committee on Fraud* (Dublin: Stationery Office, 1992).

documents, the interviewing of and statement taking from over four hundred witnesses, the analysis of over a hundred thousand phone calls, as well as the conducting of thousands of other enquiries in this jurisdiction and abroad. While the total number of permanent investigators in the fraud squad in 1992 stood at 45 the number of permanent investigators at the GNECB as of 2019 was just 31.

Since the publication of the 1992 report, several pieces of legislation have come into force putting increasing pressure on the resources assigned to the GNECB. Legislation creating new economic crimes such as money laundering, terrorist financing, competition and company law offences, as well as the advent of cybercrime has created a much greater, complex and diversified role for the GNECB in carrying out its function of combatting economic crime. However, the resources available to the GNECB do not reflect these changes.

2.1.2.15 Legislative provisions impacting on Garda Investigations

Gaps in legislation are dealt with in Chapter 1 above. However, it is worth mentioning here some legislative provisions which have a particular impact on the resources needed to carry out Garda investigations. For instance, under section 17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010, An Garda Síochána has the power to freeze funds where there are reasonable grounds to suspect a service or transaction would comprise or assist money laundering or terrorist financing. The freezing of suspect funds assists the investigative process, significantly disrupts criminals engaged in economic crime and can secure stolen funds which can then be returned to victims. However, these freezing orders are required to be renewed every 28 days in the District Court. Every renewal of a freezing order is a drain on resources. The GNECB points out that an increase in the period for which freezing orders are valid would assist greatly in the efficient use of investigative resources. Staff of the GNECB also liaise closely with law enforcement agencies throughout the world including Interpol and Europol as part of an international prevention, disruption and investigative response to serious organised economic crime.

2.1.2.16 GNECB resources: conclusions

By comparison with 1992 when the Maguire Report was published the problem of understaffing in the GNECB which existed at that time has actually got worse.⁷⁰ Resourcing, which was already insufficient in 1992, has not kept pace with the growing volume and complexity of economic crime and with international demands and obligations.

⁷⁰ Ibid.

The Review Group suggests that the necessary increases in GNECB staffing could be delivered over time, in agreement with D/JE, D/PER, and the Policing Authority through an appropriate combination of:

- Ongoing redeployment of Gardaí from non-core duties under both the ongoing civilianisation process and the restructuring programme arising from the CoFPI Report (bearing in mind the need to ensure that other Garda functions, including front-line duties, also need to benefit from redeployment); and
- An increase (or series of phased increases, if necessary) in the resources provided to the GNECB.
- Longer term resource planning to ensure sufficient staffing allocation via the workforce planning process and in line with government policy to increase civilianisation.

Key recommendation:

The Review Group recommends that GNECB be provided with the substantial and sustained increase in resources (both Garda Detectives and civilian specialists) that it needs in order to meet current and future demands in a timely and effective manner across its various units. This would also include appropriate resources to meet accommodation needs.

These include the additional resources necessary to enable the Bureau to, *inter alia*:

Establish its planned Regional and Divisional Liaison Unit and National Fraud Prevention Office

- Bring its Anti-Corruption Unit up to full strength (in line with UNCAC recommendations) to support increased criminal investigation of corruption, adopting a proactive intelligence led and preventative approach.
- Enhance the capacity of its Financial Intelligence Unit and its Money Laundering Investigation Units, in line with recommendations in the Financial Action Task Force's Mutual Evaluation Report (MER)
- Establish an International Liaison Office to meet the requirements of the 4th Anti-Money Laundering Directive
- Establish an Economic Crime Prevention Office as a proactive awareness-raising and advisory service to businesses and the general public
- Appropriately staff its Payment Crime and Counterfeit Currency Unit
- Establish a formal system (with central contact points) for liaising with and advising individual investigative agencies such as CBI, SIPO, CCPC, etc.
- Enhance its capability to provide training both to Gardaí and to other organisations (thus helping to build investigative capacity and expertise in smaller agencies such as SIPO and CCPC)
- Provide a career structure for Gardaí who wish to specialise in economic crime and corruption, thus helping to ensure the retention of expertise within GNECB.
- Steps should also be taken to identify and address existing circumstances, including legislative, which may have resource implications for the GNECB, such as extending the period for which freezing orders are valid.

2.1.3 Garda National Cyber Crime Bureau (GNCCB)

The GNCCB has existed under various guises for over 20 years now. Initially, it operated as a section within the Garda Bureau of Fraud Investigation but was set up as an autonomous Bureau in 2016. There are at present 32 personnel attached to GNCCB.

The Bureau's primary function is the forensic examination of electronic devices and the vast majority of its personnel are assigned to this duty. However, the Bureau also has a unit designated full-time to cybercrime investigations, such as ransomware, malware, DDOS

attacks and hacking. Members from GNCCB also have a role in training and developing awareness throughout the organisation with regard to cybercrime investigation and best practice on investigative methods. Members from GNCCB engage with external stakeholders/groups to provide cybercrime awareness and prevention presentations.

The forensic case-load continues to place a significant burden on GNCCB resources which can have implications in terms of the administration of criminal justice.

GNCCB has been intensively engaged in the strategic and operational planning of an expansion project to build additional capacity and capability. The intention of this project is to increase the number of human resources allocated to GNCCB from the present number of 32 to a future number of over 100, including civilian Garda staff. GNCCB has engaged in this project with extensive advice, guidance and assistance from the Strategic Transformation Office in An Garda Síochána.

This project envisages a localised response by training and equipping an initial batch of first responders. These first responders will provide assistance and guidance at district level in the conduct of searches and will be trained to do basic live data forensics.

GNCCB has also sought approval to employ six Garda Staff to conduct forensic examination of electronic devices. This has been approved by the Policing Authority. Sanction for a total of six additional Garda Staff to be allocated to GNCCB in 2019 was also approved with four of these being civilian forensic analysts.

If this GNCCB expansion process can be delivered; it will have a transformational impact on how the forensic service is delivered and provide increased capacity for GNCCB to deliver this service. It is envisaged that this will result in a very significant reduction in the GNCCB case back-log; and will in turn facilitate the more timely identification of children who are subject to CSE in order to create the movie and image files encountered as part of the forensic process.

2.1.4 The Office of the Director of Public Prosecutions (ODPP)

The Office of the Director of Public Prosecutions (ODPP) was established under the Prosecution of Offences Act 1974. The Director is independent in the performance of her functions.

The principal duties of the Director are:

- To enforce the criminal law in the Courts on behalf of the people of Ireland;
- To direct and supervise public prosecutions on indictment;
- To give direction and advice to An Garda Síochána in accordance with section 8 of the Garda Síochána Act 2005.

The ODPP's powers are prosecutorial and advisory. The ODPP indicated in submissions that the lack of legal clarity concerning corporate criminal liability creates difficulties for the prosecution. Arising out of its prosecutorial function, the ODPP noted further that the nature of corporate structures makes the identification of suspects difficult, especially where there is a foreign element in that structure. According to the ODPP, identifying the human actors that trigger corporate criminal liability presents difficulties for the prosecutor when assessing corporate criminal liability. For offences requiring *mens rea*, corporate criminal liability arises from the so-called 'identification principle'. The principle requires identifying and proving the existence of a directing mind and will of the company, and then establishing the mental element necessary to prove corporate criminal liability through that person. Section 18 of the Criminal Justice (Corruption Offences) Act 2018 was introduced to ameliorate the situation but is limited to corruption offences only.

Two further challenges identified relating to ODPP's prosecutorial role are the almost complete absence of a pre-trial process and the overly complex rules required to prove electronic and documentary evidence.

The absence of a pre-trial process was addressed in the Report of the Working Group on the Jurisdiction of the Courts on "The Criminal Jurisdiction of the Courts" chaired by Mr. Justice Niall Fennelly and published in May 2003 but since then there has been virtually no progress in implementing its recommendations. It is noted that the proposed Criminal Procedure Bill will go some way to address those specific concerns.

The lack of an effective system to deal with the issue of invocation of privileges which is discussed in the preceding Chapter has been addressed in three different Acts of the Oireachtas since 2013. The Central Bank (Supervision and Enforcement) Act 2013, the Companies Act 2014 and the Competition and Consumer Protection Act 2014 all attempt to deal with the issue of privilege. However, it remains to be seen how effective the relevant provisions in the three pieces of legislation will be in assisting the investigative and prosecutorial work of the relevant agencies by ensuring that evidence needed to prosecute economic crimes are not withheld on unjustified claims of privilege.

While the ODPP will always try to provide legal advice during the course of investigations where this is necessary, there is no formal process for the provision of legal advice as and when required to investigators, and arrangements to do so have tended to be made ad hoc. In the Anglo-Irish bank cases special arrangements were made to hold regular meetings between prosecutors and investigators during the investigative phase, and this has become more common in complex economic crime cases where necessary. Resource constraints currently mean the ODPP can only provide early legal advice in a small number of the biggest cases. With additional resources additional access could be provided as deemed appropriate by the ODPP. Early legal advice can help keep investigations focused and avoid evidence-gathering errors that can impede subsequent prosecutions. Similarly, while the

ODPP already provides a limited amount of training to investigative bodies, its current resourcing levels make it unable to meet the demand for same.

The Special Financial Unit (SFU) exists within the structure of the Office of the DPP. It is a small team consisting of five lawyers and one clerical assistant. The SFCU prosecutes very large scale fraud and money laundering cases while at the same time providing legal assistance in relation to criminal investigations when requested by An Garda Síochána and other regulatory agencies.

The primary role of the Special Financial Crime Unit is to consider and if necessary prosecute large scale financial or corporate crimes including:

- Complex economic including transnational crimes including protection of the EU's financial interests (PIF) directive offences.
- Complex money-laundering cases.
- Financial crimes which have a significant impact on the public.
- Serious regulatory and corporate criminal cases.
- All cases of foreign bribery.

In the future, in light of other recommendations concerning increased resourcing of investigative agencies if the Special Financial Crime Unit is to fulfil its role effectively its capacity to deal with additional large scale and complex economic crime needs to be expanded by increasing its staff to include several additional prosecutors and forensic experts.

Notwithstanding the particularly complex nature of the cases which fall within the remit of the Special Financial Crime Unit, they are small in number and the resourcing of this Unit is considered sufficient given the number of cases involved. However, to support more generally the prosecution of cases involving corruption or economic crime, and which are not within the remit of the Special Financial Crime Unit, resourcing – in particular supports for prosecutors – needs to be improved.

Key recommendation:

The Review Group recommends increasing the resourcing for the prosecution of financial crime to include additional prosecutors, along with a seconded specialist in digital forensics and a seconded forensic accountant. This is necessary to enable the prosecution services to:

- Deal with the larger economic crime cases submitted to the ODPP which do not fall within the remit of the Special Financial Crime Unit.
- Meet anticipated additional demands arising both from the Corporate Enforcement Authority Bill and from the recommended expansion in GNECB capacity;
- Provide more frequent training (as part of the recommended joint training programme) to other law enforcement bodies; and
- Provide additional access to necessary legal advice in larger investigations while respecting the independence of both prosecutors and investigators.

2.1.5 Office of the Director of Corporate Enforcement (ODCE)

The ODCE was established under the Company Law Enforcement Act 2001 now performs its functions under powers conferred on it by the Companies Act 2014. The ODCE was originally established following the McDowell Report's findings to address what were, prior to its inception, unacceptably low levels of compliance with company law.

The ODCE is conferred with:

- substantial powers of investigation, including the power to issue production orders, to seek information and assistance, to seek High Court orders in the case of failure to comply with its statutory demands and directions and to apply to the District Court for search warrants,
- powers to seek appropriate civil remedies (e.g., disqualification of company directors and others);
- the power to initiate summary prosecutions on its own initiative; and
- the power to refer matters to the ODPP for consideration as to whether charges should be directed on indictment.

The ODCE's other statutory functions include exercising a supervisory remit over liquidators and the directors of companies in insolvent liquidation and promoting adherence to company law.

The ODCE's staff complement comprises of, *inter alia*, suitably qualified and experienced accounting, legal and digital forensics professionals – whose backgrounds include law enforcement, professional services, financial services and private practice. In addition, and

in accordance with a Government Decision that issued in conjunction with the enactment of the Company Law Enforcement Act, the ODCE's approved staff complement includes a complement of members of An Garda Síochána. Although a matter for Garda management, members of An Garda Síochána assigned to the ODCE pursuant to the aforementioned Government have traditionally come from GNECB.

At the time of writing, the ODCE is engaged in the examination or investigation of a number of large and complex matters, including investigations into a number of cases where the involvement of the ODCE is in the public domain.

Previously, and in the context of earlier references herein to the former Anglo Irish Bank Corporation, ODCE investigations have led to multiple convictions on indictment of former directors of that bank.

The General Scheme of the Companies (Corporate Enforcement) Bill 2018 proposes to re-constitute the ODCE as a standalone agency as opposed to its current structure as an office within the Department of Business Enterprise and Innovation (DBEI).

When enacted, the Bill will provide the ODCE with greater autonomy and flexibility to adapt to the challenges it faces in the investigation and prosecution of increasingly complex breaches of company law. The proposed legislation will better place the Corporate Enforcement Authority to recruit the required skill and expertise as, and when, needed as opposed to having staff assigned to it by the Department of Business, Enterprise and Innovation. The Review Group also recommends that the new Corporate Enforcement Authority should be suitably resourced to enable it to meet its mandate and to realise its full potential.

The recommendation in the White-collar crime package of measures to restructure the ODCE in the form of a Commission is aimed at further building on the reforms that have been implemented by the Director of Corporate Enforcement since 2012 and ensuring that the successor body is adequately resourced to discharge its functions.

2.1.6 The Central Bank of Ireland (CBI)

The mission of the Central Bank of Ireland is to serve the public interest by safeguarding monetary and financial stability and by working to ensure that the financial system operates in the best interests of consumers and the wider economy. The Central Bank's primary functions and objectives are set out principally in Part II of the Central Bank Act 1942 (as amended). The Central Bank's objectives include:

- **Price stability:** As part of the European System of Central Banks, the primary objective of the Central Bank is to maintain price stability. The Governing Council of the European Central Bank (ECB) is responsible for the setting of monetary policy in

the euro area. The Central Bank provides support and analysis to the Governor in his capacity as a member of the Governing Council of the ECB, and implements the monetary policy decisions of the Governing Council.

- **Financial Regulation:** The Central Bank aims to ensure that regulated firms are financially sound and safely managed. Regulation of financial institutions and markets is undertaken through a robust regulatory framework, delivering effective gatekeeping and intrusive supervision underpinned by a credible threat of enforcement. With respect to the prudential supervision of credit institutions, for example, this is undertaken by the Central Bank within the Single Supervisory Mechanism as part of European Banking Union.
- **Protection of Consumers of Financial Services:** As the regulator of financial service providers and markets in Ireland, the Central Bank has to ensure that the best interests of consumers are protected. The Central Bank works to develop a positive consumer focused culture within regulated firms, ensuring the consumer protection framework remains effective by reviewing, developing and enhancing the protections in place and by influencing and shaping European and international developments, and monitoring and enforcing compliance with the required standards through themed reviews and inspections.
- **Financial stability:** The Central Bank has an explicit mandate in domestic and European legislation to contribute to financial stability in Ireland and at euro area and EU levels. To achieve its mandate, the Central Bank identifies, implements and monitors policies to limit the impact of systemic risks on both the financial system and the economy. As the macroprudential authority for Ireland, the Central Bank focuses on the mitigation of system-wide risks with the aim of increasing the resilience of the Irish financial system.
- **Resolution:** The Central Bank is Ireland's national resolution authority and it has responsibility for the orderly resolution of failing credit institutions, certain investment firms and credit unions. It works with the Single Resolution Board in accordance with the Single Resolution Mechanism for those credit institutions under the remit of the Single Resolution Board.
- **Payments and Settlement Systems and Currency Services:** The Central Bank, in conjunction with the ECB and other national competent authorities, is responsible for ensuring that payment, settlement and clearing systems are safe, resilient and efficient and that access to such systems is not restricted. The Central Bank also ensures the provision of banknotes and coins and other related currency services to the public, a key component of payments systems.

- **Economic Analysis and Statistics:** The Central Bank undertakes economic analysis, research, data collection and statistical analysis, designed to inform economic policy-making domestically and internationally.

The Central Bank is vested with a number of legislative⁷¹ powers to enable it carry out its functions and achieve its objectives.

From a regulatory perspective, the Central Bank has a range of supervisory tools enabling it to require regulated financial service providers to address potential breaches of financial services legislation. Furthermore, the CBI may carry out summary criminal prosecutions in respect of certain offences.

The Central Bank's enforcement work relies principally on the following four administrative processes where breaches of relevant financial services legislation occur;

- **Administrative Sanctions Procedure under Part IIIC of the Central Bank Act 1942 (as amended):** This is the means by which the Central Bank investigates and sanctions breaches of financial services law by regulated financial service providers and individuals. In investigating under the administrative sanctions procedure, the Central Bank may interview persons it suspects have knowledge of matters pertaining to the suspected prescribed contravention(s). It may also use compulsory powers to compel the production of documents and conduct on-site inspections. If, having investigated, the Central Bank has reasonable grounds to suspect a prescribed contravention, it may: decide to take no further action; issue a supervisory warning; resolve the matter by taking supervisory action; agree a settlement; or refer the case to Inquiry for determination and sanction. Administrative sanctions (as part of a settlement or following an Inquiry) may include a caution or reprimand; the imposition of a monetary penalty; and / or a direction disqualifying a person from being concerned in the management of a regulated financial service provider. The Central Bank's power to issue administrative sanctions was endorsed by the High Court in the case of *Purcell v Central Bank of Ireland*⁷² and *Fingleton v. The Central Bank of Ireland*.⁷³
- **Fitness and Probity regime under the Central Bank Reform Act 2010:** This requires individuals in prescribed positions within regulated financial service providers and certain individuals in financial holding companies to be competent and capable, honest, ethical and of integrity, and financially sound. The Central Bank plays a gatekeeper and oversight role in the regime, which comprises three pillars.

⁷¹ Central Bank Act 1942, Central Bank Reform Act 2010, Central Bank (Supervision and Enforcement) Act 2013 and other relevant pieces of legislation.

⁷² [2016] IEHC 514.

⁷³ [2016] IEHC 1.

First, certain controlled functions (known as “pre-approval controlled functions”) require prior approval from the Central Bank, which acts as a gatekeeper. As part of the pre-approval process, the Central Bank may conduct follow-up interview(s) with the individual and request further information. The Central Bank may refuse to approve an appointment where it is of the opinion that a person is not of such fitness and probity as is appropriate to perform the function for which he/she is proposed; or the Central Bank is unable to decide whether the person is of such fitness and probity because it does not have sufficient information. The Central Bank can also refuse an application if the individual fails to comply with a request for information. Secondly, the Central Bank performs an oversight function, and may investigate persons if there is reason to suspect a person’s fitness and probity; such an investigation may give rise to: suspension; or prohibition for a specified period or indefinitely. Finally, the third pillar of the regime imposes duties on regulated financial service providers, which must be satisfied on reasonable grounds and on a continuing basis that an individual performing a certain function (“a controlled function”) meets the necessary standards of fitness and probity.

- **Refusal or revocation of authorisation:** The Central Bank’s ability to refuse or revoke an authorisation allows it to act as an effective gatekeeper for firms’ entry to the financial services sector, and to engage in oversight of firms. A potential refusal/revocation of authorisation arises where there are concerns regarding the firm’s ability to comply with authorisation requirements in the case of an applicant or ongoing requirements in the case of a regulated financial service provider. The firm is given an opportunity to respond to the concerns. Where those concerns are not addressed, the Central Bank may: refuse an application for authorisation or revoke an authorisation.
- **Assessor regime:** The assessor processes under the securities markets regime are one of the means by which the Central Bank fulfils its role as the competent authority under the various Securities and Markets Regulations⁷⁴. In most instances, if a contravention of the Securities and Markets Regulations is suspected, an assessor will be appointed (who cannot be an employee of the Central Bank). The assessor will investigate before issuing an assessment. As under the administrative sanctions procedure (referred to above), the Central Bank may enter a settlement agreement with the party subject to assessment. Following an adverse assessment, or as part of a settlement agreement, sanctions may be imposed. The available sanctions differ depending on the applicable legislation. Certain of the different frameworks for

⁷⁴ The Securities and Markets Regulations include the Transparency (Directive 2004/109/EC) Regulations 2007, the European Union (European Markets Infrastructure) Regulations 2014, the European Union (Market Abuse) Regulations 2016, the European Union (Markets in Financial Instruments) Regulations 2017, the European Union (Securities Financing Transactions) Regulations 2017, the European Union (Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the Performance of Investment Funds) Regulations 2017 and the European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018 the European Union (Prospectus) Regulations 2019.

enforcement under the different Securities and Markets Regulations operate a dual enforcement regime, applying the administrative sanctions procedure to regulated financial service providers and an assessor regime to non-regulated persons.

Most criminal offences under financial services legislation are what are known as ‘hybrid’ offences. This means that the offences can be tried either summarily or on indictment. The Central Bank’s power to prosecute criminal offences under financial services legislation is confined to summary prosecution in the District Court. The power to prosecute on indictment is the sole preserve of the DPP by law.

Separate from the Central Bank’s power of summary prosecution, section 33 AK(3) of the Central Bank Act 1942 (as amended), requires the Central Bank to report to a body any information relevant to that body that leads the Central Bank to suspect that a criminal offence may have been committed by a supervised entity, or that such an entity may have contravened the Companies Acts or the Competition Acts. Section 33 AK mandates the Central Bank to provide such information to certain prescribed bodies, including the Garda Síochána, the Revenue Commissioners, the Director of Corporate Enforcement, and the CCPC, or “any other body, whether within the State or otherwise, charged with the detection or investigation of a criminal offence”. Once a section 33AK referral report has been submitted to the relevant investigative body, such as the Garda Síochána, that body will determine whether a case exists and whether to proceed to prosecution, either summarily or on indictment.

In accordance with section 33AT of the Central Bank Act 1942 (as amended),⁷⁵ no criminal prosecution may be brought if the breach in question has already been subject to the administrative sanctions procedure (detailed above) which led to the imposition of a monetary penalty. Similarly, if a criminal prosecution has been brought in respect of an offence that also involves a regulatory breach, and a regulated financial service provider is found either guilty or not guilty, then no monetary penalty may be imposed pursuant to the administrative sanctions procedure.

2.1.7 The Competition and Consumer Protection Commission (CCPC)

The CCPC is an independent statutory body with a dual mandate to enforce consumer and competition protection law in Ireland. The CCPC’s role is to encourage compliance with consumer and competition laws, to inform and educate consumers about consumer and competition laws and enforce them where necessary.

The CCPC’s functions include the enforcement of Irish and European competition law in Ireland through investigations and civil or criminal enforcement action where evidence of breaches of competition law is found.

⁷⁵ Similar provisions are also contained in the Securities and Markets Regulations in respect of the assessor regimes.

The powers of the CCPC, as provided for in the Competition and Consumer Protection Act 2014, are largely investigatory, regulatory, and supervisory and include enforcement powers.

The CCPC's powers include the power:

- To compel parties to disclose information, even where this information may be legally privileged (subject to court assessment).
- To request data from a telecommunications provider, where it is satisfied that the data may be required for the prevention, detection or prosecution of a competition offence.
- To share information with other investigatory bodies such as An Garda Síochána, ODPP and the Revenue Commissioners.
- The power to appoint authorised officers who may for the purposes of enforcing statutory provisions other than those under the Competition Act 2002 enter premises, search, secure, seize and retain books, documents or records relating to trade or business activity for further examination.⁷⁶

The CCPC's regulatory powers require that it must be notified of proposed mergers, acquisitions and takeovers which reach a certain financial threshold, including all media mergers. This requirement enhances the CCPC's ability to perform its regulatory role by facilitating its assessment of compliance with competition laws.

The CCPC has the power to bring summary prosecutions and is responsible for ensuring that product safety standards are being complied with through the General Product Safety Directive and other relevant regulations. The CCPC has the responsibility of assessing mergers to determine whether they are likely to result in a substantial lessening of competition or not. The CCPC has the responsibility to raise public awareness on competition law and to provide personal finance information an education. The CCPC has the responsibility of sharing information about dangerous goods and enforcement measures across the EU through the Rapex system.

As previously mentioned, custody Regulations do not allow CCPC and other relevant agencies to participate in An Garda Síochána interviews with suspects. An amendment to Regulation 12 of S.I. No. 119 of 1987 will allow for the CCPC to exercise its investigatory powers under the provisions of Section 37(5) of the CCPC Act 2014. Other relevant agencies will also benefit from such an amendment. The lack of access by the CCPC to surveillance powers, particularly in the investigation of cartels has also been cited as a deficit in investigatory powers. The Review Group addresses this issue under Chapter 6

⁷⁶ Section 45 of the Competition Act 2002.

2.1.8 Standards in Public Office Commission (SIPO)

The Standards Commission has six members and is chaired by a former judge of the High Court. SIPO is an independent, non-partisan statutory body that oversees the administration of legislation in four distinct areas:

- The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001, which set out standards of conduct for public officials, both elected and appointed;
- The Electoral Act 1997, which regulates political financing, including political donations and election expenses;
- The Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 2014, which regulates expenditure of public funds to political parties and independent members of the Oireachtas; and
- The Regulation of Lobbying Act 2015, which requires transparency in relation to the lobbying of public officials.

In order to fulfil this function, the Commission:

- Provides guidance and advice to stakeholders.
- Oversees compliance, including receiving statutory returns from individuals and organisations subject to the Acts.
- Processes complaints and examines possible wrongdoing under the Acts.
- Undertakes outreach activities to ensure that those with obligations under the Acts (including members of the Oireachtas, election candidates and lobbyists) understand and are able to comply with the Act's requirements.

The powers under each Act administered by the Commission vary widely. Under the Regulation of Lobbying Act, the Commission has powers of investigation, search and seizure, and may levy fines or prosecute non-compliance. Sanctions range from a €200 fixed payment penalty for submitting a return after the statutory deadline, to imprisonment for up to 2 years for conviction on indictment.

Under the Ethics Acts, the Commission may investigate, using powers to compel witnesses and direct the production of documents. The Commission may hold an investigation hearing and reports are made public. The Commission may recommend sanctions, but has no direct enforcement powers.

Under the Electoral Act, the Commission oversees compliance and may direct the production of any document or thing to fulfil its duties. Where the Commission forms the view

that a contravention of the Act has occurred, it may refer the matter to the Director for Public Prosecutions. The Commission has no power to directly enforce the legislation.

SIPO considers that the legislation governing its work should be strengthened in order to give it powers to impose sanctions as opposed to being limited to making recommendations. The Regulation of Lobbying Act 2015 has provisions for sanctions. However, at present, there is no sanction for the breaching of section 22 of the Lobbying Act 2015 relating to post-employment as a lobbyist. While the 2015 Act was subject to a statutory review conducted by the Department of Public Expenditure and Reform and published earlier this year, no recommendation to amend the legislation to address the breach of cooling-off periods was made and this remains an issue of concern for SIPO. However, as a means to improve compliance with this specific provision of the Act, the Review did recommend that SIPO may wish to consider communicating with relevant bodies to promote the Guidance Note regarding Section 22 produced by SIPO for dissemination to all relevant designated public officials (DPOs) on a regular basis, as a reminder of their obligations. Relevant bodies could be specifically asked to include this guidance note in material given to relevant DPOs on assuming office / leaving office / resigning etc. In September 2020 in the Dáil, the Taoiseach outlined that the Minister for Public Expenditure and Reform would conduct a review into the lobbying legislation pertaining to the cooling-off period. On this basis, the Department of Public Expenditure and Reform is currently conducting review of Section 22 of the Regulation of Lobbying Act 2015 (the relevant section regarding the cooling-off period).

The Review also identified issues with the current SIPO structure. The SIPO budget is tied to the Office of the Ombudsman and is not ring-fenced. Consideration should be given to whether independence from the Office of the Ombudsman is required in terms of allocation of budgets. In this regard, any allocation approved on the basis of SIPO's funding application should be identified and ring-fenced for SIPO as opposed to creating a separate vote for SIPO.

As previously stated, the Programme for Government contains a commitment to reform and consolidate the ethics in public office legislation. The Public Sector Standards Bill 2015, which has lapsed, will no longer be progressed. Consideration should therefore be given to carrying forward the findings and recommendations of the Hamilton Review Group relating to SIPO and ethics in general, in the proposed review and any future legislative reform.

Key recommendation:

- Enhance the independence and capacity of SIPO by ensuring that resources allocated to the Ombudsman under vote 19 for the purpose of meeting the budgetary needs of SIPO, are ring-fenced for use, for that purpose alone.
- Improve resourcing to enable SIPO to fulfil its mandate. For example, current staffing levels in SIPO mean that an analysis of submitted returns is not possible.
- SIPO should be a strong, effective and independent body and this requires adequate autonomy and resourcing. However, costs could be reduced by sharing services with other organisations in terms of HR, accommodation, finance, and ICT.

2.1.9 The Office of the Revenue Commissioners (The Revenue Commissioners)

The Office of the Revenue Commissioners is the Government agency responsible for customs, excise, taxation and related matters.

While the core business of the Revenue Commissioners is the assessment and collection of taxes and duties, Revenue also has lead roles in administering the customs regime and working in cooperation with other State agencies in the fight against drugs. There are 16 Divisions in Revenue with those whose work is most relevant to the investigation and prosecution of economic crime being:

2.1.9.1 Collector-General's Division

Responsible for the collection of taxes and for the implementation of debt management programmes, including appropriate interventions to maximise timely compliance. Also responsible for enforcement action against those who fail to comply.

2.1.9.2 Investigations and Prosecutions Division

Responsible for the management, development and co-ordination of Revenue's investigations and prosecution activity.

2.1.9.3 Revenue Solicitors Division

Responsible for providing comprehensive legal support services for Revenue including in the conduct of litigation and appeals and in the prosecution of criminal offences.

2.1.9.4 International Tax Division

Responsible for engagement with EU and OECD on direct taxation including transfer pricing-related, case-specific, mutual agreement procedures (MAP) and advance pricing agreement (APA) negotiations with other tax authorities. Also responsible for monitoring and updating Ireland's tax treaty network.

Revenue currently employs approximately 6,600 staff (full time equivalents) located in some 70 Revenue offices distributed throughout the country.

The Revenue Commissioners investigate and prosecute serious cases of tax and duty evasion. Section 1078 of the Taxes Consolidation Act 1997 criminalises the evasion of tax generally.

Other statutory provisions criminalise fraudulent behaviour such as, for example, the transporting, dealing in or selling illicit tobacco products, and removing prescribed fiscal markers from fuel which is subject to a lower rate of excise duty.

In support of Revenue's work against tax or duty fraud, section 1078A of the 1997 Act makes it an offence for a person to falsify, conceal, destroy or otherwise dispose of material that the person knows or suspects is or would be relevant to the investigation of a Revenue offence.

The Revenue Commissioners considers that its overall risk-based compliance intervention strategy constitutes a significant deterrent to fiscal fraud. Its strategy is kept under review on an ongoing basis with the aim of optimising its effectiveness and ensuring that the fullest use is made of all available data (including, for example, the large amounts of information now becoming available to Revenue under arrangements for the automatic exchange of information with other jurisdictions).

Where fiscal fraud does occur, Revenue has well-established systems and processes for investigating it and putting cases forward for prosecution. While investigations can be complex, challenging and time-consuming, Revenue does not believe that there are specific gaps which inhibit its actions in this field.

Revenue considers that its current staffing resource level supports the effective discharge of its anti-fraud responsibilities. The position is, however, kept under review, taking account of emerging threats and trends.

2.2 Other key challenges to resourcing

While there are serious concerns with respect to the level of resourcing in the key investigatory bodies, it is also the case that there are technological and other solutions.

2.2.1 Electronic documentary analysis and disclosure platforms

The document-based nature of much of economic crime means that law enforcement bodies are regularly required to obtain and examine vast amounts of evidential material, particularly in the more complex cases. This renders investigations and prosecutions extremely resource-intensive, causes delays and backlogs, and significantly increases the scope for error. In this context, a number of agencies represented on the Review Group highlighted the difficulties they face in not having continuous access to modern electronic document analysis and e-disclosure platforms. This puts investigators and prosecutors at a disadvantage relative to corporate defendants, who can often afford to engage law firms

which use such platforms routinely. All relevant agencies responsible for the prevention, detection, investigation and prosecution of economic crime and corruption should leverage on technological advances to enhance their abilities to carry out their functions.

Key recommendation:

The Review Group considers that all technological solutions that support the detection and investigation of economic crime should be explored including the development of a centralised Government framework for the procurement of state-of-the-art electronic documentary analysis and e-disclosure systems, which could be accessed by the relevant law enforcement bodies (and by the Chief State Solicitor's Office) on a shared basis as required.

Key recommendation:

The Review Group recommends engaging with the judiciary on the development of training in respect of complex economic crime/corruption cases, and on the possibility of judicial specialisation in this area. The recently established Judicial Council with responsibility for developing and managing schemes for the education and training of judges may have a role in this regard.

Key recommendation:

The Review Group recommends the development of a **formal and continuous joint training programme for the investigation of economic crime and corruption**, to be led by GNECB with the support of ODCE, ODPP and by other experts as appropriate. This will help to build vital longer-term capacity, expertise and consistency of approach across the rest of An Garda Síochána and in all other agencies that have identified a need for training of this type. (NB: this recommendation is closely linked to increasing the resourcing of GNECB and ODPP, which is a prerequisite if they are to be in a position to deliver training on the scale and frequency that would be needed).

2.2.2 The use of expert witnesses

The Review Group noted the difficulties experienced by the investigative agencies in contracting the services of external specialist experts - such as forensic accountants and digital analysts – because of a procurement process ill-equipped for this purpose. The slow and cumbersome nature of the process, along with the misapplication of the 'Most Economically Advantageous Tender' rule, make it very difficult to acquire 'best in class'

services in such niche areas. The net effects are to delay the investigations and make expert evidence vulnerable to being challenged in Court on competency grounds.

Contracting Authorities should specify in procurement documents (Invitations to tender), the weight attached to each criteria used to determine the 'Most Economically Advantageous Tender', such as, the '*best price-quality ratio*'. MEAT may be viewed from the lens of the relevant agency or body, as the most skilled expert with the best prospects of a successful outcome in a criminal trial, when hiring external assistance in criminal investigations. Invitations to tender should be framed in such a manner as to allow for this interpretation of the MEAT rules. This will allow prosecutorial bodies to avail of high quality specialist expertise in a fast and flexible manner when the need arises. Furthermore, it will reduce the scope for expert evidence to be challenged in Court on competency grounds.

Chapter 3. The European Union framework

As an EU member state, Ireland's anti-corruption regime is driven in many important and significant matters by European policy and by a wide range of initiatives underway or under consideration at EU level. These initiatives cover a number of important issues and cannot be considered in isolation from the overall framework to combat economic crime and corruption of which they are now a vital part affecting in a major way the work of all of the agencies working in this area. It is necessary to set out some of the more important of these provisions in order to understand fully the complexity of the tasks carried out by these agencies. Specific anti-corruption policies are set out in various parts of the EU acquis including the 1997 Convention⁷⁷ on fighting corruption involving officials of the EU or officials of Member States and the 2003 Framework Decision on combating corruption in the private sector,⁷⁸ which aims to criminalise both active and passive bribery.

3.1 Europol

The European Union Agency for Law Enforcement Co-operation (EUROPOL) was established in 1991 and is the central European investigation office for the fight against international drug trafficking and organised crime including corruption. A counterterrorism task force was established by EUROPOL in 2001 with the introduction of a secure information exchange tool (infoEx) the following year. In 2010, EUROPOL became a European Union Agency and established the EU Policy Cycle Impact (EMPACT) a four year policy cycle for measuring the fight against serious and organised crime. EMPACT's priority areas of work for the years 2018 and 2021 adopted by the Council of the European Union, include cybercrime, document fraud, criminal finances and money laundering. EMPACT is a structured multidisciplinary co-operation platform of the relevant EU member States, institutions, agencies, third countries, international organisations and other public and private partners working to address the prioritised threats of serious and organised crime.

Notably, under the Lisbon Treaty, Ireland and the UK secured an opt-in Protocol (protocol 21) in the area of freedom, security and justice, one of three Justice and Home Affairs base measures.⁷⁹ The effect of the Protocol is that Ireland is not automatically bound by EU measures in the areas of asylum, immigration, judicial cooperation in civil or criminal matters or police cooperation unless it notifies the Council of its wish to participate (or opt-in) to an

⁷⁷ [Council Act of 26 May 1997 drawing up, on the basis of Article K.3 \(2\) \(c\) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ 195 25.6.1997: 1-11.](#)

⁷⁸ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.7.2003: 54-56.

⁷⁹ Protocol 21 was negotiated amidst concerns that the needs of the common law minority legal system may not be accommodated by a predominantly Schengen system.

individual measure. Ireland may opt-in within three months of the publication of a proposal in this area and is then entitled to participate in the adoption of the measure.⁸⁰

Ireland made a Declaration, appended to the Treaty of Lisbon, affirming its commitment to the Union as an area of freedom, security and justice and declaring its intention to take part in the adoption of measures in this area to the maximum extent possible, in particular, in the field of police cooperation. As previously stated, Ireland liaises closely with Europol as part of an international prevention, disruption and investigative response to serious organised economic crime.

Europol has many Analytical Projects (APs) which are information-processing systems and focus on crime areas which assist law enforcement efforts throughout the EU including Ireland. The APs which mirror the financial crimes under investigation by GNECB investigators include the following: AP MITC (Missing Trader Intra-Community Fraud), AP Smoke (Excise Fraud), AP Sustrans Money Laundering), AP Apate (CEO Fraud) AP Terminal (Investment fraud using on-line social engineering techniques), and AP Sports Corruption (Investigates match fixing and irregular betting across many sporting activities). AP Smoke (Excise Fraud) is also available to Revenue investigators in this jurisdiction.

Europol supports An Garda Síochána through its engagement processes with the policing authorities of member states which includes the following:

- Hosting a network of Liaison officers from each of the Members States and operational countries, these Liaison officers work solely on behalf of their home jurisdictions.
- Providing Secure Network for information exchange SIENA.
- Providing Analytical support to major investigations.
- Receiving from Members States Seconded National experts to deal with a specific Europol Mandated areas of Crime.
- Receiving from Members States Cost free Seconded National experts to deal with a specific Europol Mandated area of Crime.

Europol also engages with other global law enforcement agencies such as Interpol and Eurojust as well as the United Nations Office on Drugs and Crime (UNODC) to coordinate actions by local law enforcement against international criminality.

⁸⁰ Alternatively, Ireland may opt-in to the measure at any time after its adoption by other Member States. Article 8 provides that Ireland may notify the Council that it no longer wishes to be covered by the terms of the Protocol. In that case, the normal Treaty provisions will apply to Ireland. This article did not apply to the UK.

For example, Global Airport Action Days (GAAD) target criminals suspected of traveling with airline tickets bought using stolen, compromised or fake credit card details. In 2018 the 11th GAAD involved 61 countries, 69 airlines and 6 online travel agencies and resulted in the arrest of 131 criminals and the identification of 334 suspicious transactions over a 4 day period.

Another example is regular coordinated local law enforcement interventions against Money Mules engaged in money laundering. In 2019, the fifth European Money Mule Action (EMMA 5) which took place between September and November of that year, resulted in the global identification of 3833 money mules alongside 386 money mule recruiters, of which 228 were arrested. 31 countries were involved and the European Banking Federation (EBF) also provided support. GNECB successfully participated in these operations.

3.2 Eurojust

Eurojust was first established in the year 2000 as a provisional judicial cooperation unit under the name Pro-Eurojust. The unit, which was composed of national prosecutors, magistrates, or police officers of equivalent competence from each Member State, was set up with the objective of stepping up the fight against serious organised crime. Following the attacks of 11 September 2001, in the USA, the focus on the fight against terrorism moved from the regional/national sphere to its widest international context and served as a catalyst for the formalisation, by Council Decision 2002/187/JHA, of the establishment of Eurojust as the European Union's Judicial Cooperation Unit.⁸¹

In November 2018, the Council of the European Union adopted the Regulation of the European Parliament and the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust Regulations) (EJR).⁸² The EJR which replaces and repeals the Council Decision 2002/187/JHA, introduces reforms to Eurojust's functioning and structure in order to improve its operational effectiveness, update its data protection framework and increase its transparency and democratic oversight.⁸³ Ireland opted in to the new Eurojust Regulation and transposed it by Statutory Instrument in December 2019. The Minister for

⁸¹ Sofie Arjon Schütte, 'Prosecuting Corruption across Borders: Eurojust – Interview with Maria Schnebli', U4 Practitioner Experience Note 2017:3 (Bergen: Chr. Michelsen Institute, 2017), <https://www.u4.no/publications/prosecuting-corruption-across-borders-eurojust.pdf>.

⁸² Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018: 138-183.

⁸³ 'Making Eurojust more Efficient and Effective' [Press release], *Council of the European Union* (6 April 2018), <https://www.consilium.europa.eu/en/press/press-releases/2018/11/06/making-eurojust-more-efficient-and-effective/>.

Justice and Equality, Charlie Flanagan TD, had previously highlighted the important role that Eurojust plays in tackling cross-border crime.⁸⁴

Eurojust comprises of all EU member states and has also been active in negotiating cooperation agreements with third States and other EU agencies which allow the exchange of judicial information and personal data. Agreements were concluded with, among others, Europol, Norway, Iceland, the USA, OLAF, Switzerland, North Macedonia (formerly FYROM), Moldova, Montenegro and Ukraine. Liaison prosecutors were appointed for Norway, the USA, Switzerland, Montenegro, Ukraine and North Macedonia. In addition to cooperation agreements, Eurojust also maintains a network of contact points worldwide.

Eurojust's operational focus is in tandem with the European Commission's Agendas on Security and Migration: treating terrorism, illegal immigrant smuggling and cybercrime as priorities. Corruption which often facilitates other types of crime also falls within the remit of Eurojust. In 2016, Eurojust supported the investigation of 74 cases involving corruption and conducted 15 coordination meetings.⁸⁵ It also supported two joint investigation teams. Eurojust plays an important role in facilitating cross-country collaboration in large-scale criminal investigations and currently has a network of 42 contact points outside the EU.⁸⁶

The European Council states that in 2017, EU countries requested Eurojust's assistance in 2550 cases. This represents a 10.6% increase compared to 2016. 849 of these cases were closed during the same year.⁸⁷

In the course of investigations, the Gardaí may need to seek advice from Eurojust when requiring further information (or evidence) from abroad. Eurojust, can, on occasions, make the Mutual Legal Assistance (MLA)⁸⁸ process more expeditious and effective. Discussions between the respective national desks can, quite quickly, clarify misconceptions and explain reasons for urgency. Furthermore, coordination meetings held between police and prosecutors from respective member states can serve to ensure a coordinated investigative strategy, ensure evidence taken is admissible in the receiving member state and avoid conflicts of prosecutorial jurisdiction.

⁸⁴ 'Minister Flanagan secures Government approval to participate in new Eurojust Regulation' [Press release], *MerrionStreet.ie* (7 May 2019), https://merrionstreet.ie/en/News-Room/Releases/Minister_Flanagan_secures_Government_approval_to_participate_in_new_Eurojust_Regulation.html.

⁸⁵ Ibid.

⁸⁶ Schütte, 'Prosecuting Corruption across Borders'.

⁸⁷ 'Making Eurojust more Efficient and Effective'.

⁸⁸ Mutual Legal Assistance is a form of cooperation between different countries for the purpose of collecting and exchanging to assist in criminal investigations or proceedings. See: 'Mutual legal assistance and extradition', *European Commission*, https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/mutual-legal-assistance-and-extradition_en.

International cooperation between third countries can be aided, either in cases where Eurojust/Europol have entered into strategic or operational cooperation agreements with such third countries or with the aid of contact points put in place by either agency.

In the context of cooperation with foreign counterparts, effecting processes across borders, even on the basis of existing EU and international instruments can be quite complex. Submissions received from the review group state that when dealing with fraud cases, the question of freezing assets in contemplation of a potential confiscation order may have to be considered. Within the EU, the Camden Asset Recovery Inter-Agency Network (CARIN), the EU Asset Recovery Offices and Eurojust are said to offer assistance in this regard.

3.3 EPPO (European Public Prosecutor's Office)

EPPO is an independent body of the EU established under the Lisbon Treaty to tackle financial crime against the Union's budget. Currently, only national authorities can investigate and prosecute fraud against the EU budget. However, their powers to investigate and prosecute fraud against the EU's budget do not go beyond national boundaries. Existing EU-bodies such as Eurojust, Europol and the EU's anti-fraud office (OLAF) lack the necessary powers to carry out criminal investigations and prosecutions.

The Regulation establishing the European Public Prosecutor's Office under enhanced cooperation was adopted on 12 October 2017 and entered into force on 20 November 2017. It is proposed that the EPPO will become operational by the end of 2020 and will have the competence to investigate and prosecute crimes against the EU budget such as fraud, corruption and other serious cross border crimes.

Currently, EPPO has 22 participating EU countries and will operate as a single office across the participating countries combining European and national law enforcement efforts. EPPO will have both a central and national level with the central level consisting of the European Chief Prosecutor, two deputies and twenty two European Prosecutors, one from each participating country.⁸⁹

The national level of EPPO will consist of European Delegated Prosecutors who will be located in the participating EU countries. Investigations and prosecutions carried out at the national level will be supervised by the central level. However, the European Delegated Prosecutors will be responsible for carrying out the investigations and prosecutions in their respective EU countries. It is significant to note that Ireland is not a participating country having decided not to opt in. The decision not to opt in was due to a number of concerns including that EPPO is a civil law construct which reflects the European approach to criminal

⁸⁹ 'European Public Prosecutor's Office', *European Commission*, https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en.

investigation- a prosecutor led investigation model which is not compatible with the Irish system.⁹⁰ Other concerns relate to the final structure of EPPO and the implications for the ability of Irish Courts to exclude evidence which would contravene constitutional rights in this jurisdiction. However, with the UK having left the EU, Ireland will have to reach its own accommodation with other Member States on how to cooperate with EPPO as a non-participating Member State. Ireland needs to continue to engage constructively in negotiations with the aim of addressing fundamental concerns so that participation may be a less problematic possibility in future.

3.4 EU legislation

The impact of EU initiatives on Ireland's legislative and policy framework is most evident in the wide range of EU Directives that have been transposed into Irish law and those currently in the process of being implemented. There is [anti-money laundering](#) legislation, a [directive on the protection of the financial interests](#) of the European Union (PIF Directive)⁹¹ and specific anti-corruption provisions in the area of [public procurement](#). The EU's public procurement strategy and public procurement Directives aim to improve transparency and integrity but it should be noted that the EU Procurement Directives apply only to tenders with a value in excess of the EU thresholds.

In the field of [asset recovery](#), the EU has introduced Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU and a separate Regulation on the mutual recognition of freezing orders (note that Ireland opted out of the latter.) Ireland has not opted in to the instrument for a number of reasons, including the legal and practical challenges that may be encountered in trying to meet the deadlines for execution of freezing and confiscation orders.

While the deadlines for execution have been somewhat extended, they would still be very difficult to meet in an Irish context. Given that the Commission is considering infringement proceedings against Ireland in relation to the EAW for failure to meet time limits, Ireland is reluctant to commit to similar measures where there are doubts about its ability to meet the obligations which flow from joining.⁹²

Although the instrument has been widened to include non-conviction-based orders, it appears that the wording would exclude orders obtained by the Criminal Assets Bureau under the Proceeds of Crime Act. Ireland has argued in favour of the instrument taking the form of a Directive. While the instrument will remain a Regulation, delegations have agreed

⁹⁰ Ireland has a common law structure where the An Garda Síochána lead investigations and the ODPP has no role in such matters until a file is sent to them and a decision has to be made whether a prosecution should occur.

⁹¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017: 29-41.

⁹² European Arrest Warrant Framework relating to surrender procedures between EU member States.

to include a recital indicating that the legal form of this instrument should not be taken as a precedent for further legislative acts in this field. Some Member States who had been supportive of a Directive intend to make a declaration to the effect that it is inappropriate to use a Regulation in this case. It is proposed that Ireland does not join in this declaration.

There are also several measures aimed at the prevention and investigation of fraud and corruption in the EU such as the Protection of the Union's Financial Interests ('PIF') Directive (2017). There is a need to take account of the work of OLAF the European Commission's anti-fraud office which is the lead service for the commission's anti-fraud strategy. The 2021-2027 Multiannual Financial Framework includes an Anti-Fraud Programme. The EU has had an anti-corruption experience sharing programme since 2015. The programme provides an opportunity for the exchange of best practices in anti-corruption policies between the Member States. The Commission has provided a means for monitoring the level of corruption in the EU.⁹³

In 2011, the Commission set up a reporting mechanism for the periodic assessment of anti-corruption efforts in the EU to support the EU's anti-corruption policy. An EU anti-corruption report was published in 2014. This report dealt with corruption at the level of the individual member states but despite advice from the Commission's own advisory body the report failed to address the issue of corruption within the EU institutions themselves. The anti-corruption report initiative has now been discontinued and the Commission has decided that reporting on the level of corruption within the member states will be carried out within the framework of the European Semester.⁹⁴

The EU Data Reform package incorporates the Law Enforcement Directive (LED) and the General Data Protection Regulations (GDPR) (Regulations 2016/679) which came into force in May 2018. Part 5 of the Data Protection Act 2018 transposes the LED into national law. It applies, with limited exceptions, to the processing of personal data by or on behalf of a competent authority (the data controller) where processing is carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences. Limited exceptions include processing for the purpose of safeguarding against, and preventing threats to public security, or the execution of criminal penalties and where the data are processed wholly or partly by automated means or form part of, or are intended to form part of, a relevant filing system.

Recital 47 of the GDPR allows for the processing of personal data strictly necessary for the purposes of preventing fraud, which also constitutes a legitimate interest of the data controller concerned. The LED complements the GDPR and deals with the processing of personal data by data controllers which fall outside the scope of GDPR for law enforcement

⁹³ In the 2007 the European Parliament launched its own specific Eurobarometer series which carries out surveys on a wide range of issues including corruption.

⁹⁴ The European Semester is a cycle of economic and fiscal policy co-ordination within the EU.

purposes. Some concerns have been raised that the introduction of the LED is making the exchange of letters of request more difficult, in particular, when dealing with third countries. Specifically, submissions received suggest that Chapter V of the LED raises a number of questions which will have to be determined at a domestic level. Eurojust is stated to have raised this challenge as a thematic discussion to see what guidance could be given at the EU level.

The European Union (Market Abuse) Regulations 2016 (the Market Abuse Regulation (EU 596/2014- MAR) and the Market Abuse Directive on criminal sanctions for market abuse (Directive 2014/57/EU or 'CSMAD' or 'MAD II') became applicable in Ireland in July 2016. The European Union (Market Abuse) Regulations 2016 is a legislative measure that aims at enhancing the investigation and prosecution of economic crimes such as insider dealing, market manipulation and unlawful disclosure of inside information.

The Central Bank of Ireland states on its website that 'The new Market Abuse Regime strengthens the legal framework underpinning the function of detecting, sanctioning and deterring market abuse. It extends its scope to apply to new markets, new trading platforms and new behaviours and to cover a broader range of financial instruments. It contains prohibitions for insider dealing, market manipulation and unlawful disclosure of inside information and provisions to prevent and detect these'.⁹⁵

Parts 4 and 5 of the European Union (Market Abuse) Regulations 2016, grant the CBI extensive powers over persons falling within the scope of the market abuse legislation. This includes the power to impose administrative sanctions.

The EU adopted Directive (EU) 2019/713 on Fraud and Counterfeiting on non-cash means of payment. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the areas of fraud and counterfeiting of non-cash means of payment. It aims to prevent such offences, and facilitates the provision of assistance to and support for victims⁹⁶.

The Markets in Financial Instruments Directive (MIFID I) introduced in 2007 sets out.

- conduct of business and organisational requirements for investment firms;
- authorisation requirements for regulated markets;

⁹⁵ 'Market Abuse Regulation' *Central Bank of Ireland*, <https://www.centralbank.ie/regulation/industry-market-sectors/securities-markets/market-abuse-regulation>.

⁹⁶ Directive (EU) 2019/713 of the European Union Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, OJ L123, 10.5.2019: 18-29, article 1, Directive(EU)2019/713 of the European Union Parliament And of the Council : Official Journal of the European Union L123/18.

- regulatory reporting to avoid market abuse;
- trade transparency obligations for shares; and
- rules on the admission of financial instruments to trading.

MIFID 1 was replaced in January 2018 by a revised package of rules which took the form of a revised Directive (Directive 2014/65/EU, MiFID II⁹⁷) and a new Regulation (Regulation (EU) 600/2014, MiFIR), collectively referred to as MiFID II,. Competent authorities such as the CBI and the European Supervisory Authorities now have the ability to restrict or suspend the marketing or sale of financial instruments under certain circumstances when the elevated or financial stability risks exist.

MiFID II places stricter governance requirements on MiFID investment firms and broadens the scope of financial instruments which fall within its remit. MiFID II also ensures a standardised authorisation process across the EU and requires firms to report significantly more information including the identification of individuals or computer algorithms responsible for an investment decision. MiFID II, strengthens the overall transparency regime for the financial markets.

Ireland's anti-money laundering and countering the financing of terrorism legislative and policy framework mainly stems from the requirements contained in the FATF Standards and EU law. An Anti-Money Laundering/ Countering the Financing of Terrorism (AML/CFT) Steering Committee (AMLSC) was established in 2015 to facilitate the collaboration and coordination of the work of the various agencies and government departments involved in tackling money laundering. The AMLSC plays a central role in the development of the State's anti-money laundering policy and engages with a Private Sector Consultative Forum (PSCF)⁹⁸ to enhance the development and implementation of anti-money laundering measures. The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018, while transposing most of the 4th Anti-Money-Laundering Directive, did not transpose the obligations regarding the establishment of beneficial ownership registers. However, this gap was largely addressed by the European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 (SI 110 of 2019)⁹⁹ which transposed the obligation to establish a beneficial ownership register for corporate entities contained in the 4th European Union Money-Laundering Directive, as amended. These regulations were in turn amended by the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 (SI 233 of 2020), which provided for the establishment of a

⁹⁷ Transposed into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017).

⁹⁸ The PSCF is an independent consultative forum coordinated by representatives from the private sector including banks, life insurance providers, payment institutions, investment firms and designated non-financial businesses and professionals.

⁹⁹ European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019).

separate central register for certain financial vehicles, which is operated by the Central Bank of Ireland.

The 5th Anti- Money Laundering Directive (EU) 2018/843 set out extended deadlines for the establishment of the Central Registers for corporate entities and trusts to the 10th of January and March 2020 respectively. The Central Register of Beneficial Ownership (RBO) for corporate entities opened to accept filings on 29th of July 2019 and designated persons had up to 22 November 2019 to comply with their filing obligations without being in breach of their statutory duty to do so. Filing of beneficial ownership data can only be made on-line through a portal on the RBO website and there are no paper forms or filing fees required.¹⁰⁰ The central register for certain financial vehicles operated by the Central Bank of Ireland began to accept filings in June 2020 and designated persons have until December 2020 to comply with their filing obligations without being in breach of their statutory duty to do so. A central register for the beneficial ownership information of trusts is due to be established in late 2020 and it is expected that designated persons will have a similar period of time in which to comply with their filing obligations.

These Registers will record details of the natural persons that are the beneficial owners or controllers of corporate entities and trust structures. The Revenue Commissioners, An Garda Síochána, the Criminal Assets Bureau or an Inspector appointed by the Director of Corporate Enforcement under section 764(1) of the Companies Act 2014 and competent authorities will have a right of access to such registers in relation to corporate entities (access is more restricted in relation to trusts).

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 extends the scope of AML/CFT legislation to domestic Politically Exposed Persons (PEPs) in Ireland. Previously it only applied to foreign PEPs. It has not yet been determined who domestically will now be classed as a “PEP” and this remains to be determined by the government. It is important that appropriate persons are classed as a PEP in Ireland including any relevant levels of government and holders of office who are potentially at a greater risk of exposure to corruption.

As already noted, the General Scheme of the Criminal Justice (Money-Laundering and Terrorist Financing) (Amendment) Bill 2020 has been approved by Government and will transpose the bulk of the 5th EU Anti-Money Laundering Directive.

Another development has been the recent Financial Action Task Force (FATF)¹⁰¹ review of Ireland’s compliance with international anti-money laundering and counter terrorist financing rules and standards. This was broadly positive although some limited areas for improvement

¹⁰⁰ Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies, RBO, <https://rbo.gov.ie/>.

¹⁰¹ The Financial Action Task Force (FATF) is a policy making organisation that leads the international fight against money laundering and terrorist financing.

were identified¹⁰². The FATF acknowledged Ireland's strong legislative framework for investigating and prosecuting money laundering but noted that this had not translated to results at the trial stage. While Ireland's legislative and institutional framework for asset confiscation which includes a non-conviction based regime¹⁰³ came in for praise, FATF noted that asset confiscation systems in place have yielded low dividends, in terms of the value of criminal proceeds confiscated and forfeited, relative to Ireland's risk profile. In regard to conviction-based confiscation, it may be that at the stage of investigating an offence both investigators and prosecutors need to have a greater focus on criminal proceeds than heretofore.

There appears to be a gap in respect of data collection on the part of the relevant bodies and agencies to enable an accurate reflection of the value of criminal proceeds confiscated and forfeited in this jurisdiction. In light of the criticism of Ireland's asset confiscation regime, efforts are being made to improve the national statistics in relation to criminal asset seizure/confiscation. Research has recently been commissioned to facilitate the collection and analysis of the relevant data in order to assess the effectiveness of the assets confiscation systems in place. There are also on-going engagements with the ODPP and An Garda Síochána to explore how the new Garda information systems can be leveraged for the collection of data to assist in determining the value of confiscated criminal assets. The collection and analysis of data in relation to asset confiscation will assist the State in meeting its reporting obligations under the relevant international instruments¹⁰⁴.

As previously noted, Ireland's overarching policy framework for public procurement is EU driven and sets out minimum harmonised public procurement rules. These rules govern the way public authorities and certain utility operators purchase goods, works and services. The rules are set out in three principal EU Directives which are transposed into national legislation and apply to tenders for public contracts whose monetary value exceeds a certain threshold.

The current EU Directives are Directive 2014/24/EU on public procurement (goods, services and works); Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; and Directive 2014/23/EU on the award of Concession Contracts.

The new Public Authorities Contracts Directive (2014/24/EU: the "Classical") and the Utilities Directive (2014/25/EU: the "Utilities") reflect the existing framework of procurement law. The

¹⁰² FATF, *AML & CTF Measure – Ireland*, Fourth Round MER.

¹⁰³ The Criminal Assets Bureau (CAB) targets criminal proceeds through non-conviction based forfeiture, tax assessment and social welfare assessments.

¹⁰⁴ Ireland has reporting obligations under various monitoring and evaluation processes arising from its being a party to a number of regional and international instruments.

reforms across both Directives are designed to improve the effectiveness of the regime and to codify recent procurement case law.

Article 67(1) of the European Union (Award of Public Authority Contracts) Regulations S.I No. 284 of 2016 gives effect to Directive 2014/24/EU and retains the Most Economically Advantageous Tender (MEAT) criteria for the award of contracts contained in the repealed Directive 2004/18/EC which laid down European Union (EU) rules for awarding contracts for public works, supplies and services. The MEAT rule is used to determine the winning bid and all unsuccessful bidders are provided with a summary of reasons for a tender decision. The 2016 Regulations promote the use of public procurement as an important strategic policy instrument and Article 67(9) of SI No. 284/2016 states that:

“The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, other than where this is identified on the basis of price alone.”

Article 90 of the Directive 2014/24/EU of the European Parliament and of the Council to which SI No 284/2016 gives effect, states that:

“Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio, which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting authorities are free to set adequate quality standards by using technical specifications or contract performance conditions.

In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.

To ensure compliance with the principle of equal treatment in the award of contracts, contracting authorities should be obliged to create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Contracting authorities should therefore be obliged to indicate the contract award criteria and the relative weighting given to each of those criteria. Contracting authorities should, however, be permitted to derogate from that obligation to indicate the weighting of the criteria in duly justified cases for

which they must be able to give reasons, where the weighting cannot be established in advance, in particular because of the complexity of the contract. In such cases, they should indicate the criteria in decreasing order of importance.”

As outlined earlier in the report, in applying the MEAT rules, the contracting authority should specify in procurement documents the weight it attaches to each criterion used to determine the ‘most economically advantageous’ tender. This will allow prosecutorial bodies to avail of high quality specialist expertise in a fast and flexible manner when the need arises. Furthermore, it will reduce the scope for evidence to be challenged in Court on competency grounds.

The overarching policy framework for public procurement in Ireland is largely informed by EU law as demonstrated in the legislative provisions outlined above¹⁰⁵. The public procurement policy framework sets out the procurement procedures to be followed by Government Departments and State Bodies under national and EU rules.¹⁰⁶

Ireland’s legislative and policy framework for the investigation and prosecution of economic crime is impacted in a fundamental and positive way by all of the above EU legislative initiatives.

¹⁰⁵ ‘National Public Procurement Policy Framework’, (Dublin: Office of Government Procurement and Department of Public Expenditure & Reform, June 2018), <https://ogp.gov.ie/national-public-procurement-policy-framework/>.

¹⁰⁶ Ibid.

Chapter 4. Domestic and international co-operation structures

Domestic co-operation structures between the various Government Departments and agencies which have responsibility for tackling economic crime and corruption include information sharing, secondments as well as advice and support with investigation and prosecution.

4.1 The adequacy of the legal basis for information sharing between relevant bodies

Some members of the Review Group are of the view that priority should be given to the drafting of Memoranda of Understanding (MOUs) or protocols that refer explicitly to information sharing and joint inspections. Any arrangements to share information, or legislative reform in respect of information sharing, would need to consider issues such as data protection constraints, common law duties of confidentiality, and the constitutional rights to privacy and to a good name. Furthermore, the sharing of confidential information by the Central Bank with other agencies or regulators is subject to confidentiality and professional secrecy obligations, both at national and EU level, and any reforms on coordination and cooperation would need to take that into account.

Key recommendations:

The Review Group recommends that a comprehensive analysis be carried out as to the precise nature and scope of legislation necessary to (a) facilitate the optimal exchange of information and intelligence between investigative agencies, both under a Joint Agency Task Force (JATF) model and more generally, and to (b) ensure the necessary clarity on the respective roles and powers of agency personnel under a JATF model. The Group considers that this work could appropriately be led by the proposed Advisory Council in consultation with the Attorney General's Office and the relevant Government Department and State agencies.

However, the Review Group agrees that any legal restrictions on the sharing of sensitive intelligence and personal data should not prevent the exchange of more general information on current or upcoming investigations (particularly those that may need interagency co-operation). Moreover, there is clearly no legal barrier to the sharing of expertise and ideas or the discussion of developments, practices, procedures and joint working possibilities more generally. While some of the key bodies already meet regularly on an informal basis to discuss issues of mutual interest, the Review Group agrees that this agreement should now be put on a formal and expanded footing.

4.2 Domestic co-operation between relevant agencies

The GNECB regularly assists local investigators with An Garda Síochána and other bodies having investigative powers and is currently supporting a number of investigations. GNECB investigators are, pursuant to Government decisions, permanently seconded to the Office of the Director of Corporate Enforcement (ODCE) and the Competition and Consumer Protection Commission (CCPC). In addition, the GNECB regularly give talks and lectures to relevant stakeholders, such as the business community, financial sector, legal sector and public sector in an effort to educate companies, institutions and individuals on their collective responsibility to combat bribery and corruption.

The secondment of members of An Garda Síochána to agencies with an investigative remit in criminal matters is of huge benefit to the agencies involved. The practice has led to very good co-operation between the CCPC, other relevant agencies and the GNECB, which is of critical importance in, for example, facilitating the sharing of information and providing training at the Garda College. The members of the Review group believe that enhancing and expanding the practice of seconding members of the An Garda Síochána to relevant agencies will ensure that the agencies have comparable ability to investigate complex criminal matters to that of the GNECB. The CCPC has established domestic co-operation and works well with the Revenue Commissioners, the Criminal Assets Bureau (CAB) and the ODCE on the sharing of information in digital forensics cases and also on training.

The Cartel Immunity Programme, which is run by the CCPC in association with the ODDP, is an example of co-operation between agencies with potential for enhancing the investigative and prosecutorial work of both agencies, in this case, where there are suspected breaches of competition laws. Under the programme, the ODPP may give immunity to a suspect in hard core cartel cases that are tried in the Central Criminal Court. However, Ireland has no leniency system directed at low level cartel competition infringements.

The Directive to make national competition authorities more effective enforcers under the reform of EU competition law Directive 2019/1 (the ECN +4 Directive) was signed into law on 11 December 2018. Some members of the Review Group are of the opinion that the Directive provides an opportunity for Ireland to put in place a system of civil or administrative fines for breaches of EU Competition law. The idea of moving towards a system of administrative sanctions with the aim of enhancing competition and ultimately competitiveness in the Irish economy has been mooted. It is further suggested that this approach would enable the CCPC to institute a leniency programme that would run in parallel with the Cartel Immunity Programme. While noting the proposals for the introduction of a system of civil and administrative sanctions on foot of Directive 2019/1, the Review Group deems the issue one that may be more appropriately considered by the LRC.

The ODPP on an informal basis can and has played a role in assisting the co-ordination of parallel investigations.

The GNECB and the ODPP established a joint Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT) project in 2015. The AML/CFT project was established to review the anti-money laundering and terrorist financing systems and procedures of the State in order to identify any impediments or obstacles to its functioning efficiently. The project which is run by the Money Laundering Investigation Unit in the GNECB and the Specialist Units of the ODPP was facilitated by the Anti-Money Laundering Steering Committee (AMLSC). The subgroups of the AMLSC are responsible for preparing the State's risk assessment for money laundering and terrorist financing. The AMLSC comprises of representatives from the ODPP, the DJE, the DBEI, GNECB, the Office of the Attorney General, the Central Bank of Ireland, the Revenue Commissioners and other agencies. The GNECB's Money Laundering Investigation Units worked closely with the ODPP's Directing Division, Asset Seizing Section and Special Financial Crime Unit in the investigation and prosecution of money laundering and terrorist financing offences.

As chair of the National Anti-Money Laundering Steering Committee (AMLSC), the Department of Finance works closely with a range of agencies, to develop and strengthen Ireland's Anti-Money Laundering framework, which includes the Financial Intelligence Unit (FIU) of the Garda National Economic Crime Bureau (GNECB), and the Anti-Money Laundering Compliance Unit in Department of Justice and Equality and the Central Bank of Ireland. The ODPP, the Revenue Commissioners, the DBEI and CAB are also members of the Committee.

In this context two assessments may be relevant to this exercise. These are:

The [National Risk Assessment \(NRA\)](#) of Money Laundering and Terrorist Financing, which analyses and assesses the level of risk of various economic activities for possible exploitation for money laundering and terrorist financing purposes, and

The [Mutual Evaluation Report \(MER\)](#) of Ireland by the Financial Action Task Force which analysed the strengths and weaknesses of Ireland's overall AML/CFT framework.

These reports conclude there may be some resourcing and intelligence gaps in relation to aspects of AML/CFT offences and some predicate offences.

The Review Group also **recommends the following additional measures to enhance multi-agency co-operation and information-sharing more generally:**

- The existing arrangements whereby Garda members are seconded to the ODCE and CCPC should be reciprocated in bilateral protocols to enable experts from those organisations to be seconded to GNECB, including short-term secondments to participate in complex and large-scale investigations elements of which include

suspected offences against company law, tax law or competition law. Two-way protocols for secondments between GNECB and other relevant agencies should also be explored on the same basis.

- Priority should be given to drafting Memoranda of Understanding (MOUs) or protocols that refer explicitly to information sharing and joint inspections.

4.3 International co-operation between relevant agencies

There exists a range of legal instruments to assist the acquisition of evidence from other jurisdictions where so required for an investigation or prosecution. These instruments include in particular the 2000 EU Convention on Mutual Legal Assistance (MLA), the 1959 Council of Europe Convention on Mutual Assistance and its protocols, and the 2003 EU Framework Decision on the freezing of evidence. While Ireland has not formally ratified the MLA convention, it is referenced in the Criminal Justice (Mutual Assistance) Act 2008 and very few EU jurisdictions refuse requests on that basis. In any case, the 1959 Convention usually provides an adequate alternative where required. However, implementing these requests, even at an EU level, is a slow and often complex process.

In the course of investigations, An Garda Síochána may need to seek advice from Eurojust when requiring further information (or evidence) from abroad. As previously outlined, Eurojust, can, on occasions, make the MLA process more expeditious and effective. Discussions between the respective national desks can, quite quickly, clarify misconceptions

Within an EU context, there are other remedies, in particular enquiries directed through the Europol national liaison bureau, using secure communication links, within the legal framework of Framework Directive 960/2006 (the ‘Swedish initiative’ on the exchange of information between investigative authorities) as endorsed by section 9 of the 2008 Act.

There is an argument that the new process under the European Investigation Order Directive (EIO)¹⁰⁷ is quicker and more effective as the process and form itself is standardised and, because the order is made in the requesting state, mutual recognition is a simple process. The EIO replaces letters of request for investigative measures and also provides for mutual recognition of judicial decisions between participating member states.¹⁰⁸ Ireland and Denmark are the only EU member states not to be part of the EIO framework, but the question of opting in is under consideration. An inter-departmental working group set up to consider the question of Ireland opting in to the EIO, has determined that there are no legal

¹⁰⁷ Directive 2014/41/EU is a core instrument in judicial cooperation in the European Union.

¹⁰⁸ ‘European Investigation Order’, *Eurojust*, <http://www.eurojust.europa.eu/Practitioners/operational/EIO/Pages/EIO.aspx>.

or constitutional obstacles to doing so. However, the working group is finalising its work on the EIO and no final recommendations have yet been made.

When dealing with fraud cases the question of freezing assets held abroad (in contemplation of a potential confiscation order) may also fall to be considered. While a wide range of both EU and international instruments can be used for this purpose, including the Vienna, New York and Strasbourg Conventions,¹⁰⁹ effecting such processes across borders is highly complex. However, CARIN (the international asset recovery network), Eurojust and the EU's Asset Recovery Offices can all provide practical assistance.

There are also arrangements to facilitate international co-operation with third countries where Eurojust or Europol have entered into strategic or operational co-operation agreements with such a third country, or with the aid of contact points put in place by either agency. (However, difficulties can be exacerbated where translation is required.) While Interpol can also assist, this is purely limited to the provision of information, rather than evidence.

The Central Bank has extensive engagement with other national competent authorities both at EU and on a global level. The Central Bank's counterparts in other jurisdictions tend similarly to be financial services regulators that would not generally, as their primary focus, lead the investigation or prosecution of fraud and corruption.

The Central Bank's enforcement function is that of a financial services regulator and as such, its engagement with foreign counterparts are typically, in relation to the fitness and probity of individuals or regulatory investigations.

To the extent that the Central Bank needs to formally engage with or requires assistance from other EU regulators, it would typically rely upon relevant provisions in various EU Directives for the co-operation and exchange of information between regulators (e.g. under CRD IV, Solvency II or MiFID II etc.). Beyond the EU, the Central Bank is a signatory to various international Memoranda of Understanding, which include the facility to co-operate and exchange information in a structured manner and with relevant protections (e.g. IOSCO MMOU and IAIS MMOU).

The Revenue Commissioners engage with the EU and OECD on direct taxation including transfer pricing-related, case-specific, mutual agreement procedures (MAP) and advance pricing agreement (APA) negotiations with other tax authorities. The Revenue Commissioner is also responsible for monitoring and updating Ireland's tax treaty network.

The Revenue Commissioners have extensive contacts with the Revenue administrations in other jurisdictions with regard to the anti-fraud remit of its work. This encompasses

¹⁰⁹ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, Council of Europe, European Treaty Series No. 141 (Strasbourg, 8 November 1990).

cooperation on particular operations and cases and intelligence and information sharing. Sharing of knowledge and experience specifically relevant to fiscal fraud occurs on a continual basis.

In addition to the cooperation with its counterparts in other jurisdictions, the Revenue Commissioners have well-developed and effective contacts with the European Anti-Fraud Office and other international bodies including Europol and the World Customs Organisation and that, from its own perspective, it does not believe that there are gaps in this area.

The Revenue Commissioners use Mutual Assistance and Mutual Legal Assistance procedures and its experience is that, in some instances it can take quite a long time for responses to be received.

The GNECB also holds a number of international briefs liaising closely with law enforcement agencies throughout the world including Interpol and Europol as part of an international prevention, disruption and investigative response to serious organised economic crime. GNECB officers also work closely with a number of international oversight bodies in their capacity as members, or peer evaluators of these organisations which include the Financial Action Task Force (FATF), The EGMONT Group of Financial Intelligence Units, The OECD Working Group on Bribery in International Business Transactions and the United Nations Convention Against Corruption (UNCAC).

The Financial Intelligence Unit (FIU) of the GNECB is an active participant in the AML/CFT Steering Committee (AMLSC) which was established to facilitate the collaboration and coordination between national competent authorities, government departments and law enforcement authorities, to ensure the effective combating of money laundering and terrorist financing.

The Payment Crime and Counterfeit Currency Unit (PCCCU) is the unit within the GNECB with the greatest responsibility for Cyber Enabled fraud which is one of the most common types of Cyber Crime.

With regard to the competition remit of its work, interactions between the CCPC and the European Commission (DG Competition) are well established under the auspice of the European Competition Network (ECN), which has existed since the large reform of EU competition law in 2003. . This enables co-operation on cases and on approaches to new and emerging issues such as screening for bid riggings in public procurements. The International Competition Network provides a forum for working towards a more widely harmonised approach. In the Irish context, this enables learning from the experience of many more criminal enforcement regimes in common law countries outside the EU. The network provides the opportunity for knowledge exchange in areas needing improvement or where issues not previously raised have begun to gain traction in the Courts.

The European Commission does not have an enforcement role in the consumer protection remit of the CCPC's work (in contrast to competition). Only Member State consumer protection authorities can enforce consumer protection law. However, pursuant to the Consumer Protection Cooperation Regulation (CPC) (Regulation EC 2006/2004) the European Commission coordinates the cooperation of Member State consumer protection authorities, including joint actions, where the enforcement investigation is coordinated by the European Commission but the enforcement action is undertaken by Member State authorities.

A new CPC Regulation (Regulation EU 2017/2394) will be applicable as on 17 January 2020 and it will put in place stronger coordinated mechanisms to investigate and tackle widespread consumer protection infringements... This Regulation is also an attempt to address the shortcomings that were highlighted by the emissions scandal and concerns around social media companies. The Regulation addresses the need to better enforce EU Consumer law due to failings highlighted by the emissions or diesel gate scandal¹¹⁰. The European Parliament introduced the regulation to enhance coordinated measures by Member States to tackle the legacy of highly polluting diesel vehicles by reducing the emissions they produce. It takes account of the potential detriment arising from cross border e-commerce and will ensure that consumer protection agencies have a minimum set of powers as well as stronger co-ordination mechanisms. On a practical level with a lot of digital firms set up in Ireland, it will likely lead to additional requests from consumer protection agencies in the rest of the EU to the CCPC.

The CCPC has contacts with its counterparts in other Member State consumer protection agencies through the Consumer Protection Cooperation Network. Internationally, the CCPC regularly attends and contributes to the International Consumer Protection and Enforcement Network (ICPEN) – an organisation composed of consumer protection authorities from over 60 countries.

While the systems at present with the UK as part of the EU are well established, there is concern about arrangements post Brexit as many markets (both input markets and final goods and services markets) have operated effectively as combined Ireland-UK markets. It is clear that in the longer run, new systems will have to be put in place on the basis of whatever arrangement emerges. However, in the interim, co-operation has the potential to practically cease in all areas including in the areas of competition, consumer protection and market surveillance.

¹¹⁰ European Court of Auditors, 'The EU's response to the "dieselgate" scandal', Briefing Paper (Luxembourg: Publications Office of the European Union, 2019), https://www.eca.europa.eu/lists/ecadocuments/brp_vehicle_emissions/brp_vehicle_emissions_en.pdf.

The Review Group notes the establishment of a Joint Agency Task Force (JATF) as part of an agreement entered into by the Irish and British Governments and the Northern Ireland Executive in November 2015.¹¹¹ The Joint Agency Task Force is led by senior officers from An Garda Síochána, the Police Service of Northern Ireland (PSNI), the Revenue Commissioners and Her Majesty's Revenue and Customs (HMRC). A number of other relevant bodies including the National Crime Agency and the Criminal Assets Bureau (CAB) are also involved in operational activity where appropriate. The objective of the task force is to build on existing law enforcement frameworks and to increase the collective effectiveness of operational law enforcement actions. The task force has made strong progress in tackling cross border criminal activity across a range of crime areas. These include traditional smuggling activities, organized burglary, rural and drug related crime. The JATF complements the on-going formal and informal co-operation between An Garda Síochána and the PSNI and is an example of extensive North-South co-operation to tackle crime on both sides of the Irish border. The multi-agency structure of the JATF has contributed significantly to its success. However, the visibility of the work of the JATF has been adversely impacted by the absence of a Government in Stormont.

An Garda Síochána should take further steps towards further participation in Joint Investigative Teams (as provided for under the 2000 Convention on Mutual legal Assistance) now that the Criminal Justice (International Cooperation) Act 2019 has amended a previous legislative error which had inadvertently prevented An Garda Síochána from legally participating in teams.

The Review Group noted that, while international co-operation arrangements are largely quite satisfactory, it can take a very long time – sometimes years – to receive responses to evidential requests made under the EU Mutual Legal Assistance (MLA) Convention. This can impede the progress of investigations into the many serious economic crime cases that have a cross-border dimension.

While Ireland is the only EU Member State (other than Denmark) not to be part of the European Investigation Order (EIO) framework, the Review Group understands that the possibility of opting into the Directive has been under consideration for a number of years. While appreciating that it is a complex area with broader implications for the operation of Ireland's legal system, the Review Group recommends expediting consideration of an Irish opt-in to the EIO Directive.

¹¹¹ 'A Fresh Start, The Stormont Agreement and Implementation Plan' is an agreement between the Governments of Ireland, the British Government and the Northern Ireland Executive to consolidate the peace, secure stability, enable progress and offer hope to border communities. The agreement enhances efforts to tackle organised and cross jurisdictional crime.

4.4 Domestic and international monitoring arrangements

The EU monitors performance of Member States in the fight against corruption. It has an anti-corruption experience-sharing programme and periodically organises workshops for Member States. The EU has developed a European corruption observatory and an anti-corruption toolkit and toolbox of public administration that can be used by Member States.

All Member States (including Ireland) have a designated national contact point to facilitate information sharing on anti-corruption policy. Together with the Anti-Corruption Experience Sharing programme launched by the Commission in 2015, countries have been enabled to better implement laws and policies against corruption.

In addition to the wide range of EU policies and initiatives, Ireland is party to a number of anti-corruption international instruments monitored by international organisations.

- The Council of Europe's Group of States against Corruption (GRECO)
- The Organisation for Economic Co-operation and Development (OECD) which monitors the Convention on Combating Bribery of foreign public officials in International Business Transactions
- The United Nations Convention against Corruption (UNCAC) which is monitored by the United Nations Office on Drugs and Crime (UNODC)

As a party to these international instruments, Ireland is subject to periodic peer-review evaluations. It is notable that there are many areas of overlap and crossover across the international instruments.

4.4.1 The Group of States Against Corruption (GRECO)

The Council of Europe's Group of States against Corruption (GRECO) objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, with a view to prompting the necessary legislative, institutional and practical reforms. While the Department of Justice and Equality has lead policy responsibility in relation to corruption, this is a national evaluation process and many other public sector agencies and bodies have roles and responsibilities in this area.

Ireland has been a member of GRECO since 1999 and undergone four phases of evaluation to date. Several of the issues identified have been addressed through the Criminal Justice (Corruption Offences) Act 2018. The details of GRECO findings are to be located in the appendices to this Report.

The Fourth Evaluation Round Report on Ireland was adopted by GRECO in October 2014. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".

GRECO adopted a compliance report in March 2017 which concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner three recommendations (ii, iv and xi) of eleven recommendations contained in the Fourth Evaluation Round Report. GRECO concluded that the very low level of compliance with the recommendations was 'globally unsatisfactory' within the meaning of the Rules of Procedure.

GRECO invited Ireland to report again on the outstanding recommendations by 30 September 2019. Significant progress has been made on the outstanding recommendations details of which can be found in Appendix D of this Report.

An update on the implementation of these recommendations was recently provided by Ireland and has resulted in an updated draft compliance report¹¹² being adopted at a GRECO's plenary meeting in September 2020.

Two further recommendations, namely (v) and (vi) are now considered by GRECO to be implemented, on the basis that the Judicial Council has been established and begun its work and that training on ethics is now being provided by the Standards in Public Office Commission to parliamentarians. However, recommendations (i) and (iii) have been downgraded from part implemented to not implemented due to the lack of progress on the revised ethics legislation. Ireland will no longer be ranked 'globally unsatisfactory', though there are still six recommendations not implemented. Ireland has been requested to provide a further report on the outstanding recommendations by 30 September 2021.

The Fifth GRECO Evaluation Round process commenced in 2017 and deals with Preventing Corruption and Promoting Integrity in Central Government at the top executive level and in the Law Enforcement Agencies. In the case of Ireland, the law enforcement agency in scope for review is An Garda Síochána. The evaluation process involves the completion of an extensive self-assessment questionnaire which was returned to the GRECO Secretariat in January this year. The evaluation process will also include an on-site visit by evaluators to Ireland in November postponed from April due to COVID-19. GRECO's report on Ireland will be published a number of months thereafter. A compliance group comprising of officials from a number of government departments and agencies, including D/Taoiseach, DPER, An Garda Síochána, GSOC, Policing Authority, SIPO and the C&AG has been established by the Department of Justice and Equality to oversee the completion of the fifth evaluation round. The site visit will also include a meeting with civil society and media representatives.

¹¹² GRECO Draft Second Compliance Report, Ireland, Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors.

4.4.2 The Organisation for Economic Co-operation and Development (OECD)

Regarding the OECD, three phases of review have taken place over more than a decade with various sub-phases. Ireland's phase three report was adopted in December 2013 with a number of recommendations made by the OECD Working Group on Bribery contained in that report. The Criminal Justice (Corruption Offences) Act 2018 seeks to address the recommendations¹¹³ contained in the OECD Phase three evaluation report. The OECD has only recently completed a further evaluation (Phase 1Bis) of Ireland in respect of the Criminal Justice (Corruption Offences) Act 2018. The purpose of this evaluation was to assess whether the new Act adequately addresses the obligations under the Convention and deals with a variety of gaps and other legal issues that had previously been identified in earlier reviews.

The OECD Phase 1bis report acknowledges that the Criminal Justice (Corruption Offences) Act 2018 represents a significant milestone in the fight against bribery and other forms of corruption. As already noted in this Review, the report states that the new legislation fully implements the OECD recommendation to harmonise Ireland's bribery offences¹¹⁴.

While acknowledging the progress made by the new legislation, OECD states that confiscation continues to be discretionary under the new Act. In further criticism of the confiscation regime under the 2018 Act, the OECD states that where a corporate body is convicted of an offence under section 18(1) of the Act, no provision has been made for the confiscation of the bribe, property or pecuniary advantage obtained. The OECD contends that the provisions on confiscation in section 17(3) (a) and (b) for summary convictions and indictable offences do not apply to corporate bodies and therefore, falls short of meeting the obligations under Article 3 of the Bribery Convention.

The Department of Justice and Equality / Hamilton Review Group is satisfied that the provisions in relation to prosecutions of bodies corporate are sufficiently strong to enable the confiscation of the bribe, property or pecuniary advantage given or received. For a successful prosecution of a body corporate under section 18(1), it must be proven that an underlying offence under the Act was committed by an officer or employee of the body corporate. The Act provides (sections 20 and 21) that cash or other property that is suspected to be a gift or consideration used or intended to be used for the purposes of committing the underlying offence may be seized and forfeited. Furthermore, if the underlying offence is successfully prosecuted, there is provision to forfeit the cash, land or other advantage under section 17 (3). The OECD has indicated that it will review Ireland's confiscation regime with respect to corporate bodies in the phase 4 evaluation scheduled for 2021.

¹¹³ 'Ireland – OECD Anti-Bribery Convention', OECD, <https://www.oecd.org/ireland/ireland-oecdanti-briberyconvention.htm>.

¹¹⁴ OECD WGB, *Phase 1bis Report: Ireland*.

Concerns about the dual criminality requirements contained in the provisions of the Criminal Justice (Corruption Offences) Act 2018 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 were raised during the consultation process of the Review Group.

The OECD gave comprehensive consideration to dual criminality provisions in both pieces of legislation in its Phase 1bis evaluation of Ireland. With regard to the compliance of the relevant provisions of both Acts with the Bribery Convention, the OECD stated that the provisions of the Criminal Justice (Corruption Offences) Act 2018 appear to meet the requirements of the Bribery Convention. Ireland's dual criminality requirements were stated to appear to be in conformity with the Bribery Convention following consideration of relevant case law relating to dual criminality in this jurisdiction and the guidance provided by the OECD good practice guidance.¹¹⁵

The OECD's findings also acknowledged the progress made, but has stated that a number of significant issues remain outstanding and will be considered under the phase 4 evaluation process scheduled to take place in 2021. A more detailed consideration of the Phase 1bis evaluation report is contained in Appendix D of this Report.

4.4.3 UN Convention Against Corruption (UNCAC)

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument.

The Convention covers five main areas:

- Preventive measures.
- Criminalization and law enforcement.
- International cooperation.
- Asset recovery.
- Technical assistance and information exchange.

States Parties to the Convention must:

- undertake effective measures to prevent corruption (chapter II, articles 7 to 14)

¹¹⁵ OECD, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (26 November 2009, amended on 18 February 2010 C(2009)159/Rev1/FINAL, C(2010) 19, Annex I: Good Practice guidance on implementing specific articles of the Convention on combatting bribery of foreign officials in international business transactions, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

- criminalize corrupt acts and ensure effective law enforcement (chapter III, articles 15 to 42)
- cooperate with other States parties in enforcing anti-corruption laws (chapter IV, articles 43 to 50)
- assist one another in the return of assets obtained through corruption (chapter V, articles 51 to 59).

Moreover, in addition to calling for effective action in each of these specific areas, article 5 imposes the more general requirements that each State Party:

- a) develop and implement or maintain effective, coordinated anti-corruption policies;
- b) establish and promote effective practices aimed at the prevention of corruption; and
- c) periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

Under article 6, each State Party is required to ensure the existence of a body or bodies, as appropriate, that prevent corruption by implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies. Thus, one of the most important obligations of States Parties under the Convention, and to which they are to be held accountable under the Mechanism for the Review of Implementation of the Convention is ensuring that their anti-corruption policies are effective, coordinated and regularly assessed.

The implementation of the Convention by State Parties is evaluated through a peer-review process, also involving the UN Secretariat. In 2018 Ireland underwent the second cycle evaluation of its compliance with the UNCAC. Chapters II (Preventive Measures) and V (Asset Recovery) were reviewed. The UNODC Secretariat has recently published its Executive Summary on Ireland's implementation of the Convention in relation to the recent review and a full Country report will soon follow. Ireland was subject to the first cycle of this review process in 2015 on its implementation of Chapters III (Criminalization and law enforcement) and IV (International Cooperation) of the Convention.

A copy of the UNCAC Convention, the Executive Summary (2019) relating to the review of Ireland as regards chapters II and V and the full Country report (2015) in relation to chapters III and IV is annexed to the report. UNCAC has set out what it considered to be successes and good practices in Ireland, as well as challenges in relation to the implementation of certain parts of the Convention. Appendix D contains the summary of 'successes and good practices' identified in the UNCAC reviews and the challenges in implementation.

4.4.4 The Financial Action Task Force (FATF)

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.

Ireland has been a member of the FATF since 1991 and has undergone several rounds of evaluations.

In common with its EU partners, Ireland has implemented the recommendations of the FATF largely by way of transposition of EU Directives which mirror the practical aspects of the FATF Recommendations.

FATF organises peer reviews of its member countries' AML/CFT systems. As part of this process, it conducts an in-depth examination of legal, regulatory and operational measures in place while also reviewing the effectiveness of the country's AML/CFT framework. The FATF's follow-up report on the most recent assessment of Ireland's AML/CFT system was published in November 2019 and acknowledged that Ireland has made progress in strengthening measures for combatting money laundering and terrorist financing since the last assessment of its framework. FATF had acknowledged in its previous assessment, that Ireland has a generally sound legislative and institutional AML/CFT framework and a good understanding of its overall money laundering and terrorist financing (ML/TF) risks. In particular, in relation to domestic crime, and is substantially effective in supervising its relevant sectors for compliance with their AML/CFT obligations. It was also acknowledged that inter-agency co-ordination and co-operation is a strong point of the Irish AML/CFT system which has been fruitful in understanding the ML/TF risks. Overall the report put Ireland on a par with its peers within the international system, with most findings as good as or better than our peers. However, the FATF also found that Ireland could do more in the area of securing convictions and in the confiscation of proceeds of crime.

It is noted that since the FATF carried out its review of Ireland, there have been prosecutions for terrorist financing and one successful conviction. Furthermore, research has been commissioned by the Irish Government to facilitate the collection and collation of data in order to accurately reflect the proceeds of crime confiscated in the State. Further detail on the FATF Recommendations and the progress made can be found in Appendix D.

4.5 Conclusion

The significance of the role of the various international organisations who play a monitoring role on State signatories to the various anti-corruption instruments cannot be over stated. As an EU member state, Ireland has benefitted immensely from the wide range of EU policies and initiatives designed to combat economic crime and corruption. The many relevant EU Directives transposed into national law have helped to shape and strengthen the criminal justice structures for combatting economic crime and corruption in this State. Beyond EU driven legislative and policy measures, GRECO, FATF, the OECD, UNCAC and Transparency International(T.I), a global civil society organisation (CSO) leading the fight against corruption among CSOs, have through their various monitoring mechanisms, ensured that our systems and procedures are up to international standards. These international monitoring bodies have taken this State to task where they consider it to have fallen short of international standards. Constructive engagements between Ireland and the various international bodies have contributed in the significant gains made in this State in the area of combatting corporate, economic and regulatory crime.¹¹⁶

¹¹⁶ In August 2017, Ireland was one of three jurisdictions to be awarded the highest international rating by the OECD's Global Forum on Transparency and Exchange of Information following a peer reviewed examination of the State's legal and regulatory framework.

Chapter 5. Should there be a single corporate crime agency?

5.1 The concept of a single corporate crime agency

From time to time the idea of a single agency to investigate and prosecute all white-collar crime, economic crime or corporate crime has been suggested. Sometimes such a single body is envisaged as having wider powers than just those of investigation and prosecution, including regulatory powers or general powers to coordinate anti-corruption activities generally. The report of the Mahon Tribunal mentioned the idea of putting in place systems which would greatly reduce both the incentive and opportunity to engage in corrupt activity but did not discuss it in any detail. Some support for the idea is to be found in a submission made to the Review Group by Transparency International. The idea has also been put forward from time to time by some of the political parties.

5.2 The Law Reform Commission's recommendations

The Law Reform Commission (LRC) in its report on 'Regulatory Powers And Corporate Offences' recommended the establishment of an independent multi-disciplinary Corporate Crime Agency, similar, but not identical to the Criminal Assets Bureau (CAB), with a statutory mandate to investigate corporate criminal offences. The centrepiece to the recommendation of the Commission to set up a Corporate Crime Agency is the need to enhance the State's ability to undertake modern, complex corporate law enforcement. The LRC's recommendation for a Corporate Crime Agency is also premised on what it states is a need to address in a systematic way, both regulatory enforcement and supervision in Ireland. The LRC report identifies the need for a properly resourced multidisciplinary body to deal with corporate offending.

The report then proposes the establishment of a multi-disciplinary Corporate Crime Agency and a dedicated Prosecution Unit preferably located within the ODPP. The report suggests the secondment of "experienced members of An Garda Síochána" to this new Corporate Crime Agency.

The LRC proposes that the Corporate Crime Agency be established with its own mandate to investigate corporate crime independent of referrals from regulators as well as investigating corporate offending that comes to the attention of regulators such as the ODCE, the Central Bank or the Competition and Consumer Protection Commission (CCPC).

5.3 What is the problem to be solved?

At first glance the idea of a single agency appears to be an attractive one. A key part of the argument in support of a single agency is the multiplicity of existing agencies which is argued to be over-complicated and inefficient. It is therefore important to start by considering the existing structures and whether they are fit for purpose. It is necessary, in other words, to identify where the problems lie in order to find solutions rather than to start with a solution and then find the problems which it is supposed to solve.

The need for a Corporate Crime Agency must therefore be assessed by looking at how corporate crime is already dealt with in Ireland. Some observers of the Irish system of dealing with corruption offences and with economic crime generally have commented on the large number of agencies involved which inevitably leads to a consideration of whether efficiencies could be made by attempting to combine all or some of those agencies into a single body.

The LRC has expressed concerns about overlaps in areas of responsibilities among the various relevant agencies which cause inefficiencies, and gaps that could lead to some corporate wrongdoing going un-noticed.

Chapter II of this Report has discussed in some detail the existing structures for the investigation and prosecution of economic crime. As it stands economic crime may currently be investigated by An Garda Síochána, and other regulators/enforcement bodies such as the Central Bank, the ODCE, SIPO, the Revenue Commissioners and the CCPC. Within the Garda organisation, the Garda National Economic Crime Bureau (GNECB) has the responsibility for the investigation of large scale economic crimes. The Director of Public Prosecutions is responsible for the prosecution of all indictable crime in the State. Summary offences may be prosecuted by An Garda Síochána, subject to a power of the ODPP to give either general or specific directions, as well as by the regulating authorities within their own particular areas of responsibility.

The Review Group is not convinced that the existing structures are over-complicated or unfit for purpose. The Review Group is however, convinced that the single overwhelming weakness in the existing system is not a flaw in its structural organisation but rather is the serious under-resourcing of some of the key agencies, in particular of the GNECB and the prosecution services.

Notwithstanding the particularly complex nature of the cases which fall within the remit of the Special Financial Crime Unit, they are small in number and the resourcing of this Unit is considered sufficient given the number of cases involved. However, to support more generally the prosecution of cases involving corruption or economic crime, and which are not within the remit of the Special Financial Crime Unit, resourcing – in particular, supports for prosecutors – needs to be improved.

Furthermore, the Review Group considers that while in general cooperation between the different agencies is quite good, there is a need for more formalised structures. This need lies behind the Review Group's recommendations to establish an Advisory Council against Economic Crime and Corruption as well as a Forum of senior representatives from the relevant law enforcement bodies. It also underlies the recommendation for increased resourcing to the Office of the DPP to enable additional access to early legal advice to investigators in economic crime cases as appropriate.

There is a further significant disadvantage to the idea of a Corporate Crime Agency which is not discussed at all in the Law Reform Commission's report. While the single agency would draw together investigators and prosecutors it would drive a wedge between economic crime investigators in the new agency and the rest of the State's investigators in An Garda Síochána. The separation of the investigation or prosecution of corruption cases or white-collar crime from the investigation and prosecution of crime generally would bring significant disadvantages. Financial crime does not necessarily exist in isolation from other types of criminality. This is especially true in the case of internationally-organised crime. Corruption and white-collar crime are frequently engaged in by organised criminal gangs who may also be engaged in serious acts of violence, including murder, drug offences, people trafficking and terrorism. Indeed one of the most serious financial crimes is the financing of terrorism. It would make no sense for the financing of terrorism to be investigated by a different agency than that which investigated terrorism itself. Nor does it seem sensible, or even practical, that money-laundering should be investigated and prosecuted by different agencies than those dealing with the offences which were the source of the wealth which is being laundered.

The attempted separation of the investigation of White-collar crime from other forms of criminality would inevitably lead to questions about who should investigate in cases where there were mixed forms of criminality. Alternatively, it could lead to a situation where different investigators were investigating the same series of events. The creation of a new body of investigation would also require consideration of what powers should be conferred on the new body, whether they should be identical or different from those which are present possessed by members of An Garda Síochána.

It would be undesirable to have different investigative agencies involved in an investigation which should be unified. Since the creation of the State, Ireland has had a single body responsible for the investigation of all crime other than certain relatively minor regulatory offences usually of a specialised nature. Such a unified system of criminal investigation has significant advantages over a system where crime is investigated by a number of different agencies. Much could be lost and it is difficult to see what would be gained by the large change in the system which a move away from the idea of a single investigative agency would represent.

There is also a lack of clarity on how the proposed Corporate Crime Agency would interact with other regulators and enforcement bodies most of which have powers of summary criminal prosecution, associated investigative powers and the right to make referrals to the ODPP.

5.4 Other issues relating to the idea of a single Corporate Crime Agency

In considering the proposal for a Corporate Crime Agency it is necessary also to consider a number of other questions.

Firstly, what aspect of anti-corruption activities or economic crime generally would the single agency cover? There are a number of options. A single anti-corruption agency might cover investigation, prosecution and other measures of anti-corruption control such as the collection and analysis of asset declarations and public education in anti-corruption matters. It might also have responsibility for the regulation of bodies where corruption is likely to present a risk, for example, the regulation of activities such as public procurement and the issuing of government contracts, electoral fraud, the enforcement of competition policy as well as the investigation and prosecution of offences such as price-fixing, bid-rigging and other unlawful activity.

An agency which covers all matters related to fraud, corruption or economic crime generally, and not merely investigation and prosecution of crime, would have to cover a large and disparate area of public life. It would require a great variety of specialists from different disciplines. In practice, the different sections and departments of such an organisation would have to be organized and act independently of each other. The management of such a large organisation, which it would inevitably have to be, would be extremely difficult. There is no guarantee that such a project would succeed and a high risk that it would not. It is therefore not a project which could be recommended unless all the existing agencies were seriously dysfunctional which the Review Group does not consider to be the case. The Review Group therefore does not recommend such an approach.

A less radical and complex option would be the creation of a specialised anti-corruption agency or agencies dealing with the investigation and prosecution of corruption offences or of White-collar crime generally. This option has been adopted in many countries with mixed results. In many of the countries which have taken this route, for example Romania, Bulgaria and Ukraine this option was adopted because the existing investigative and prosecution bodies were themselves affected by corruption and the creation of relatively small new agencies which would be free of corruption was seen as a more practical solution than the attempt to cleanse the existing large agencies of investigation and prosecution. Hong Kong's single anti-corruption agency, the Independent Commission Against Corruption (ICAC) was established in response to pervasive and deeply entrenched corruption in that jurisdiction in

the 1960s and 1970s. Queensland, Australia's Crime and Corruption Commission (CCC) was also established following a high level inquiry into possible illegal activities and associated police misconduct in that jurisdiction. There were concerns about pervasive corruption in the investigative bodies in both Hong Kong and Queensland at the time of the establishment of ICAC and the CCC in the respective jurisdictions. The Review Group does not consider such an approach necessary in Irish conditions.

In Ireland, cases where members or employees of the bodies responsible for criminal investigation or prosecution have been found guilty of corruption or economic crime have been very infrequent. That is not to say that this is not a risk to be guarded against and vigilance to protect against such risks is always required. But the creation of separate new agencies to investigate and to prosecute anti-corruption cases is not warranted in Ireland at present as a measure to prevent such a risk becoming a reality. The Review Group notes that the present Garda Commissioner has established an internal Garda mechanism to investigate allegations of corruption within An Garda Síochána which appears to represent a practical approach. If a specialised stand-alone agency or agencies were to be established in Ireland to investigate and prosecute corruption cases it would have to be justified for other reasons.

5.4.1 The scope of a specialised agency or agencies to investigate and prosecute corporate crime

Assuming that there are other reasons why it might be thought desirable to establish a separate agency or agencies to deal with the investigation and prosecution of corporate crime, what subject matter would be covered by such an agency? Would it deal only with questions concerned with corruption, or would it have a wider remit and deal with economic crime generally, including various forms of fraud not containing a corruptive element.

An obvious difficulty that arises is the fact that there is no definition of the term 'corporate crime' and the term often appears to be used interchangeably with the phrase 'White-collar crime'. Does corporate crime relate only to crimes committed by companies? Does it refer only to criminal infringements of company law? Would one exclude crimes other than economic crimes committed by or through the agency of a corporate body? Would a company engaged in criminality such as fraud affecting the European Union's financial interests or company engaged in market abuse or committing the offence of corruption in another jurisdiction be regarded as committing a 'company offence'? What if an individual used a company to commit an offence without the knowledge or approval of the company's governance system?

Fraud and corruption can be perpetrated by an individual without the involvement of a corporate entity. On the other side of the coin, corporate crime or corporate offending on its broadest interpretation could encompass any criminality in which a company or corporate

entity is involved, and which might have nothing to do with fraud, corruption or any economic crime.

If a Corporate Crime Agency were to be established, this lack of definition would need to be addressed and the types of cases that such an agency would take on would need to be defined. In GNECB for example, the Serious Economic Crime Investigation Units investigate all types of cases committed by companies and not merely offences against company law, although the investigations generally centre on individuals rather than the company itself.

Another issue is whether a Corporate Crime Agency should only investigate cases where the suspect is a company or its officers acting on its behalf, or whether it should also investigate cases where the company is the victim of a crime, whether perpetrated from within or outside the company.

Many issues would therefore arise in relation to how these types of cases could be investigated. It is difficult to see any logic or advantage in having an offence carried out by a company investigated by one agency and the same or a similar offence carried out by an individual person investigated by a different agency.

None of this is to say that these questions could not be answered. The onus, however, is on anyone who advocates such a solution to say what model they believe should be adopted and how such a solution would create a more workable solution than the arrangements which already exist.

The creation of a separate Corporate Crime Agency would not reduce the total number of agencies in the State but would create an additional big cases agency. The Review Group has not been convinced that another agency in this field would improve the State's ability to investigate and prosecute such offences. Given that there are already limited resources, competing demands and a difficulty in securing expertise, the creation of an additional agency would only spread those resources even more thinly. The major problems and gaps experienced by the various investigative agencies are caused in the main by inadequate resourcing.

In the Review Group's opinion the establishment of a new Corporate Crime Agency would represent a duplication of efforts and an inefficient use of resources.

In summary, the Review Group considers that the need for a new agency to investigate large-scale and complex economic crime has not been established and that any potential benefits are outweighed by the risks and uncertainties involved. The Group considers that it should instead be possible to meet future demands posed by large-scale, complex economic crime cases by way of other, more suitable measures.

The Review Group considers that the necessary improvements in anti-corruption law enforcement can be achieved by implementing the recommendations in this Report on

enhancing public sector ethics legislation, strengthening SIPO's capacity and independence, and adequately resourcing GNECB and the other offices which have identified needs for additional resources.

The Review Group considers, however, that there is a necessity to confer a high degree of autonomy on both economic crime investigators and prosecutors in particular to guarantee and to ring fence their budgets and the resources allocated to them to ensure that in times of financial stringency they are not stripped of the resources necessary for them to effectively exercise their powers and functions. This was one of the recommendations of the Maguire report in 1992 in relation to the GNECB but unfortunately while the recommendation to establish such a unit was implemented the recommendation to ring fence its budget was not implemented. It is worth noting that one of the stated challenges to Canada's IMETs achieving its goals has been the failure to ring-fence a budget to support its work.

Key recommendations:

The Review Group recommends the development of a multi-annual National Strategy to Combat Economic Crime and Corruption and an accompanying Action Plan. Without purporting to prescribe their content, the Group considers that such a Strategy and Action Plan could be used to support many of the recommendations contained in this Report in relation to multi-agency collaboration, information-sharing, resourcing, training, awareness-raising, legislative reform and so on.

5.4.2 Advisory Council

To support the development and implementation of a National Strategy and action plan, a structure needs to be put in place at national level to provide the appropriate oversight guidance and support.

Key recommendations:

The Review Group recommends that the Government establish, on a permanent basis:

- A cross-sectoral, partnership-based Advisory Council to advise the Government on strategic and policy responses to all forms of economic crime and corruption; and
- The **Advisory Council** to co-ordinate and lead the delivery of a Whole-of-Government approach to economic crime and corruption and to serve as a 'centre of excellence' for research and analysis, awareness-raising, training and other best practice issues.

The Review Group strongly recommends that, to help ensure and sustain the necessary Whole-of-Government focus, the Advisory Council be established at the centre of Government.

With respect to the structure of the Advisory Council, the Review Group considers that this should comprise a representative of each of the relevant Government Departments, State regulators and law enforcement agencies along with a number of representatives from the industry, the academia and civil society. The Advisory Council's primary functions would include:

- Advising the Government on emerging trends, key domestic/international developments and issues of systemic importance;
- Carrying out periodic evaluations of the National Strategy and Action Plan, and recommending amendments or additions to Government as required;
- Promoting, and advising stakeholders on, enhanced co-operation and information-sharing within and between the public and private sectors.
- Provide secretarial services to the forum of senior representatives from the relevant bodies.

The Review Group also considers that the **Advisory Council** should be provided with a ring-fenced budget and dedicated full-time staff (ideally including seconded experts from a number of key Departments and agencies). A number of functions have been identified by the Review Group as potentially appropriate for such an Office.

- Developing the National Strategy and Action Plan, in conjunction with the relevant Government Departments and State agencies, and in consultation with the Council and other stakeholders;
- Co-ordinating, monitoring and reporting regularly to Government on the implementation of the Strategy and Action Plan;
- Leading and co-ordinating Ireland's reporting obligations under the various international anti-corruption evaluation mechanisms, and representing Ireland at related international conferences and working group meetings;
- Advising organisations on the conduct of risk assessments to identify and mitigate internal corruption risks in the public sector;
- Undertaking domestic and international research on economic crime and corruption and reporting to Government with findings and recommendations;

- Gathering and analysing data to build a reliable ongoing picture of the scale, risks and impacts of economic crime and corruption;
- Developing and delivering educational and awareness-raising measures (both sector-specific and for the general public);
- Co-ordinating and organising multi-agency joint training programmes and information seminars, etc.;
- Assessing, in consultation with relevant Departments and agencies, what legislation may be necessary in order to (a) facilitate the optimal exchange of information and intelligence between investigative agencies, both under a Joint Agency Task Force (JATF) model and more generally and to (b) ensure the necessary clarity on the respective roles and powers of agency personnel under a JATF model;
- Co-ordinating the establishment of JATFs as required;
- Examining the feasibility of introducing sectoral fraud databases, which industry bodies could access on a shared basis for the purpose of identifying suspected fraudulent activity in particular sectors of the economy;
- Examining the feasibility of introducing a centralised, anonymised database to identify the scale, cost and trends of fraud nationally, thus helping to inform future policy and resourcing decisions.
- Assessing the feasibility of providing investigatory bodies with statutory powers to intercept telecommunications.

5.4.3 Forum of Senior Representatives

The forum is described as having the following responsibilities:

- To facilitate greater inter-agency co-ordination, collaboration and information sharing.
- To have quarterly meetings to share trends and developments of common concern.
- To share knowledge, ideas and best practice.
- To flag significant, new or upcoming investigations that may require structured bi-agency or multi-agency collaboration.
- To ensure maximum co-ordination of activities between law enforcement bodies.
- To provide where appropriate expert assistance and advice to the Advisory Council.

Chapter 6. Miscellaneous legislative reforms

Note: this chapter is not intended as an exhaustive or definitive consideration of the legislative reforms that could be introduced to enhance the investigation, detection and prosecution of economic crime and corruption. Other than in relation to information-sharing, the terms of reference for the Review did not specifically encompass a wider review of legislative powers, procedures, offences, penalties etc. By necessity, greater focus had to be placed on the core terms of reference. Nonetheless the Review Group has, in the course of its deliberations (and on foot of the public consultation), identified a range of specific legislative reforms that it believes would be helpful. The Group has also identified a number of other legislative issues which, in its view, warrant detailed further analysis by the appropriate authorities.

6.1 Statutory powers and procedures

6.1.1 Criminal Procedure Bill

The Review Group considers that the provisions on pre-trial hearings and other cost saving measures contained in the Criminal Procedure Bill are essential to enhancing the prosecution of complex economic crime and corruption cases. The Group notes the significant delay in the progress made with the Bill since the publication of the General Scheme of the Bill in 2014 and recommends expediting the Bill to facilitate the work of the relevant prosecutorial agencies.

Key recommendation:

The Review Group recommends expediting the publication and enactment of the Criminal Procedure Bill. Among numerous other cost-saving measures, this Bill includes provisions on pre-trial hearings which are vital in ensuring the efficient and timely progress of criminal trials in complex economic crime and corruption cases.

6.1.2 Ethics Legislative Framework

The Review Group considers that the current Ethics legislative framework is too weak and lacks sufficient enforcement provisions and that real powers of sanction, rather than merely of recommendation, are needed. The Group notes that, while the Public Sector Standards Bill 2015 (PSSB) went a considerable way to addressing the shortcomings of the current legislative regime, it lapsed with the dissolution of the Dáil in January 2020. Following the subsequent general election, a new Government was formed in June 2020. The associated Programme for Government published in June 2020 entitled 'Our Shared Future' contained a commitment to 'reform and consolidate the Ethics in Public Office legislation'. In order to progress this commitment, the Minister for Public Expenditure and Reform confirmed that a

new full review of Ireland's current ethics legislation was to commence to inform the drafting of a new consolidated Ethics Bill. Following this review, a proposed new consolidated Ethics Bill will be brought forward for consideration by the Oireachtas. In the interim, the existing ethics framework remains in force.

Key recommendation:

The Review Group recommends that the Government seek to expedite the review and reform of ethics in public office legislation as a matter of urgency, with consideration being given to the need for amendments by the Oireachtas to enhance the independence, capacity and enforcement powers of the Standards in Public Office Commission by providing it with the following:

- The power to initiate investigations into former members of the Oireachtas where a concern of wrongdoing comes to light after the member has left office.

6.1.3 The volume, complexity and electronic nature of evidential material

This Report has already noted the need for the relevant agencies to be provided with ongoing access to state-of-the-art electronic documentary analysis and e-disclosure systems, in view of the highly voluminous and typically electronic nature of evidential material in a typical corporate crime case. Additional measures that could be taken to support this work could also include:

- Introduce a legal presumption in favour of the admissibility of documentary and electronic evidence to simplify the currently overly complex rules required to prove electronic and documentary evidence.
- Give effect to the Law Reform Commission recommendation¹¹⁷ so that where huge numbers of documents are presented in evidence (especially documents generated electronically), a written summary of such documents may be used.

The Group further notes that the largely electronically-based evidential material in complex economic crime cases, particularly where combined with evolving privacy issues, presents a range of other challenges for investigators, including:

- Encryption challenges;
- Issues relating to the jurisdiction within which the data actually resides;

¹¹⁷ Law Reform Commission, *Consolidation and Reform of Aspects of the Law of Evidence*, LRC 117-2016, Rec. 4.103 (Dublin: LRC, 2016).

- The involvement of storage hosts (e.g., Google, Microsoft, Dropbox) and the associated challenges given that these reside in other jurisdictions;
- The limitations of search warrants in the context of production orders, establishing which custodians own which material;
- Issues/risks associated with the use of search terms (by both the investigators and those upon whom production orders have been served).

Privacy issues, and how these interact with the duty to investigate, pose a significant related challenge. In light of recent judgments – and in particular the *CRH* case,¹¹⁸ in which the Supreme Court criticised a particular search by an investigatory body as disproportionate, there is a pressing need for greater clarity on the protection of privacy rights in searches by investigative bodies. There is the need also to establish a process for determining what constitutes irrelevant material in the context of such searches. Technological advances, such as the storage of documents in the cloud, make the case for legislative reform even more compelling.

An in-depth analysis of these highly complex legal issues was beyond the time and resources available to the Group and, as such, it is not in a position to offer specific solutions. However, the codification of An Garda Síochána's powers in relation to search, arrest and detention in line with CoFPI recommendations is of relevance here. The proposal to codify the law recognises the need to modernise search powers to address concerns around claims of legal privilege or the assertion of privacy rights in the context of digital searches as highlighted by the *CRH* case. The Group recommends that the Department of Justice and Equality, in consultation with the Attorney General's Office and other relevant stakeholders, examine what legislative reforms could be undertaken to address these issues to the extent possible. Members of the Review Group have engaged in the consultations leading up to the codification process which provides an opportunity for modernising the legislation governing search warrants with particular reference to material held in the cloud and evolving privacy issues.

The Group additionally **recommends that the Criminal Justice (Corruption Offences) Act 2018 be amended to allow An Garda Síochána to require persons subject to search warrants to provide passwords for electronic devices** when investigating offences under the Act. A commonly-used precedent exists in section 48 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

¹¹⁸ [2017] IESC 34.

The Review Group also noted the difficulty faced by Gardaí in putting vast amounts of evidential material to suspects within the very limited time periods available for questioning under Section 4 of the Criminal Justice Act 1984 (as amended). The Review Group recommends extending the provisions of section 50 of the Criminal Justice Act 2007 (as amended) to all arrestable offences, i.e. any offence that carries a term of imprisonment of five years or more. This will enable a suspect for any such serious offence to be detained – subject to judicial authorisation – for Garda questioning for a maximum of seven days.

6.1.4 Garda interviews

Section 37(5) of the Competition and Consumer Protection Act 2014 provides that authorised CCPC officers may attend and participate, where so requested by An Garda Síochána, in the questioning of suspects arrested and detained under the Criminal Justice Act 1984 on suspicion of having committed competition law offences. Section 906 of the Taxes Consolidation Act 1997 makes equivalent provision in respect of Revenue officers. However, the Review Group understands that Regulation 12 of the Criminal Justice Act 1984 (Treatment of Persons (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (“the *Custody Regulations*”) provides that only Gardaí may participate in the questioning of any suspect arrested and detained. The Group considers that this legislative anomaly should be clarified and if necessary, rectified and further **recommends amending the Regulations to allow An Garda Síochána to engage an expert from any statutorily-mandated regulatory or investigative body, or an independent expert, to participate in interviewing a detained suspect**. The Group believes that such interviews, particularly in the more complex investigations, could be rendered more efficient and effective (without compromising the rights of detained suspects) by allowing the participation of such an external officer or expert where their knowledge or expertise is relevant to the investigation and to the intended line of questioning.

6.1.5 Surveillance powers

The Group also noted the inherently clandestine and often conspiratorial nature of corruption and economic crime, and how this such activities have been made easier to conceal by technological developments. This is frequently counteracted in other jurisdictions by providing investigative bodies with powers of surveillance and of communications interception. In the US, for example, the Attorney’s Office of the Southern District of New York has relied heavily on recordings in insider dealing cases, given that an essential element of the crime of insider dealing is communication. In Iceland, surveillance tools such as wiretaps were successfully used by the Office of the Special Prosecutor in its investigations of bankers suspected to have been culpable for the collapse of its banking industry (40 of whom were prosecuted for crimes committed in the collapse). In the UK, measures such as probes, video surveillance, undercover agents and interceptions of

private communications are used as evidence and sources of intelligence in economic crime investigations, including those into market abuse.

While An Garda Síochána has statutory powers to intercept telecommunications (including the content of phone calls and electronic messages) in certain limited circumstances, in practice it uses them very sparingly and only when investigating serious organised crime or subversive activity. The overall view of the Review Group is that extending interception powers – even with the attendant judicial oversight – to other agencies for the purposes of investigating economic crime and corruption might be widely perceived as posing undue risks to privacy and as an excessive infringement of civil liberties. However, the Group’s view is that it would be balanced and proportionate to extend to other relevant agencies the statutory powers of surveillance that are currently afforded to both An Garda Síochána and the Revenue Commissioners. These powers are set out in the Criminal Justice (Surveillance) Act 2009, which provides a statutory framework for evidence obtained by means of covert surveillance to be used in criminal trials. As defined in the Act, ‘surveillance’ encompasses monitoring, observing, listening to or recording a person or group, or their movements, activities and communications; it does not include the interception of telecommunications. Such surveillance may only be carried out with judicial authorisation and it is also subject to stringent qualifying criteria and a complaints procedure. In introducing any such legislative reforms, consideration should also be given to the extent to which the intelligence or evidence gathered during the course of such surveillance could be shared with other bodies. It is imperative that consideration be given to international best practice before introducing legislation in this regard.

Key recommendation:

The Group recommends amending the Criminal Justice (Surveillance) Act 2009 to extend its surveillance powers to the other bodies that have a statutory remit to investigate economic crime or corruption, such as the ODCE and CCPC.

6.2 Offences and penalties

In addition to other legislative recommendations contained in this Report, the Review Group also proposed that consideration be given to the following legislative changes.

6.2.1 Ethics offences

The Review Group has already noted that the Criminal Justice (Corruption Offences) Act 2018 strengthens the criminal law framework in the area of corruption. It notes also, the proposed review, reform and consolidation of legislation relating to public sector ethics. **The Group recommends that consideration be given to further strengthening the criminal law in the area of public sector ethics**, including the possibility of amending the Ethics

Acts to create offences in such areas as nepotism in the hiring or contracting of elected and appointed public officials, preferential treatment based on a person's identity, and the improper use of influence. However, as previously stated, the Programme for Government contains a commitment to reform and consolidate ethics in public office legislation and any recommendations in this regard, can be taken forward or considered in the context of the proposed reform. Consideration was given to recommending the creation of an offence of failing to comply with the post-employment cooling-off period under the Regulation of Lobbying Act 2015. However, the findings of the second statutory review of the legislation¹¹⁹ which was published in February 2020 did not recommend any amendment to the Regulation of Lobbying Act at this time. On 29 September 2020 in the Dáil, the Taoiseach outlined that the Minister for Public Expenditure and Reform would conduct a review into the Lobbying legislation pertaining to the cooling-off period. On this basis, the Department of Public Expenditure and Reform is currently conducting a review of Section 22 of the Regulation of Lobbying Act 2015 (the relevant section regarding the cooling-off period).

6.2.2 Create offence of *fraud simpliciter*

Section 9 of the Fraud Act 2006¹²⁰ in the United Kingdom extends the offence of fraudulent trading to sole traders and others not covered by the corporate offence. The importance of this is that the offence does not focus on the loss to the victim but focuses more on the purpose or system of the fraud. This is important as in many cases of fraud victims cannot be identified or reside out of the jurisdiction while the methods being used by the fraudster may often be very clear. Situations can also arise where the loss to the individual victim is very small but the number of victims can present difficulties prosecuting effectively. Consideration might usefully be given to extending the provisions similarly in this jurisdiction.

6.2.3 Reckless trading and egregious risk-taking (*LRC report*)

There is no criminal offence for reckless trading in this jurisdiction notwithstanding the far reaching adverse consequences reckless trading can have for the economy and the stability of the financial system. While acknowledging that criminalising risk-taking has the potential to impede commercial activity, the Nyberg report highlighted the damage done by excessive risk-taking leading up to the 2008 financial crisis. Section 610 of the Companies Act 2014 introduced civil liability for company officers who engage in fraudulent or reckless trading. Similar legislative provisions can be found in other jurisdictions for example Section 214 of the Insolvency Act 1986 of the United Kingdom creates liability for wrongful trading while Section 588 of the Corporations Act 2001 of Australia creates civil liability for insolvent trading. Other relevant legislative provisions such as Section 135 Companies Act 1993 of New Zealand make provisions for reckless trading while Sections 22 and 77 of the Companies Act 2008 of South Africa personalise and hold directors personally liable for any

¹¹⁹ Department of Public Expenditure and Reform, *Second Statutory Review of the Regulation of Lobbying Act 2015* (Dublin: DPER, January 2020), <https://www.gov.ie/en/publication/7ef279-second-statutory-review-of-the-regulation-of-lobbying-act-2015/>.

¹²⁰ Section 9, [UK] Fraud Act 2006.

loss incurred through knowingly carrying on the business of the company recklessly or with the intention to defraud creditors and other stakeholders. None of the pieces of legislation cited criminalise reckless trading as opposed to offences equivalent to the fraudulent trading provisions in Ireland and elsewhere. In this regard, fraudulent trading is criminalised under section 722 of the Companies Act 2014 while reckless trading is not..

The members of the Review Group are of the view that legislation in this jurisdiction sets a very high bar for reckless trading in the civil arena and that a simplistic approach to criminalizing the existing provisions would serve no useful purpose. Reference is made to the Appleyard case (*Toomey Leasing Group Ltd v Sedgwick & Ors*¹²¹). In allowing the appeal in that case, the Court of Appeal noted that Section 297A(2)(a) is a provision which deems certain conduct to amount to reckless trading for the purposes of ascribing personal liability. The statutory test in such circumstances, would question whether a director of a company such as Appleyard “*ought to have known that his actions or those of the company would cause loss to*” a creditor such as Toomey. The Court noted that while the statutory test is an objective one, the court is expressly required by the terms of Section 297A(2) “*to have regard to the general knowledge, skill and experience that may reasonably be expected of a person in his position.*” In order to be personally liable, loss to the creditor ought to have been foreseeable by the appellant to a high degree of certainty. Viewed objectively, it is not enough that an experienced director ought to have known that his actions or those of the company **might** cause loss to a creditor but rather, that the actions in question **would** cause loss to a creditor. Such a high bar for reckless trading would no doubt pose a challenge to establishing personal liability in such circumstances.

The LRC in its report distinguishes between entrepreneurial and operational risk taking emphasizing the importance of commercial risk taking in a market based context¹²². The LRC report states that entrepreneurial risk taking which is in effect risk taking in trading activity has less likelihood of causing harm to creditors in the event that it is unsuccessful. This is in contrast to the potential harmful effect that operational risk taking can have on a company, typically resulting in the company being unable to satisfy all its debts. However, where an operational risk taken is successful, a company could benefit with its solvency bolstered or it could even overcome insolvency. The LRC does not support the sanctioning of operational risk taking because of the chilling effect it could have on corporate risk-taking as a whole. Furthermore, it does not recommend the criminalization of ‘reckless trading’ but rather recommends that egregiously reckless trading should be open to prosecution by the expansion of the fault element in fraud offences. The expansion of the fault element in fraud

¹²¹ [2016] IECA280, Court of Appeal, Hogan J, 13 October 2016.

¹²² LRC, *Report on Regulatory Powers and Corporate Offences*, volume 2, chapter 12

offences is dealt with comprehensively in Chapter 12 of the LRC report. The subjective nature of recklessness is explored comprehensively in Chapter 11 of the LRC report.

Other jurisdictions have also attempted to grasp similar issues. New Zealand strengthened its legislation in 2014 but chose a different method to the one recommended by the LRC. They have now criminalised breaches of certain directors duties i.e. knowingly causing their companies serious loss by acting in bad faith (section 138A Companies Act 1993 as inserted¹²³) or dishonestly allowing an insolvent company to incur debts section 380 (4) Companies Act 1993¹²⁴. In Australia section 184 of the Corporations Act 2004¹²⁵ criminalises the behaviour of directors and officers who are reckless or are dishonest and fail to exercise their powers and discharge their duties in good faith in the best [interests](#) of the corporation or for a proper purpose. This Review Group agrees in principle with the LRC's recommendation but framing an offence criminalising 'Egregious Risk Taking' that will balance up the rights of the accused coupled with the undesirability of penalising normal business risks presents a challenge. However the Review Group considers that the LRC has done a considerable amount of work in its report.

¹²³ Section 138A [NZ] Companies Act 1993.

¹²⁴ Section 380 [NZ] Companies Act 1993.

¹²⁵ Section 184 [Aus] Corporations Act 2001.

Appendix A: List of main initialisms and acronyms used in the report

AMLSC	Anti-Money Laundering Steering Committee
BPFI	Banking and Payments Federation Ireland
CAB	Criminal Assets Bureau
CBI	Central Bank of Ireland
CCPC	Competition and Consumer Protection Commission
CoFPI	Commission on the Future of Policing in Ireland
CSO	Central Statistics Office
CTF	Countering the Financing of Terrorism
D/BEI	Department of Business, Enterprise and Innovation
D/EASP	Department of Employment Affairs and Social Protection
D/JE	Department of Justice and Equality
D/PER	Department of Public Expenditure and Reform
GNECB	Garda National Economic Crime Bureau
JATF	Joint Agency Task Force
MLA	Mutual Legal Assistance
ODCE	Office of the Director of Corporate Enforcement
OECD	The Organisation for Economic Co-operation and Development
ODPP	Office of the Director of Public Prosecutions
SIPO	Standards in Public Office Commission
UNCAC	United Nations Convention Against Corruption

Appendix B: Membership of the Review Group

- An Garda Síochána
- Banking and Payments Federation Ireland
- Central Bank of Ireland
- Competition and Consumer Protection Commission
- Department of Business, Enterprise and Innovation
- Department of Employment and Social Protection
- Department of Finance
- Department of Justice and Equality
- Department of Public Expenditure and Reform
- Garda National Economic Crime Bureau
- Office of the Director of Corporate Enforcement
- Office of the Director of Public Prosecutions
- Standards in Public Office Commission
- Office of the Revenue Commissioners
- Dr Elaine Byrne (BL) is a barrister, journalist, member of the academia and a member of the Hamilton Review Group

Appendix C: International models

The Review Group considered a number of international models which are set out below in this Appendix. Actions taken in Hong Kong, Canada and Queensland were all notably in response to financial scandals or investigations of economic crime and corruption. In Hong Kong, the Independent Commission Against Corruption (ICAC) was established in response to pervasive and deeply entrenched corruption in Hong Kong in the 1960s and 70s. In Queensland, Australia, the Crime and Corruption Commission was born out of the Criminal Justice Commission (CJC) established in 1989 following an Inquiry into Possible Illegal Activities and Associated Police Misconduct. On the other hand, the Integrated Market Enforcement Teams (IMETS) were established in response to the stock market collapse of 2000 and 2001 which revealed deep-rooted corporate fraud in the system.

While all three organisations have witnessed varying degrees of success since their establishment, ICAC has had considerable success in reversing deeply entrenched corruption pervasive in Hong Kong prior to its establishment.

However, the extent of ICAC's powers may prove difficult to replicate here. A stand-alone agency with an ICAC type remit will encroach into the work of several agencies in the multi-agency type anti-corruption & anti-fraud structures adopted in this jurisdiction. ICAC's supervisory role over Government Departments may also prove difficult to replicate in this jurisdiction due to the level of intrusiveness and the encroachment on the autonomy of Government Departments and agencies. More so, there are significant differences between the legal systems in Ireland and Hong Kong. For instance, it is unlikely that the extent of ICAC's powers of search, seizure & arrest could be replicated here due to privacy rights. However, certain elements of the anti-corruption regime in Hong Kong's ICAC such as its pro-active approach in tackling corruption, in particular, preventative measures such as risk assessments, education and training can be adapted here. Furthermore, ICAC's partnership with the private sector could be replicated here subject to contextual limitations. There are comprehensive and effective anti-corruption laws in place in Hong Kong which make corruption a high risk crime. This review process presents further opportunity for strengthening legislation in this jurisdiction as outlined under the appropriate headings in this report, so as to enhance the efforts of the relevant agencies involved in tackling economic crime and corruption.

There are significant parallels to be drawn between Canada's IMETs and Ireland's GNECB. Both agencies are established as divisions or units within the respective State's police force and tasked with the investigation, detection and prevention of large scale economic crime. Like the GNECB, IMETs is engaged in secondments and comprises of specialist personnel such as investigative experts, lawyers and forensic accountants needed to carry out its functions. Notably, IMETS broad range of powers include the power to compel parties to

disclose information (subject to court assessment) even where such information may be legally privileged. This approach to dealing with claims of legal privilege has been more recently adopted in legislation in this jurisdiction as detailed elsewhere in this report. Some of the challenges reportedly faced by IMETs are echoed by submissions received in the process of this review. IMETs has been criticized in certain quarters for its poor record in securing convictions and in recruiting and retaining the necessary expertise to carry out its functions. The seeming inability of IMETs to recruit and retain specialist expertise has been attributed to lack of budgetary autonomy. Some of the other challenges which IMETs face that have been echoed by some members of the Review Group, is the challenge of being pitted against well-funded deep pocket corporations in complex legal trials. Inefficient court processes have also come to the fore. Many of the issues here have been addressed in the recommendations of the Review Group.

A wide range of Queensland, Australia's CCC's powers could not be replicated in this jurisdiction. In particular, its powers to conduct hearings in secret and the derogation from the right against self-incrimination will be met with constitutional resistance in this jurisdiction. The scale of the CCC's oversight and surveillance powers detailed in Appendix C of this report will also prove difficult to replicate. The CCC has not been without its critics some of whom perceive it as elitist and dismissive of the complaints of ordinary people and whistleblowers. However, the use of surveillance powers albeit, to a lesser degree and subject to judicial oversight, has been mooted by members of the Review Group and is one of the recommendations in this report.

The establishment of the National Economic Crime Centre (NECC) and the Joint Money Laundering Intelligence Task Force (JMLIT) in the UK, while not arising from any major singular event, was done in recognition of the need for greater co-ordination of the efforts of the various relevant agencies involved in tackling economic crime and corruption in that jurisdiction. NECC states on its website that it was created to bring together law enforcement and justice agencies, Government Departments, regulatory bodies and the private sector with a shared objective of driving down serious organised economic crime, protecting the public and safeguarding the prosperity and reputation of the UK as a financial centre.¹²⁶ While the success of NECC is yet to be established, it's role is more of a coordinating role with the aim of improving the UK's response to economic crime. JMLIT on the other hand has been recognised as an international best practice model in tackling money laundering and terrorist financing.

The success of the UK's JMLIT is of particular interest given the similarity between this jurisdiction and the UK in particular with regards to the legal systems and the influence of EU law in both jurisdictions. While not necessarily recommending the establishment of a

¹²⁶ National Economic Crime Centre, *National Crime Agency*. <https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre>.

public/private anti-money laundering information sharing agency such as the JMLIT in this jurisdiction, there are obvious lessons to be learned and practices that could be replicated in this jurisdiction from the JMLIT experience. A somewhat similar information sharing structure has been recommended by the Review Group in this report. It is significant to note that EU initiatives in the area of anti-money laundering and terrorist financing has significantly enhanced information sharing in this field and continues to do so through the various measures introduced by the 4th, 5th and proposed 6th Anti Money Laundering Directives (AMLD). Recommendations relevant to enhancing information sharing structures have been put forward by the Review Group in this report.

The Swedish Economic Crime Authority and Denmark’s State Prosecution for Serious Economic Crime were all established in part, in recognition of the need for greater co-ordination of efforts to combat economic crime and corruption by the relevant agencies in both jurisdictions. The Swedish Economic Crime Authority and Denmark’s State Prosecutor for Serious Economic Crime like most of the agencies examined in this report are multi-agency economic crime agencies. Both countries are notably ranked high in Europe in terms of low prevalence of corruption. However, the recent Danske Bank scandal indicates that there may have been a gap in the AMLD structures in Denmark as at the time of the scandal. In 2015, Nordic Bank Nordea was fined 50 million Swedish crowns (\$5.62 million) by Sweden’s Financial Supervisory Authority for breaches in anti-money laundering and financing of terrorism rules. All of the agencies examined in this report have contributed in the important work of combatting economic crime and corruption in their respective jurisdictions and provide an important learning opportunity in this review process.

Case study 1: The UK’s National Economic Crime Centre

In October 2018 the UK government launched a multi-agency National Economic Crime Centre (NECC) with the objectives of improving the intelligence picture on economic crime, tasking and co-ordinating law enforcement responses, and enhancing overall capacity to tackle large-scale economic crime. The NECC is based in the National Crime Agency, which is an independent non-ministerial Government agency whose remit includes tackling serious and organised crime.

The NECC is not in itself an investigative body but rather it directs and co-ordinates investigations (including multi-agency investigations) by other bodies on the basis of aggregated data and intelligence which it receives from these bodies and other sources. Its website states the following:

“For the first time, the NECC brings together law enforcement and justice agencies, government departments, regulatory bodies and the private sector with a shared

objective of driving down serious organised economic crime, protecting the public and safeguarding the prosperity and reputation of the UK as a financial centre.”

“The NECC will coordinate and task the UK’s response to economic crime, harnessing intelligence and capabilities from across the public and private sectors to tackle economic crime in the most effective way.

“It will jointly identify and prioritise the most appropriate type of investigations, whether criminal, civil or regulatory to ensure maximum impact. It will seek to maximise new powers... to tackle the illicit finance that funds and enables all forms of serious and organised crime.

“The NECC will ensure that criminals defrauding British citizens, attacking UK industry and abusing UK financial services are effectively pursued; that the UK’s industries and government agencies know how to prevent economic crime; and that the UK’s citizens are better protected. As the NECC evolves throughout 2019 and beyond it will build wider partnerships across the public sector, with regulators and the private sector, particularly with those businesses at risk from economic crime.”

The NECC’s staff includes personnel seconded from the Serious Fraud Office, the Financial Conduct Authority, the City of London Police, HM Revenue and Customs, the Crown Prosecution Service and the Home Office. It is planned to expand the NECC’s functions and resources on a phased basis.

As the NECC it is in its infancy, it is too early to assess whether it will have the desired impacts. It is also debatable whether this type of ‘co-ordination and tasking’ model is necessary or even feasible in Ireland, given our far smaller economy and population and our differing law enforcement structures (including the fact that Ireland has a single police force as opposed to the UK). Nonetheless, its establishment is an interesting development and its progress should be followed closely. The Review Group also sees great potential in the NECC’s role of bringing together relevant Government Departments, law enforcement agencies, regulators and industry bodies to develop a partnership-based approach to tackling serious economic crime. This principle informs the Group’s recommendation for an Advisory Council on Economic Crime and Corruption (see below).

Case Study 2: United Kingdom’s Joint Money Laundering Intelligence Task Force (JMLIT)

The JMLIT was established in 2015 as part of the NECC and is a partnership between law enforcement and the financial sector for facilitating the exchange and analysis of information relating to money laundering and wider economic threats. The JMLIT consists of over 40 financial institutions and five law enforcement agencies including the National Crime Agency

(NCA), HM Revenue and Customs (HMRC), Serious Fraud Office (SFO), the City of London Police and the Metropolitan Police Service. Cifas, a fraud prevention membership organisation and the Financial Conduct Authority are also part of the JMLIT partnership. The JMLIT provides a forum for information sharing on new typologies, existing vulnerabilities and live intelligence for tackling high end money laundering schemes which are mostly complex, multi-institutional and multi-jurisdictional.

The JMLIT is an innovative model for public /private information sharing that has gained international approval including from the FATF and it is stated that more countries are considering following suit, particularly, the Scandinavian countries in the wake of recent money laundering scandals. Since its inception, JMLIT has supported and developed over 500 law enforcement investigations contributing directly to over 130 arrests and the seizure or restraint of over £13m. JMLIT collaboration with the private sector members has identified over 5,000 suspect accounts linked to money laundering activity, and commenced over 3,500 of their own internal investigations. JMLIT continues to develop and enhance systems and controls for mitigating the threat of financial crime. Working groups led by experts from the financial sector provide a platform for members to discuss current or emerging threats, and to identify innovative ways of collectively combating these threats. As a result, over 30 'JMLIT Alert' reports have been shared with the wider financial industry which has assisted in focusing the identification and implementation of transactional monitoring system queries, thereby mitigating the criminal methodologies used to exploit the UK's financial system.

Case Study 3: Canada's Integrated Market Enforcement Teams

The Canadian government established Integrated Market Enforcement Teams in 2003 as a new division of the Royal Canadian Mounted Police (RCMP), in response to the stock market collapse of 2000 and 2001 which revealed deep-rooted corporate fraud in the system. Established as part of a broader package of measures to enhance the regulation of capital markets, IMETs are tasked with the investigation, detection and prevention of serious capital market fraud. They work to promote legal compliance in the corporate community, to assure investors that Canada's markets are safe and secure. IMETs are deployed in the key legal markets of Toronto, Vancouver, Montreal and Calgary with the aim of responding swiftly to major capital markets fraud wherever it may occur.

The IMETs initiative is a partnership with Justice Canada's Federal Prosecution Service, provincial and municipal forces and the Securities Commission. This multi-agency approach sees IMETs work closely with the securities regulators and with federal and provisional authorities, building on RCMP's existing partnerships. IMETs comprise police officers, lawyers and other investigative experts such as forensic accountants from the Securities Commission. They have a broad range of powers, including the power (subject to Court

assessment) to compel parties to disclose information even where such information may be legally privileged. Police officers seconded to IMETs are highly qualified financial investigators provided with the latest training in capital markets and legal developments in their field. The Public Safety Canada website indicates that secondees are dedicated to the teams for specified periods of time. Investigators receive ongoing legal advice from the federal prosecution service advisors.

However, IMETs have been the subject of extensive criticism from academia and the media for their poor record in securing convictions and in recruiting and retaining necessary expertise. Some of the challenges faced by IMETs have been attributed to its lack of budgetary autonomy, as control remains with the RCMP whose policing priorities change from time to time. This impacts on IMET's ability to recruit and retain specialist personnel as needed. (In Ireland, the Garda National Economic Crime Bureau faces similar challenges; see Chapter 7). In addition, IMETs' focus on large-scale White-collar crime pits them against aggressive and well-funded legal firms representing large corporations in complex cases which often prove difficult to prosecute successfully. A fraud investigation into Royal Group Technologies, a plastics company, which stretched for several years and included a high-profile raid on the Toronto headquarters of the Bank of Nova Scotia, ended in December 2010 with six executives being acquitted of all charges.

Comments attributed to John Sliter, the now-retired founding Director of IMETs, indicate that in the early days of IMETs, fast-track promotions and the allure of working in big cities were used to recruit and retain personnel. In addition, RCMP officers with relevant qualifications were seconded to IMETs and provided with the necessary training to carry out their functions. While the Review Group does not have data on how much success was achieved with that approach, Mr. Sliter's comments indicate that that changes in RCMP priorities led to the reassignment of trained IMETs personnel to other tasks, resulting in a loss of expertise. (Again, this is an issue for GNECB.)

In recent years, reports indicate that RCMP has moved away from training police officers as capital market experts, citing prohibitive costs as the reason. RCMP appears to have adopted an alternative approach focusing more on secondments to provincial securities regulators.

Case Study 4: Queensland Australia's Crime & Corruption Commission

Queensland, Australia's Crime and Corruption Commission was born out of the Criminal Justice Commission (CJC) established in 1989 following the Fitzgerald Inquiry into Possible Illegal Activities and Associated Police Misconduct in that jurisdiction. In 2001, the CJC was reformed into a single body the Crime & Misconduct Commission (CMC) & again, in 2014, reformed into the CCC following extensive reviews and legislative changes.

The CCC was set up as a statutory body to combat and reduce major crime and corruption in the public sector in Queensland. The functions and powers of the CCC are set out in the Crime and Corruption Act 2001 and include investigating both crime and corruption. The CCC is under the Justice portfolio and the Attorney General and Minister for Justice as well as the leader of the House, are responsible for the allocation of the CCC budget. The Parliamentary Crime and Corruption Commission, an all-party parliamentary Committee, has an oversight role over the CCC. The Supreme Court in that jurisdiction also has an oversight role over the CCC with the latter having to apply to the Supreme Court before exercising some of its powers. In addition, the Public Interest Monitor, monitors the CCC's compliance with legislation and examines its applications for covert search warrants and surveillance warrants. The CCC takes on cases with a serious impact on the community, which are important to the public sector or have a bearing on public confidence or order. Significantly, it has oversight of the police and public sector in that jurisdiction. The CCC receives and investigates allegations of serious or systemic corrupt conduct and will retain and investigate only the most serious allegations of corrupt conduct with a public interest element. Police officers seconded to CCC can institute criminal proceedings. The CCC also researches crime, policing or other relevant matters and provides a witness protection service. Witnesses who have assisted law enforcement and put themselves & their families at risk are eligible for inclusion in the witness protection program. The CCC is also empowered to recover proceeds of crime and administers a non-conviction based civil confiscation scheme.

The CCC refers less serious corruption allegations to the appropriate agencies and may refer investigated cases to DPP, Queensland Civil & Administrative Tribunal (QCAT) or to a CEO to consider disciplinary action. The CCC has oversight of the handling of cases referred to other agencies. It assesses cases and agencies to ensure that cases are properly assigned and reviews cases referred to other agencies and may refer such cases to QCAT if not satisfied with the sanction or disciplinary action meted out. The CCC has a range of powers that enable it carry out its functions. It has special powers to hold public and closed hearings and conduct public inquiries to expose systemic issues. The CCC has the powers to conduct coercive hearings and can compel witnesses to give evidence. Witnesses in such hearings, have no right to silence and cannot claim the privilege against self-incrimination as a reason not to answer questions. The CCC has surveillance powers and may intercept telephone communications where the need arises. The CCC may use surveillance devices & assumed identities to carry out controlled operations. Seconded police officers retain all their powers and can have suspects arrested, charged and prosecuted following criminal investigations.

The powers of the CCC are exceptional in Queensland & enable it to secure otherwise unobtainable evidence & intelligence regarding activity by criminal organisations. Hearings are conducted in secret with strong protections placed on access to information gained through these powers. The right to remain silent is a Constitutional right & when exercised to

avoid self-incrimination, may impede any attempt to compel information from suspects in this jurisdiction. In the case of *Sweeney v Ireland* [2019] IESC 39 the Supreme Court held that the privilege against self-incrimination is the basis of the right to remain silent & the law cannot compel a person to self-incriminate as to their commission of a crime. The scale of CCC's surveillance powers & the oversight role it plays over other agencies may prove challenging to replicate in this jurisdiction in light of privacy rights guaranteed by Article 40 of the Irish Constitution and Article 8 of the European Convention on Human Rights (ECHR). While the CCC has experienced some degree of success in its anti-corruption work, there are suggestions that the CCC's oversight role of the police force has been impeded by the initial merger of the Criminal Justice Commission with the Queensland Crime Commission to form the present CCC. The CCC has stated that recent reforms of the police discipline system which will result in greater transparency and efficiency in its overall role of the police. However, criticism of the CCC persists with the body being described in some quarters as being too elitist and dismissive of complaints by ordinary people and whistle-blowers.

Case Study 5: Hong Kong's Independent Commission Against Corruption

Hong Kong's Independent Commission Against Corruption (ICAC) was set up in 1974 and is Hong Kong's independent anti-corruption agency. ICAC was established in response to pervasive and deeply entrenched corruption in Hong Kong in the 1960s and 70s. ICAC is a One- Stop shop anti-corruption agency tasked with the prevention & tackling of corruption & fraud in the public & private sector. ICAC has adopted a three pronged approach to its work: Law enforcement, prevention and education in fighting corruption. While the name ICAC suggests an anti-corruption remit, ICAC works to tackle related criminality such as fraud. No emphasis is made on distinguishing between fraud & corruption. ICAC is vested with the statutory duties and powers to prevent corruption and has adopted a proactive prevention and early detection approach to tackling corruption by promulgating best practices & internal control measures. ICAC organises training on ethics & corruption prevention, publishes practical guides & tools on ethics management and formulates and reviews codes of conduct. It maintains a website to provide reference material on business ethics & corruption prevention and provides advice to companies on system control. It also Provides corruption prevention advice to private organisations & individuals upon request and runs integrity management trainings. ICAC's regional offices are a bridge between ICAC & the public engage with the public through face to face activities & connect with district organisations to entrench a probity culture in the community.

ICAC has regular meetings with senior management of government departments and public bodies and may identify areas for review & map out anti-corruption strategies & work plan. It may enter any government premises and require government officials to answer questions with respect to their duties. ICAC may examine the practices & procedures of any

government or public body & secure the revision of any that it considers conducive to corruption. ICAC is involved in the public procurement process, reviewing practices & procedures in government departments & agencies. ICAC has powers of search, seizure and arrest and may search premises and arrest suspects without a warrant under provisions of Section 10 of the ICAC Ordinance. ICAC has the powers to arrest persons suspected of committing related offences, such as theft, false accounting and fraud. It may detain a suspect for up to 48 hours and may grant bail. ICAC may take samples without the consent of suspects subject to authorisation by an ICAC authorising officer. ICAC may handle any other offence that is disclosed during the investigation of suspected corruption. ICAC has an oversight role in areas of public interest in particular, in areas affecting people's livelihood & safety such as important government initiatives, new public services, and new regulatory regimes with corruption risks. ICAC's oversight role extends to cover areas of expenditure of substantial public funds, major capital works, such as, the construction of Hong Kong International airport. Since inception, ICAC has been very successful with Hong Kong now considered as one of the cleanest places in the world to do business. The prevalence of corruption in the police force in Hong Kong is stated to have fallen from 47% in 1975 to 7.5% in 2018. There are comprehensive and effective anti-corruption laws in place in Hong Kong to make corruption a high risk crime. However, the extent of ICAC's powers of search, seizure & arrest may prove difficult to replicate here due to privacy rights. ICAC's supervisory role over Government Departments may also prove difficult to replicate in this jurisdiction due to the level of intrusiveness and the encroachment on the autonomy of government departments and agencies. A stand-alone agency with an ICAC type remit will encroach into the work of several agencies in the multi-agency type anti-corruption & anti-fraud structures adopted in this jurisdiction.

Case Study 6: Denmark's State Prosecutor for Serious Economic and International Crime

Denmark's State Prosecutor for Serious Economic and International Crime (SØIK) is a multidisciplinary team composed of prosecutors & investigators and deals with cases of serious economic and international crime or cases involving international crime that are substantial in scale. Such cases are primarily concerned with suspected economic offences that are extensive in scope, have been committed as part of organised crime, by means of specific business methods or particularly qualified in some other manner.

The State Prosecutor for Serious Economic and International Crime (SØIK) deals with international criminal proceedings concerned with genocide, crimes against humanity, war crimes and other serious crimes committed abroad for which the investigations and criminal prosecution require specialist knowledge and insight into conditions in areas outside Denmark. In addition to actual criminal cases, the State Prosecutor is involved in pre-legislative and international work. It handles the receipt and analysis of reports on money

laundering and terrorist financing and is responsible for the tracing and confiscation of proceeds of crime. The State Prosecutor is also responsible for the initial review of criminal cases, including reports on intellectual property right violations. The staff at the State Prosecutor for Serious Economic and International Crime comprise of legal consultants, police officers, analysts, administrative employees, and specialist consultants with a background in finance. The State Prosecutor is nationwide and placed under the Danish Prosecution Service.

The Danish International Development Agency (Danida) is located within the Ministry of Foreign Affairs and has established procedures for reporting corruption. Danida provides training on integrity issues & conducts corruption risk management. The Danish Ministry of Foreign Affairs has undertaken a range of activities to raise awareness of corruption among its employees. International monitoring bodies are critical of Denmark for lack of transparency in the rules on financing political parties & lack of enforcement of foreign bribery. The Danish government enforces anti-corruption laws & policies effectively. Tax fraud is considered to be the most widespread corrupt practice in Denmark. While there are few regulatory rules for integrity & anti-corruption in public administration in Denmark, it is consistently ranked among the least corrupt countries in Europe. This has attributed to the tradition of high ethical standards & transparency in public procedures in Denmark.

However, the money laundering scandal which came to light in the Danske Bank, Denmark's largest bank, in 2017-2018, called to question, the adequacy of the anti-money laundering measures put in place by the bank. The Danske Bank money laundering scandal involving several countries is considered as possibly the largest money laundering scandal in Europe ever. Danske Bank is currently under investigation from a range of authorities and in May 2019, the former CEO and other nine group senior managers were preliminarily charged by the State Prosecutor for Serious Economic and International Crime (SØIK) for alleged violation of the State's anti-money laundering legislation in relation to the bank's Estonian branch. The Danish Parliament increased penalties for money laundering in Denmark making the penalties in that jurisdiction one of the strongest in Europe.

Case Study 7: The Swedish Economic Crime Authority

The Swedish Economic Crime Authority (Ekobrottsmyndigheten) is a specialised authority within the Swedish public prosecution service responsible for fighting economic crime. It is a multidisciplinary agency composed of prosecutors, police officers, auditors and other experts. The Swedish Economic Crime Authority coordinates the activities of other agencies working to combat economic crime and is the knowledge centre for economic crime in that jurisdiction, sharing knowledge and experience on economic crime. The Swedish Economic Crime Authority works strategically and operationally to recover proceeds of crime developing and strengthening collaboration with other law enforcement agencies for a cohesive recovery strategy. The Swedish Economic Crime Authority has ten local public

prosecution offices and prosecutes other economic crimes such as disloyalty to principal, bribery and money receiving. It may take cases on the request of the public prosecution office e.g. major cases, of national scope, international connections, and qualified economic crime. The Swedish Economic Crime Authority investigates crimes relating to bankruptcy, market manipulation, and fraud, tax evasion, false accounting, insider trading and embezzlement. The Swedish Economic Crime Authority also has surveillance powers with five operational police units engaged in criminal intelligence operations, carrying out surveillance and seizing and analysing evidence from IT environments.

Sweden is considered as one of the countries with the least corruption in the EU with the Eurobarometer indicating that there is both low perceptions of corruption as well as actual prevalence of corruption in that jurisdiction. It is ranked 3 out of 180 countries by Transparency International in terms of low perceptions of corruption. The Council of Europe's Group of States against Corruption (GRECO) in a report published in May 2019, called for further measures to prevent corruption in Sweden in respect of public officials, including ministers, state secretaries and senior political experts, as well as members of the Police Authority. While noting that bribery is very rare in Sweden, GRECO stated in the report that conflicts of interest and "friendship corruption" are more prevalent. Awareness raising about these forms of corruption was considered necessary along with the establishment of rules promoting integrity and preventing conflicts of interest among top executive officials and police staff. GRECO recommended the adoption and implementation of a strategy towards achieving that goal and the development of rules of conduct as well as the introduction of compulsory dedicated training.

The Review Group considered a number of international models which are set out in Appendix C of this Report. Actions taken in Hong Kong, Canada and Queensland were all notably in response to financial scandals or investigations of economic crime and corruption. In Hong Kong, the Independent Commission Against Corruption (ICAC) was established in response to pervasive and deeply entrenched corruption in Hong Kong in the 1960s and 70s. In Queensland, Australia, the Crime and Corruption Commission was born out of the Criminal Justice Commission (CJC) established in 1989 following an Inquiry into Possible Illegal Activities and Associated Police Misconduct. On the other hand, the Integrated Market Enforcement Teams (IMETS) were established in response to the stock market collapse of 2000 and 2001 which revealed deep-rooted corporate fraud in the system.

While all three organisations have witnessed varying degrees of success since their establishment, ICAC has had considerable success in reversing deeply entrenched corruption pervasive in Hong Kong prior to its establishment.

However, the extent of ICAC's powers may prove difficult to replicate here. A stand-alone agency with an ICAC type remit will encroach into the work of several agencies in the multi-agency type anti-corruption & anti-fraud structures adopted in this jurisdiction. ICAC's

supervisory role over Government Departments may also prove difficult to replicate in this jurisdiction due to the level of intrusiveness and the encroachment on the autonomy of Government Departments and agencies. More so, there are significant differences between the legal systems in Ireland and Hong Kong. For instance, it is unlikely that the extent of ICAC's powers of search, seizure & arrest could be replicated here due to privacy rights. However, certain elements of the anti-corruption regime in Hong Kong's ICAC such as its pro-active approach in tackling corruption, in particular, preventative measures such as risk assessments, education and training can be adapted here. Furthermore, ICAC's partnership with the private sector could be replicated here subject to contextual limitations. There are comprehensive and effective anti-corruption laws in place in Hong Kong which make corruption a high risk crime. This review process presents further opportunity for strengthening legislation in this jurisdiction as outlined under the appropriate headings in this Report, so as to enhance the efforts of the relevant agencies involved in tackling economic crime and corruption.

There are significant parallels to be drawn between Canada's IMETs and Ireland's GNECB. Both agencies are established as divisions or units within the respective State's police force and tasked with the investigation, detection and prevention of large scale economic crime. Like the GNECB, IMETs is engaged in secondments and comprises of specialist personnel such as investigative experts, lawyers and forensic accountants needed to carry out its functions. Notably, IMETS broad range of powers include the power to compel parties to disclose information (subject to court assessment) even where such information may be legally privileged. This approach to dealing with claims of legal privilege has been more recently adopted in legislation in this jurisdiction as detailed elsewhere in this Report. Some of the challenges reportedly faced by IMETs are echoed by submissions received in the process of this review. IMETs has been criticized in certain quarters for its poor record in securing convictions and in recruiting and retaining the necessary expertise to carry out its functions. The seeming inability of IMETs to recruit and retain specialist expertise has been attributed to lack of budgetary autonomy. Some of the other challenges which IMETs face that have been echoed by some members of the Review Group, is the challenge of being pitted against well-funded deep pocket corporations in complex legal trials. Inefficient court processes have also come to the fore. Many of the issues here have been addressed in the recommendations of the Review Group.

A wide range of Queensland, Australia's CCC's powers could not be replicated in this jurisdiction. In particular, its powers to conduct hearings in secret and the derogation from the right against self-incrimination will be met with constitutional resistance in this jurisdiction. The scale of the CCC's oversight and surveillance powers detailed in Appendix C of this Report will also prove difficult to replicate. The CCC has not been without its critics some of whom perceive it as elitist and dismissive of the complaints of ordinary people and whistle-blowers. However, the use of surveillance powers albeit, to a lesser degree and

subject to judicial oversight, has been mooted by members of the Review Group and is one of the recommendations in this Report.

The establishment of the National Economic Crime Centre (NECC) and the Joint Money Laundering Intelligence Task Force (JMLIT) in the UK, while not arising from any major singular event, was done in recognition of the need for greater co-ordination of the efforts of the various relevant agencies involved in tackling economic crime and corruption in that jurisdiction. NECC states on its website that it was created to bring together law enforcement and justice agencies, Government Departments, regulatory bodies and the private sector with a shared objective of driving down serious organised economic crime, protecting the public and safeguarding the prosperity and reputation of the UK as a financial centre.¹²⁷ While the success of NECC is yet to be established, it's role is more of a coordinating role with the aim of improving the UK's response to economic crime. JMLIT on the other hand has been recognised as an international best practice model in tackling money laundering and terrorist financing.

The success of the UK's JMLIT is of particular interest given the similarity between this jurisdiction and the UK in particular with regards to the legal systems and the influence of EU law in both jurisdictions. While not necessarily recommending the establishment of a public/private anti-money laundering information sharing agency such as the JMLIT in this jurisdiction, there are obvious lessons to be learned and practices that could be replicated in this jurisdiction from the JMLIT experience. A somewhat similar information sharing structure has been recommended by the Review Group in this Report. It is significant to note that EU initiatives in the area of anti-money laundering and terrorist financing has significantly enhanced information sharing in this field and continues to do so through the various measures introduced by the 4th, 5th and proposed 6th Anti Money Laundering Directives (AMLD). Recommendations relevant to enhancing information sharing structures have been put forward by the Review Group in this Report.

The Swedish Economic Crime Authority and Denmark's State Prosecution for Serious Economic Crime were all established in part, in recognition of the need for greater co-ordination of efforts to combat economic crime and corruption by the relevant agencies in both jurisdictions. The Swedish Economic Crime Authority and Denmark's State Prosecutor for Serious Economic Crime like most of the agencies examined in this Report are multi-agency economic crime agencies. Both countries are notably ranked high in Europe in terms of low prevalence of corruption. However, the recent Danske Bank scandal indicates that there may have been a gap in the AMLD structures in Denmark as at the time of the scandal. In 2015, Nordic Bank Nordea was fined 50 million Swedish crowns (\$5.62 million) by Sweden's Financial Supervisory Authority for breaches in anti-money laundering and

¹²⁷ National Economic Crime Centre, *National Crime Agency*, <https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre>.

financing of terrorism rules. All of the agencies examined in this Report have contributed in the important work of combatting economic crime and corruption in their respective jurisdictions and provide an important learning opportunity in this review process.

Appendix D: International monitoring arrangements

The Financial Action Task Force (FATF)

Ireland has been a member of the Financial Action Task Force (FATF) since 1991 and has undergone several rounds of evaluations since it became a member of the FATF.

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions, who are for the most part the then members of the OECD. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. As a result of Ireland's progress in strengthening its measures for combatting money laundering and terrorist financing since the 2017 assessment, FATF has re-rated Ireland on a number of recommendations. The follow-up report of the FATF on Ireland is published on FATF's website.¹²⁸

GRECO evaluations of Ireland 2013 and 2018

Ireland has been a member of GRECO since 1999 and undergone four phases of evaluation to date. Several of the issues identified have been addressed through the Criminal Justice (Corruption Offences) Act 2018 and through the implementation of various other measures that are covered under progress on the UNCAC recommendations. The details of GRECO findings are to be located in the appendices to this report.

The Fourth Evaluation Round report on Ireland was adopted by GRECO in October 2014. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". The United Kingdom and Estonia were appointed as rapporteurs.

GRECO adopted a compliance report in March 2017 which concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Evaluation Round report. GRECO also concluded

¹²⁸ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Follow-Up-Report-Ireland-2019.pdf>.

that the very low level of compliance with the recommendations was “globally unsatisfactory” within the meaning of the Rules of Procedure.

Ireland then entered into a non-compliance procedure. In June 2018, an interim compliance report was adopted at the plenary session. It also found Ireland to be globally unsatisfactory in its implementation of the recommendations. GRECO instructed the President to the Head of Delegation of Ireland, drawing his attention to the need to take determined action with a view to achieving tangible progress as soon as possible.

GRECO invited Ireland to report again on the outstanding recommendations by 30 September 2019. As previously stated, significant progress has since been made with recommendations 5 and 6 which were previously deemed partially implemented and are now deemed satisfactorily implemented with the establishment of the Judicial Council and the introduction by the Standards in Public Office Commission of training on ethics to parliamentarians. While five out of the eleven recommendations have now been implemented, there are still six recommendations not implemented. The full set of reports is published on the [GRECO website](#).

The Organisation for Economic Co-operation and Development (OECD)

Regarding the OECD, three phases of review have taken place over more than a decade with various sub-phases. Ireland’s phase three report was adopted in December 2013 with a number of recommendations made by the OECD Working Group on Bribery contained in that report. The Criminal Justice (Corruption Offences) Act 2018 which was enacted on the 5 June 2018 and entered into force on the 30 of July 2018, seeks to address the recommendations contained in the OECD Phase three evaluation report.¹²⁹ As previously referred to, the OECD has only recently completed a further evaluation (Phase 1Bis) of Ireland in respect of the Criminal Justice (Corruption Offences) Act 2018. The purpose of this evaluation, was to assess whether the new Act adequately addresses Ireland’s obligations under the Convention and deals effectively with recommendations made in previous evaluations.

The OECD Phase 1bis report published on the 11 of October 2019 examines the Criminal Justice (Corruption Offences) Act 2018 to determine if it addresses the following recommendations;

¹²⁹ ‘Ireland – OECD Anti-Bribery Convention’, OECD, <https://www.oecd.org/ireland/ireland-oecdanti-briberyconvention.htm>.

- To harmonise Ireland's two foreign bribery offences contained in several statutes¹³⁰ including removing the reference to the term 'agent' contained in statutory provisions.¹³¹
- To review the law on the liability of legal persons for foreign bribery on a high priority basis with a view to codifying it and expanding it to cover all categories of liability recommended in the 2009 recommendations.¹³²
- To amend the dual criminality exception for the money laundering offence in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to ensure that foreign bribery is always a predicate offence for money laundering without regard to the place where the bribery occurred.

The OECD Phase 1bis report acknowledges that the Criminal Justice (Corruption Offences) Act 2018 represents a significant milestone in the fight against bribery and other forms of corruption. The report states that the new legislation fully implements the OECD recommendation to harmonise Ireland's bribery offences contained in several statutes¹³³. The 2018 Act also removes the reference to the term 'agent' and effectively broadens the scope of the provisions of the legislation.

The Criminal Justice (Corruption Offences) Act 2018 creates criminal liability for legal persons for the offence of bribery in the provisions of Section 18(1). However, the OECD has stated that in relation to the liability of persons for foreign bribery, the requirement to prove corrupt intent contained in section 14 of the Criminal Justice (Corruption Offences) Act 2018, necessitates an on-going review of the 2018 Act.¹³⁴ The OECD is of the view that the absence of jurisprudence on how the presumption of corrupt intent will be dealt with under the new legislation, means that a follow up review of the Act in the Phase 4 evaluation of Ireland is needed to determine its effectiveness. The Phase 4 evaluation which is scheduled to take place in 2021, will examine the application of the provisions on corrupt intent to assess its conformity with the provisions of Article 1 of the Bribery Convention.¹³⁵ The OECD has indicated that concerns expressed in this regard could be alleviated if Ireland were to

¹³⁰ The Prevention of Corruption(Amendment) Act 2001('POCA 2001') as amended by the Prevention of Corruption (Amendment) Act 2010 ('POCA'), and the Criminal Justice (Theft and Fraud Offences) Act 2001 ('CJA 2001').

¹³¹ OECD WGB, *Phase 1bis Report: Ireland*.

¹³² OECD, 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Annex I: Good Practice guidance on implementing specific articles of the Convention on combatting bribery of foreign officials in international business transactions.

¹³³ The Prevention of Corruption(Amendment) Act 2001('POCA 2001') as amended by the Prevention of Corruption (Amendment) Act 2010 ('POCA'), and the Criminal Justice (Theft and Fraud Offences) Act 2001 ('CJA 2001').

¹³⁴ The OECD considers that the requirement of 'corrupt intent' contained in Section 5(1) of the Criminal Justice (Corruption Offence) Act 2018 might not meet the requirement of Article 1 of the Bribery Convention. OECD WGB, *Phase 1bis Report: Ireland*.

¹³⁵ Ibid.

review the provisions of Section 5(1) of the Criminal Justice (Corruption Offences) Act 2018 so that it autonomously applies to the bribery of foreign public officials. It is significant to note that the Irish authorities responding to this criticism, stated that the offence provided for in section 5(1) of the 2018 Act, can be prosecuted without relying on the presumption of corruption. However, the OECD Working Group on Bribery expressed concern that Ireland has not established an autonomous foreign bribery offence in the 2018 Act.

Furthermore, the OECD commented on the approach taken in defining ‘foreign official’ by the 2018 Act. The OECD states that in order to be fully compliant with the Bribery Convention, the definition of ‘foreign official’ must include all category of officials encompassed by the Convention.¹³⁶ The OECD indicates that the Phase 4 evaluation of Ireland’s compliance with the Bribery Convention will include a review of the provisions relating to foreign officials contained in the 2018 Act to ensure compliance with the Convention. This Phase 4 evaluation is part of OECD’s ongoing programme of review.

Regarding the recommendation to review the law on the liability of legal persons and codify it, the OECD acknowledges that Ireland has implemented the requirement to codify the liability of legal persons in foreign bribery offences. However, the OECD states that assessing compliance with Annex 1 of the 2009 recommendations is a far more complicated matter.¹³⁷ Annex 1 of the 2009 recommendations is essentially ‘*Good Practice guidance on implementing specific articles of the Convention on combatting bribery of foreign officials in internal business transactions*’. Annex 1 of the 2009 recommendations provides guidance on the implementation of specific articles of the anti-bribery convention setting out criteria that should be met. For example, Annex 1 of the 2009 states that Article 1 of the Anti-Bribery Convention should be implemented in a manner that does not provide a defence or exception where the public foreign official solicits a bribe.

Section 18(1) of the Criminal Justice (Corruption Offences) Act 2018 extends the liability of legal persons beyond the common law ‘identification theory’ which allows liability of legal persons only in circumstances where the culpability of individuals who are deemed to be the ‘controlling minds’ of the legal person is proven. While acknowledging that the provisions of the 2018 Act go beyond limiting the liability of legal persons beyond common law requirements, the OECD states that the defences provided for under Section 18(2)¹³⁸ may affect the compliance of the provisions with Annex 1 of the 2009 recommendations. However, the OECD acknowledges that the Irish authorities relying on the ruling in the case of *Re the Employment Equality Bill [1997]2.I.R 321* advised that vicarious criminal liability for

¹³⁶ The OECD considers the definition of ‘foreign official’ contained in section 2(1) of the Criminal Justice (Corruption Offences) Act 2018 to be too narrow and not in compliance with the Bribery Convention.

¹³⁷ OECD, 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions

¹³⁸ Section 18(2) provides for defences that may be used by a corporate body against which proceedings are brought to prove that it took ‘all reasonable steps’ and exercised ‘all due diligence’ to avoid the commission of the offence.

a corporate body is unconstitutional and only permissible for regulatory offences. The Irish authorities did not introduce an absolute liability offence for bodies corporate in light of Irish constitutional jurisprudence on offences of this nature. Furthermore, the Irish authorities argued that a defence would provide a necessary incentive to bodies corporate to ensure that adequate systems are put in place in their organisations to prevent corruption.

The OECD states that Annex 1 of its 2009 recommendations require that the liability of legal persons for foreign bribery be autonomous but that the implementation of the recommendation in this regard, fails to meet that criteria and requires further review. The OECD acknowledges Ireland's position regarding corporate liability for foreign bribery with respect to the requirement of culpability on the part of a relevant individual. The Irish authorities have stated that under the provisions of the 2018 Act, the prosecution must prove that a relevant individual committed an offence. However, the conviction of that individual, is not a prerequisite for the prosecution of the body corporate itself.

In terms of penalties, the Criminal Justice (Corruption Offences) Act 2018 has increased the criminal penalties for foreign bribery upon conviction so as to match the penalties for the offence of bribery committed by domestic public officials. Other penalties introduced by the 2018 Act include the forfeiture of the office, position or employment held by the official at the time of commission of the offence as well as a prohibition from seeking to hold any office or employment as an Irish Official for up to 10 years. The latter prohibition does not apply to those seeking elected office.

The 2018 Act also goes further than previous anti-corruption legislation by enabling the confiscation of land, cash or other property of an equivalent value where there are reasonable grounds to suspect that such property are the proceeds of a bribery offence. While acknowledging the progress made by the new legislation, OECD states that confiscation continues to be discretionary under the new Act. In further criticism of the confiscation regime under the 2018 Act, the OECD states that where a corporate body is convicted of an offence under section 18(1) of the Act, no provision has been made for the confiscation of the bribe, property or pecuniary advantage obtained. The OECD contends that the provisions on confiscation in section 17(3) (a) and (b) for summary convictions and indictable offences do not apply to corporate bodies and therefore, falls short of meeting the obligations under Article 3 of the Bribery Convention. In essence, the absence of a confiscation regime to cater for offending corporate bodies within the Criminal Justice (Corruption Offences) Act 2018, means that it is not in compliance with the requirements of the Bribery Convention in that particular regard. The OECD has indicated that it will review Ireland's confiscation regime with respect to corporate bodies in the phase 4 evaluation scheduled for 2021.

It is important to note that sections 20 and 21 of the Criminal Justice (Corruption Offences) Act 2018 provide for the seizure and forfeiture of gifts or other considerations used or

intended for the bribery offences under the Act. Ireland contends that while not a requirement for the prosecution of a corporate body, the likelihood of the prosecution of a relevant officer of the corporate body in relation to a bribery offence, will result in the confiscation of any pecuniary advantage obtained from the offence.

Concerns about the dual criminality requirements contained in the provisions of the Criminal Justice (Corruption Offences) Act 2018 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 were raised during the consultation process of the Review Group.

The OECD gave comprehensive consideration to dual criminality provisions in both pieces of legislation in its Phase1bis evaluation of Ireland. With regard to the compliance of the relevant provisions of both Acts with the Bribery Convention, the OECD indicated that the provisions in the legislation appear to be compliant. With respect to the provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, the OECD's recommendation to ensure that foreign bribery is always a predicate offence to money laundering was complied with by way of an amendment to the Act. Foreign bribery under the Criminal Justice (Corruption Offences) Act 2018 is now a predicate offence for the purpose of money laundering legislation without regard to the place the offence took place. The requirement of the bribery convention has now been fully implemented in this regard.

The OECD's findings acknowledged the progress made, but has stated that a number of significant issues remain outstanding and will be considered under the phase 4 evaluation process scheduled to take place in 2021.

UN Convention Against Corruption (UNCAC)

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument.

The Convention covers five main areas:

- Preventive measures.
- Criminalization and law enforcement.
- International cooperation.
- Asset recovery.
- Technical assistance and information exchange.

In 2018 Ireland underwent the second cycle evaluation of its compliance with the UNCAC. Chapters II (Preventive Measures) and V (Asset Recovery) were reviewed (report to be

published in 2019.) The implementation of the Convention by State Parties is evaluated through a peer-review process, also involving the UN Secretariat.

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.

States Parties to the Convention must:

- undertake effective measures to prevent corruption (chapter II, articles 7 to 14)
- criminalize corrupt acts and ensure effective law enforcement (chapter III, articles 15 to 42)
- cooperate with other States parties in enforcing anti-corruption laws (chapter IV, articles 43 to 50) and
- assist one another in the return of assets obtained through corruption (chapter V, articles 51 to 59).

Moreover, in addition to calling for effective action in each of these specific areas, article 5 imposes the more general requirements that each State Party:

- a) develop and implement or maintain effective, coordinated anti-corruption policies;
- b) establish and promote effective practices aimed at the prevention of corruption; and
- c) periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

Under article 6, each State Party is required to ensure the existence of a body or bodies, as appropriate, that prevent corruption by implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies. Thus, one of the most important obligations of States Parties under the Convention, and to which they are to be held accountable under the Mechanism for the Review of Implementation of the Convention is ensuring that their anti-corruption policies are effective, coordinated and regularly assessed.

The UNODC Secretariat has recently published its Executive Summary on Ireland's implementation of the Convention in relation to the recent review and a full Country report will follow later this year. Ireland was subject to the first cycle of this review process in 2015 on its implementation of Chapters III (Criminalization and law enforcement) and IV (International Cooperation) of the Convention.

A copy of the UNCAC Convention, the Executive Summary (2019) relating to the review of Ireland as regards chapters II and V and the full Country report (2015) in relation to chapters III and IV is annexed to the report. UNCAC has set out what it considered to be successes and good practices in Ireland, as well as challenges in relation to the implementation of certain parts of the Convention. Appendix A contains the summary of 'successes and good practices' identified in the UNCAC reviews and the challenges in implementation. Below I have set out the progress that Ireland has made to date on some of the implementation challenges identified in the UNCAC evaluations.

UNCAC evaluations of Ireland 2015 and 2019

Chapter I: Preventative Measures (Reviewed in 2019)

Recommendation	Progress
Set up an anti-corruption inter-agency steering committee to better coordinate corruption prevention efforts.	The review of Ireland's anti-corruption and anti-fraud structures and procedures in criminal law enforcement currently being undertaken by this group is assessing the extent to which the various State bodies involved in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together, and identifying any gaps or impediments in this regard. The review group, chaired by an expert and former Director of Public Prosecutions, comprises a range of relevant Government Departments, State agencies and other experts is expected to report to the Minister by Q 3 2020 with its findings and recommendations.
Establish a Judicial Council with a mandate to adopt a code of conduct for judges	The recommendation to establish a Judicial Council with a mandate to adopt a code of conduct for judges has been addressed with the passage of the Judicial Council Act 2019. The Judicial Council Act 2019 was signed into law on the 23 July 2019 and provides for the establishment of a Judicial Council with a mandate to adopt a code of conduct for judges. Under the legislation, the Council will be independent in the performance of its functions. The Act will also provide, for the first time, a statutory basis for the appropriate training of judges and for the investigation of complaints against judges.
Consider lowering the limits in relation to gifts to public officials that are subject to mandatory declaration and refusal or remittance (art. 7(4))	Limits relating to gifts were included in the Public Sector Standards Bill 2015 (Minister for Public Expenditure and Reform), which aimed to significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks. However, as previously stated, the bill has (as with all Bills) lapsed with the dissolution of the Dáil in January 2020. Arising from the commitment to reform and consolidate the ethics in public office legislation in the Programme for Government (June 2020), a review of relevant legislation will be carried out to inform a new consolidated ethics framework.

Recommendation

Progress

Consider establishing a single, unified anti-money-laundering supervisory authority for designated non-financial businesses and professions (arts. 14(1)(a) and 52(1))

Designated Non-Financial Persons and Bodies encompass a wide variety of economic actors, many of whom have existing self-regulatory bodies in Ireland that function as competent authorities in respect of their members. In Ireland, where shortcomings are perceived, there is a tendency towards replacing self-regulatory bodies with external general regulators under statute (e.g. Gambling Regulator.)

In circumstances where Revenue already receives all Money-Laundering Suspicious Transaction Reports, setting up an agency within Revenue (as has been done in the UK) could be perhaps the most appropriate approach to a single “residual” Irish Designated Non-Financial Persons and Bodies agency for those businesses not subject to general regulation (such as dealers in high-value goods). This would need further consideration by relevant stakeholders.

Chapter II: Criminalization and Law Enforcement (Reviewed in 2015)

Recommendation

Progress

Bribery of national public officials and
Bribery of foreign public officials and
officials of public international
organizations

explicitly criminalize the “promise” of
a bribe;

implement a better case tracking
system to be able to evaluate the
effectiveness and identify any
weaknesses in the current
enforcement system;

monitor effective enforcement and
take any necessary measures to
strengthen its implementation.

Addressed through the Criminal Justice (Corruption Offences) Act 2018. Section 5(1) of the Criminal Justice (Corruption Offences) Act 2018 sets out as follows:

A person who, either directly or indirectly, by himself or herself or with another person—

- a) corruptly offers, or
- b) corruptly gives or agrees to give, a gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business shall be guilty of an offence.

The phrase “agrees to give” in the above offence covers the promise of a bribe.

Trading in influence - swiftly adopt the
Criminal Justice (Corruption) Bill in order
to comprehensively criminalise trading in
influence

Section 6 of the Criminal Justice (Corruption Offences) Act 2018 criminalises trading in influence.

Recommendation	Progress
<p>Adopt legislation to:</p> <ul style="list-style-type: none"> establish an effective and comprehensive system of corporate criminal liability; establish an effective and comprehensive system of liability that is not dependent on the prior establishment of liability of a natural person or persons with sufficient control over the legal entity 	<p>Section 18 of the Criminal Justice (Corruption Offences) Act 2018 deals with the criminal liability of legal persons.</p>
<p>Take measures to allow for the disqualification of persons other than MPs convicted of corruption offences from holding public office</p>	<p>Section 17(4) of the Criminal Justice (Corruption Offences) Act 2018 deals with forfeiture of office and prohibition on seeking office and sets out as follows:</p> <p>(4) (a) Paragraph (b) or (c) applies where a person is convicted on indictment of an offence under section 5, 7, 8, 9 or 10 in relation to an office, position or employment as an Irish official held or occupied by that person at the time the offence was committed.</p> <p>(b) Subject to subsection (5), the court in imposing sentence on the person for the offence concerned may order the forfeiture of any office, position or employment as a relevant Irish official held or occupied by that person.</p> <p>(c) Subject to subsection (5), the court in imposing sentence on the person for the offence concerned may make an order prohibiting the person from seeking to hold or occupy any office, position or employment as an Irish official, other than an office as—</p> <ul style="list-style-type: none"> (i) a member of Dáil Éireann, (ii) a member of Seanad Éireann, (iii) a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997, or (iv) a member of a local authority, for a specified period not exceeding 10 years from the making of the order. <p>This penalty is in addition to other penalties set out in section 17. The Criminal Justice (Corruption Offences) Act 2018 was enacted on 5 June 2018 and commenced in full on 30 July 2018</p>

Recommendation

Progress

Adopt legislation to:

establish an effective and comprehensive system of corporate criminal liability;

establish an effective and comprehensive system of liability that is not dependent on the prior establishment of liability of a natural person or persons with sufficient control over the legal entity

Section 18 of the Criminal Justice (Corruption Offences) Act 2018 deals with the criminal liability of legal persons.

18. (1) A body corporate shall be guilty of an offence under this subsection if an offence under this Act is committed by—

(a) a director, manager, secretary or other officer of the body corporate,

(b) a person purporting to act in that capacity,

(c) a shadow director within the meaning of the Companies Act 2014 of the body corporate, or

(d) an employee, agent or subsidiary of the body corporate, with the intention of obtaining or retaining—

(i) business for the body corporate, or

(ii) an advantage in the conduct of business for the body corporate.

(2) In proceedings for an offence under subsection (1), it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(5) Subsection (1)—

(a) is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts, and

(b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence under this Act.

Recommendation

Progress

Take measures to allow for the disqualification of persons other than MPs convicted of corruption offences from holding public office.

Section 17(4) of the Criminal Justice (Corruption Offences) Act 2018 deals with forfeiture of office and prohibition on seeking office and sets out as follows:

(4) (a) Paragraph (b) or (c) applies where a person is convicted on indictment of an offence under section 5, 7, 8, 9 or 10 in relation to an office, position or employment as an Irish official held or occupied by that person at the time the offence was committed.

(b) Subject to subsection (5), the court in imposing sentence on the person for the offence concerned may order the forfeiture of any office, position or employment as a relevant Irish official held or occupied by that person.

(c) Subject to subsection (5), the court in imposing sentence on the person for the offence concerned may make an order prohibiting the person from seeking to hold or occupy any office, position or employment as an Irish official, other than an office as—

(i) a member of Dáil Éireann,

(ii) a member of Seanad Éireann,

(iii) a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997, or

(iv) a member of a local authority,

for a specified period not exceeding 10 years from the making of the order.

This penalty is in addition to other penalties set out in section 17. The Criminal Justice (Corruption Offences) Act 2018 was enacted on 5 June 2018 and commenced in full on 30 July 2018

Ireland was encouraged to consider the introduction of a central register of bank accounts.

Ireland is examining this matter at present. Ireland is obliged under Article 32a of the 5th Anti-Money Laundering Directive to establish a central register of bank accounts or an equivalent information retrieval mechanism by 10 September 2020.

Chapter III: International cooperation (reviewed in 2015)

Recommendation	Progress
Include the offences established in accordance with the Convention as extraditable offences.	Extradition treaties are negotiated on a business needs basis and can be amended when required subject to the agreement of both parties.
Extending the domestic legal framework to also allow for the execution of sentences imposed by the requesting State party when extradition of nationals is denied	The extradition of nationals continues to be kept under active review.
Consider concluding agreements for the transfer of sentenced persons with States that are not parties to the European Convention on the Transfer of Sentenced Persons	Transfer of Sentenced Persons Acts, 1995 and 1997 are based on the Council of Europe Convention on the Transfer of Sentenced Persons. Ireland has not yet enacted legislation to give effect to the provisions of EU Council framework decision 2008/909/JHA. This framework decision will be implemented by the enactment of the Transfer of Sentenced Persons and the Transfer of Execution of Sentences Bill, which is currently being drafted.
Consider concluding further bi- and multilateral treaties in order to enhance the effectiveness of extradition	Remains under active consideration based on business needs.
Consider concluding agreements for the transfer of sentenced persons with States that are not parties to the European Convention on the Transfer of Sentenced Persons	The Transfer of Sentenced Persons Acts, 1995 and 1997, is the legislative basis for enabling the repatriation of prisoners to Ireland. These Acts allow for the operation in Ireland of the Council of Europe Convention on the Transfer of Sentenced Persons. Non-members of the Council of Europe can either sign up to the Convention on the Transfer of Sentenced Persons or seek to negotiate a bilateral agreement with Ireland. If an application is made for a bi-lateral agreement and consent is given by the Minister for Justice to commence discussions, legal advices would then be sought from the Office of the Attorney General in respect of any proposed agreement.
Clarify the national ability to provide assistance to all States parties to the Convention, including those that are not designated States or Member states of the European Union; and consider whether the collection of separate statistics on requests related to offences established in accordance with the Convention would be beneficial	Under the Mutual Legal Assistance Act, States must be designated. The current designation orders are in the process of being updated.

Recommendation	Progress
Ireland could accept oral requests made in urgent circumstances if they are confirmed in writing afterwards	Mutual Legal Assistance is generally provided on the basis of international letters of request. Requests by their nature can be complex and detailed. Requests may be dealt with by email, which could be considered to adequately address this point.
Ireland could consider providing to a requesting State party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public (art. 46, para. 29 (b))	The Mutual Legal Assistance Act provides for the production of documents under section 75 which provides for the uplift of documents by way of a court order. The issuing of such an order is a matter for the District Court.
Consider establishing joint investigations also with States parties to the Convention that are not covered by the Criminal Justice (Joint Investigation Teams) Act 2004, as amended	The Criminal Justice (International Cooperation) Bill will provide for a technical amendment to section 51 of the Garda Síochána Act 2005. The provisions in question concern the assignment for service abroad of members of An Garda Síochána including, in particular, in joint investigation teams in accordance with the 2002 EU Council Framework Decision on joint investigation teams. This Bill is at an advanced stage of drafting and is expected to be published during May 2019.
Ensure the use of controlled delivery and other special investigative techniques within the context of international cooperation with regard to all States parties to the Convention With regard to States Parties not covered by the Criminal Justice (Mutual Assistance) Act 2008, ensure the use of special investigative techniques on a case-by-case basis	In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. A designated State under UNCAC and by association Article 50 is covered by the Mutual Legal Assistance Act 2008.

Chapter IV: Asset Recovery (Reviewed in 2019)

Recommendation	Progress
Finalize the transposition of the fourth European Union anti-money-laundering directive to address the existing gaps in its anti-money-laundering/counter-terrorist financing legislation, notably on beneficial ownership registers (Articles 30 and 31).	The beneficial ownership elements of the fourth European Union anti-money-laundering directive have been transposed by the European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 (SI 110 of 2019) and the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019(SI 16 of 2019). Other components of transposition were completed in November 2018 with the commencement of the Criminal Justice (Money Laundering and

Recommendation

Progress

Terrorist Financing) Amendment Act 2018. Work is well underway on the transposition of the fifth anti-money-laundering Directive.

Recommendation: Ensure that international cooperation for the purposes of the Convention can be provided to all States parties, regardless of their current designation under the Mutual Legal Assistance (MLA) Act, including by specifically designating all States parties to the Convention for the purposes of the MLA Act or clearly designating the Convention as a sufficient legal basis for these purposes

In consultation with Department of Foreign Affairs and Trade, the final text of a statutory instrument designating all current States parties to the UN Convention against Corruption for mutual assistance has been completed. This order, which will be signed into law at the earliest possible opportunity, will fully address the recommendation to ensure that international cooperation for the purposes of the Convention can be provided to all States parties to the Convention.

