UNODC
United Nations Office on Drugs and Crime

Country Review Report of Ireland

Review by Austria and Liechtenstein of the implementation by Ireland of Chapters II (articles 5-14) and V (articles 51-59) of the United Nations Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Ireland of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Ireland, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Liechtenstein and Austria, by means of meetings, e-mail exchanges and country visit and involving Mr. Patrick Duffy, Mr. Fiachra Byrne (Ireland), Mr. Andreas Wieselthaler, Ms. Verena Wessely, Mr. Bernhard Weratschnig (Austria), Mr. Patrick Ritter, Dr. Frank Haun (Liechtenstein), Mr. Oliver Landwehr and Mr. Meder Begaliev (UNODC).
6. A country visit, agreed to by Ireland, was conducted from 26 to 28 June 2018 in Dublin.

III. Executive summary

1. ***Introduction : Overview of the legal and institutional framework of Ireland in the context of UNCAC implementation***

Ireland signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 9 November 2011.

Ireland is a parliamentary democracy. Parliament consists of the President and two Houses: Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). Irish law is based on English Common Law, substantially modified by domestic concepts, the Constitution of 1937, statute law and judicial decisions. Ireland follows a dualistic approach with regard to the incorporation of public international law.

The implementation by Ireland of chapters III and IV of the Convention was reviewed in the fourth year of the first cycle, and the executive summary of that review was published on 29 May 2015 (CAC/COSP/IRG/I/4/1/Add.14). As a member of the Council of Europe Group of States against Corruption (GRECO), Ireland's anti-corruption framework has also been reviewed in multiple rounds of reviews. Likewise, Ireland's anti-money-laundering and counter-terrorist financing framework has been assessed by the Financial Action Task Force (FATF). As a member of the European Union (European Union), Ireland is subjected to European Union legislation on the internal market, including the anti-money-laundering and counter-terrorist financing framework.

Relevant institutions involved in the prevention, investigation and prosecution of corruption include An Garda Síochána (the national police service of Ireland) and its Financial Intelligence Unit (FIU), the Criminal Assets Bureau (CAB), the Office of the Director of Public Prosecutions (ODPP), the Office of the Director of Corporate Enforcement (ODCE), the Comptroller and Auditor-General (C&AG), the Standards in Public Office Commission (SIPO Commission), and the Information Commissioner.

The implementing legislation for chapters II and V includes, notably, the Criminal Justice (Corruption Offences) Act 2018, the Ethics in Public Office Act 1995 (EPO Act), the Standards in Public Office Act 2001 (SIPO Act), the Protected Disclosures Act 2014 (PD Act), the Regulation of Lobbying Act 2015 (RL Act), the Freedom of Information Act 2014 (FOI Act), the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (AML-CTF Act), the Proceeds of Crime Act 1996 (PoC Act), the Criminal Assets Bureau Act 1996 (CAB Act), and the Criminal Justice (Mutual Assistance) Act 2008, as amended (MLA Act).

2. ***Chapter II: preventive measures***

2.1 Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Ireland has adopted several policies and legislative measures to prevent and fight corruption including the Government report on Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework.

The report identifies a series of action points aimed at strengthening Ireland's

anti-corruption framework including enacting new legislation, reviewing existing legislation and making organizational and procedural changes. The Government report and action plan follows a review of Ireland's Corporate, Economic and Regulatory Framework.

Furthermore, the National Action Plan of Ireland for 2016–2018 under the Open Government Partnership initiative, developed by the Government in consultation with civil society, contains commitments on strengthening anti-corruption measures, increased citizen engagement, transparency and open data, and other anti-corruption themes.

Ireland is a party to a number of international agreements on corruption, including GRECO, and the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Ireland also supports accountability for corruption in its partner countries by helping to put in place the necessary legal and institutional frameworks through its development programme, Irish Aid, of the Department of Foreign Affairs and Trade.

The mandate to prevent, investigate and prosecute corruption in Ireland is spread across various public bodies, including An Garda Síochána, the ODPP, the Ombudsman, the SIPO Commission, the ODCE, the C&AG, the Information Commissioner, etc. These are statutory bodies with their own resources in terms of staff and budget and their independence is provided in law and practice. The SIPO Commission publishes a wide range of guidelines, codes of practice and conducts outreach activities as part of its statutory functions.

Ireland has recently established a dedicated anti-corruption unit within An Garda Síochána to investigate and prevent corruption. Currently, however, the unit has only three staff and its corruption prevention mandate is not sufficiently clear.

The Irish Government has also launched a website (www.anticorruption.ie) to raise awareness of bribery and corruption among the public and businesses.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Public Service Management (Recruitment and Appointments) Act 2004 sets out the main framework for public service recruitment in Ireland. The Act established the Public Appointments Service, a central recruitment agency, and the Commission for Public Service Appointments, which develops codes of practice to guide the work of the Service and to promote the principles of probity, merit, best practice, fairness and transparency. There is also comprehensive legislation regulating the remuneration and retirement of civil servants.

The Constitution establishes eligibility criteria for election to the office of the President (art. 12) and to both houses of Parliament (arts. 16 and 18, Constitution and sect. 41, Electoral Act 1992). These provisions also state that the President is not to hold any other office or position of emolument and members of both houses of Parliament cannot be, inter alia, members of the judiciary or civil servants.

The Electoral Act 1997 establishes detailed rules on electoral funding and sets various donation thresholds and disclosure requirements, including permissible anonymous donations (EUR 100 maximum), permissible cash donations (maximum of EUR 200 for Members of Parliament, political parties and candidates in parliamentary and presidential elections), the size of donations from a single source in any given calendar year (maximum of EUR 1,000 for candidates and EUR 2,500 for political parties), mandatory disclosure of donations exceeding EUR 100, etc. Political

parties, candidates, members of Parliament or third parties among others are not to accept foreign donations. The Act also sets election expenditure limits, requires submission of election expense reports within 56 days of an election, provides for sanctions for violations of the Act and assigns the SIPO Commission a supervisory role in this regard. Separate to requirements under the Electoral Act 1997, section 15 of the Criminal Justice (Corruption Offences) Act 2018 sets out the regulatory framework in respect of corrupt donations.

Integrity, honesty and responsibility among public officials are promoted by the SIPO Act, the EPO Act and the RL Act. Section 10 of the SIPO Act provides a legislative basis for codes of conduct for certain categories of public officials. These codes are enforceable as terms and conditions of employment. The Civil Service Disciplinary Code provides for detailed procedures that apply in case of a breach of the codes. A breach may lead to disciplinary actions including dismissal. Training on codes of conduct are arranged by public bodies as part of induction programmes for new entrants and on an ongoing basis. The SIPO Commission has a general role in terms of awareness-raising as well as advice, monitoring and enforcement of the codes.

The PD Act provides a comprehensive statutory framework for whistle-blower protections and, inter alia, protects disclosures regardless of the motivation of the whistle-blower. In line with the PD Act, Protected Disclosures Policy and Procedures have been adopted across the public service and Guidance issued to assist public bodies in the implementation of the Act.

Any designated official under the SIPO Act and the EPO Act must declare any interest held by them or by their spouse or civil partner, child or child of spouse, which could materially influence the official in or in relation to the performance of their official functions. The declaration system is designed to capture conflicts of interest.

The registrable interests are set out in schedule 2 of the EPO Act and include mandatory declaration of gifts valued above EUR 650. Public officials may engage in outside activities, including paid activities, with certain conditions and restrictions as outlined in the Civil Service Code of Standards and Behaviour (Civil Service Code).

The Constitution, the Courts of Justice Act 1936 and the Courts of Justice (District Courts) Act 1946 establish the legal framework for appointment and removal of judges.

There is no code of conduct for members of the judiciary and the adoption of such a code would be facilitated by the establishment of a judicial council. Newly appointed judges are familiarized with the Bangalore Principles of Judicial Conduct on induction but no formal courses on ethics are offered. Judges cannot be members of parliament or hold any other paid job while in office. However, they are not required to declare any interests at present.

The Prosecution of Offences Act 1974 contains provisions on the appointment of the DPP, and the independence of that office-holder in the exercise of his or her functions, etc. Provisions of the SIPO Act, the EPO Act and the RL Act, including on the management of conflicts of interest, apply to officials of the ODPP. The ODPP has its own Code of Ethics and Prosecutors' Guidelines. In addition, one-hour mandatory training on ethics for professional staff is carried out annually.

Public procurement and management of public finances (art. 9)

The national public procurement policy sets out the overarching policy framework for public procurement in Ireland and contains procedures to be followed by departments and state bodies under relevant national and European Union rules. The Department of Public Expenditure and Reform (DPER) implements the National Policy and the Office of Government Procurement

(OGP) within DPER serves as a central purchasing body and sources 8 categories of goods and services out of 16 in total. Procurement of construction works is decentralized and governed by the capital works management framework.

OGP develops framework contracts to source standard goods and services and manages www.eTenders.gov.ie which is a dedicated website to advertise all public procurement opportunities and award notices.

The "Most economically advantageous tender" method is used to determine the winning bid. All unsuccessful bidders are provided with a summary of reasons for a tender decision. They may lodge a written request for more specific reasons and if still dissatisfied may take a case to the High Court. In addition, OGP has set up the Tender Advisory Service to provide an informal outlet for potential suppliers to address concerns in relation to procurements carried out by OGP and other contracting authorities.

Procurement is subject to audit and scrutiny by C&AG, and accounting officers within departments are accountable for expenditure incurred. Contracting authorities are to ensure the proper conduct of procurements, including conformance to standards of good governance and accountability and take appropriate measures to prevent, identify and remedy conflicts of interest.

The Department of Finance leads the development of a draft national budget which covers general government revenues and expenditures. The draft is then presented to the Parliament for its debate and approval. The draft is also submitted to the European Commission for assessment to ensure compliance with the expenditure limits specified under the Stability and Growth Pact. The parliamentary process is public.

The Exchequer returns (revenues and expenditure of the main treasury account of the Government) are published every month. The Government publishes relevant information on several websites, including www.budget.gov.ie, www.databank.per.gov.ie and www.whereyourmoneygoes.gov.ie.

C&AG audits all budgetary and extrabudgetary funds. Accounting officers are to supply a signed Statement on Internal Financial Control (SIFC) to C&AG with the annual Appropriation Account. SIFC is made public subsequently.

Each government department or office is required to have an Internal Audit Unit and an Audit Committee which provide opinions and advice to the Accounting Officer.

Accounting officers are also to make adequate arrangements to ensure the integrity of financial documentation related to public revenue and expenditure. Falsification, destruction or withholding accounts information for the purposes of material gain for oneself or another is an indictable offence (sect. 10, Criminal Justice (Theft and Fraud Offences) Act 2001 (CJA 2001)).

Public reporting; participation of society (arts. 10 and 13)

Subject to certain exceptions, the FOI Act provides every person with the right to access official records held by the Government and the right to be given reasons of the decisions of public bodies that affect them among others. The freedom of information central policy unit within DPER provides support and guidance to assist public bodies in the implementation of the FOI Act. The unit maintains a helpdesk and a dedicated website with relevant manuals.

All freedom of information bodies must publish specific information on freedom of information procedures and have a "publication scheme", which includes a range of routinely and proactively

published information, and a freedom of information disclosure log, which outlines received requests and decisions made on the requests.

Decisions denying freedom of information requests may be reviewed internally if requested. The Information Commissioner may be requested to review internal review decisions. The Information Commissioner publishes a range of guidance documents and all decisions made on reviews on its website.

Ireland seeks to reform administrative processes, enhance the delivery of services and achieve greater transparency within the public service in its eGovernment Strategy 2017–2020.

In recent years, Ireland has published reports of public inquiries into corrupt payments to politicians and tax evasion ("Mahon" and "Moriarty" Tribunals). Further, National Risk Assessment for Ireland: Money Laundering and Terrorist Financing includes a section on bribery and corruption.

Anti-corruption authorities are known to the public. Reports of corruption can be made to An Garda Síochána, including anonymously, using special telephone lines, post and email.

Private sector (art. 12)

The Companies Act 2014 (Companies Act) regulates transparency among private entities, requires disclosure of relevant information by companies upon registration, lays down corporate governance rules, provides sanctions for non-compliance with the requirements of the Act and provides for the ODCE.

Apart from the provisions of the Companies Act on corporate governance, Euronext Dublin stock exchange promotes standards of good governance among its listed companies. In addition, the Central Bank of Ireland (CBI) has a corporate governance code for credit institutions.

The Companies Registration Office (CRO) registers new companies and business names and maintains a public record accessible through the company name, business name or company number. It also enforces the Companies Act in relation to the filing obligations of companies.

CRO will be responsible for a central beneficial ownership register for corporate entities as required by directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (known as the fourth anti-money-laundering directive) once implemented.

The main financial reporting frameworks for private sector entities are the International Financial Reporting Standards, issued by the International Accounting Standards Board, and the generally accepted accounting principles followed in Ireland and the United Kingdom of Great Britain and Northern Ireland, which have been issued by the Financial Reporting Council in the United Kingdom.

Unless exempted, company financial statements must be audited and submitted to CRO together with the auditor's report (sects. 333, 336, 342–347 and 358–364, Companies Act). The Companies (Accounting) Act 2017 introduces new transparency measures, including the obligation of large companies in extractive industries to report payments to Governments (part 26, Companies Act).

Auditors have obligations to report offences and other matters to the authorities once they become aware of those offences. It is a criminal offence to knowingly or recklessly make a false return or lodge a false document with CRO in purported compliance with any provision of Companies Act (sects. 406 and 876, Companies Act).

Engaging in specific accounting practices for the purpose of committing corruption offences is prohibited (sect. 406, Companies Act and sect. 10, CJA 2001).

Cooperation between law enforcement agencies and the private sector on prevention issues are planned in future.

The Civil Service Code and the RL Act provide for restrictions on outside appointments and activities following resignation or retirement of designated public officials.

Sections 58 and 83A of the Taxes Consolidated Act 1997 prohibit deduction of expenses for payments that constitute a criminal offence under Irish law, even if they are made outside of Ireland.

The protections of the PD Act are also available to private sector employees.

Measures to prevent money-laundering (art. 14)

As a member of the FATF, Ireland is to implement and apply all recommendations of FATF and has recently carried out a national assessment of money-laundering and terrorist financing risks. Ireland has transposed most of the fourth European Union anti-money-laundering directive by passing the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 (CJA 2018). Ireland has a robust and mature regime for combating money-laundering. The main piece of legislation for the prevention of and fight against money-laundering is the AML-CTF Act 2010, as amended by the Criminal Justice Act 2013 and the CJA 2018. The AML-CTF Act follows a risk-based approach and establishes three levels of due diligence (standard, enhanced and simplified).

The anti-money-laundering supervisory authority for credit and financial institutions is the CBI, while other obliged entities (designated persons) are supervised by the Department of Justice and Equality, the Property Services Regulatory Authority or the appropriate self-regulatory body. Designated persons are listed in section 25 of the AML-CTF Act. The list includes, inter alia, legal professionals, trust or company service providers, property service providers and traders in high-value goods.

Ireland has adopted an all-crimes approach to money-laundering. Proceeds of crime are defined in section 1 of the PoC Act, as amended by the Proceeds of Crime (Amendment) Act 2005, and in section 6 of the AML-CTF Act.

Identification and verification of customers and beneficial owners is provided for in section 33 of the AML-CTF Act. According to section 33(2)(b) of the AML-CTF Act, the identity of the beneficial owner is systematically verified. Enhanced due diligence obligations with regard to politically exposed persons are set out in section 37. Under Chapter 4 of the AML-CTF Act (sect. 41 et seq.), designated persons have an obligation to make suspicious transaction reports to the FIU and the Irish Revenue Commissioners.

The national authorities engaged in combating money-laundering regularly meet in a forum known as the Anti-Money-Laundering Steering Committee to jointly develop Ireland's anti-money-laundering and counter-terrorist financing policy. This body is chaired by the Department of Finance and includes, inter alia, the CBI, the FIU, the CAB, and the ODPP. The FIU can share information with other units of An Garda Síochána, the CAB and the Revenue Commissioners. Mutual legal assistance in relation to money-laundering, is regulated in the MLA Act and the Banking Act.

The legal framework relating to the declaration or disclosure of cross-border movement of cash is based on the European Communities (Controls of Cash Entering or Leaving the Community) Regulations 2007 and the Customs Act 2015. In particular, persons travelling into and out of the European Union are obliged to declare details of cash valued in excess of EUR 10,000. Measures on electronic funds transfers and money remitters are implemented through the European Union Funds Transfer Regulation (European Union 2015/847) that has direct legal effect in Irish law and the European Union (Anti-Money-Laundering: Information accompanying transfers of funds) Regulations 2017.

Ireland has been a member of FATF since 1991 and its implementation of the FATF recommendations has been assessed in mutual evaluation reports in 2006 and 2017. The CAB is a member of the Camden Assets Recovery Inter-Agency Network (CARIN). As a member of the European Union, Ireland also contributes to the formulation of anti-money-laundering policy through active involvement in the relevant European Union bodies.

2.2 Successes and good practices

The review highlighted as good practices:

- *The motivation of a whistle-blower is irrelevant to whether their report is a protected disclosure under the PD Act 2014 (art. 8(4));*
- *The establishment of the Tender Advisory Service (art. 9(1));*
- *The existence of a freedom of information disclosure log (art. 10(a));*
- *The existence of the Anti-Money-Laundering Steering Committee (art. 14).*

2.3 Challenges in implementation

It is recommended that Ireland:

- *Set up an anti-corruption inter-agency steering committee to better coordinate corruption prevention efforts (see Anti-Money-Laundering Steering Committee) (art. 5(1));*
- *Ensure adequate resourcing and staffing of preventive authorities, particularly of the Anti-Corruption Unit within An Garda Síochána; clarify their tasks with regard to prevention (art. 6(2));*
- *Consider lowering the limits in relation to gifts to public officials that are subject to mandatory declaration and refusal or remittance (art. 7(4));*
- *Establish a Judicial Council with a mandate to adopt a code of conduct for judges (art. 11(1));*
- *Continue promoting appropriate corporate governance standards by adopting codes of conduct for a wider range of businesses and relevant professions (art. 12(2)(b);*
- *Consider establishing a single, unified anti-money-laundering supervisory authority for designated non-financial businesses and professions (arts. 14(1)(a) and 52(1)).*

3. Chapter V: asset recovery

3.1 Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

Ireland has a comprehensive legislative and policy framework for asset recovery. The PoC Act, the CAB Act, the MLA Act and the AML-CTF Act provide a legal basis for identifying, restraining and confiscating assets derived from the commission of an offence. Ireland uses various models of forfeiture and confiscation, including extended confiscation and non-conviction-based confiscation. CAB is responsible for civil non-conviction-based confiscation. The ODPP is responsible for criminal asset confiscation and forfeiture of cash and the instrumentalities of crime in accordance with the CJA 1994.

The sharing of information held by the FIU with foreign countries is governed by the MLA Act and the CJA 2018. Section 9 of part 1 of the MLA Act provides a basis for the spontaneous exchange of information by the ODPP, An Garda Síochána (including the FIU) and the Revenue Commissioners with relevant authorities in designated States. Police-to-police information sharing with other States is also possible on the basis of common law. Ireland has concluded two bilateral mutual legal assistance treaties. In addition, Ireland relies upon various European Union treaties with third states.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

As indicated above, provisions governing the identity of customers and beneficial owners are contained in section 33 of the AML-CTF Act. Section 35 obliges credit and financial institutions to monitor dealings with customers with whom they have a business relationship. A register of beneficial owners will be introduced in the context of the implementation of the fifth European Union anti-money-laundering directive.

Politically exposed persons are defined and subject to special measures and enhanced due diligence (sect. 37(10), AML-CTF Act). The CJA 2018 extends the regime on politically exposed persons to domestic politically exposed persons.

Section 55 of the AML-CTF Act provides for the keeping of records by obliged entities during the business relationship and for a period of not less than five years after the business relationship has ended. Banks that have no physical presence and that are not affiliated with a regulated financial group ("shell banks") are prohibited. Section 59 of the AML-CTF Act provides, inter alia, that a credit institution or financial institution is not to enter into a correspondent relationship with a shell bank. It is also obliged to have appropriate measures to ensure that it does not enter into or continue a correspondent banking relationship that permits its accounts to be used by a shell bank.

The EPO Act as amended by the SIPO Act provides for the disclosure of interests by, inter alia, members of the Houses of the Oireachtas, and designated positions in the civil service and the semi-state sector. There are no requirements for public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship.

The FIU is part of the Garda National Economic Crime Bureau of An Garda Síochána. It is a member of the Egmont Group of Financial Intelligence Units and of the European Union Financial Intelligence Units' Platform.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

As a matter of common law, foreign States have standing (locus standi) in Irish civil courts and can thus initiate civil action in court to establish title to or ownership of property or seek compensation or damages. Under section 6 of the Criminal Justice Act 1993, a court can order a defendant to pay compensation to the victim after a criminal conviction. Section 56 of the CJA 2001 also provides that restitution orders can be made by a trial court in relation to offences proved under that act. The PoC Act and the MLA Act contain several provisions to ensure that legitimate owners of property can have their interests recognized (e.g. sect. 53(6), MLA Act). In particular, under section 3(3) of the PoC Act, a foreign State may make an application to show that the property is not the proceeds of crime and claim ownership.

A foreign confiscation order from a European Union member State is directly enforceable (sect. 51A, MLA Act). Confiscation orders from other States that are designated States (designated as such by an order of the Minister of Foreign Affairs for mutual assistance purposes), may be transmitted to the Irish Central Authority with a request for its enforcement (sect. 50(1), MLA Act). The Central Authority may then make an application to the High Court for a "confiscation co-operation order" (sect. 51(1), MLA Act), which can be enforced by the ODPP as if it were a judgment of the High Court (sect. 52(1)). The confiscation provisions in the MLA Act are predicated on conviction-based and non-conviction-based criminal proceedings. Under the Criminal Justice Act 1994 (as amended), once a person has been convicted on indictment and sentenced, the trial court can make a confiscation order. This can also be done at the request of a foreign country. Moreover, Ireland has a "civil" non-conviction-based confiscation ("forfeiture") system. The CAB can bring "civil" proceedings to seize, freeze and ultimately forfeit property, also at the request of a foreign country. Under section 13(5B) of the Criminal Justice Act 1994 (as amended) the High Court may make a confiscation order where the defendant has absconded or where proceedings have been discontinued by reason of the defendant being ill.

Foreign freezing or seizure orders may be enforced under section 34 of the MLA Act. Domestic freezing orders, also at the request of a foreign country, can be issued under the PoC Act and the CAB Act. Proactive measures without request can be taken under sections 2 and 3 of the PoC Act.

Regarding the application of the provisions on cooperation in confiscation to a concrete case under article 55, section 51(1) of the MLA Act provides that for
non-European Union member States, the Central Authority enjoys discretion ("may") as to whether to make an application to the High Court. The content of requests for mutual legal assistance for the purpose of confiscation is determined by the MLA Act.

Ireland makes cooperation for the purposes of confiscation under the MLA Act conditional on the existence of a treaty. Ireland can use the Convention as a legal basis for such cooperation, however, a designation of the country under the MLA Act is also required.

Sections 3, 46 and 51B of the MLA Act outline the grounds for refusal of assistance, which do not include the de minimis value of the property. Irish authorities would not discontinue provisional measures without first giving the requesting state an opportunity to outline why the measures should be continued (sect. 51D, MLA Act).

The rights of bona fide third parties are protected under the MLA Act (sect. 51B (3)).

Return and disposal of assets (art. 57)

Pursuant to section 53 of the MLA Act, Ireland may return confiscated property which is not a sum of money to any designated State. If the confiscated property is a sum of money, it may be returned to a designated State that is a European Union member State. However, there is no explicit legal basis for the return of confiscated property which is a sum of money to a designated State that is not a European Union member State. In addition, in cases of embezzlement, sections 84–87 of the same Act contain provisions on the restitution of stolen property to its owner.

If there are third parties with an interest in the property, they can apply to court prior to confiscation. The court must consider all bona fide third-party interests which are incumbrances on the property.

Cooperation requests are, in principle, executed free of charge. Ireland has concluded two bilateral mutual legal assistance treaties and can also conclude agreements on a case-by-case basis for the final disposal of confiscated property.

3.2 Successes and good practices

- *The establishment of CAB and a "civil" non-conviction-based confiscation ("forfeiture") system (arts. 51 and 54(1)(c)).*

3.3 Challenges in implementation

It is recommended that Ireland:

- *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 (arts. 14 and 52);*

- *Consider requiring public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship (art. 52 (6));*

- *Ensure that the Central Authority exercises its discretion under section 51 of the MLA Act in a way that observes the binding obligations under article 55(1) and (2);*

- *Ensure that international cooperation for purposes of article 55(1) and (2) regarding Convention offences can be provided to all States parties, regardless of their current designation under the MLA Act (art. 55(6)), 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 (art. 55(6));*

- *Ensure that the MLA Act clearly provides for the return of confiscated property which is a sum of money to any State party, in accordance with (art. 57(2) and (3)).*

- *Consider concluding further bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation beyond the member States of the European Union (art. 59).*

IV. Implementation of the Convention

A. Ratification of the Convention

Ireland signed the United Nations Convention against Corruption on 9 December 2003 and ratified it on 9 November 2011.

B. Legal system of Ireland

Ireland is a sovereign, independent, democratic state. It is a republic and a parliamentary democracy. The system of Government remains broadly that established following Ireland's independence in 1922, with a written Constitution establishing a system of Government based on a separation of powers between a legislature, executive and judiciary.

Irish law is based on English Common Law, substantially modified by domestic concepts, the Constitution of 1937, statute law and judicial decisions. Ireland follows a dualistic approach with regard to the incorporation of public international law.

The Constitution of Ireland is the basic law of the State. It was adopted by referendum in 1937 and followed an earlier Constitution of 1922. It can only be amended following the passage of a Bill to amend the Constitution by a simple majority of both Houses of Parliament and the subsequent approval of the proposal by a majority of the people voting in a referendum. The functions and powers of the parliament, Government and the judiciary derive from the Constitution and also from law .

The Constitution sets out that all powers of Government are derived ultimately from the people. The Constitution guarantees citizens' fundamental rights. They are rigorously enumerated, interpreted, and enforced by a strongly independent and respected judiciary. Fundamental rights and freedoms are also guaranteed and vindicated by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights. Any legislation which is enacted and which is found to be repugnant to the Constitution by the Courts is invalid to the extent of such inconsistency.

The Government

The executive power of the State is exercised by or on the authority of the Government. The Executive is drawn from the membership of Dáil Éireann. There is provision that no more than 2 of the members of Government, who cannot exceed 15 including the Prime Minister (i.e. the Taoiseach), may be drawn from Seanad Éireann. The Constitution provides in Article 12.6 that the President shall not be a member of either House of Oireachtas. The Government is responsible to the Dáil, the popularly elected lower house of parliament. The Government meets and acts as a collective authority, is collectively responsible for the Departments of State administered by its members, and its discussions are confidential. The Taoiseach is the Prime Minister and Head of the Government.

Article 28.12 sets out:

> *"The following matters shall be regulated in accordance with law, namely, the organization of, and distribution of business amongst, Departments of State, the designation of members of the*

Government to be the Ministers in charge of the said Departments, the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity, and the remuneration of the members of the Government."

Parliament (the Oireachtas)

The national parliament, known as the Oireachtas, consists of the President and two Houses: a House of Representatives (Dáil Éireann) and a Senate (Seanad Éireann). The functions and powers of the President, Dáil, and Seanad derive from the Constitution and law.

The number of Dáil Members (Teachtaí Dála or TDs) is not fixed, but the Constitution provides that there must be at least one TD for every 20,000 to 30,000 people. At present, Dáil Éireann has 158 members returned by the 40 multi-seat constituencies into which the State is at present divided. In plenary session, questions are decided upon a majority of votes, and the Chairman of each House has a casting vote in the event of an equality of votes.

Seanad Éireann (Senate) has 60 members. Eleven are nominated directly by the Taoiseach. 43 are elected by members of Dáil Éireann, by outgoing members of the Seanad and by Local Authority members, from five panels of candidates: the Cultural and Educational Panel, the Agricultural Panel, the Labour Panel, the Industrial and Commercial Panel and the Administrative Panel. Each panel contains the names of persons with knowledge and practical experience of the interests represented by the panel. The remaining six are elected by the graduates of two universities - three by the National University of Ireland and three by the University of Dublin. The powers of the Seanad, as defined by the Constitution are, in general, less than those of the Dáil. Its powers are complementary to those of the Dáil in broad areas such as the passage of legislation, the initiation of Bills other than Money Bills; the annulment of statutory instruments; removal from office of a President or a judge; and the declaration and termination of a state of emergency. Seanad Éireann has no power to initiate Money Bills although it can make recommendations to Dáil Éireann in respect of such Bills.

There is a system of Parliamentary Committees in operation within the Oireachtas. Under Dáil standing orders four committees must be appointed, on Selection (Seanad Éireann), on Public Accounts, on Procedure and Privileges and on Consolidation Bills. Other committees may be established by a resolution of one or both of the Houses of the Oireachtas. They are empowered to request official papers and to hear evidence from individuals. It is a matter for the Houses to decide upon the number and range of Committees which should be established, together with their terms of reference. The Third Stage (of five stages) in the passage of a Bill by Dáil Éireann is usually delegated to the relevant sectoral Committee.

The President

The President is Head of State. He or she is elected to serve a seven-year term to a maximum of two terms. The President is independent of the Houses of Parliament and is not ordinarily answerable to them. Article 13.8.1o states "The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions." The President may, however, be impeached for "stated misbehaviour" and removed from office in a process involving charge and investigation by the Houses of the Oireachtas. No President has ever been impeached.

Despite the independent nature of the office of President, the powers and functions conferred on the

President are generally exercisable only on the advice of the Government, with limited exceptions. Article 13.9 of the Constitution states - "The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body."

The powers and functions conferred on the President by the Constitution include:

- The appointment of the Taoiseach on the nomination of Dáil Éireann;
- The appointment of members of the Government on the advice of the Taoiseach and with the prior approval of Dáil;
- The signing and promulgation of all Bills presented to him or her for signature;
- The summoning and dissolution of Dáil Éireann on the advice of the Taoiseach;
- Supreme Commander of the Irish Defence Forces;
- Granting pardons; and
- The appointment of judges.

While the President of Ireland is the titular Supreme Commander of the Defence Forces, under the Defence Act of 1954, military command is exercised by the Government through the Minister for Defence who manages and controls the forces.

As noted above, the President may generally only exercise powers and functions on the advice of the Government or another person or body. The President's discretion to act independently is limited to where the Constitution provides that he shall act in his absolute discretion or after consultation with or in relation to the Council of State.

There are few circumstances where this independence of action applies: the two most important relate to the dissolution of the Dáil; and the referring of Bills to the Supreme Court. The other independent functions include - the appointment of a Committee of Privileges; the abridging the time for consideration of a Bill by the Seanad; the reference of a Bill to the people - all of which are contingent upon a prior request from a majority of at least one House of the Oireachtas. The latter three functions have seldom, if ever, been exercised.

Refusing to Dissolve the Dáil

Article 13.2.1o provides that the Dáil shall be summoned and dissolved by the President on the advice of the Taoiseach. Article 13.2.2o states "The President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann." This discretion has never been exercised in the history of the Presidency. While it allows the President to refuse to dissolve the Dáil, it does not provide for the President to become involved in the process of forming a Government. As noted in the leading academic text on the Constitution - "In fact the Constitution does not accord any such role of political initiative to the President."

Referring a Bill to the Supreme Court

Article 26.1.1° of the Constitution provides that "The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on

the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof."

If the Court finds that any aspect of a Bill is repugnant to the Constitution the President must decline to sign the Bill. This function of referral has been exercised on numerous occasions by various Presidents.

As noted in Kelly, these two functions of the President are practically the only independent functions of the President of political importance.

C. Implementation of selected articles

Chapter II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland is strongly committed to ensuring that the necessary domestic measures are in place to effectively combat corruption both nationally and in the context of our international commitments. There is a broad spectrum of legislation in relation to the prevention of corruption including the Criminal Justice (Corruption Offences) Act 2018, ethics legislation, political funding legislation, money laundering legislation and the Companies Acts.

The Criminal Justice (Corruption Offences) Act 2018 arose from a Programme for Government commitment to enact a new consolidated and reformed anti-corruption law. The law was enacted on 5 June 2018 and commenced in full on 30 July 2018. The Act modernises Irish anti-corruption laws. It repealed and replaced the seven previous Prevention of Corruption Acts dating back as far as 1889. In addition, it provides for a number of new offences as well as stronger penalties for those convicted of corruption.

The Act includes a new offence of 'trading in influence' to criminalise bribing a person who may exert an improper influence over the decision-making of a public or foreign official. Under the Act, it is now an offence for a public official to make use of confidential information acquired in the course of their duties to obtain an advantage. It outlaws a person giving a gift where the person knows or reasonably ought to know that it will be used to facilitate corruption.

The Act also includes a new strict liability offence where a corporation can be liable for the actions of directors, managers, employees or agents who commit a corruption offence for the benefit of the corporation. Designed to prevent corruption in corporate bodies, it shall be a defence for a company to prove that it took all reasonable measures and exercised due diligence to avoid the commission of the offence.

Regarding the penalties in the Act, sentences of up to 10 years are provided for as well as unlimited fines for conviction on indictment of the main corruption offences in the Act. The Act gives discretion to a court to order that certain public officials found guilty of a corruption offence be removed from their public office or position. The Court also has the discretion to prohibit those convicted of corruption offences from seeking certain public appointments for up to ten years.

At present, the main legislation regulating the ethical conduct of public officials is The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001. This legislation provides for the disclosure of registrable interests by members of the Oireachtas (Parliament) and public servants and for investigation of possible non-compliance with the legislation. It provides

for the publication of Codes of Conduct for office holders, for ordinary members of the Dáil, for ordinary members of the Seanad and for public servants, and also a requirement that members of the Oireachtas and appointees to senior office in the public service are required to furnish evidence of tax compliance.

The Regulation of Lobbying Act 2015 was commenced on 1 September 2015. It is designed to provide appropriate transparency on 'who is lobbying whom about what' and allows all sections of society to reach informed evidence-based judgments regarding the extent to which different interest groups are able to access and influence decision-making. The Act sets out arrangements for bringing transparency to lobbying activities through a web-based register. For further details, see: https://www.lobbying.ie/. Provisions in the Act regarding enforcement commenced on the 1st January 2017.

The Standards in Public Office Commission is responsible for regulatory functions in relation to the above legislation, including maintaining and publishing relevant registers, and investigating complaints. For further details, see: http://www.sipo.ie/en/

A full review of ethics legislation has taken place, in order to consolidate existing provisions, as well as to implement recommendations of Tribunals that dealt with matters around political ethics. The development of the Public Sector Standards Bill involved a root and branch examination of the current ethics system both at the national and local level, a review of international best practice, analysis of Tribunal recommendations and those of other bodies such as the Standards in Public Office Commission and the Irish Houses of the Oireachtas (Parliament). The Public Sector Standards Bill will significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, to achieve a shift towards a more dynamic and risk-based system of compliance and to ensure that the institutional framework for oversight, investigation and enforcement is robust and effective. The Bill is currently before the Houses of the Oireachtas.

To further promote transparency and accountability, a modernised, consolidated, restructured, more accessible Freedom of Information Act 2014 was introduced in October 2014. The 2014 Act made a significant number of additional bodies subject to the FOI, now approaching some 600 organisations. The Information Commissioner, an independent statutory officer, is responsible for carrying out reviews of decisions made under the Act as well as oversight of the operation of this legislation. For further details, see: http://foi.gov.ie/http://www.oic.gov.ie/en/

The Protected Disclosures Act 2014 provides robust statutory protections for workers in both the public and private sectors against the real or potential penalisation by their employers where they have brought concerns about wrongdoing in the workplace to light (whistleblowing). The Workplace Relations Commission has developed a statutory code of practice on the Act (S.I. No. 464 of 2015). A review of the operation of the Act was completed and published in July 2018 and is available at: https://assets.gov.ie/8765/7e1f2c66e7c04062a25561a848e17943.pdf. For further information on the Protected Disclosures Act, see: https://www.gov.ie/en/policy-information/60cf66-government-reform/

Significant changes were made to the process of State board appointments during 2014, with the broad objectives of providing access to State board opportunities to as wide a pool of candidates as possible, strengthening the performance of State boards by identifying and securing high-quality membership, and attaining a high level of transparency in the selection and appointment of board members by Ministers. For further details, see: http://www.stateboards.ie/stateboards/

Measures to enhance Ireland's Corporate, Economic, and Regulatory Framework

Consequent to the 'banking crisis', the Ministers for Business Enterprise and Innovation, Justice and

Equality, and Public Expenditure and Reform undertook a review of corporate governance structures and white-collar crime. On 2 October 2017, the Government approved the publication of a report entitled *Measures to enhance Ireland's Corporate, Economic, and Regulatory Framework: Ireland, Combatting "White Collar Crime"*. This report developed a comprehensive set of actions aligned to four distinct themes to augment the existing regulatory and legislative framework in Ireland in the area of corporate, economic and regulatory crime. One of the four identified themes of this review was 'Countering Money Laundering and Corruption.'

There has been considerable progress with delivery and most of the actions under this theme either have been completed on schedule or are on track to be completed.

Risk Assessment

In October 2016, the Departments of Finance and Justice and Equality jointly published Ireland's first *National Risk Assessment for Ireland, Money Laundering and Terrorist Financing*. This review includes an intelligence assessment of Ireland's general incidence of bribery and corruption as a predicate offence for money laundering.

A substantial review of the effectiveness and efficiency of Ireland's current Ethics framework has been undertaken by the Department of Public Expenditure and Reform, including consideration of the recommendations of the 'Mahon' (Inquiry into Certain Planning Matters and Payments) and 'Moriarty' (Inquiry Into Payments to Politicians and Related Matters) Tribunals and other relevant recommendations, as well as international best practice. As a consequence, a Public Sector Standards Bill has been developed and is at Committee stage. The Bill aims to significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, to achieve a shift towards a more dynamic and risk-based system of compliance and to ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.

Whistle-blower legislation, Freedom of Information and the Public Sector Standards Bill

The Protected Disclosures Act 2014 represented a significant step in facilitating the participation of workers in anti-corruption efforts. Enhanced Freedom of Information legislation was also introduced with the passage of the Freedom of Information Act 2014 with the aim of promoting openness, transparency and accountability in public administration, by facilitating members of the public in accessing public records. Work remains ongoing on the Public Sector Standards Bill 2015, which will make significant changes to the ethics regime for public officials. An online public consultation portal will shortly be launched, which aims to facilitate participation and transparency in the government processes generally.

anticorruption.ie

The Government recently launched a revamped anti-corruption website (www.anticorruption.ie)[1] which is aimed at raising awareness of bribery and corruption. The site provides published reports on Ireland's compliance with various International Anti-Corruption Conventions, including the United Nations Convention Against Corruption. This is to ensure that this information is available and easily accessible to the public. There are also links to relevant legislation; advice for the public

[1] This website was further revamped in May 2020.

on complaints procedures in instances of corruption; and other helpful resources relevant to the area of corruption prevention.

Criminal Justice (Corruption Offences) Act, 2018

Prior to its enactment, the general scheme of the Criminal Justice (Corruption Offences) Bill was referred to the Joint Oireachtas Committee on Justice, Defence and Equality in July 2012 to consider the provisions therein and also to invite submissions from interested parties, as part of the consultation process. The committee advertised for written submissions both in print media and on television. Submissions were received from members of the general public and one submission was received from the Association of Criminal Justice Research and Development. These submissions were considered by the Committee as part of the pre-legislative scrutiny process.

Review of the Protected Disclosures Act 2014

A further consultation process was also carried out from August to October 2017 in relation to a review of the Protected Disclosures Act 2014. The Report of this review was published in July 2018 and sent to each house of the Oireachtas.

Ireland's legislation in this area has been viewed internationally in a positive light and cited by a number of EU and international organisations, including Eurofound (the EU agency for the improvement of living and working conditions), as an example of a comprehensive regulatory framework for protecting whistleblowers.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the bodies mentioned above contain details of relevant cases, provisions and statistics.

Risk Management Policy of the Department of Agriculture Food and the Marine (DAFM)

The Department of Agriculture, Food and the Marine's policy on Risk Management is a good example of an initiative reflecting the principles of proper management of public affairs and public property. The Risk Management Policy governs the management of risk across the Department, and each division of the Department is required to record and manage risks relating to fraud and the associated anti-fraud measures on its Risk Management System. This system offers a specific 'fraud' risk category. The Department is active in the mitigation of possible fraudulent activity. It implements procedures in line with the Ethics in Public Office Acts 1995 & 2001 and requests staff to complete a Conflict of Interest Declaration Form. It also exercises strict controls in the management of schemes and activities. The Department, as an approved paying agency, is subject to a robust audit programme. The Department of Agriculture, Food and the Marine's Risk Management Policy does not deal with corruption risks specifically.

(b) Observations on the implementation of the article

Ireland has adopted a set of policies and legislative measures to prevent and fight corruption. Notably, the Government report on Measures to Enhance Ireland's Corporate, Economic and

Regulatory Framework identifies a number of action points aimed at strengthening Ireland's anti-corruption framework such as enacting new legislation and reviewing existing legislation among others.

The authorities also cite a number of important bills that are going to be introduced and pieces of legislation that address various corruption prevention measures. For example, the Protected Disclosures Act 2001 ensures protection for whistle-blowers from both the public and the private sector, and the Regulation of Lobbying Act 2015 allows all sections of society to get information about lobbying activities. Also, the Public Sector Standards Bill 2015 should make changes to the ethics regime for public officials with a view to the implementation of the principles of the rule of law, integrity, transparency and accountability. Ireland seems to be in full compliance.

It is also noted from the response under article 13 below that Ireland has adopted the Open Government Partnership National Action Plan for 2016-2018. The Plan was developed by the Government in consultation with civil society and contains a number of commitments on relevant themes such as strengthening anti-corruption measures, increased citizen engagement, and transparency and open data.

As Ireland has chosen to implement the provision under review through a set of policy and legal measures instead of the adoption of one national comprehensive strategy, an effective coordination mechanism may be an issue. In this regard, **it was recommended that Ireland set up an anti-corruption inter-agency steering committee to better coordinate its corruption prevention efforts**. A similar coordination mechanism mentioned under article 14 below has been established to implement Ireland's anti-money laundering regime.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

See response to Article 5, Paragraph 1.

In addition, all State Bodies must comply with the Code of Practice for the Governance of State Bodies (2016). The Code aims to ensure commercial and non-commercial State Bodies meet the highest standards of corporate governance and is based on the underlying principles of good governance, accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.

Furthermore, Bodies are required to be compliant with the various provisions of the Ethics Acts 1995 and 2001.

The effectiveness of other anti-corruption practices and tools are assessed as follows:

An Garda Síochána

An Garda Síochána analyses the number of corruption related incidents recorded on an ongoing basis.

According to An Garda Síochána's records in the period 01/01/2008 to 31/12/2017 there were 61

corruption related incidents recorded, 18 of these incidents were detected.

Due to the statistically small sample it is not possible to properly assess the impact of anti-corruption practices and tools.

The average number of corruption incidents over the 10 year period was 6.1, in recent years the number of incidents recorded has been less. In 2017, 4 were recorded, in 2016, 1 and no incidents were recorded for 2015 or 2014.

Companies Registration Office

Companies and, to a lesser extent, persons that have registered a business name, have an obligation under law to file certain documents with the Companies Registration Office (CRO). In relation to companies, those documents include details of changes of registered office, changes of company officers (director or secretary) and details of mortgages and charges affecting companies. Companies are also required to file annual returns, and in most cases, they must also file annual accounts. The CRO has certain powers to deal with companies who fail to file their financial statements, including prosecution of the company or its directors and striking the company off the Register.

Compliance increased in 2017 with fewer companies failing to file an annual return. 197,430 Annual Returns were received in 2016 and by year-end end over 90% of all companies were up to date in filing of their Annual Returns. 92.6% of all companies filed a return during 2017 (188,906 companies). 206,934 Annual Returns were received in 2017 and by year-end 94.7% of companies were up-to-date in filing of their Annual Returns.[2]

In 2017, the CRO continued to enforce the Companies Act 2014 against companies in default of their annual return filing obligations by way of involuntary strike-off and company prosecutions. During the year, 5,420 companies were struck off the Register.

Almost all of the information filed with the CRO is available for public inspection, increasing transparency and meaning the public can notify the authorities if they have any concerns about a company.

Review of legislation

It is now common practice for statutes to contain a review clause, which requires a full review of the operation of the legislation after a specified period of time. For example, a consultation process was carried out from August to October 2017 in relation to a review of the Protected Disclosures Act 2014. The Report of this review has been published and sent to each house of the Oireachtas.

Section 2 of the Regulation of Lobbying Act 2015 contains provisions in relation to regular reviews of the operation of the Act. The first review of the Act commenced in September 2016, with the report being published in April 2017. Subsequent reviews must take place every 3 years. The second review will commence in April 2019. In conducting reviews of the Act, the Minister for Public Expenditure and Reform must:

[2] The Register of Companies is continually growing with new companies being incorporated all the time. Companies have 6 months to file their first annual return and those companies are about 20,000 per year so at any time there are approximately 10,000 companies (about 4% of the register) who are up to date by virtue of the fact that they have not yet reached the date for their first filing.

consult with the Standards in Public Office Commission;

take into account any relevant report of a committee appointed by either House of the Oireachtas (Parliament) or jointly by both Houses;

consult with such persons carrying on lobbying activities and such bodies representing them, and such other persons, as the Minister considers appropriate.

Ireland's Protected Disclosures legislation has been viewed internationally in a positive light and cited by a number of EU and international organisations, including Eurofound (the EU agency for the improvement of living and working conditions), as an example of a comprehensive regulatory framework for protecting whistleblowers.

A further key mechanism for assessment is through the operation of official inquiries or tribunals

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the State Bodies contain relevant details.

(b) Observations on the implementation of the article

All State bodies in Ireland, whether commercial or non-commercial, must comply with the Code of Practice for the Governance of State Bodies (2016). Ireland also provided some examples of how the effectiveness of anti-corruption practices and tools are assessed.

Ireland has implemented this provision of the Convention.

Paragraph 3 of article 5

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland ratified the Council of Europe Criminal Convention on Corruption through the introduction of the Prevention of Corruption (Amendment) Act 2001, which was signed into law on 9th July,2001. This legislation also enabled Ireland to ratify EU and OECD conventions against corruption.

Ireland has since 1999 been a member of the Council of Europe Group of States Against Corruption (GRECO). The fourth evaluation round compliance report for Ireland was adopted in March 2017 and published in June 2017.

Ireland ratified The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2003. The Prevention of Corruption (Amendment) Acts of 2001 and 2010, gave effect in domestic law to the OECD Convention and two other Conventions

concerning corruption in criminal law, and corruption involving officials of the European Communities and officials of the EU member states.

As a party to these international agreements, Ireland has undergone numerous evaluations and remains subject to such peer evaluation.

As outlined in the response to Article 5, para 1, a cross departmental approach has been adopted to ethics and anti-corruption measures, with the adequacy of same being constantly under review. Moreover, the various regulators, including the Standards in Public Office Commission, the Information Commissioner, etc., each produce an annual report setting out, where necessary, views on the operation of relevant legislative and administrative arrangements.

In many cases, a clause is inserted in relevant legislation requiring that the operation of the legislation be reviewed at regular intervals. For example, see section 2 of the Protected Disclosures Act 2014 and section 2 of the Regulation of Lobbying Act 2015.

As mentioned previously, a significant consolidation and update to the public sector ethics framework is currently before the Houses of the Oireachtas (Parliament).

In November 2017, a suite of measures aimed at enhancing corporate governance, increasing transparency and strengthening Ireland's response to White Collar Crime was published. Since then Ireland's anti-corruption legislation has been consolidated and reformed with the enactment of the Criminal Justice (Corruption Offences) Bill mentioned above; a review of the Protected Disclosures Act has been completed to ensure that the legislation has been effective in line with its objectives and to identify how it might be improved if necessary; and a wide review of the effectiveness of state bodies with a role in the prevention, detection, investigation and prosecution of engagement in fraud and corruption has commenced.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Reports and recommendations concerning Ireland are published on the websites of the Council of Europe, OECD and UNODC.

The annual reports and websites of the bodies mentioned above contain details of relevant cases, provisions and statistics.

(b) Observations on the implementation of the article

Due to its participation in several international agreements and bodies, e.g. GRECO, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction as well as in the UN Convention against Corruption, Ireland's legal framework and administrative measures are regularly under review. Moreover, Irish anti-corruption legislation often includes clauses concerning the review of the legislation at regular intervals.

This paragraph requires the regular assessment of the consequences of existing measures to determine their efficiency and success and, when necessary, to make adjustments. This may be accomplished through specialized bodies or academic research, civil society or public sector agencies with oversight responsibilities. The review mechanisms of international bodies as well as appropriate provisions in Irish legislation are adequate instruments to assess existing measures.

Ireland has implemented this provision of the Convention.

Paragraph 4 of article 5

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

As mentioned previously, Ireland is a party to a number of international agreements, including the Council of Europe's Group of States against Corruption (GRECO), the United Nations Convention against Corruption and the OECD Convention on Combating Bribery of Public Officials in International Business Transactions. As well as undergoing numerous evaluations under these international agreements, Ireland has also acted as evaluators in these peer evaluations and is an active participant in the structures established under these international measures.

Ireland has ratified the Council of Europe Criminal Convention on Corruption through the introduction of the Prevention of Corruption (Amendment) Act 2001, which was signed into law on 9th July 2001. This legislation also enabled Ireland to ratify EU and OECD conventions against corruption.

Ireland has been a member of the Council of Europe Group of States Against Corruption (GRECO) since 1999. The fourth evaluation round compliance report for Ireland was adopted in March 2017.

Ireland ratified The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2003. The Prevention of Corruption (Amendment) Acts of 2001 and 2010, gave effect in domestic law to the OECD Convention and two other Conventions concerning corruption in criminal law, and corruption involving officials of the European Communities and officials of the EU member states. The 2010 Act incorporates recommendations arising from the OECD reviews of Ireland's implementation of the Convention. It also strengthens the previous legislation on bribery in relation to foreign public officials and gives fuller effect to certain provisions of the Convention such as protection for whistle-blowers. As mentioned earlier Ireland’s anti-corruption legislation was consolidated and reformed with the enactment of the Criminal Justice (Corruption Offences) Bill. This Bill was enacted on 5 June 2018 and commenced in full on 30 July 2018.

Further, An Garda Síochána participates in a number of forums in relation to Bribery and Corruption including: the OECD Working Group on Bribery; OECD Global Network of Law Enforcement Practitioners against Transnational Bribery; Europol Anti-Corruption Conference; and Europol Analysis Project on Sports Corruption. Staff from An Garda Síochána have also attended recent UNCAC conferences in Vienna and St Petersburg.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Further details and links to relevant reports may be accessed from: www.anticorruption.ie

(b) Observations on the implementation of the article

Article 5 paragraph 4 requires the collaboration of the State parties with each other as well as with relevant international and regional organizations. Ireland is a member of several international agreements, has undergone numerous peer evaluations and plays an active role as an evaluator in the peer evaluations under these international agreements.

During the country visit, it was explained that Ireland regularly supported accountability for corruption in other countries through the Department of Foreign Affairs and Trade's Irish Aid development programme. Such support included assistance in the establishment of relevant legal and institutional frameworks.

Based on the response above, it was concluded that Ireland has implemented this provision of the Convention.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

The development and implementation of anti-corruption policies does not rest with any one body in this jurisdiction. The competence to prevent, detect, investigate and prosecute corruption is spread across a number of agencies with a mandate to tackle corruption such as tribunals of inquiry, commissions of inquiry, high court inspectors, the Financial Regulator, the Standards in Public Office Commission (SIPO), local authorities, the Ombudsman, parliamentary committees on members' interests, the Garda National Economic Crime Bureau (a Bureau within An Garda Síochána), the Criminal Assets Bureau (CAB), the Office of the Director of Corporate Enforcement (ODCE), the Comptroller and Auditor-General, the Public Accounts Committee and the Director of Public Prosecutions (responsible for all criminal prosecutions of the most serious cases).

Regarding the specific prevention mandates of the above bodies:

Office of the Director of Corporate Enforcement

Under Part 15, Chapter 3 (ss. 945-957) of the Companies Act 2014, the Office of the Director of Corporate Enforcement is the main body tasked with enforcement of company law. The Director of Public Prosecutions, and, for certain company law offences, the Companies Registration Office, may also be involved.

The ODCE Annual Report for 2016 points to a number of key successes during the year, as follows:

- Following the examination of reports submitted to the Office by liquidators of insolvent companies, 90 company directors were restricted and 11 disqualified by the High Court;
- 93 Restriction Undertakings were obtained from directors of insolvent companies;
- In keeping with the ongoing strategic shift towards the investigation of more serious indications of wrongdoing, 5 investigation files were submitted to the DPP;
- As an alternative to formal enforcement actions, cautions issued to a total of 61 companies;
- 108 directions were issued to relevant parties requiring them to comply with their statutory obligations under company law;
- The securing of the rectification on a non-statutory basis, of suspected infringements of the Companies Act 2014, in relation to Directors' loans in 60 cases, to an aggregate value of €17m approximately.

In terms of prosecutions, the Director of Corporate Enforcement is statutorily empowered to initiate summary prosecutions (i.e. prosecutions of relatively minor offences in the District Court). More serious alleged breaches of company law are prosecuted on indictment in the Circuit Court and only the Director of Public Prosecutions ("DPP") can direct that charges be preferred on indictment.

The ODCE has also been successful in recent high profile white collar crime prosecutions:

- In 2014, two individuals were convicted for the giving of unlawful financial assistance by Anglo Irish Bank for the purchase of its own shares.
- In 2016, an individual was convicted for fraudulent trading on foot of a plea of guilty.
- Also, in 2016, another individual was convicted for failing to maintain a licensed bank's register of loans to directors on foot of a plea of guilty.
- In 2017, a person was arrested and charged with fraudulent trading based on an invoice discounting fraud and entered a plea of guilty.

An Garda Síochána Anti-Corruption Unit

An Garda Síochána as the national police force is solely responsible for the investigation and prevention of bribery and corruption which are contrary to the criminal law. The newly formed Anti-Corruption Unit of An Garda Síochána is currently formulating a specific crime prevention policy in relation to Bribery and Corruption. One of the roles of the Unit is for it to liaise effectively with other agencies. In addition, the Unit makes itself available for anti-corruption talks to businesses and state agencies. The Unit is also available to attend relevant trade shows and conferences in order to disseminate anti-corruption advice. In this regard, relevant stakeholders will be identified during the formulation of the crime prevention strategy.

Standards in Public Office Commission

The Standards Commission has a supervisory role under four separate pieces of legislation.

- The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the

Ethics Acts).

- The Electoral Act 1997, as amended, (the Electoral Acts)
- The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014, (the Parliamentary Activities Allowance Act)
- The Regulation of Lobbying Act 2015

The principal ongoing functions of the Standards Commission under the Ethics in Public Office Act 1995 (as amended) are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses of the Oireachtas. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders

The Electoral Act 1997 (as amended) requires the Standards Commission to monitor and, where it considers it appropriate to do so, to report to the Chairman of Dáil Éireann on matters relating to:

- the acceptance and disclosure of donations received by political parties, Members of both Houses and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections
- the opening and maintenance of political donations accounts
- the limitation, disclosure and reimbursement of election expenses
- State financing of qualified political parties
- the registration of "third parties" (i.e. campaign / lobby groups or individuals which accept a donation for political purposes which exceeds €100 in value) and other persons.

Under the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014 the Standards Commission must consider each statement and auditor's report furnished to it and, if necessary, consult with the party leader or independent member on any matter contained in the statement. The Standards Commission is also required to furnish a report to the Minister for Public Expenditure and Reform indicating whether the statement and auditor's report have been submitted within the specified period. It must also indicate whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate.

The Regulation of Lobbying Act 2015 provides that the Standards Commission will be the Registrar of Lobbying. The Standards Commission will oversee the implementation of the register, monitor compliance, provide guidance and assistance and, where necessary, investigate and pursue breaches of legal requirements in due course.

Information Commissioner

Originally established under the Freedom of Information (FOI) Act, 1997 and continued under the FOI Act 2014, the role of the Commissioner is to review decisions made by public bodies in relation to FOI requests and to make binding new decisions. His role is also to keep the operation of the Act under review with a view to ensuring maximum compliance among public bodies and to prepare and publish commentaries on the practical operation of the Act. Typically, the objectives of a well-functioning FOI regime include:

- bringing transparency to Government decision making and discouraging corruption,
- helping to hold government to account,
- informing the public about government,
- improving the quality of decision making by public bodies,
- acting as a check on the exercise of power by government and its agencies, and
- promoting citizen participation.

Proposed review of Ireland's anti-corruption structures

On 2 October 2017, the Government approved the publication of a report entitled *Measures to enhance Ireland's Corporate, Economic, and Regulatory Framework: Ireland, Combatting "White Collar Crime"*. This report sets out a package of measures to enhance the framework in place to tackle corporate, economic and regulatory offences. The report noted that, aside from the enforcement of company law, the development and implementation of anti-corruption policies does not rest with any one body in Ireland. The competence to prevent, detect, investigate and prosecute corruption is spread across An Garda Síochána and a number of other agencies with a mandate to tackle corruption.

Arising from the report, an inter-Departmental and Agency Group, chaired by an independent expert, to review Ireland's anti-corruption and anti-fraud structures was established. The purpose of this review is to ensure that all state bodies with a role in the prevention, detection, investigation, and prosecution of fraud and corruption are working effectively together and to identify any gaps or deficits that may exist.

Measures to enhance Ireland's Corporate, Economic, and Regulatory Framework

As detailed above, on 2 October 2017 the Government approved the publication of *Measures to enhance Ireland's Corporate, Economic, and Regulatory Framework*. The main actions arising include:

- Establishing the Office of the Director of Corporate Enforcement as an independent company law compliance and enforcement agency, with enhanced ability to recruit specialist staff;
- Piloting a Joint Agency Task Force to tackle White Collar Crime. The pilot will address [3]payment fraud (including invoice redirection fraud and credit card fraud) – a criminal enterprise which is increasingly exploited by sophisticated criminal enterprises and which can have devastating effects on individuals and on businesses, resulting in closures of companies and job losses;
- Enacting the Criminal Justice (Corruption Offences) Bill which includes legislative provision

[3] The General Scheme for the Companies (Corporate Enforcement Authority) Bill 2018 was published on 4th December 2018.

for recommendations arising from the Mahon Tribunal and will substantially advance meeting Ireland's obligations under a number of international anti-corruption instruments. This major modernisation of corruption offences law, now passed by the Irish parliament, repealed and replaced the seven previous Prevention of Corruption Acts 1889 to 2010;

- Enacting the Criminal Procedure Bill, which will, among other things, streamline criminal procedures to enhance the efficiency of criminal trials;
- Implementing the Markets in Financial Instruments Directive II (MiFID II) to improve the functioning of financial markets, making them more efficient, resilient and transparent and strengthen investor protection;
- Evaluating the Protected Disclosures Act, to ensure that the legislation has been effective in line with its objectives; and to identify how it might be improved if necessary;
- Ensuring this package of measures will be subject to regular scrutiny by Oireachtas (Parliament) to monitor the implementation and effectiveness of the measures.

It would appear at this stage that most of the above actions either have been completed on schedule or are on track to be completed.

Regarding coordinating the creation and dissemination of knowledge, the Department of Business, Innovation and Enterprise, the Companies Registration Office, and the Department of Finance have been in consultation with the Financial Intelligence Unit (within the Garda National Economic Crime Bureau) regarding access to the proposed Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (RBO).[4]

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the bodies mentioned above contain details of relevant cases, provisions and statistics.

(b) Observations on the implementation of the article

There are a number of agencies in Ireland with a mandate to prevent and tackle corruption such as An Garda Síochána, Standards in Public Office Commission, the Information Commissioner, and the Office of the Director of Corporate Enforcement. These agencies oversee and coordinate the implementation of policies and measures described in the response under article 5(1) above

During the country visit, it was explained that the Standards Commission published a wide range of guidelines, codes of practice and conducted outreach activities as part its statutory functions. Ireland has also launched a dedicated website (www.anticorruption.ie) to raise awareness of bribery and corruption among the public and businesses.

[4] The RBO opened to accept filings from 29 July 2019 and the data filed is accessible by the FIU. The RBO has a dedicated website available at https://rbo.gov.ie/

However, considering the number of agencies with corruption prevention mandates, coordination may be a challenge to ensure effective and comprehensive prevention of and fight against corruption. Therefore, the recommendation made under article 5(1) above refers.

With regard to the proposal to establish an inter-Departmental and Agency Group to review Ireland's anti-corruption and anti-fraud structures, Ireland provided the following update after the country visit:

On 18 July 2018, the Irish Government decided to establish a national review of anti-corruption and anti-fraud structures to ensure that all state bodies with a role in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together and to identify any gaps or deficits which exist. The review group is chaired by Mr James Hamilton, former Director of Public Prosecutions, and has met on a number of occasions already.. A written public consultation process will form part of the review.

The following relevant Bodies are participating in this review:

- Department of Justice & Equality (including secretariat)
- Department of Finance
- Central Bank
- Banking & Payments Federation Ireland
- Department of Public Expenditure and Reform
- Garda National Economic Crime Bureau
- Department of Business, Enterprise and Innovation
- Department of Employment Affairs and Social Protection
- Office of the Revenue Commissioners
- Office of the Director of Corporate Enforcement
- Office of the Director of Public Prosecutions

The terms of reference for the review group:

1. 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 whether gaps exist, by reference to international standards;
2. 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);
3. To review the extent of potential cross-over of any new structure with the evolving role of the ODCE and the work of the Cost of Insurance Working Group and make recommendations to minimise risk of duplication;
4. 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;
5. To assess the levels of resourcing and expertise or experience in relevant bodies and make any relevant recommendations.

6. To make recommendations within nine months of the initial meeting of the review group.

This development is very welcome and it is hoped that the outcome of the review would further strengthen the institutional framework to prevent corruption.

Paragraph 2 of article 6

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

(a) Summary of information relevant to reviewing the implementation of the article

The relevant regulators, including the Standards in Public Office Commission, the Information Commissioner, as well as other relevant officials such as the Director of Public Prosecutions are each fully independent, by law and in practice. Further details may be obtained from their relevant websites and each organisations' annual reports.

With respect to adequate material resources and specialized staff as well as training for the prevention of corruption:

The Office of the Director of Public Prosecutions (ODPP)

The office of the ODPP has a staff complement of over 200 staff. The Unit dealing with economic crimes has three legal officers and an administrative officer. The unit dealing with asset confiscation, amongst other tasks, has a staff complement of three legal officers

Standards in Public Office Commission (SIPOC)

SIPOC considers that it has been provided with adequate resources to carry out its functions under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (the Ethics Acts). It has been provided with staff from the Office of the Ombudsman who are administrative civil servants. Many of these, including the more senior staff, have considerable experience of the civil and public service. These staff have been provided with all necessary training to allow them to fulfil the Commission's functions under the Ethics Acts, as well as under other legislation which the Commission oversees in the areas of political donations, election expenses, state financing of political parties, party leaders, and independent members of the Oireachtas (Parliament), and regulation of lobbying.

As detailed in Vote 19 of the Revised Estimates for Public Services 2019 , the SIPOC was allocated €2.073 million in the 2018 Budget Estimates and €2.24 million in the 2019 Budget Estimates. The increased funding that SIPOC has received in recent years has enabled it to attract expert senior staff from overseas.

Office of the Director of Corporate Enforcement (ODCE)

Organisational reforms in the ODCE were commenced in 2012 by the current Director of Corporate Enforcement upon his appointment to enhance the capability of the Office to investigate complex breaches of company law, and to ensure a more efficient and effective use of its resources. These include:

- Reorganising the structures of the Office;
- Recruiting additional expertise, including 7 Forensic Accountants, a Digital Forensic Specialist, 2 Enforcement Portfolio Managers and an Enforcement Lawyer. Further recruitment to Forensic Accountant and Enforcement Lawyer posts is nearing completion;
- As senior-level vacancies have arisen, reconfiguration of the skill sets, competencies, roles and responsibilities associated with those posts to better reflect the organisation's current needs;
- Fundamentally amending the investigative procedures used by the Office so that members of An Garda Síochána take the lead in all criminal investigations; and
- Fostering a greater culture of risk management within the Office.

In addition to the 38 staff in place in the ODCE, the Office, at 18 June 2018, also has an approved complement of seven members of An Garda Síochána (one Detective Inspector, two Detective Sergeants and four Detective Gardaí), all of whom are currently assigned to the ODCE.

Information Commissioner

The Information Commissioner has received a significant additional funding in recent years, including an 11% increase between 2017 and 2018. This has allowed the Office to recruit specialist staff through external competitions, including a number of legal professionals.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the bodies mentioned above contain details of relevant cases, provisions and statistics.

(b) Observations on the implementation of the article

The prevention agencies mentioned under article 6(1) above are afforded the necessary independence in law and practice. In regard to the resources available to these agencies, it is reported that they are staffed and funded adequately. For example, as clarified during the country visit, the Standards Commission was co-located with the Office of the Ombudsman and assigned staff by that Office (18 currently assigned to the Commission). Nevertheless, no concerns were expressed about the adequacy of these arrangements in so far as the operational independence of the Commission and its ability to fulfil its mandates under the Standards in Public Office Act, the

Ethics in Public Office Act and the Regulation of Lobbying Act was concerned.

During the country visit, it was also explained that the Standards Commission required all 6 Commission members to sit together to make decisions and this could potentially pose a challenge in certain circumstances, including in light of the expansion of the Commission's mandate under the Regulation of Lobbying Act. These challenges should be addressed by proposed amendments to the Public Sector Standards Bill 2015.

Finally, in relation to the Anti-Corruption Unit within Garda National Economic Crime Bureau, it was clarified that the Unit had only 3 staff assigned to it and was responsible for the investigation and prevention of bribery and corruption that occur both inside and outside of Ireland. However, the mandate of the Unit in relation to corruption prevention, is not sufficiently clear.

Therefore, **it was recommended that Ireland ensure adequate resourcing and staffing of preventive authorities, particularly of the Anti-Corruption Unit within An Garda Síochána; clarify their tasks with regard to prevention (art. 6(2))**

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland informed the UNODC of the name and address of the preventive authority in Ireland by a note verbale dated 17 July 2018:

Department of Justice and Equality of Ireland

51 St Stephen's Green, Dublin 2, D02 HK52

(b) Observations on the implementation of the article

Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 7. Public sector

Paragraph 1 of article 7

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

(a) Summary of information relevant to reviewing the implementation of the article

The Public Appointments Service (PAS) is the centralised provider of recruitment, assessment and selection services for the Civil Service and also provides recruitment and consultancy services to local authorities, the Health Service Executive, An Garda Síochána and other public bodies.

PAS mainly operates under the Public Service Management (Recruitment and Appointments) Act 2004 (PSM (R&A) Act) and the Code of Practice published by the Commission for Public Service Appointments (CPSA) under the terms of that Act. The functions of the PAS under section 34 of the 2004 Act include:

(a) to act as the centralised recruitment, assessment and selection body for the Civil Service and to provide a similar service, where requested, to the local authorities and health boards, the Garda Síochána and any other public service body;

(b) to ensure that standards of probity, merit, equity and fairness, consistent with the codes of practice set down by the Commission are followed in the public interest in the recruitment, assessment and selection of persons for appointments in the Civil Service and other public service bodies;

(c) to carry out all the procedures necessary to undertake the recruitment, assessment and selection of suitable candidates for appointment;

A Code of practice has been created to set out guidelines and standards for all those carrying out internal and external recruitment in the public service. Where PAS is requested to conduct, or assist with, recruitment and selection processes which do not fall under the remit of the 2004 Act, Guidelines have been prepared to provide guidance in respect of these processes. It also sets out the requirements in relation to the conduct of candidates in the selection process. The Guidelines are based on the CPSA Codes of Practice thereby ensuring that a standardised approach to recruitment is adopted in all campaigns conducted by PAS.

In relation to public service pay there is a strong tradition in Ireland of centralised pay negotiations

between Government and the public service unions. The most recent such pay agreement can be viewed on the Department of Public Expenditure and Reform's website.

Garda Vetting

In respect to Garda Vetting two documents have been shared with the reviewers on the Public Appointments Service's clearance procedures. The first document is the clearance and assignment procedures for all general service grades. These are much the same for professional and technical grades aside from the fact that those roles also require ministerial sanction. Other areas of appointment are included in document "Procedures for Pre-employment checking in Recruitment Units".

Recruitment: State Boards

In relation to the size of shortlists for State Boards, while there is no specific rule in this regard in practice, according to the Public Appointments Service (PAS), for any given vacancy a list of no more than two or three names is compiled in order to give the Minister sufficient choice. Therefore, longer lists may be provided where multiple vacancies are being filled through the same process. In any event, all candidates going forward must have met the required standard for the particular post. Candidates are not informed that their names had gone forward to the Minister until after the process has been completed, which heads off the possibility of lobbying.

Guidelines were issued in 2014 in relation to appointments to state boards, recommending open selection processes in most instances. A central web portal was created which allows candidates to register their interest and apply for positions as they arise, as well as publishing an up to date list of the memberships of the various state boards.

Independent research found that this had resulted in a 'seismic shift in attitudes' since 2012 when 26% reported satisfaction with the fairness and transparency of the process compared to 2015 where the report showed 70% satisfaction. PAS recently issued a report on the process; the press release is at the following link: https://www.per.gov.ie/en/minister-donohoe-publishes-pas-report-on-state-board-appointment-process/

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The CPSA Codes of Practice set out the standards to be followed in relation to civil service recruitment and certain other public service bodies. The most recent annual report of the PAS can be viewed at: https://www.publicjobs.ie/publicjobs/publication/document/Annual_Report_2015.pdf

(b) Observations on the implementation of the article

The system of recruitment, promotion, retirement and remuneration of civil servants in Ireland can be characterized as transparent and efficient. The Public Service Management (recruitment and Appointments) Act 2004 sets out the main framework for public service recruitment in Ireland. The Act established the Public Service Appointments, a central recruitment agency, and the Commission for Public Service Appointments, which develops codes of practice to guide the work of the Service and to promote the principles of probity, merit, best practice, fairness and transparency.

Pay agreements are in place that provide for adequate remuneration of civil servants. Moreover,

Ireland is actively taking measures regarding the education and training programmes to minimize corruption risks in the performance of the functions of civil servants.

During the country visit, the authorities clarified that while all appointments require police clearance, agencies individually determine risks of corruption and may accordingly address them in their recruitment and rotation policies. With regard to the most senior positions in the Civil Service (Assistant Secretary level and above), the independent Top Level Appointments Committee (TLAC) makes recommendations on candidates to Ministers and Government. Copies of the document describing the role and procedures of TLAC and of the latest annual report have been shared with the reviewers as well.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Eligibility for elected office:

Office of the President (Bunreacht na hÉireann, Article 12)

> Every citizen of Ireland who has reached the age of 35 years is eligible for election to the office of President. The term of office is for seven years. No person may hold the office for more than two terms and the President cannot be a member of the Dáil or the Seanad (see below). The President shall not hold any other office or position of emolument.

Dáil Éireann (Bunreacht na hÉireann, Article 16.1.1; Electoral Act 1992, Section 41)

> Every citizen of Ireland who has reached the age of 21 years of age who is not disqualified under the Constitution or by law is eligible to be elected to the Dáil. Certain occupations are incompatible with membership of the Dáil, for example, members of the judiciary, officials of the institutions of the European Union, civil servants, whole time members of the Defence Forces and the Garda Síochana (police); such persons are prohibited from holding Dáil membership and such occupations at the same time.

Seanad Éireann (Bunreacht na hÉireann, Article 18.2)

> Every citizen of Ireland who has reached the age of 21 years of age who is not disqualified by the Constitution or by law is eligible to be elected to the Seanad. A person must be eligible to become a member of the Dáil in order to be eligible for membership of the Seanad. Therefore, the same requirements as apply to membership of the Dáil, as set out above, also apply to membership of the Seanad.

European Parliament (European Parliament Elections Act 1997, Section 11)

Every Irish citizen, and every resident EU citizen, over 21 years of age, who is not disqualified by Union or national law and is not standing as a candidate in another Member State, is eligible to be elected in Ireland to the European Parliament. Certain occupations are incompatible with membership of the European Parliament, for example, Ministers of Government and Ministers of State, members of the Houses of the Oireachtas, members of the judiciary, members and officials of various institutions of the European Union, civil servants, whole time members of the Defence Forces and the Garda Síochána (police).

Local Elections (Local Government Act 2001, Section 12, 13 & 13A)

Every person who is a citizen of Ireland, or is a person ordinarily resident in the State, and has reached the age of 18 years and is not disqualified by law is eligible for election or co-option to and membership of a local authority. Certain occupations are incompatible with membership of a local authority, for example, Ministers of Government and Ministers of State, members of the Houses of the Oireachtas, members of the judiciary, members and officials of various institutions of the European Union, civil servants, certain local authority officials, certain Health Service Executive officials, certain Child and Family Agency officials, whole time members of the Defence Forces and the Garda Síochána (police)

Disqualification from elected office: Office of the President

There are no statutory disqualifications from holding the office of President subject to the eligibility criteria as set out above being met

Dáil Éireann (Bunreacht na hÉireann, Article 16.1.1; Electoral Act 1992, Section 41)

Section 41 of the Electoral Act 1992 (as amended) provides that persons undergoing a prison sentence in excess of 6 months and persons of unsound mind are disqualified from election to Dáil Éireann. In the latter case, it should be noted that it is proposed to remove the disqualification relating to persons of unsound mind following the enactment of the Disability (Miscellaneous Provisions) Bill 2016; the Bill is currently being progressed through the Houses of the Oireachtas.

Seanad Éireann (Bunreacht na hÉireann, Article 18.2)

The same disqualification criteria apply to membership of the Seanad as apply to membership of the Dáil.

European Parliament (European Parliament Elections Act 1997, Section 11)

Section 11 of the European Parliament Elections Act 1997 (as amended) provides that persons undergoing a prison sentence in excess of 6 months, persons of unsound mind and EU citizens from other Member States who have been prohibited from standing as a candidate in their Member States by virtue of individual judicial or administrative decisions (which may be subject to judicial remedies) are disqualified from election to the European Parliament in Ireland. Similar to the position as outlined in the preceding two paragraphs, the enactment of the Disability (Miscellaneous Provisions) Bill 2016, which is currently being progressed through the Houses of the Oireachtas, will remove the disqualification relating to persons of unsound mind for election to the European Parliament in Ireland.

Local Elections (Local Government Act 2001, Section 13)

> Section 13 of the Local Government Act 2001 (as amended) provides that persons undergoing a prison sentence in excess of 6 months, persons who fail to pay any sum charged or surcharged against such persons by an auditor of the accounts of any local authority, persons who fail to comply with a final court judgement, order or decree for payment of money due to any local authority and persons convicted of an offence relating to fraudulent or dishonest dealings affecting a local authority, corrupt practice or acting when so disqualified, are disqualified from election to a local authority.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

A broad range of information is available on the Department of Housing, Planning and Local Government's website at http://www.housing.gov.ie/voting including specific information leaflets on local government, Dáil, Seanad, Presidential and European Parliament elections, the holding of referendums and the register of electors.

Standards in Public Office Commission

The Standards in Public Office Commission is an independent body established in December 2001 under the Standards in Public Office Act 2001. The Commission has a supervisory role under four separate pieces of legislation which set out a broad range of requirements on public officials. Its functions include supervising the disclosure of interests and compliance with tax clearance requirements, the disclosure of donations and election expenditure, the expenditure of state funding received by political parties and the registration of lobbying under: -

- the Ethics in Public Office Act 1995 as amended by the Standards in Public Office Act 2001;
- the Electoral Act 1997 (as amended);
- the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014: and
- the Regulation of Lobbying Act 2015.

Requirements on candidates standing for elections in respect of political donations and election expenses are set out under the Electoral Act 1997 (as amended) and are summarised elsewhere in this report. The Ethics in Public Office Acts, the Parliamentary Activities Allowance Act and the Lobbying Act fall within the remit of the Department of Public Expenditure and Reform / Department of Finance.

The Standards in Public Office Commission have published a wide range of guidelines and codes of practice in relation to its statutory functions which are available at http://www.sipo.ie/en/Guidelines/ and http://www.sipo.ie/en/Codes-of-Conduct/ respectively.

(b) Observations on the implementation of the article

The Constitution of Ireland and the Electoral Act 1992 (section 41) contain provisions on qualification and disqualification criteria for candidates to the office of the President and members of both houses of Parliament. According to these provisions, the President shall not hold any other office or position of emolument and members of both houses of Parliament cannot be members of the judiciary or civil servants among others.

Furthermore, as an EU-Member State similar requirements on qualification and disqualification

criteria are provided for by way of Ireland's European Parliament Elections Act 1997. At the local level, the Local Government Act 2001 also sets out the qualification and disqualification criteria that apply to candidates standing for election to local authorities. In addition, persons convicted of an offence relating to corruption are disqualified from election to a local authority. Hence, section 13 of the Local Government Act 2001 makes concrete provisions and includes sanctions concerning corrupt conduct in relation to elections. This is of great importance because past experience shows that local authorities can be particularly vulnerable to corruption.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

Paragraph 3 of article 7

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

(a) Summary of information relevant to reviewing the implementation of the article

The Electoral Act 1997 (as amended) provides the statutory framework for dealing with political donations and sets out a detailed regulatory regime covering a range of issues such as the funding of political parties; the reimbursement of election expenses; the setting of election expenditure limits; the disclosure of election expenditure; the setting of limits on permissible donations; the prohibition of certain donations; the disclosure of donations; and the independent supervision of the regime by the Standards in Public Office Commission.

The meaning of donation is expressly defined under the Act.

The purpose of the Electoral Acts is to ensure that there is openness and accountability in the relationships that exist between, on the one hand, political parties and individual politicians and, on the other, those who would support them politically, whether by way of financial assistance or otherwise. The legislation also seeks to achieve equity in the electoral process by limiting expenditure at elections and by providing a system whereby candidates at elections can, in certain circumstances, recoup election expenses. The Electoral Acts also provide for State financing of qualified political parties which received at least 2% of the first preference votes at the last preceding Dáil general election.

In broad terms, the following provides a brief summary of the requirements under the Act of 1997 (as amended) that apply in respect of political donations:

· anonymous donations exceeding €100 cannot be accepted in any calendar year;

· on receipt of a donation of €100 or more, a political donations account must be opened by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or a third party, if one has not already been opened;

· €200 is the maximum cash donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or a third party in any calendar year from a donor;

· €200 is the maximum donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or third party in any calendar year from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Standards in Public Office Commission and a statement, on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor, is furnished with the donation to the donee;

· €200 is the maximum aggregate donation that a company, trade union, society or building society can give before reporting it in annual returns made under the Companies Act 1963, or to the Registrar of Friendly Societies or the report of a building society (under the Building Societies Act 1989);

· all donations received by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, or Presidential candidate/election agent exceeding €600 must be disclosed on a Donation Statement;

· €1,000 is the maximum donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, or Presidential candidate/election agent from an individual or a registered corporate donor in any calendar year;

· all donations received by a political party exceeding €1,500 must be disclosed on a Donation Statement;

· €1,500 is the reporting threshold/maximum aggregate amount in any calendar year that a donor can give to multiple candidates of the same political party or to one or more party members and the political party itself before the donor is required to submit a Donation Statement;

· €2,500 is the maximum donation that may be accepted by a political party, accounting unit of a political party, or a third party from an individual or a registered corporate donor in any calendar year;

· donations, of any value, from an individual (other than an Irish citizen) who resides outside the island of Ireland are prohibited. Similarly, no donation, of any value, may be accepted from a body corporate or an unincorporated body of persons which does not keep an office in the island of Ireland from which at least one of its principal activities is directed.

The Act of 1997 sets down limits on the maximum amount of expenditure that may be incurred by candidates at Dáil, European Parliament and presidential elections. In addition, it also provides for a system of reimbursement of election expenses

In relation to reimbursements of election expenses, candidates must apply to the Standards in Public Office Commission who must certify the statements of election expenses, accompanying statutory declarations, the actual expenses incurred and, where appropriate, donation statements. Where a person fails to comply with a direction for information made of him or her by the Standards in Public Office Commission under section 4 of the Electoral Act 1997 (as amended) within such time as the Commission considers reasonable, that person commits an offence and is liable on summary conviction to a class D fine up to €1,000.

Part III of the Electoral Act 1997 (as amended) provides for the making of payments to qualified parties by the Minister for Finance, with the approval of the Minister for Public Expenditure and Reform, on the basis of quarterly instalments in arrears. A qualified party is a political party: -

· that is registered in the Register of Political Parties established under section 25 of the Electoral Act 1992 (as amended);

· whose candidates at the last preceding Dáil election obtained not less than 2% of the total first

preference votes obtained by all candidates at that election.

Each qualified party must submit an exchequer expenditure statement, which must be accompanied by an auditor's report, to the Standards in Public Office Commission on an annual basis.

The Standards in Public Office Commission arrange for exchequer expenditure statements to be laid before each House of the Oireachtas and furnish copies to the Minister for Finance. Exchequer expenditure statements are also published on the website of the Standards in Public Office Commission.

The Electoral Act 1997 (as amended) sets out a range of offences and penalties relating to political donations, the funding of political parties and limitations on expenditure incurred at elections.

The following rules apply, under the Local Elections (Disclosure of Donations and Expenditure) Act 1999 (as amended), to donations relating to candidates at local government elections and members of local authorities: -

· the maximum amount that can be accepted in the same calendar year by a member of a local authority or by a local election candidate from the same source is €1,000;

· details of donations which exceed €600 must be disclosed in a statement made to the local authority;

· a candidate or a member of a local authority who receives a monetary donation that exceeds €100 must open and maintain a political donations account in a financial institution;

· donations from anonymous sources which exceed €100 are prohibited;

· donations in cash which exceed €200 are also prohibited;

· where corporate donations exceed €200, the donor must be registered with the Standards in Public Office Commission and evidence that the donation was approved by the corporate body must be provided.

In addition, the maximum expenditure limits established under the Local Elections Acts 1974 to 2014 in respect of local government elections are: -

· €13,000 per candidate in local electoral areas with a population in excess of 35,000 persons;

· €11,500 per candidate in local electoral areas with a population between 18,001, and 35,000 persons;

· €9,750 per candidate in local electoral areas with a population of 18,000 persons or less.

Furthermore, Part XXII of the Electoral Act 1992 (as amended) provides for a wide range of offences and associated penalties for failure to comply with various provisions of the Electoral Acts including personation, bribery, use of undue influence, breach of secrecy, disorderly conduct at election meetings, false declarations on nomination papers, obstruction of the nomination of candidates, making of a forged certificate of political affiliation etc.

As indicated earlier, the Standards in Public office Commission is an independent body which has a supervisory role in this area. In relation to the Electoral Acts specifically, the Commission has published guidelines for political parties on the preparation of their Annual Accounts, guidelines on Dáil, Seanad and European Parliament elections, guidelines for political parties, TDs, Senators and MEPs on political donations and prohibited donations. It also maintains the registers of political parties, corporate donors and third parties and publishes donation statements and political party accounts. The Commission also performs a wide range of functions under the other aforementioned Acts.

In addition, the Department of Public Expenditure and Reform and the Department of Finance have an implementation role in the context of payments to political parties and the reimbursement of election expenses under a number of sections of the Electoral Act 1997 (as amended). The Standards in Public Office Commission monitors expenses and certifies them to the relevant Department for payment/reimbursement. These Departments are responsible for policy and legislation in respect of the Ethics in Public Office Acts, the Parliamentary Activities Allowance Act and the Lobbying Act, each of which imposes obligations of varying degree on public officials.

More detailed information in relation to the Electoral Act 1997 can be found in the Appendix to Chapter II.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Standards in Public Office Commission have published a wide range of guidelines and codes of practice in relation to its statutory functions which are available at http://www.sipo.ie/en/Guidelines/ and http://www.sipo.ie/en/Codes-of-Conduct respectively. Various reports in respect of political donations, annual accounts and other disclosures are also available at http://www.sipo.ie/en/Reports/.

Functions of the Standards in Public Office Commission under the Electoral Acts

The Electoral Acts require the Standards Commission to monitor and, where it considers it appropriate to do so, to report to the Chairman of Dáil Éireann on matters relating to -

· the acceptance and disclosure of donations received by political parties, Members of both Houses and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections

· the opening and maintenance of political donations accounts

· the limitation, disclosure and reimbursement of election expenses

· State financing of qualified political parties

· the registration of "third parties" (i.e. campaign / lobby groups or individuals which accept a donation for political purposes which exceeds €100 in value) and other persons.

The Standards Commission may conduct whatever enquiries are necessary in the discharge of its statutory functions.

The Standards Commission is required, from time to time, to draw up and publish guidelines and provide advice on compliance to persons who are covered by the provisions of the Electoral Acts. A person must act in accordance with guidelines published or advice given by the Standards Commission, unless, by doing so, he or she would be contravening another provision of the Electoral Acts.

The Standards Commission is also required to facilitate the inspection and copying, by any person, of Donation Statements, Election Expenses Statements, etc., furnished to it under the legislation.

Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2014 (the Parliamentary Activities Allowance Act)

Overview of the Parliamentary Activities Allowance Act

The Parliamentary Activities Allowance Act provides for the payment of an annual allowance to the leaders of parliamentary parties and independent members in relation to expenses arising from parliamentary activities, including research. The amount paid is based on the party's representation in Dáil Éireann. The allowance is reduced where a party forms part of the government. The "parliamentary activities" to which the funding may be applied are set out in the Parliamentary Activities Allowance Act. The funding may not be used for electoral or referendum purposes

The Parliamentary Activities Allowance Act requires the party leader to prepare, or cause to be prepared, a statement of expenditure from the allowance received in respect of the preceding year. The statement must set out, under specific headings, the items on which the funding was spent. The statement must be audited by a public auditor and must be furnished together with the auditor's report to the Standards Commission within 120 days of the end of the financial year for which the allowance has been paid (i.e. 30 April). Failure to furnish the statement within this timeframe can result in a suspension of the Allowance.

Functions of the Standards Commission under the Parliamentary Activities Allowance Act

The Standards Commission must consider each statement and auditor's report furnished to it and, if necessary, consult with the party leader or independent member on any matter contained in the statement. The Standards Commission is also required to furnish a report to the Minister for Public Expenditure and Reform indicating whether the statement and auditor's report have been submitted within the specified period. It must also indicate whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate

The Standards Commission must cause a copy of the report to the Minister for Public Reform and Expenditure to be laid before each House of the Oireachtas. A copy of the statements and auditors' reports must be retained by the Standards Commission for 3 years and must be made available for public inspection and copying.

(b) Observations on the implementation of the article

The Electoral Act 1997 comprehensively regulates financing of political parties and candidates. The Act provides for the definition of permissible donations, limits on permissible donations, obligations of political parties and candidates to maintain records of donations, offences and penalties, obligations to monitor, audit and report on finances and many other issues. In addition, the Parliamentary Activities Allowance Act establishes legal requirements for the management of annual allowances to parliamentary parties.

Under the Act of 1997, the Standards in Public Office Commission is mandated to receive the financial reports of political parties and candidates and monitor election expenditure. Overall, the Electoral Act is aimed at enhancing transparency, openness and accountability in the funding of candidatures for elected public office and political parties.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

Paragraph 4 of article 7

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

(a) Summary of information relevant to reviewing the implementation of the article

In general, the Ethics in Public Office Act 1995, Standards in Public Office Act 2001, and Regulation of Lobbying Act 2015 apply.

The broad focus of the Ethics in Public Office Act 1995 is to provide for disclosure of interests, including any material factors which could influence a Government Minister or Minister of State, a member of the Houses of the Oireachtas (Parliament) or a public servant in performing their official duties. The principal objective of the legislation is to demonstrate that those who are participating in public life do not seek to derive personal advantage from the outcome of their actions. To meet this objective, a statutory framework has been put in place to regulate the disclosure of interests and to ensure that other measures are taken to satisfy the broad range of obligations arising under the legislation. The legislation is founded on the presumption of integrity but recognises that specific measures should exist to underpin compliance.

Under the Ethics Acts, as well as disclosing interests, evidence that they are tax compliant must be furnished to the Standards Commission by all members of both Houses of the Oireachtas, the Attorney General and appointees to senior office in public bodies. The legislation also requires the drawing up of codes of conduct for ordinary members of the Houses, for office holders (e.g. Ministers of the Government and Ministers of State) and for public servants. These codes are drawn up by the responsible body (for example, Committees on Members' Interests for Dáil Eireann and Seanad Eireann are responsible for Codes of Conduct for members of their respective houses). Once finalised by the responsible body, they are published by the Standards Commission on its website.

The Standards in Public Office Act 2001 provides for the establishment of the Standards in Public Office Commission, referenced earlier.

The Regulation of Lobbying Act 2015 was signed into law on Wednesday11 March 2015. The purpose of the Act is to provide for a web-based Register of Lobbying to make information available to the public on the identity of those communicating with designated public officials on relevant matters, including policy, programme, legislation, funding or zoning and development. The Act designates the Standards in Public Office Commission as Registrar. The Act also provides restrictions and conditions on the taking up of certain employments by certain designated officials for a specified period of time.

The website (www.lobbying.ie)and online register were launched on 30 April 2015. The register was made available for a trial period from 1 May until 31 August 2015 to allow people to pre-register, familiarise themselves with the register and the process of submitting a return. During this trial period any information uploaded to the register was not made publicly available.

The Act was commenced on 1 September 2015. Anyone carrying on lobbying activities since 1 September 2015 must keep a record of these activities and submit them to the register every four months. This information is required to be submitted to the Register within 21 days after the end of each four month period.

Cash gifts to public officials

The Ethics Acts define a "gift" as meaning "a gift of money or other property excluding a donation (within the meaning of the Electoral Act, 1997)". Section 15 of the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001 deals with the acceptance of gifts by office holders. Gifts (including cash) of up to €650 given by virtue of an office holder's office are acceptable: gifts from the same person in the registration period should be aggregated and surrendered, if over the threshold (The Standards in Public Office Commission has outlined that in many cases, it would be impossible to collect up all the gifts previously received that were accepted (and may have been used or consumed), therefore, for practical reasons, the most recent gift that brought the aggregate value over the threshold would have to be either refused or surrendered). A gift valued at more than the €650 threshold must be surrendered to the State and disclosed in the office holder's next Statement of Registerable Interests. Instructions on how to determine the value of a gift and how to deal with surrendering it are included in the Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 for Office Holders, which is available here: http://www.sipo.ie/en/Guidelines/Guidelines-for-Office-Holders/.

Neither the Act, nor the Codes of Conduct for Office Holders, Members of Dáil Éireann, or Members of Seanad Éireann preclude the acceptance of money as a gift.

However, the Code of Conduct for Civil Servants states explicitly that gifts in the form of "cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount".

There are related anti-corruption provisions in the Codes of Conduct for Members of the Dáil and Seanad. The Code of Conduct for Members of Dáil Eireann other than Office Holders states that "Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees". A virtually identical provision is in the Code of Conduct for Members of Seanad Éireann, which states that "Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Seanad or to any of its committees".

Local authority members are covered by the Local Government Act 2001, which states that "An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office..."

As well, the Code of Conduct for Councillors states that "the normal presentation of 'official gifts' or tokens exchanged or given as part of protocol (where for instance a councillor receives a visiting dignitary or is a speaker at a conference etc.) would not be precluded, nor would minor infrequent items such as diaries, calendars, pens or other infrequent tokens of modest intrinsic value. All other offers of gifts should be declined, or if this would cause offence, should be handed over to the local authority".

Authorization to have outside employment/income

Whether public officials are required to seek prior authorization to have outside employment or income would depend on the position held.

The Ethics Acts clearly contemplate that those subject to the legislation may have outside employment, as they explicitly provide that outside sources of income must be disclosed in a

person's Statement of Registerable Interests. The only explicit prohibition in the primary legislation applies to special advisers, and states that "the person shall undertake not to engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be capable of interfering or being incompatible with the performance by the person of his or her functions as a special adviser".

The Code of Conduct for Office Holders (which applies to the Taoiseach, Tánaiste, Cabinet Ministers and Ministers of State, the Attorney General, the Chairman/Deputy Chairman of either House of the Oireachtas (Parliament), and Chairs of Committees or Joint Committees of either House of the Oireachtas) states as follows:

"Office holders should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office. Office holders should not hold company directorships carrying remuneration. Even if remuneration is not paid, it is regarded as undesirable for them to hold directorships. A resigning director may enter into an arrangement whereby a company would agree to his/her re-appointment as a director upon ceasing to be an office holder."

"An office holder should not carry on a professional practice while an office holder but may make arrangements for the maintenance of a practice until such time as s/he ceases to be an office holder and returns to the practice.

"Office holders should not take any part in the decision-making or management of the affairs of a company or practice and should dispose of, or otherwise set aside for the time-being, any financial interests which might conflict, or be seen to conflict, with their position as an office holder".

Members of Dail Eireann and Seanad Eireann who are not office holders are not subject to the same restrictions, and may engage in outside trade, profession, employment, vocation or other occupation. Statements of interest must be filed annually that disclose: occupational income (from a remunerated trade, profession, employment, vocation or other occupation (other than that of office holder or member or an occupation to which Part IV of the Ethics in Public Office Act 1995 (as amended by the Standards in Public Office Act 2001) applies) where the remuneration exceeds €2,600 per year; shares (including bonds, debentures or other like investments) with an aggregate value in excess of €13,000 at any time during the reporting period; directorships (or shadow directorships); land (including property) that exceeds €13,000 in value at any time during the reporting period; gifts where the value or aggregate value from the same person exceeded €650; property supplied or lent or a service supplied; travel facilities (including accommodation, meals or entertainment); remunerated position held (whether political or public affairs lobbyist, consultant or adviser); and contracts with the State.

Local authority members equally may engage in outside employment.

The Civil Service Code of Standards and Behaviour states that:

14.1 Civil servants may not at any time engage in, or be connected with, any outside business or activity which would in any way conflict with the interests of their Departments/Offices, or be inconsistent with their official positions, or tend to impair their ability to carry out their duties as civil servants. For this reason, civil servants intending to be engaged in or connected with any outside business or employment should inform their Personnel/Human Resources Management Section of such an intention. Whole-time civil servants whose duties are of a professional character (e.g. doctors, engineers, architects, veterinary surgeons, solicitors etc.) must not engage in private practice in their professions. Any case in which the propriety of undertaking a particular business or occupation could reasonably be open to question must be referred by the civil servant concerned to the Secretary General or Head of Office.

As well, civil servants must not seek contracts with Government Departments or Offices for the supply of goods or services whether for their own benefit or for the benefit of any company with which they may have an involvement in a private capacity.

Finally, there are post-employment restrictions (both in the Regulation of Lobbying Act and in the Civil Service Code of Standards and Behaviour) which apply to certain designated public officials (namely, ministers, ministers of state, ministerial advisors, and senior-most civil servants) once a person leaves office. These restrictions do not apply to TDs or Senators that are not members of Cabinet, nor to local councillors.

Civil servants and political activity

Circular 09/2009 brings together in one document the rules that apply to civil servants in relation to politics and political activity and elaborates on the restrictions on civil servants in relation to politics and political activity, as set out in the Civil Service Code of Standards and Behaviour. Civil servants are debarred from standing for election to either House of the Oireachtas (Parliament) or to the European Parliament. In relation to local elections, certain civil service grades may stand for election, other grades may stand for election subject to being granted permission to do so by their Department, whilst other grades are debarred from standing for local elections. The restrictions placed on civil servants in relation to politics and political activity are designed to ensure that a civil servant does not do anything that could give rise to a perception that his or her official actions are in any way influenced or capable of being influenced by party political motives. This is binding on other agencies too, such as the Office of the Director of Public Prosecutions.

Gifts

Gifts valued below the EUR 650 threshold need not be declared. However, in practice, the Codes of Standards and Behaviour operate in tandem with the Ethics legislation, and in the case of civil servants, local authority employees and Councillors, provide for gifts of only a minimal amount to be accepted (e.g. diaries or pens). In the case of Office Holders, gifts exceeding EUR 650 given, by virtue of the office, to the office holder or spouse or partner or child, must be surrendered: gifts from the same person in the registration period should be aggregated and surrendered, if over the threshold (The Standards in Public Office Commission has outlined that in many cases, it would be impossible to collect up all the gifts previously received that were accepted (and may have been used or consumed), therefore, for practical reasons, the most recent gift that brought the aggregate value over the threshold would have to be either refused or surrendered).

The Public Sector Standards Bill 2015, which is currently making its way through the Houses of the Oireachtas (Parliament) provides the approach below in relation to gifts, travel and accommodation, refreshment and ancillary facilities, in order to address various recommendations of the Mahon Tribunal:

- There is a new obligation for all officials to make a declaration in respect of gifts (or a series of gifts from the same person) over EUR 200, received in connection with their function. Category A officials must declare privately, gifts over EUR 200, even if they are not received in connection with their function. The Bill proposes 3 categories of Official, A, B and C, with those in Category A being subject to more stringent requirements, arising from the senior nature

of the posts that they hold;

- The upper limit for receipt of gifts has been reduced by EUR 50 (to EUR 600) to make it consistent with the threshold for the declaration of political donations to individuals;
- The prohibition on accepting gifts over EUR 600 now applies to all officials;
- All public officials are now prohibited from seeking rewards or favours for anything done or not done, by virtue of their position.

The Public Sector Standards Bill also provides that a person is not obliged to make a declaration of gifts or travel etc. below a threshold of EUR 200 in a 12 month period, whether it was received in connection with their function or not. It is considered that a floor needs to be put on the legal obligation to accept and declare – otherwise, staff who receive token gifts (e.g. pens), would be obliged to declare each time that they received one. The threshold of EUR 200 was approved by Government.

It is anticipated that guidelines will be provided on the subject of gifts etc., following the enactment of the Bill.

The Criminal Justice (Corruption Offences) Act 2018, provides for some rules around the acceptance of gifts, considerations or advantages. Section 14 of that Act provides that a gift given to an official, by or on behalf of a person with an interest in relevant functions of the official, is presumed to be given and received corruptly. There is no value limit on what constitutes a "gift, consideration or advantage". Therefore, the thresholds for acceptable gifts, in both current and proposed Ethics legislation, should be read in concert with the Corruption Offences Act 2018.

Local Government

In relation to Local Government, the relevant legislation is the Local Government Act 2001. This Act includes an ethics framework specific to local authority members, managers and employees and is applicable generally across all areas of the local authorities' work. It builds on the principles in the Ethics in Public Office Act, 1995.

The Act imposes a duty on every member and employee of a local authority and of every member of committees to maintain proper standards of integrity, conduct and concern for the public interest. Under the legislation

· All members of Local Authorities must declare an annual report which outlines any conflicts of interests that they are aware of.

· They must agree to be bound by the Code of Conduct.

· Details of members/employees interests will be held by the ethics registrar. The register is available to the public (the ethics registrar is a person or persons assigned by the manager for a local authority to perform the relevant duties. The ethics registrar is changed every two years).

· If a manager of a local authority has knowledge of pecuniary or beneficial interests, it must be disclosed when a matter is proposed that it relates to. The manager will not influence the decision and inform the Mayor and the ethics registrar.

· Local auditors can be assigned to investigate local authorities, seek documents, obtain

information and assist the Minister.

As mentioned earlier, a full review of ethics legislation is underway.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Standards in Public Office Commission

Functions of the Standards in Public Office Commission under the Ethics Acts

The principal ongoing functions of the Standards Commission are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders.

Functions of the Standards in Public Office Commission under the Lobbying Act

The Act provides that the Standards Commission will be the Registrar of Lobbying. The Standards Commission will oversee the implementation of the register, monitor compliance, provide guidance and assistance and, where necessary, investigate and pursue breaches of legal requirements in due course.

The focus of the Registrar in the initial period of the operation of the legislation will be on guidance and information. A review of the Regulation of Lobbying Act 2015 has taken place and has had no effect on the powers of sanction. You can find the press release and report at the following link;

http://www.per.gov.ie/en/main-home/regulation-of-lobbying/regulation-of-lobbying/

Complaints

In 2016 the Standards in Public Office Commission received 26 complaints under the Ethics Acts. The Commission closed 22 complaints during the year and commenced six preliminary inquiries. In 2015, 28 complaints were received. 2014 saw a small increase from the previous year's total of 29 complaints to 39. However, the number of complaints which were valid within the terms of the Ethics Acts fell from 16 in 2013 to 12 in 2014.

Reports of recent investigations.

https://www.sipo.ie/reports-and-publications/annual-reports/

Examples of Declarations of Interest

An example of ethics declarations can be found on the Wicklow County Council homepage: https://www.wicklow.ie/Living/Your-Council/Your-Councillors/Ethics-Declarations

(b) Observations on the implementation of the article

Ireland has adopted several legislative measures dealing with the promotion of transparency and the prevention of conflict of interests at national as well as local level. The disclosure of interests,

keeping records of activities, declaring reports and drawing up codes of conduct as well as a web-based register of Lobbying which is available to the public, create an efficient system of transparency, integrity and compliance. Moreover, Ireland states that a full review of ethics legislation has been completed.

However, it is noted that public officials are presently allowed to accept gifts valued up to 650 EUR and certain categories of public officials may accept such gifts in cash. This coupled with the lack of disclosure requirements of gifts valued below this threshold may increase corruption risks. Although various codes of conduct prohibit accepting gifts that seek to influence public officials in the exercise of their official duties, this prohibition does not appear to sufficiently address the above concerns. Therefore, **it was recommended that Ireland consider lowering the limits in relation to gifts to public officials that are subject to mandatory declaration and refusal of remittance.**

(e) Technical assistance needs

No assistance would be required.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

As mentioned in previous responses, the relevant legislation which applies here is the Standards in Public Office Act 2001, the Ethics in Public Office Act 1995 and the Regulation of Lobbying Act 2015

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the bodies mentioned above contain relevant details.

(b) Observations on the implementation of the article

In light of the previous responses describing the referenced Acts in combination with the Local Government Act 2001 and the activities of the Standards in Public Office Commission, it is concluded that Ireland promotes ethics and relevant values like integrity, honesty and responsibility among public officials.

Ireland has implemented this provision of the Convention.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Aside from the statutory provisions outlined above, section 10 of the Standards in Public Office Act 2001 provides a legislative basis for codes of conduct for five categories encompassing civil service and public sector officials. The relevant codes may be accessed from the following link:

http://www.sipo.ie/en/Codes-of-Conduct/

Part 15 of the Local Government Act 2001 provides a basis for two further codes of standards for local authority members and local representatives. These codes may be accessed from the following link:

http://www.housing.gov.ie/local-government/governance/standards-public-life/standards-public-life

The codes address the matters around standards of integrity set out in the International Code of Conduct for Public Officials (annex to General Assembly resolution 51/59), although they are not directly derived from same. Training for their officials is arranged by public bodies, as part of induction programmes for new entrants and on an ongoing basis, while the Standards in Public Office Commission has a general role in terms of awareness raising as well as advice, monitoring and enforcement. A review of the processes in this regard will be undertaken once the Public Sector Standards Bill has passed into law.

The codes are reviewed regularly. A code of conduct for Special Advisers to the Government is currently being prepared.

These codes are enforceable as terms and conditions of employment. The recently introduced Civil Service Disciplinary Code provides clarity around the procedures to be employed in case of a breach of the codes.

http://circulars.gov.ie/pdf/circular/per/2016/19.pdf

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The annual reports and websites of the bodies mentioned previously contain relevant details.

(b) Observations on the implementation of the article

Based on the Standards in Public Office Act 2001 codes of conduct were drawn up for Members of the Oireachtas (Parliament), for office holders and for the civil service. The Standards Commission is responsible for the publication and distribution of those codes of conduct. In addition, also on a regional level, the Local Government Act 2001 provides a legal basis for codes of conduct for local authorities.

During the country visit, it was explained that public bodies, including State bodies, also have their own agency-specific codes of conduct.

Regarding paragraph 3 of article 8, most of the standards set out in the International Code of Conduct for Public Officials are embodied in the above codes. Therefore, it was concluded that Ireland has implemented this provision of the Convention.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

The Protected Disclosures Act 2014 provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so. The legislation also closely reflects international best practice recommendations on whistle-blower protection made by, the G20/OECD, the UN and the Council of Europe and draws on recent developments in legislative models adopted or being put in place in other jurisdictions.

In line with the Act, Protected Disclosures Policy and Procedures have been adopted across the Public Service. Guidance under the Act has been issued to public bodies to assist them in the performance of their functions under the Act. A Framework contract for training is also in place which may be availed of by public bodies.

In addition, the Standards in Public Office Commission is the main regulatory authority charged with receiving and investigating complaints for breaches by public officials of ethics legislation and associated codes (see previous responses). Further details may be obtained from that organisation's website.

In addition, a person who has either a suspicion or documentary proof that corrupt practices are taking place in international business transactions can report the matter to the Garda National Economic Crime Bureau who have responsibility for investigations in this area. Alternatively, a complaint can be made at any local Garda Station.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Further details may be obtained from the links provided above, in particular the website and annual reports of the Standards in Public Office Commission.

(b) Observations on the implementation of the article

Ireland has established a mechanism to facilitate reporting of acts of corruption by public officials by virtue of the Protected Disclosure Act 2014. The Act provides a solid legal basis to protect whistle-blowers in both public and private sectors regardless of their motives, improve detection rates, enhance accountability and support public confidence in the effective enforcement of general anti-corruption principles.

Moreover, the Standards in Public Office Commission is entrusted with the responsibility to manage complaints against public officials for breaches of ethics legislation and codes of conduct which further increases the efficiency of the reporting system.

Ireland has implemented the requirements of this provision of the Convention.

(c) Successes and good practices

The motivation of whistle-blowers is irrelevant to whether their reports are protected disclosures within the meaning of the Protected Disclosure Act 2014.

Paragraph 5 of article 8

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

(a) Summary of information relevant to reviewing the implementation of the article

State Board members and designated public officials in the public sector are subject to obligations under the Ethics Acts 1995 and 2001, while public bodies are all subject to the Code of Practice for the Governance of State bodies. The Ethics Acts requires staff occupying designated positions prescribed under the Acts to complete and furnish statements of interest.

Any person who occupies a designated position prescribed under the Ethics Acts must complete and furnish a statement of interest i.e. any interest held by the person or by his or her spouse or civil partner, child or child of spouse, which could materially influence the person in or in relation to the performance of his or her official functions.

Section 15 of the Ethics in Public Office Acts 1995 provides that where a gift valued in excess of €650 is given to an office holder by virtue of his or her office, that gift shall be deemed to be a gift given to the State and shall be vested in the Minister for Public Expenditure and Reform. In addition,

many local authorities operate a voluntary code where gifts from third parties are discouraged.

The declaration system is designed to capture conflicts of interest. The relevant arrangements are outlined above. Further details on the nature of the declarations required as well as relevant compliance measures may be accessed from the website of the Standards in Public Office Commission.

The Public Sector Standards Bill 2015 is currently at Committee Stage in the Dáil (one of the two houses of the Irish Parliament). This proposed legislation includes provisions for a declarations regime applicable to public officials.

The Bill adopts a graduated approach to declarations of interest and establishes three categories of public officials. This approach is adopted in light of the Mahon Tribunal (Tribunal of Inquiry into Certain Planning Matters and Payments) which highlighted that the more senior the public official the more significant the existence of a conflict from a corruption perspective as well as best international practice. Disclosures of members of the Oireachtas (Parliament), Councillors and top level public officials are to be submitted to the Public Sectors Standards Commissioner (a new office to be created by this legislation and replacing the Standards in Public Office Commission) whereas public officials at lower levels will make their returns to the Head of their organisations. Different requirements also apply in terms of the publication of information.

The registrable interests of members of the Oireachtas (Parliament) are currently set out in schedule 2 to the Ethics in Public Office Act 1995 and the similar declarable interests are at section 175 of the Local Government Act 2001 though those at Local Government Level also include the obligation to declare interests relating to where the person is dealing in or developing land during the appropriate period. The Public Sector Standards Bill proposes to consolidate and provide a comprehensive ethics framework for all public officials, which will modernise, simplify and reform the current framework. It will provide for independent and robust oversight of compliance with its provisions. This will bolster confidence in the integrity of the political system. The existing annual disclosure system is being amended so that once the first declaration is made, on assignment or election, no further declarations will be required unless there is a significant change in interests. Interests will need to be reviewed three times per year to see if there has been a significant change in interests in the previous 4-month period.

The interests to be declared largely mirror the current interests including:

- The source of income in excess of €2,600 from any remunerated trade, profession, employment or other occupation;
- The source of any income which relates to dealing with or developing land by the public official, or on behalf of the public official by a company or other body of which the official or a nominee is a member;
- The source of any income from a remunerated position as a lobbyist, consultant or advisor during the appropriate period;
- Any contract that the public official was a party to or is interested in for the supply of goods or services to a public body if the value of the goods or services exceeds €5,000 or €5,000 in aggregate;

- Any interest the public official has in land (other than a family home) in excess of €10,000;
- Any beneficial or legal interest or holding of shares and other like investments, in a particular company at any time during the appropriate period if the interest exceeds €13,000 with certain exclusions;
- A directorship, shadow directorship or other office or management position of any company held by the official during the appropriate period;
- The approach in relation to gifts sets a lower limit of €200 on gifts, below which no declarations are made. It sets an intermediate limit of €200-600 where gifts must be declared and an upper limit of €600, above which gifts must be refused or remitted. In the case of Category A officials, gifts over EUR 200 are declared confidentially even if not connected with their function. It should be noted that the Mahon Tribunal recommended that no gifts or gifts of only a minimal amount be accepted.

The concept of a private declarable interest is introduced, whereby certain interests such as liabilities over a certain threshold and gifts given by relatives in a private capacity are also disclosed periodically, but by senior officials and politicians only, on a confidential basis, and are not published. This approach seeks to achieve an appropriate balance between the constitutional right to privacy with the public interest in disclosure of interests. Private declarable interests include:

- The amount of income from each source;
- Own liabilities and assets over €50,000 other than pensions or a charge on the family home;
- Gifts: if the value of a gift is over €200 and is given by non-relatives for reasons not connected with the official's function it must be declared;
- Travel: travel, accommodation and related facilities over €600 given by a person who is not a relative and which are not connected with the performance of his or her functions.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Details may be accessed from the website and annual reports of the Standards in Public Office Commission, and the other links provided above.

(b) Observations on the implementation of the article

The relevant Irish law, in particular the Ethics Acts of 1995 and 2001, require certain public officials to furnish a statement of interest and declare substantial gifts. Public officials, except the office holders to whom the Code of Conduct for Office Holders applies, shall also report outside activities if their income from such activities exceed specified thresholds. The office holders, on the other hand, are not permitted to engage in outside activities which are incompatible with their public functions.

Furthermore, Ireland has developed the Public Sector Standards Bill 2015 which should, if adopted, introduce an improved declaration regime and cover all public officials. A private declarable interests' concept is also to be introduced by the Bill and should include liabilities and private gifts.

It should be noted that paragraph 5 of article 8 of the Convention only requires State parties to endeavour to establish appropriate measures and systems for public officials to declare interests from which conflicts of interest may result. The above Acts as well as the Bill serve as evidence that Ireland not only established such measures but is also endeavouring to improve them. Therefore, it was concluded that Ireland has implemented this provision of the Convention.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Disciplinary procedures would be taken in accordance with stated policies and procedures of the Standards in Public Office Commission in relation to staff and Office Holder. A breach of the Code of Conduct may lead to disciplinary actions up to and including dismissal.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See responses provided above.

(b) Observations on the implementation of the article

Various disciplinary sanctions or penalties are provided for violations of the Codes of Conduct and Acts described under article 8 above.

It was concluded that Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

(a) Summary of information relevant to reviewing the implementation of the article

The Office of Government Procurement (OGP) was established in 2014 and has responsibility for sourcing all goods and services on behalf of the Public Service. In addition, the OGP also has responsibility for procurement policy and procedures.

Through the OGP, the Public Service speaks with "one voice" to the market for each category of expenditure, eliminating duplication and taking advantage of the scale of public procurement to best effect.

All procurements carried out by the Public Sector adhere to the following EU laws and national Guidelines:

- Directive 2014/24/EU on public procurement (goods, services and works) - http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN) - transposed into Irish law by way of S.I 284 of 2016
- DPER Circular 02/16: Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service - http://circulars.gov.ie/pdf/circular/per/2016/02.pdf
- DPER Circular 10/14: Initiatives to Assist SMEs in Public Procurement 2014 - https://ogp.gov.ie/990-2/
- DPER Circular 13/13: The Public Spending Code: Expenditure Planning, Appraisal & Evaluation in the Irish Public Service - Standard Rules & Procedures - https://www.gov.ie/en/publication/public-spending-code/
- DOF Circular 02/11: Additional Arrangements for ICT Expenditure in the Civil and Public Service - https://circulars.gov.ie/pdf/circular/finance/2011/02.pdf

- DOF Circular 40/02: Public Procurement Guidelines - Revision of existing procedures for approval of certain contracts in the Central Government sector - http://circulars.gov.ie/pdf/circular/finance/2002/40.pdf

In all procurements, the following EU Treaty principles are adhered to:

- equal treatment and non-discrimination (all parties must be treated equally and without bias at all stages of the process)
- transparency (the procurement process must be clear and easily audited)
- mutual recognition (equal validity must be given to the qualifications and standards of other Member States)
- proportionality (procurement procedures and decisions must be proportionate)
- free movement of goods and services
- the right of establishment - guarantee mobility of businesses and professionals within the EU.

By strictly implementing EU Regulations and national guidelines the Public Sector by extension, adheres to the standards of the UNCITRAL Model Law on Procurement of Goods, Construction and Services (2011). Compliance with Regulations and guidelines, while also seeking value for money, are the abiding principles of the Central Procurement Unit.

It is Departments policy to avail of all centrally available OGP Frameworks as soon as they come on stream and to engage with the OGP where a Department has a specific requirement not available on a Framework

Where a framework is not available, Departments publishes tenders on the e-tenders website - https://www.etenders.gov.ie/ which contains guidance material, including tender templates- https://www.etenders.gov.ie/generalprocguide.aspx. The award criteria is included in the tender document, including the marks available for each criterion. Tenders are evaluated by a carefully selected evaluation team using the Most Economically Advantageous Tender (MEAT) method for evaluation. Unsuccessful bidders are given meaningful feedback and are given specific reasons why their tender gained less marks as compared to the successful bidder - unsuccessful letters set out the relative advantages of the successful tenderer and template letters are available in the guidance document noted above. An unsuccessful bidder may seek a feedback meeting and if still dissatisfied may take a case to the High Court.

www.eTenders.gov.iehas been developed as part of the Irish Government's Strategy for the Implementation of eProcurement in the Irish Public Sector. The site is designed to be a central facility for all public sector contracting authorities to advertise procurement opportunities and award notices. The site is managed by The Office of Government Procurement (OGP). The OGP sets the policy on content and functionality of the site however day to day management and maintenance, as well as development, of the site has been outsourced to a private company, EU-Supply. The site displays, on a daily basis, all

Irish public sector procurement opportunities currently being advertised in the Official Journal of the European Union (OJEU), as well as other lower-value contracts uploaded to the site from awarding authorities. At any given time, it will contain all open opportunities in the form of Tender Notices, Prior Indicative Notices (PIN) and Contract Award Notices (CAN). It also provides associated tender documents (where available) which can be downloaded from the site.

The site has the functionality to allow Awarding Authorities to publish notices on the site which will then be sent to the Official Journal of the European Union (OJEU) automatically. Other functionality includes facility for conducting online clarifications via a Q&A facility, online

submission of tenders, user and notice management facilities to awarding authorities, email alerts and response management facilities to suppliers. There is also comprehensive notice search and help functions.

www.eTenders.gov.ie also provides comprehensive information on procurement rules and guidelines. These include European Directives and National Guidelines on the Public Procurement Process. The site offers the opportunity to widen the net of potential suppliers to the Irish Public Sector. There is no charge to contracting authorities or suppliers for this service. The eTenders site is also freely available for use by the public to view tender notices published by Public Contracting Authorities.

Pursuant to Circular 10/14 issued by the Department of Public Expenditure and Reform all buyers in the public sector, including the local government sector, are required to advertise all contracts for supplies and services with an estimated value of €25,000 (exclusive of VAT) and upwards on www.etenders.gov.ieto promote SME participation. The advertising threshold for works and works related services is €50,000 (exclusive of VAT). Buyers are also required to extend the use of the eTenders website to include tenders for low value purchases where possible.

The EU Remedies Directive was implemented into Irish law in 2010. The 2010 Remedies Regulations, which implement both the EU Remedies Directive and the EU Utilities Remedies Directive, established a special form of judicial review applying to contracts governed by the EU public procurement rules.

Public procurement by local authorities

Section 171 of the Local Government Act 2001 provides for the submission by local authority employees of an annual written declaration containing particulars of his or her declarable interests. Furthermore, Section 167 of the Local Government act 2001 provides that Part 15 (Declaration of Interest), applies to certain employees of the local authorities and also to "connected persons". "Connected persons" are defined in the Act as a brother, sister, parent or spouse of the person or a child of the person or of the spouse.

Each local authority has established rules and controls for managing the procurement process within its Corporate Procurement plan. These rules and controls set out the requirements, within the local authority, for receipt, opening and evaluation of tenders. In addition, tenders received electronically in the National Procurement platform etenders.ie are contained in a "tender box" and cannot be accessed until the deadline for receipt of tenders has passed.

Each local authority has established rules and controls for managing the procurement process relating to below threshold tenders and quotations within its Corporate Procurement plan. These rules and controls set out the requirements, within the local authority, for receipt, opening and evaluation of tenders.

Screening procedures and training requirements

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. Public procurement procedures must comply with the EU Treaty principles. The key policies in the Treaties, from a public procurement point of view, are the free movement of goods, the freedom of establishment, and the freedom to provide services. There are also 5 general principles of EU law derived from these freedoms which are highly relevant to fair and competitive public procurement: equal treatment (discrimination on the grounds of nationality or location is not permitted); transparency; proportionality; mutual recognition; and, openness to competition. These

principles ensure a properly functioning internal market that affords significant opportunities to Irish suppliers.

In addition to the Treaties, there are three main EU Public Procurement Directives that flesh out the principles with detailed procedures and criteria for specifications, selection and award of contracts above certain thresholds. The Directives have been implemented into Irish law by the following Statutory Instruments:

- EU Directive 2014/24/EU - EU Procurement Directive has been transposed by S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016 (referred to in this document as "the 2016 Regulations");
- EU Directive 2014/25/EU - Procurement by entities operating in the water, energy, transport and postal services sectors (Utilities Directive) has been transposed by S.I. No. 286 of 2016 European Union (Award of Contracts by Utility Undertakings) Regulations 2016;
- EU Directive 2014/23/EU on the award of Concession contracts has been transposed by S.I. No. 203 of 2017 European Union (Award of Concession Contracts) Regulations 2017.

Contracting authorities must be able to justify decisions made and actions taken. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993, and the Local Government Reform Act 2014, and Accounting Officers are publicly accountable for expenditure incurred. Contracting authorities are responsible for establishing arrangements for ensuring the proper conduct of their affairs, including conformance to standards of good governance and accountability with regard to procurement. In organising the procurement function, management in contracting authorities must ensure appropriate separation of duties within the procurement cycle. For example, insofar as possible, ordering and receiving goods and services should be separate from payment for goods and services. Contracting authorities are required to take "appropriate measures" to prevent, identify and remedy conflicts of interest in the conduct of a procurement procedure to avoid any distortion of competition and to ensure equal treatment of tenderers. A conflict of interest includes any situation where a relevant staff member has directly or indirectly a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of the procurement procedure. The 2016 Regulations define a relevant staff member as a staff member of the contracting authority or a procurement service provider acting on behalf of the contracting authority who is involved in the conduct of the procurement procedure or who may influence the outcome of the procurement procedure.

Separately, public officials who occupy "designated positions" for purposes of the Ethics in Public Office Acts 1995 and 2001 have a statutory obligation to furnish an Annual Statement of Interests disclosing any interest held by the person and any interests held, to the person's actual knowledge, by his or her spouse or civil partner, a child of the person, or a child of a spouse, which could materially influence the person in relation to the performance of his or her official functions. "Designated positions" include certain directorships in public bodies as well as positions of employment in the Civil Service and the wider Public Service that are remunerated at or above the level of a Principal Officer in the Civil Service. They also include positions of employment in the Civil Service and the wider Public Service that are remunerated below the level of Principal Officer where the parent department or public body believe they should be included for reasons of transparency or to put beyond doubt that the Ethics Acts apply to the particular position. This would include those that interface with the commercial sector or have responsibility for public procurement.

There is an onus on each contracting authority to ensure that officials engaged in procurement are fully familiar with the relevant EU and national rules and are compliant with these when performing

the procurement function.

Local Government Management Agency

In respect of the Local Government Management Agency, a Procurement Officer has been appointed and fully trained in Procurement including the requirements of EU Directives. For the overall Local Government Sector, a Procurement Officer has been designated in each local authority and full training has been provided including the requirements of EU Directives. The Local Government Strategic Procurement Centre (LGSPC) based in the Local Government Management Agency hosts four quarterly forums for the Procurement Officers providing updates on case law and sharing of best practice. The LGSPC also provides specific training identified in an annual assessment of training needs.

Procedures on making changes in the tendering rules and or selection/award criteria during the procurement

The S.I. No. 284 of 2016, European Union (Award of Public Authority Contracts) Regulations 2016, does not allow contracting authorities to change selection or award criteria once they have been published.

Some of the other procedures available, such as competitive dialogue etc., do allow for a more flexible approach to procuring in line with the EU Directive. However, any flexibility has to be clearly set out at the beginning of the process.

The system of appeal and available legal recourse or remedies to address bidders' complaints

On 1 February 2015 the Office of Government Procurement launched the Tender Advisory Service (TAS), designed to provide an informal outlet for potential suppliers to raise concerns in relation to a particular live tender process. It is aimed at improving communications with suppliers and increasing professionalism and consistency in how procurement processes are carried out across the Public Service. The service covers all procurement processes carried out by the OGP and other public bodies (excluding the commercial semi-state bodies and major works).

Individuals have recourse to the Remedies Regulations if they are unhappy with a tender process. Engagement with the Tender Advisory Service in no way impedes individuals from pursuing their rights formally under the Remedies Regulations.

Legal recourse or remedies are also available to address complaints through the seeking of a judicial review in the High Court.

Measures taken to avoid the leaking of information about submitted tenders to other competitors before the submission deadline

Public officials are required to maintain the highest standards of probity in the performance of their duties and to comply with codes of standards and behaviour that apply in respect of them. Separate statutory codes of conduct have been developed across the Public Sector including the Civil Service, the Local Authority sector, the HSE and State body sectors. In addition, the S.I. No. 284 of 2016 European Union (Award of Public Authority Contracts) Regulations 2016 set out the procedures for handling tenders which respect to commercial nature of the bidding process and ensure processes achieve value for money.

In the case of the Civil Service Code, for example, civil servants are required to conduct themselves with honesty, impartiality and integrity. They are not allowed to use their official positions to benefit themselves or others with whom they have personal or business ties, nor seek to influence decisions

on matters pertaining to their official positions, other than through established procedures. They are not permitted to negotiate or arbitrate in any matter affecting a Government contract or the purchase from or sale of goods to the State where, in their private capacities, they are interested either as principals or as shareholders in a company being one of the principals in the matter under consideration.

Each local authority has established rules and controls for managing the procurement process relating to tenders and quotations within its Corporate Procurement plan. These rules and controls set out the requirements, within the local authority, for receipt, opening and evaluation of tenders. In addition, tenders received electronically in the National Procurement platform etenders.ie are contained in a "tender box" and cannot be accessed until the deadline for receipt of tenders has passed.

Tender Advisory Service

The Tender Advisory Service (TAS) was established by the Office of Government Procurement (OGP) in consultation with SME stakeholders, to address concerns in relation to perceived barriers for SMEs in competing for tender opportunities. TAS is an informal outlet, provided free of charge, to suppliers in order to raise concerns in relation to a live tender process carried out by the OGP or other public sector contracting bodies.

The Tender Advisory Service was relaunched in July 2018. The TAS website can be accessed at https://ogp.gov.ie/tender-advisory-service/

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Details of all public sector tenders are available at https://www.etenders.gov.ie/ . There has been one significant court case relating to local authority public procurement - RPS v. Kildare County Council. The High Court found that the Council had a legal obligation to provide RPS, an unsuccessful tenderer, with reasons that have been individually considered and formulated so as to clearly specify the relative advantages of the winning tenderer over RPS. The High Court also found that the Council had a legal obligation to positively respond to a request by RPS for further information related to the rejection of their tender within 15 days of having notified RPS. This is the first case where the sufficiency of reasons provided to unsuccessful tenderers has been considered in detail by an Irish court.

(b) Observations on the implementation of the article

The National Public Procurement Policy sets out the overarching policy framework for public procurement in Ireland and contains procedures to be followed by procuring entities under relevant national and EU rules. The Department of Public Expenditure and Reform (DPER) implements the National Policy and the Office of Government Procurement within the Department serves as a central purchasing body and sources eight categories of goods and services out of sixteen in total. Procurement of construction works is governed by the Capital Works Management Framework.

Furthermore, the OGP develops framework contracts to source standard goods and services and

manages www.eTenders.gov.ie which is a dedicated website to advertise all public procurement opportunities and award notices. As explained during the country visit, procuring entities are required to also list low-value procurements on this website where possible and the compliance with this requirement was rated at 70 %.

Procurement is subject to audit and scrutiny by C&AG, and Accounting Officers within Departments are accountable for expenditure incurred. Contracting authorities shall ensure the proper conduct of procurements, including conformance to standards of good governance and accountability and take appropriate measures to prevent, identify and remedy conflicts of interest.

The "most economically advantageous tender" method is used to determine the winning bid. All unsuccessful bidders are provided with a summary of reasons for a tender decision. They may lodge a written request for more specific reasons and if still dissatisfied may take a case to the High Court. In addition, OGP has set up a Tender Advisory Service to provide an informal outlet for potential suppliers to address concerns in relation to procurements carried out by OGP and other contracting authorities.

During the country visit, the authorities highlighted that the Tender Advisory Service was a success as only 15 out of over 6000 queries lodged with the Service annually actually lead to changes to live tender processes.

In regard to measures to blacklist suppliers who were found to have violated relevant procurement rules, the authorities stated during the country visit that such measures were not available. The reasons were that no acceptable international or regional standards existed and the introduction of backlisting could be seen as a violation of the constitutional right to earn income.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

(c) Successes and good practices

The establishment of the Tender Advisory Service should be highlighted as a good practice.

Paragraph 2 of article 9

2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

(b) Timely reporting on revenue and expenditure;

(c) A system of accounting and auditing standards and related oversight;

(d) Effective and efficient systems of risk management and internal control; and

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

(a) Summary of information relevant to reviewing the implementation of the article

a) The National Budget must first be presented to the Houses of the Oireachtas (Irish Parliament). It is then submitted to the European Commission on or before the 15th of October, for assessment under the Stability and Growth Pact. Revenue measures are costed and described in the Budget,

while the legislation (the Finance Act) to give effect to these measures is debated and voted upon in the Houses of the Oireachtas. This process must be completed by the end of the calendar year. Expenditure Measures and expenditure ceilings, under 16 different Ministerial headings, are voted upon by the Houses of the Oireachtas. The aggregate of the Ministerial expenditure ceilings must not exceed the overall Government Expenditure Ceiling - which is set to ensure compliance with the Stability and Growth Pact.

b) The Exchequer returns (cash received and issued from the Central Fund) are published, on a cash basis, on the second working day of the following month. A press conference is scheduled for each end quarter Exchequer returns. The revenues and expenditure of all subsectors of general government are also published a month in arrears. The annual estimates of general government debt and deficit are reported, in early April each year, by the Central Statistics Office (CSO).

c) General Government debt and deficit data are published by the CSO on a European System of National and Regional Accounts (ESA) 2010 basis. Oversight of the methodology used by the CSO is completed by Eurostat. Voted Expenditure is overseen by the Minister for Public Expenditure and Reform

d) The Department of Finance publish macroeconomic and fiscal forecasts twice a year, as part of the respective Budget and Stability Programme publications. As part of the risk management process, these publications contain a sensitivity analysis and risk assessment matrix where risks to the forecasts and their possible impacts are analysed.

e) Failure by the Houses of the Oireachtas to vote upon annual estimates of expenditure would limit, by legislation, the expenditure under the various Ministerial headings to 80 percent of the previous year's amount. Failure to pass the Finance Act through the Houses of the Oireachtas would result in Ireland being in breach of its commitments under the EU regulations known as the "Two Pack" which was formally adopted on 30th May 2013 and would risk not meeting the deadlines of the common budgetary timeline introduced for all Euro area member states. Changes in taxation which are announced in the Budget are given temporary statutory effect by way of Financial Resolutions which act on a provisional basis pending the full enactment of the Finance Act. The passing of the Finance Act gives permanent effect to the tax provisions.

If the Resolutions are not confirmed by the passing of the Act, then the monies collected by the Revenue Commissioners from Budget night would have to be refunded. As well as giving legislative form to the taxation measures included in the Budget, the Finance Act also contains provisions which are consequential to the Budget measures and other changes in the tax code including; tax administration, Revenue powers and the statutory imposition of anti-avoidance measures. If the Act fails to pass through the Houses of the Oireachtas then these measures could not be implemented.

Appropriation Accounts

Appropriation accounts, showing the financial transactions of Central Government Departments, are prepared in accordance with the Exchequer and Audit Departments Act 1866 (as amended by the Comptroller and Auditor General (Amendment) Act 1993) and with accounting rules and procedures laid down by the Minister for Public Expenditure and Reform. The term ‘Department’ includes central Government Departments, Offices and State Agencies responsible for Vote management and accounting.

The Appropriation Accounts are a cash-based record of the receipts and payments in the year compared with the amounts provided under the Appropriation Act. The accounts also show prior year figures for comparison purposes. Some information of an accruals nature is included in the notes to the accounts.

Comptroller and Auditor General

Article 33.1 of the Constitution of Ireland states that 'there shall be a Comptroller and Auditor General to control on behalf of the State all disbursements and to audit all accounts of monies administered by or under the authority of the Oireachtas'.

The main statutory functions of the Comptroller and Auditor General are (1) as Comptroller General of the Exchequer, to ensure that no money is issued from the Central Fund by the Minister for Finance except for purposes approved by the Oireachtas; and (2) as Auditor General, to audit Government accounts for accuracy and regularity, and to carry out such examinations as he or she considers appropriate in regard to economy and efficiency on the use of resources and the effectiveness of certain management systems (i.e. a Value-for- Money Audit).

If during the examination of a Department's accounts, etc. (which takes place throughout the year), the Comptroller and Auditor General considers that there is prima facie evidence of matters that may be referred to in the annual report, he or she may communicate the facts in writing to the responsible Accounting Officer with a request for information or explanation, even if at that stage the Appropriation Account for the year has not been finalised. Depending on the Accounting Officer's reply, or in the absence of a reply, the Comptroller & Auditor General may qualify the certificate on the Appropriation Account and report the matter to the Dáil (Lower House of the Oireachtas). If the matter giving rise to the audit query is to be referred to in a Comptroller and Auditor General Report, the Accounting Officer is asked in advance to confirm the accuracy of the facts in the Report. (A similar procedure operates for audit queries issued to all other bodies audited and for any reports arising there from.

All reports of the Comptroller and Auditor General are laid before Dáil Éireann. The Committee of Public Accounts considers such reports on behalf of Dáil Éireann and reports its findings to Dáil Éireann.

Public Accounts Committee (PAC)

The Public Accounts Committee is a standing Committee of the Dáil established under the Standing Orders of the Dáil (Standing Order 156) and is responsible for examining and reporting to Dáil Éireann on:

1. the Appropriation Accounts of Government Departments and Offices, and on such other accounts as they see fit that are audited by the C&AG and presented to the Dáil, together with any reports on them by the C&AG ;

2. the C&AG's reports on his examinations of economy, efficiency, effectiveness evaluation systems, procedures and practices; and

3. other reports carried out by the C&AG under the 1993 Act.

By tradition, the Chairman of the Public Accounts Committee (PAC)is a member of the Opposition and the Comptroller and Auditor General is always in attendance at the meetings of the PAC, as a witness. Historically the key function of the PAC has been to examine the accounts for regularity and propriety of expenditure, which are key elements of the C&AG's certification audit. The role was formally expanded following the enactment of the 1993 Act, which extended the scope of the Pac's remit to encompass the C&AG's examinations of economy and efficiency as well as of the systems, practices and procedures to evaluate effectiveness. The PAC plays a key role in ensuring that there is accountability and transparency in the way Government Departments and Agencies allocate, spend and manage their finances and in guaranteeing that the taxpayer receives value for money.

Statement on Internal Financial Control (SIFC)

Accounting Officers are required to supply a signed Statement on Internal Financial Control (SIFC) to the Comptroller and Auditor General with the annual Appropriation Account. The Statement on Internal Financial Control requires Accounting Officers to acknowledge their responsibility for ensuring that an effective system of internal financial control is maintained and operated by the Department/Office.

Typically, the SIFC will contain the entities position in regard to:

- the financial control environment,
- the framework of administrative controls and management reporting, and
- internal audit.

Risk Management Guidance for Government Departments and Offices 2016

In 2016 the Department of Public Expenditure and Reform published updated Risk Management Guidance for Government Departments and Offices. The purpose of the 2016 guidance was to update Government Departments in relation to current good practice, to support them with embedding risk management within the culture of the organisation and to reaffirm the benefits from effective risk management including accountability, assurance and enhanced decision-making. The guidance takes account of developments in risk management including the International Standards Organisation (ISO) 31000, Risk Management - Principles and Guidelines.

Government Departments are required to have a pro-active management-led risk management policy as part of their governance framework.

Internal Audit

Internal Audit is responsible for providing an independent assurance opinion to the Accounting Officer and the Audit Committee on the risk management framework, policy and processes. The Internal Audit function should as part of their work programme:

- regularly review risk management arrangements and risk policy implementation;
- assess the extent to which Internal Audit can add value to the process of risk management; and
- adopt a risk-based approach to the development of its audit plan.

Internal Audit Standards, 2012

Internal Audit Standards were published by the Department of Public Expenditure and Reform in 2012 which applies to Government Departments/Offices. Following consultation with Heads of Internal Audit, Audit Committees and Senior Management across the range of Vote Holders, the Department of Public Expenditure and Reform determined that the Institute of Internal Auditors', The International Standards for the Professional Practice of Internal Auditing', should apply across all Government Departments and other Vote Holders.

Opportunities for public input and debate concerning proposed national budget

Following a suite of reforms, the annual budget process now involves a number of elements, starting with publication of the Summer Economic Statement. This Statement sets out the broad policy parameters for macroeconomic growth and the fiscal outlook and constraints over the medium term.

This is usually followed by a National Economic Dialogue which takes place in June of each year. The dialogue is an important element of the budgetary framework and its objective is to facilitate an open and inclusive exchange on the competing economic and social priorities facing the Government, amongst key stakeholders. The dialogue offers an opportunity to consider how to make best use of the available resources in the interests of all citizens. Discussion focuses on how

to best use resources while taking account of the many competing economic and social priorities within the limited fiscal space. Attendees include representatives of community, voluntary and environmental groups as well as business, unions, research institutes and the academic community. Members of the Select Committee on Budgetary Oversight also attend and participate in the event.

The Irish Fiscal Advisory Council publishes two fiscal assessment reports a year, following the Budget in the autumn and the Stability Programme Update in the spring. The reports assess the Government's macroeconomic and budgetary forecasts, the appropriateness of the fiscal stance, compliance with the budgetary rule, as well as detailing the Council's endorsement function. Reports are submitted to the Minister for Finance and are laid before the Oireachtas.

The Summer Economic Statement outlines the broad parameters that will underpin discussions of economic and fiscal policy over the medium term. The Mid-Year Expenditure Report presents the baseline for Departmental expenditure and provides the starting point for examination of budgetary priorities by the Oireachtas.

A further recent reform is the circulation by the Department of Finance of Tax Strategy Papers to the relevant Oireachtas Sectoral Committees. These set out existing measures across all tax heads, contain issues for discussion and costed options for tax changes, taking Programme for Government commitments into account.

These reform measures go towards addressing some of the issues highlighted by the OECD in its report on Irish parliamentary budgetary oversight from November 2015. Arising from the process and the Programme for Partnership Government, the Oireachtas established the Budget Oversight Committee and the Parliamentary Budget Office. These reforms will further improve the formulation, oversight and discussion of fiscal policy in Ireland.

Furthermore, at any point in the annual budgetary process, representations can be made by members of the public, i.e. an individual, company, group or representative body and can be sent to the Department of Finance, either by themselves or through their public representatives. These are received in the Minister's office where they are recorded and forwarded to the relevant section for appropriate action.

The Department of Finance also receives pre-budget submissions prior to the Budget each year. Again, these can be sent in directly or through their public representatives and are recorded in the Minister's Office and forwarded to Tax Administration where they are made available to the relevant tax sections for review. There were in excess of 400 submissions received for Budget 2017 and in excess of 420 submissions received for last year, Budget 2018.[5]

Corrective actions required and taken in the management of public finances if accounting problems are identified

Fiscal policy in Ireland is bound by the EU Fiscal Rules as set out in the Stability and Growth Pact Agreement. Under these parameters, departmental ceilings are published each year in the Expenditure Report setting out allowable increases in expenditure over a three year period.

Regular reviews of expenditure are carried out focusing on an assessment of the efficiency, effectiveness and sustainability of Government expenditure. These Spending Reviews support the development of better policy options for Government by broadening and deepening the knowledge of a range of complex policy areas to facilitate future discussions regarding the evolution of Government expenditure. This process allows for the systematic examination of existing spending programmes to assess their effectiveness in meeting policy objectives and to identify scope for re-allocating expenditure to meet expenditure priorities.

[5] 466 submissions were received for Budget 2019.

Role of the Comptroller and Auditor General Office

The role of the Comptroller and Auditor General Office in relation to corrective action lies in reporting of instances of wrongdoing, breaches in controls etc to Dáil Éireann. The Comptroller and Auditor General does not have authority to apply financial or other penalties to individual agencies. Issues arising are reported as part of the audit certificates or reports which give an audit opinion on the accuracy of the financial statements or through reports of the C&AG in relation to specific topics/issues. The C&AG's reporting mandate is set out below.

Comptroller and Auditor General Reporting mandate

The results of audit activity are reported to Dáil Éireann in two main ways:

- through audit certificates or reports which give an audit opinion on the accuracy of the financial statements / accounts;
- through reports on the financial management of individual entities and other matters likely to be of concern to Dáil Éireann.

The Committee of Public Accounts also plays a key role in the process of public accountability. The C&AG attends meetings of the PAC as a permanent witness. The PAC examines and reports to Dáil Éireann on its review of accounts audited by the C & AG and his reports on them. The PAC also examines other statutory reports of the C & AG including the C&AG's reports on the examinations of economy, efficiency and effectiveness evaluation (VFM) and other reports made by the C&AG under the Comptroller and Auditor General (Amendment) Act 1993.

Reports completed in relation to types of issues identified

See below examples of issues reported recently in relation to the types of issues outlined in your query

1. 2016 Account Excess Vote

In summary, expenditure greater than the limit specified in the Appropriation Act requires the approval of Dáil Éireann — this is known as an excess vote. The audit identified additional expenditure which had (incorrectly) not been charged to the account. The correction of this error meant that the Department had now exceeded the amount approved by Dail Éireann and the Department was required to get Dáil approval for the related expenditure.

See: http://www.audgen.gov.ie/documents/annualreports/2016/report/en/Chapter6.pdf

(paragraph 6.10 to 6.14)

2. Report on public sector financial reporting

This report reviewed the timeliness of public sector financial reporting and identified those bodies where delays have occurred. It also summarised the issues brought to attention in the Comptroller and Auditor General's audit reports on financial statements for 2015.

See: www.audgen.gov.ie/reports/Public_Sector_Financial_Reporting_for_2015.pdf

3. Report on financial reporting in a specific entity

These reports included matters encountered during financial audit, including, delays in the preparation of the annual accounts and other issues.

See: www.audgen.gov.ie/viewdoc.asp?DocID=1867&CatID=5&StartDate=1+January

+2018

See: www.audgen.gov.ie/documents/vfmreports/2059-part1.pdf

4. Review of audit committees

This report examined the operation of audit committees in a sample of non-commercial State bodies and assessed the level of their compliance with guidelines issued by the Department of Public Expenditure and Reform.

See: www.audgen.gov.ie/viewdoc.asp?DocID=2009&CatID=5&StartDate=1+January

+2018

The Department of Public Expenditure and Reform have responsibility for issuing guidance to departments and State agencies. In a number of cases additional guidance is issued on foot of issues identified in reports of the Comptroller and Auditor General. For example, DPER updated its guidance in relation to Audit Committees on foot of the report above. In addition, DPER consult with the Office of the Comptroller and Auditor General in the development of guidance. A recent example relates to the development of a revised Code of Practice for the governance of State bodies.

See: www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/

Publication of the Annual Finance Accounts

With respect to the publication of the annual Finance Accounts, there is no specific rule around their publication save for the fact they must be laid before both Houses of the Oireachtas before 30th September each year. This is a statutory requirement pursuant to Section 4 (3) of the Comptroller and Auditor General (Amendment) Act, 1993.

As a general rule and in the interests of transparency and accountability, the Department of Finance makes the Finance Accounts available on the website in PDF format each year once they have been signed by the Accounting Officer of the Department of Finance, certified by the C&AG and laid before the Houses. These publications currently go back as far as the year 2000 on the Department of Finance website at https://www.finance.gov.ie/what-we-do/public-finances/finance-accounts-2/accounts/ . With regard to Finance Accounts from years before 2000, these have been scanned onto our E-docs system in PDF format and are freely available in soft or hard copy on request to Exchequer Section.

Hard copy publications are also forwarded each year to the Government Publications Office for sale to the General Public. However, I am not aware of how long those publications would be maintained on shelf for sale by the GPO i.e. some of the older publications may not be readily available.

The Finance Accounts for various years are also freely available on the Oireachtas website at http://opac.oireachtas.ie/liberty/libraryHome.do, arising from the Accounts being laid before the Houses each year, as mentioned above.

Ireland Strategic Investment Fund

The Ireland Strategic Investment Fund (ISIF) was established on 22 December 2014 on the commencement of Part 6 of the NTMA (Amendment) Act 2014. The Fund's predecessor was the National Pensions Reserve Fund. The National Treasury Management Agency (NTMA) is the controller and manager of the ISIF.

Section 39(1) of the NTMA (Amendment) Act 2014 requires the NTMA to hold or invest the assets of the Fund (other than directed investments) on a commercial basis in a manner designed to support economic activity and employment in Ireland. Sections 42, 43, 47(4) of the NTMA (Amendment) Act 2014 enable the Irish Minister for Finance to give directions in relation to certain public policy "directed investments" which are also managed within the ISIF.

The NTMA is required to determine, monitor and keep under review an investment strategy for the assets of the ISIF (other than directed investments) in accordance with the Fund's statutory mandate.

Ownership of the ISIF vests with the Irish Minister for Finance.

The ISIF is audited annually by the Office of the Comptroller and Auditor General as outlined in the NTMA (Amendment) Acts 1990, 2000 & 2014.

Further detail is contained in the latest published audited accounts and the ISIF's investment strategy which are available on the ISIF's website at ISIF Publications.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Further details are available in the public financial procedures at http://govacc.per.gov.ie/public-financial-procedures-booklet-by-section/

Risk Management Guidance for Government Departments and Offices at http://govacc.per.gov.ie/wp-content/uploads/2016/02/Risk-Management-Guidance-February-2016.pdf

General Government debt and deficit data are published by the CSO on an ESA 2010 basis at www.cso.ie

Further information can also be found on the websites of the various Departments/Bodies.

(b) Observations on the implementation of the article

The Department of Finance leads the development of a draft national budget which covers general government revenues and expenditures. The draft is then presented to the Parliament for its debate and approval. The draft is also submitted to the European Commission for assessment to ensure compliance with the expenditure limits specified under the Stability and Growth Pact. The Parliamentary process is public.

During the country visit, the authorities explained that apart from the Central Fund there exist several extra-budgetary funds like Social Insurance Fund and Ireland Strategic Investment Fund. These funds are managed by various Departments.

The Exchequer returns, which are revenues and expenditure of the main treasury account of the Government, are published every month. Relevant information on national budget is published on several websites.

C&AG audits all budgetary and extra-budgetary funds. Accounting Officers are required to supply a signed Statement on Internal Financial Control (SIFC) to C&AG with the annual Appropriation Account. SIFC is made public subsequently.

Finally, each government department or office is required to have an Internal Audit unit and an Audit Committee which provide opinions and advice to the Accounting Officer.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of

accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Appropriation accounts are subject to annual audit by the Comptroller and Auditor General.

Article 33 of the Constitution of Ireland provides for a Comptroller and Auditor General to control on behalf of the State all disbursements and to audit all accounts of monies administered by or under the authority of the Oireachtas.

Section 3 of the Comptroller and Auditor General (Amendment) Act 1993 provides the legislative base for the Comptroller and Auditor General to audit the appropriation accounts for the previous financial year prepared by the departments and offices. Oireachtas oversight is performed by the Public Accounts Committee. It meets throughout the year with the Comptroller and Auditor General and the head of the relevant department or agency to discuss the Comptroller and Auditor General's Appropriation Accounts (i.e. the audited accounts of each Vote) and Report on the Accounts of the Public Services (i.e. an additional narrative report which highlights issues the C&AG has on the audited accounts)

Local Government Sector:

· Annual Financial Statements for the preceding year (AFS) for Local Authorities (LAs) are prepared by the LAs (Local Government Act 2001, sect. 108) by the first of April each year. These are then audited by the Local Government Audit Service (LGAS) who provide independent scrutiny of the financial stewardship of local authorities and other local bodies.

· AFS must be prepared to a particular format and are audited by the LGAS (LG ACT Sect 108). As a matter of course audited AFS are published on the LAs website.

· All Local Authorities are required to have an internal audit function, overseen by an audit committee (LG Act, 2001, sect 122) and are subject to external audit by the LGAS (LG Act 2001, Sect 116).

· The National Oversight & Audit Commission (NOAC) is a statutory body established by Ministerial Order under section 126B of the Local Government Act 2001, to oversee the local government sector.

· The NOAC's statutory functions are wide, and specifically the Commission is required to:

i. Scrutinise performance of any local government body against relevant indicators as selected by NOAC (to include customer service) or as prescribed in Ministerial Regulations;

ii. Scrutinise financial performance, including Value for Money, of any local government body in respect of its financial resources;

iii. Support best practice (development and enhancement) in the performance of their functions by local government bodies;

iv. Monitor and evaluate adherence to Service Level Agreements entered into by any local government body;

v. Oversee how national local government policy is implemented by local government bodies;

vi. Monitor and evaluate public service reform implementation by any local government body or generally;

vii. Monitor adequacy of corporate plans prepared by Regional Assemblies and councils and evaluate implementation of the plans by any local government body or generally;

viii. Take steps under its other functions for the purpose of producing any report requested under the Act as well as produce reports under its own initiative; and carry out any additional functions conferred by Ministerial Order

Standards to prevent the falsification of financial documentation

One of the main statutory functions of the Comptroller and Auditor General is to audit Government accounts for accuracy and regularity. The financial audits carried out by the Comptroller and Auditor General, like commercial audits, tests the accuracy of the records and the reliability of the systems underlying them, and checks that the accounts are in agreement with the records, and therefore fairly represent the outturn.

If during the examination of a Department's accounts, etc. (which takes place throughout the year), the Comptroller and Auditor General considers that there is prima facie evidence of matters that may be referred to in the annual report, he or she may communicate the facts in writing to the responsible Accounting Officer with a request for information or explanation, even if at that stage the Appropriation Account for the year has not been finalised. Depending on the Accounting Officer's reply, or in the absence of a reply, the Comptroller & Auditor General may qualify the certificate on the Appropriation Account and report the matter to the Dáil. If the matter giving rise to the audit query is to be referred to in a Comptroller and Auditor General Report, the Accounting Officer is asked in advance to confirm the accuracy of the facts in the Report. (A similar procedure operates for audit queries issued to all other bodies audited and for any reports arising there from.)

Upon completion of the audit of the Appropriation Account, the Comptroller and Auditor General is obliged to attach to each account a certificate, as required under Section 3 of the Comptroller and Auditor General (Amendment) Act, 1993, stating whether the account properly presents the receipts and expenditure of the Department concerned and to refer to any material case in which transactions recorded in the account do not conform to the authority under which they purport to have been carried out.

The process of producing audited financial statements for presentation to the Houses of the Oireachtas involves interaction between the audited entity, the Office of the Comptroller and Auditor General and the overseeing Government Department.

The accounts of bodies and funds under the aegis of Departments and Offices are required to be submitted to their sponsoring Department as soon as possible once these accounts have been audited by the Comptroller and Auditor General. Each Department should then lay the audited accounts of bodies and funds under its aegis before the Houses of the Oireachtas within two months of such accounts being received by the Department, together with any report of the Comptroller and Auditor General on the accounts. Where a Department must first present these accounts to the Government, this should be done at the earliest opportunity. In such cases Departments must in any event lay the accounts of the body or fund before the Houses of the Oireachtas within three months of their being received by the Department.

The above procedures ensure that in the normal course the accounts of bodies and funds under the aegis of Departments and Offices are laid before both Houses of the Oireachtas within three months of the Comptroller and Auditor General issuing the audit certificate on the accounts.

Civil and administrative measures

The following civil and administrative measures have been taken to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of records.

1. 2016 Account Excess Vote.

In summary, expenditure greater than the limit specified in the Appropriation Act requires the approval of Dáil Éireann — this is known as an excess vote. The audit identified additional expenditure which had (incorrectly) not been charged to the account. The correction of this error meant that the Department had now exceeded the amount approved by Dail Éireann and the Department was required to get Dáil approval for the related expenditure.

See, Office of the Comptroller and Auditor General, *Report on the Account of the Public Services 2016*, Chapter 6, paragraph 6.10-6.14.

2. Report on public sector financial reporting

This report reviewed the timeliness of public sector financial reporting and identified those bodies where delays have occurred. It also summarised the issues brought to attention in the Comptroller and Auditor General's audit reports on financial statements for 2015.

See, *Public Sector Financial Reporting for 2015*.

3. Report on financial reporting in a specific entity

These reports included matters encountered during financial audit, including, delays in the preparation of the annual accounts and other issues.

Special Report 82 Financial Management and Reporting for Fishery Harbour Centres

+2018

Accountability and Governance at the National College of Art and Design

4. Review of audit committees

This report examined the operation of audit committees in a sample of non-commercial State bodies and assessed the level of their compliance with guidelines issued by the Department of Public Expenditure and Reform.

Special Report 87 Effectiveness of Audit Committees in State Bodies

+2018

Preservation of records

The legislation that covers the responsibilities of Government Departments for archives, particularly archives over 30 years old, is the National Archives Act, 1986 and the National Archives Act 1986, Regulations 1988. The provisions of the Act with regard to departmental records can be summed up as follows:

- All departmental records must be preserved, unless their destruction is authorised in writing by the National Archives.
- In general, all departmental records which are more than 30 years old must be transferred to the National Archives and made available for inspection by the public.

- Particular records may be retained by departments only if they are covered by certificates stating either:
    - that they are in regular use in a department or are required in connection with its administration, or
    - that they should not be made available for public inspection on one of the grounds specified in the Act.

Under national archives legislation, Departments make an annual transfer of records which are more than 30 years old by early December of each year to the National Archives. Under the National Archives Act 1986, the National Archives provides services to the public by making available and accessible the records it acquires.

(b) Observations on the implementation of the article

Accounting Officers in public bodies are required to make adequate arrangements to ensure the integrity of financial documentation related to public revenue and expenditure.

Furthermore, Ireland clarified after the country visit that financial records within government departments fall under the remit of the National Archives Act and must be disposed of or transferred to the National Archives in accordance with the Act. The Office of the Comptroller and Auditor General is a body named under and is subject to the National Archives Act.

The Act does not include sanctions for non-compliance. However, if a record is 30 years old and (1) has not been transferred to the National Archives, or (2) has not been formally retained by the Department, then a member of the public may call to the relevant office requesting to inspect the record.

There are no criminal sanctions if documentation required by the C&AG for audit purposes is not preserved. However, the relevant Department's Accounting Officer (Secretary General) can be called before the Irish Parliament's Public Accounts Committee to account for any discrepancies in relation to accounts or accounting practices. It is however an indictable offence (s. 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and s. 17 of the Criminal Justice Act 2011) to falsify, conceal, destroy or otherwise dispose of a document if you know or suspect it is relevant to a criminal investigation. This includes an investigation into corruption offences. S.10 of the 2001 Act also provides for a 'false accounting' offence whereby it is an indictable offence to destroy, falsify or withhold accounts information for the purposes of material gain to oneself or another.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 10. Public reporting

Subparagraph (a) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance

transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(a) Summary of information relevant to reviewing the implementation of the article

An extensive review of the operation of the Freedom of Information (FOI) framework fed into the development of the FOI Act 2014 which introduced a modernised, consolidated, restructured and more accessible FOI system. The Act, alongside an FOI Code of Practice, seeks to bring about greater efficiency, consistency and promote best practice in the operation of FOI throughout public bodies. Freedom of Information Publication Schemes are required of all public bodies under the FOI Act 2014.

As required under Freedom of Information legislation, Government Department's internal guidelines are made available to the public through publication on Department websites. In addition, the Freedom of Information Act 2014 requires Departments to produce a "publication scheme" setting out key information regarding the Department in a prescribed format on its website.

Under the Department of Public Expenditure and Reform Circular 25/2016, arrangements have been put in place for the provision of information to members of the Oireachtas seeking information from bodies under the aegis of Government Departments/Offices.

Appeal mechanism

In terms of a Member of Parliament, there is no distinction in the act between requestors and the same process applies to all. However, other routes to information are open to Members of Parliament, including the use of Parliamentary Committees and also Parliamentary Questions. See here for more: http://www.oireachtas.ie/parliament/oireachtasbusiness/parliamentaryquestions/

If requestors are not satisfied with the decision on an Freedom of Information (FOI) request, they may ask the body for an "internal review" of the decision. A more senior officer will review the application and the result of this review is issued within 3 weeks. While there is no "upfront fee" for making a request, fees may apply to reviews. More information (on this and all other elements of FOI) is available here: http://foi.gov.ie/faqs/what-are-my-rights-of-appeal/

If requestors are not satisfied with the decision on "internal review", they may ask the Information Commissioner to review the matter. The Information Commissioner is independent in his functions. Further information on the OIC Review is available here: http://www.oic.ie/apply-for-a-review/what-we-can-review/

Initiatives to raise awareness amongst the public regarding what information is available and how it can be accessed

In terms of awareness-raising, all Bodies subject to FOI, must publish specific information relating to FOI and how people may make requests. They must also have a "publication scheme" which includes a range of routinely published information and also an FOI Disclosure Log which outlines the request made to that body and decisions made. An example can be seen here: https://www.education.ie/en/The-Department/FOI/Publication-Scheme/

The FOI Central Policy Unit in the Department of Public Expenditure provides support and guidance to assist in the implementation of FOI. Networks have been established which provide an excellent means of sharing learning and expertise, assisting in the development of common approaches and facilitating the transfer of learning between FOI bodies. The Unit also provides ongoing support and advice to citizens and to some 600 FOI bodies through its helpdesk and has presented at a number of conferences and training events. It has developed new guidelines and maintained and updated the content on the FOI website http://www.foi.gov.ie. This website is a valuable resource for both public bodies and the general public. Manuals, Guidance Notes and sample letters to assist public bodies are available.

The Office of the Information Commissioner also publishes a range of guidance, http://www.oic.ie/guidance-and-resources/guidance-notes/, as well as all decisions made on reviews http://www.oic.ie/decisions/.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Act extends FOI to all public bodies, unless specifically exempt. As new public bodies are established, they will automatically be subject to FOI unless specifically exempt. The Act provides for an oversight role for the Information Commissioner, who is completely independent of the Government in the performance of his functions. This independence is underpinned by the Freedom of Information Act 2014. Requests have increased from around 10,000 in 2007 to over 30,000 in 2016 with some 73% of requests granted in full or part.

(b) Observations on the implementation of the article

The Freedom of Information Act 2014 provides, inter alia, every person with the right to access official records held by public bodies and the right to be given reasons of the decisions of public bodies that affect the public. The Act lays out the procedure to request information, lists exceptions with regard to what type of information may be withheld by public bodies and established the Office of the Information Commissioner to oversee the operation of the Act.

Also, the Act requires freedom of information bodies to publish specific information on the procedure to request information and to proactively publish specified categories of information. These bodies are also required to maintain a disclosure log which outlines received freedom of information requests and decisions made on them.

Finally, the Act foresees a clear appeal mechanism to challenge decisions denying requests for information.

Based on the above, it was concluded that Ireland has implemented this provision of the Convention.

(c) Successes and good practices

The existence of a freedom of information disclosure logs should be highlighted as a good practice.

Subparagraph (b) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance

transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

Subject to statutory provisions all procedures are to be made as simplified and as user friendly as possible. See also Customer Charter and Customer Action Plan on the website of all Government Departments.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.'

eGovernment Strategy 2017-2020

eGovernment and Digital Government objectives are underpinned by the eGovernment Strategy 2017-2020 which was published in June 2017 and builds further on the Public Service ICT Strategy launched in 2015. The Strategy seeks to reform administrative processes, enhance the delivery of services and achieve greater efficiencies within the public service. In addition, Action 1 of Our Public Service 2020 seeks to accelerate digital service delivery across the Civil and Public Service.

The gov.ie Government Digital Services Gateway, is a simple front-end that presents public services of most interest or relevance to citizens and businesses on a cross-government basis.

The Public Services Card and MyGovID together with the Government Digital Services Gateway will facilitate delivery of digital government transactions. Departments and offices continue to progress commitments set out in the eGovernment Strategy 2017-2020. Commitments already achieved include:

- The Online PAYE Anytime Service by the Office of the Revenue Commissioners;
- Applications for Drivers Licence and Drivers Theory Tests by the Road Safety Authority;
- The online Student Grant Application System by Student Universal Support Ireland, now has the option to use MyGovID;
- A range of services delivered by the Department of Employment Affairs and Social Protection including applications for
    - Appointment Booking,
    - Submit Work and Skills information,
    - Jobseeker Payment and Jobseeker's Holiday application,
    - Maternity Benefit,
    - Paternity Benefit,
    - Child Benefit,

- Treatment Benefit Eligibility, and
- PRSI Contribution Statement and PRSI Refund.

Other examples of (online) Digital Services include applying for passport renewals online and tracking passport applications, appointment booking at the Passport Office; applying for car tests, paying taxes, employee permits, Garda eVetting service, Jobs Ireland website service, interacting with local authorities and a range of mywelfare.ie services provided by the Department of Employment Affairs and Social Protection including paternity benefit and job seeker payments as set out above. The **whereyourmoneygoes.gov.ie** website allows examination of Government spending.

Customer Satisfaction Surveys of citizens show that satisfaction ratings in excess of 80% are being achieved and that there is an increasing level of customer contact by email and online channels.

Services with a very high-level of digital uptake include:

- Income Tax Self-Assessment (Form 11) and Employers' Annual PAYE returns (Revenue)
- Change of vehicle ownership involving motor dealers (Department of Transport, Tourism and Sport)
- Electronic filing of trade mark applications and the e-payment of the trade mark application fee (Patents Office)
- Driving Test applications (Department of Transport, Tourism and Sport)
- *Eurostat* measures individuals using at least one of the following eGovernment services: for obtaining information from public authorities websites, for downloading official forms, for submitting completed forms. This has shown an increase between 2013 and 2017:

	2013	*2017*
Ireland	*45%*	*55%*
EU28	*41%*	*49%*

The European Digital Economy and Society Index (DESI) for 2017 ranked Ireland in 8th place overall of the EU28 across five measures: Connectivity, Human Capital, Use of Internet, Integration of Digital Technology and Digital Public Services.

The Irish government announced the publication of the eGovernment Strategy 2017-2020 on 27 July 2018. *The new eGovernment Strategy sets out our plans to be a leader in the provision of digital government services.* The new strategy has been developed to build upon the first eGovernment Strategy (eGovernment 2012-2015) with the aim of succinctly setting out the next phase of eGovernment in Ireland. The Strategy focuses on 10 key actions which cover a range of themes including presentation of services, secure online identification, underlying infrastructure and appropriate skilling. The Strategy takes note of the contextual changes of the last few years such as technology innovation, a more joined-up Civil Service and developments across the EC, particularly GDPR, the eGovernment Action Plan and the Digital Single Market. It also recognises the national progress that has continued to be made and the momentum that has been created by the Public Service ICT Strategy and its 18-step delivery plan.

Adoption Plan for the Public Services Card and MyGovID

The availability of a secure and consistent citizen identity verification scheme is a requirement for the effective delivery of digital services, the reform of backend processes, the ability to effectively make policy decisions, the protection of personal data, and the interoperability with EU Member States in the context of citizen interaction. In line with the 2013 Government Decision, S180/20/10/1789, the Public Services Card (PSC) infrastructure is the Government's standard identity verification scheme, which is to be used for access to all public services where appropriate. As such, the widespread adoption of the PSC infrastructure, including its online counterpart MyGovID, to underpin access to public services by citizens is critical to the successful delivery of the eGovernment strategy. The following lists the commitments by Departments and Offices to adopt the PSC and MyGovID infrastructure for specified public services within the listed timeframes.

Department Office	Service	Note	Date
Office of the Revenue Commissioners	Online PAYE Anytime Service	Access to the online PAYE Anytime service will be possible via MyGovID	Jun-17
Road Safety Authority	Drivers Theory Test	Access to the Drivers Theory Test will require service users to be SAFE 2 registered	Jun-17
Dept. Education and Skills	School Transport Appeal	Submission of a school transport appeal will require submitter to be SAFE 2 registered; Online submission of appeal will be possible via MyGovID	Sep-17
Dept. Employment & Social Protection	Treatment Benefit	Checking eligibility for treatment benefits (dental/optical/aural) via MyWelfare using MyGovID	Nov-17
Dept. Foreign Affairs and Trade	Passport Application	All adult passport applications, new and renewals, for residents in Ireland will require applicants to be SAFE 2 registered; Online renewal of adult passports will use MyGovID	Q4-18
Road Safety Authority	Drivers Licence Application	Driver licence applications will require applicants to be SAFE 2 registered; Online renewal of drivers licences to	Mar-18

		be introduced and use MyGovID	
Dept. Justice and Equality; Dept. Emp & Social Protection	Proof of Age	Introduce the optional use of the PSC as an Age Card for use as a Proof of Age service	Q3-18
Student Universal Support Ireland (SUSI)	Student Grant Application	MyGovID will be used as the authentication mechanism to provide access to the student grant scheme for the 2018/19 academic year. Applicants will have to be SAFE 2 registered in order to make an application	Apr-18
Dept. Education and Skills	School Grant Appeal	Submission of a school grant appeal will require submitter to be SAFE 2 registered; Online submission of appeal will be possible via MyGovID	Sep-18
Health Service Executive	Online Health Portal	MyGovID will be used as the authentication mechanism to provide access to a new online Health portal being launch in 2018 – this portal is to provide access to a growing number of health related services online.	Sep-18
Dept. Agriculture, Food and the Marine	Agfood.ie	Support for individual access to the Agfood.ie set of services via MyGovID	Sep-18

Public online services available to citizens

For a non-exhaustive list of public services available online in Ireland as of February 2016 in the categories of travel, work and retirement, vehicles, residence formalities, education and youth, family, and consumers, please see European Commission report 'eGovernment in Ireland', pp. 32-37.

(b) Observations on the implementation of the article

Ireland has adopted a strategy (eGovernment Strategy) to simplify administrative processes, enhance the delivery of public services and achieve greater transparency in the public service.

Ireland has also provided an example of specific initiatives under the eGovernment Strategy such as the Government Digital Services Gateway.

Ireland has implemented this provision of the Convention.

Subparagraph (c) of article 10

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

Section 22 of the Protected Disclosures Act 2014 requires the publication of a report each year by Public Bodies relating to the number of protected disclosures made in the preceding year and any actions taken in response to such disclosures.

In addition, to conducting financial audits, the Office of the Comptroller and Auditor General also carries out a range of other work designed to test on a discretionary basis whether value for money has been achieved by State organizations and that public business has been conducted properly.

A substantial review of the effectiveness and efficiency of Ireland's current ethics framework has been undertaken by the Department of Public Expenditure and Reform, including consideration of the recommendations of the 'Mahon' (Inquiry into Certain Planning Matters and Payments) and 'Moriarty' (Inquiry Into Payments to Politicians and Related Matters) Tribunals and other relevant recommendations, including those of other bodies such as the Standards in Public Office Commission and the Houses of the Oireachtas (Parliament). A review of international best practice was also undertaken. As a consequence, a Public Sector Standards Bill has been developed and is at Committee stage. The Bill aims to significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, to achieve a shift towards a more dynamic and risk-based system of compliance and to ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.

In October 2016, the Departments of Finance and Justice and Equality jointly published Ireland's first *National Risk Assessment for Ireland, Money Laundering and Terrorist Financing*. This review includes an intelligence assessment of Ireland's incidence of bribery and corruption.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

All Reports under Section 22 of the Protected Disclosures Act 2014 are publicly available.

Details on the work of the Comptroller and Auditor General can be found on their website http://www.audgen.gov.ie.

Oireachtas TV (i.e. parliamentary TV) allows members of the public to follow televised sessions of

the Public Accounts Committee of the Parliament.

(b) Observations on the implementation of the article

Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

Article 35.2 of the Constitution provides that:

> "All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law".

No individual or body may give any directive in individual cases to judges as to how they may determine a case. All holders of judicial office in Ireland are full-time professional judges

The constitution provides that a judge of the Supreme Court, Court of Appeal or the High Court cannot be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by each house of parliament calling for the judge's removal.

In arriving at such a resolution, members of the houses of parliament would be required to act in accordance with the rules of procedural fairness guaranteed by the constitution. Judges of the lower courts have been given by statute tenure equivalent to that of their counterparts in the superior courts: (section 39 of the Courts of Justice Act 1924, and section 20 of the Courts of Justice (District Court) Act 1946).

The Judicial Council Bill was published on 1 June 2017 and is now awaiting Second Stage in Seanad Éireann. The purpose of the Bill is to establish a Judicial Council, the functions of which include promoting and maintaining excellence in the exercise by judges of their judicial functions and high standards of conduct among judges. Other functions concern promoting and maintaining the efficient and effective use of judicial resources, continuing education of judges, respect for judicial independence and public confidence in the administration of justice. The Judicial Council Bill also provides for a Judicial Conduct Committee, the membership of which will include lay persons, to facilitate the investigation of allegations of judicial misconduct where the conduct is not sufficiently grave as to warrant recourse to Article 35 of the Constitution. That Committee will also have a role

in preparing guidelines concerning judicial conduct and ethics. Matters relating to the training of judges will also be addressed. The Bill provides that, in addition to the Judicial Conduct Committee, the Judicial Council may establish such and so many committees as it thinks fit to assist and advise it in the performance of its functions. Specific provision is made in the Bill for a Judicial Studies Committee, a Sentencing Information Committee and Judicial Support Committee and the Bill is expected to be enacted in 2019.

One of the matters under consideration for inclusion in the Bill is the possible establishment of a Register of Pecuniary Interests for Judges. Such a register is seen as having the potential to enhance public confidence in the integrity of the judicial process by offering reassurance that justice is administered in an impartial and unbiased manner.

Recusal of a judge

As a general proposition, it is established practice – and one endorsed by jurisprudence - for judges not to act as a judge in a case where they have an interest, or where there are grounds on which a reasonable person might believe that in respect of the issues involved he or she would not get an independent hearing.

Any party to proceedings may apply to a judge to recuse himself/herself where there is an apprehension of objective or subjective bias in the case.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The principles concerning and the circumstances in which a judge should recuse himself/herself are set out in case law. The seminal case in this area is Dublin Wellwoman Centre Ltd. & Ors v Ireland & Ors. [1995] 1 I.L.R.M. 408. Two further judgments are also attached for information – (i) *Goode Concrete v. CRH Plc & Ors*. [2015] and (ii) *O'Driscoll v Hurley and Health Service Executive* [2016].

(b) Observations on the implementation of the article

During the country visit, the authorities clarified that the legal framework for appointment and removal of judges consist of the Constitution of Ireland, the Courts of Justice Act 1936 and the Courts of Justice (Districts Courts) Act 1946.

Members of the judiciary have established various committees to improve the administration of justice. The most relevant committees are rules committees (to adopt rules of court on, inter alia, pleadings, practice and procedure) and judicial trainings committees (to offer induction briefings to new judges, including on the Bangalore Principles of Judicial Conduct).

Furthermore, the authorities referred to the recently established Association of Judges of Ireland which represents interests of members of the judiciary. The Association is presently seen as a de facto interim judicial council.

It is important to mention the new Judicial Council Bill. The purpose of the Bill, among others, is to promote high standards of conduct and ethics among judges; respect for judicial independence; and public confidence in the administration of justice. Moreover, the establishment of a Judicial Conduct Committee should facilitate investigation of allegations of judicial misconduct under certain circumstances. Thus, the Bill, if adopted, would be a solid legislative basis to strengthen integrity and prevent opportunities for corruption among judges. Since there are no codes of conduct for the judiciary, the establishment of a Judicial Council foreseen in the Bill may also provide a

necessary basis for the development and adoption of such codes.

Based on the above, **it was recommended that Ireland establish a Judicial Council with a mandate to adopt a code of conduct for judges**.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

The Authority vested with the responsibility for the prosecution of persons is the Director of Public Prosecutions. The Office Holder is, by statute, independent in the exercise of his/her functions (Section 2(5) of the Prosecution of Offences Act 1974). As a Public Sector Body, the officials within the Office are covered by legislation such as the Standards in Public Office Act 2001, the Ethics in Public Office Act 1995 and the Regulation of Lobbying Act 2015.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The Office has its own Code of Ethics and Prosecutors Guidelines. In addition, mandatory training in ethics for professional staff is carried out annually.

(b) Observations on the implementation of the article

The Office of the Director of Public Prosecutions was established by the Prosecution of Offences Act in 1974, which also determines the independence of the Office Holder and provides rules for appointments. As with any other public sector body its officials are subject to the Standards in Public Office Act, the Ethics in Public Office Act, and the Regulation of Lobbying Act and the Office has its own Code of Ethics and Prosecutors Guidelines.

On the basis of the observations above and considering the optional character of paragraph 2 of article 11, it was concluded that Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required

Article 12. Private sector

Paragraphs 1 and 2 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

(a) Summary of information relevant to reviewing the implementation of the article

The Companies Act 2014 (CA 2014) provides that every company incorporated in Ireland must keep a register of its members (CA 2014, S. 169) which must contain:

- the name and address of each member,
- the date on which the person was entered in the register as a member,
- the date on which any person ceased to be a member
- a statement of the shares held by each member,
- the amount paid on each share.

Failure to maintain the register of members means the company and any officer of the company that is in default is guilty of a category 3 offence. A category 3 offence is a summary offence attracting a term of up to six months imprisonment and/or a Class A fine, which is a fine not exceeding €5,000 (CA 2014, s. 871).

All transfers of shares in a company must be made by an instrument in writing and a company is prohibited from registering a transfer of shares of the company unless a proper instrument of transfer

has been delivered. The transferor is deemed to remain the owner of the shares until the name of the transferee is entered in the register in respect of them (CA 2014, s. 94).

In addition, in the case of a PLC, notification to the PLC is required by any person or group that acquires or disposes of any form of an interest in shares that brings their shareholding above or below 5 percent of the issued share capital of the company (CA 2014, s. 1052).

The Registrar of Companies (the Registrar) is responsible for the registration of companies in Ireland. Every company that is incorporated in Ireland must register its constitution (CA 2014, s. 21), which will identify the number of shares taken by each original subscriber, together with a statement that includes details of the directors, the secretary, the registered office and the place where the administration of the company will be carried out (CA 2014, s. 22). The Companies Registration Office (CRO) maintains a public record accessible through the company name, business name or company number that the Registrar allocates to each company.

In addition, foreign-incorporated companies which have established a branch in Ireland must register with the CRO and with the Irish Revenue Commissioners.

Any company that allots new shares must file a Form B5 - Return of allotments - with the Registrar within 30 days of the allotment (CA 2014, s. 70(7)). In addition, each company must submit an annual return (Form B1) containing certain prescribed information, including up-to-date details of present members and changes in membership during the year (CA 2014, s.343).

Information held by the CRO on a company is kept so long as the company remains on the register as a live company and for twenty years after a company's dissolution until the CRO is obliged to send all documents filed with it in relation to that company to the public record office (CA 2014, s. 709). In practice all information which was electronically held is still available (therefore up to 30 years of records are readily accessible at present).

The CA 2014 requires that the register of members be maintained continuously (CA 2014, s. 169). When a company is in the process of being liquidated there is a requirement for all relevant records to be transferred to the liquidator. Once the company has been formally liquidated the books and papers must be retained by the liquidator for a period of at least 6 years after the date of the dissolution of the company (CA 2014, s. 707(2)). In the absence of a prior direction as to their disposal, the liquidator may then dispose of them as he or she thinks fit. If a liquidator fails to comply with the requirements of this section, he or she shall be guilty of an offence (CA 2014, s. 707).

It is a criminal offence to knowingly or recklessly make a false return or lodge a document, false in a material particular, with the Registrar in purported compliance with any provision of the CA 2014 (CA 2014, s. 406 and 876). This is a category 2 offence which means conviction on indictment can result in a term of imprisonment of up to five years and/or a €50,000 fine.

In addition, the Registrar may involuntarily strike off a company which has failed to make an annual return as required by section 343 (CA 2014, s. 726(a)). Companies and directors of companies who fail to file an annual return may be prosecuted (CA 2014, s. 865(2)). The Registrar also has the authority to compel a person to comply with the Act (CA 2014, s. 797). Where the annual return is delivered late, a late filing fee is applied (S.I. No. 213/2015 - Companies Act 2014 (Fees) Regulations 2015).

Enforcement

The Companies Registration Office (CRO) also takes action to enforce the obligations of companies to register and file notices and documentation with the Registrar. A company that fails to file an annual return in respect of any one year may be struck off the register and dissolved. In the event

that a company has an annual return outstanding, a statutory warning is required to be issued by the CRO to the registered office of the company. Moreover, the CRO has an automated operating system - the Integrated Enforcement Environment (IEE) - which issues letters to companies reminding them of their requirements to file an annual return, and which initiates strike-off proceedings against companies.

Involuntary strike-off is at the discretion of the Registrar and not all non-compliant companies proceed to strike off. For example, CRO may decide to prosecute the company, or the Registrar may have been notified of legal proceedings or have been advised of investigations by another State Agency.

Each year, companies which fail to file annual returns may be struck off the register by the CRO. In addition to strike off, companies with the poorest compliance rate (companies that have been consistently filing their annual returns late over a number of years) are identified and these are considered for prosecution in the Circuit Court.

The CRO also cross-checks information that is in the annual returns to ensure it is consistent with information that it has on file. For example, if the identity of the directors has changed since the previous return, then a separate notification to this effect should have been filed with the CRO and, if not, the annual return cannot be filed until this prior step has been completed.

Following the strike-off of a company the obligation to maintain the company's records falls to the "last director" (TCA, s.886 (4A)).

Legal ownership and identity requirements for companies are mainly found in Ireland's company law and the tax law. While Ireland's anti-money laundering laws will apply in some circumstances to ensure the availability of legal ownership information, those rules are more applicable to the maintenance of beneficial ownership information. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Type	**Company Law**	**Tax Law**	**AML Law**
Private Company	All	Some	Some
DAC	All	Some	Some
PLC	All	Some	Some
CLG	All	Some	Some
Unlimited Company	All	Some	Some
Foreign Companies (Tax Resident)	Some	Some	Some

The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every entity of this type created is required to maintain ownership information for all its owners and that there are sanctions and appropriate retention periods. "Some" in this context means that an entity will be required to maintain information if certain conditions are met.

Article 30 of the 4th EU Money Laundering Directive (4AMLD) requires all EU Member States to put into national law provisions around beneficial ownership information for corporate and legal entities.

In Ireland, there are two stages to this process:

1. Under S.I. No. 560 of 2016 (European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016), as of 15 November 2016 corporate and legal entities must hold adequate, accurate and current information on beneficial owners in their own beneficial ownership register;[6]

2. Corporate and legal entities will in due course be required to file this information with a central beneficial ownership register. The central register is in the process of being established.

Under the draft European Union (Anti-Money Laundering: Central Register for Beneficial Ownership of Companies and Industrial and Provident Societies) Regulations 2017, it is expected that the Companies Registration Office (CRO) will be responsible for establishing a Central Register of Beneficial Owners (RBO) for Companies and Industrial and Provident Societies

It is anticipated that the S.I. will be signed in Q1 2018 and that the Register will come into existence following this.

Corporate governance standards and codes of conduct

The Companies Act 2014 deals extensively with Corporate Governance which is relevant to all companies, listed or not. This makes the law more accessible and comprehensible for directors. All companies, regardless of size, are required to comply with the extensive provisions of the Companies Act 2014, including the corporate governance arrangements. Certain entities because they invite investment from the public or because they are systematically important to the economy (credit institutions) must comply with additional requirements.

In line with the principles of Better Regulation, especially the Think Small First principle, the administrative burden of additional reporting and other requirements for small privately-owned businesses would need to be considered carefully before further codes of conduct would be advocated. What is appropriate for a listed company may not be appropriate for small companies. The majority of businesses in Ireland are small privately owned companies.

The Companies Act 2014 is available at:

http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html.

The main corporate governance enhancements contained in the Companies Act 2014 include:

- Where a company's constitution is silent on an issue, the provisions in the Act apply by default. Many of the previous provisions that were set out in a company's articles of association now apply as requirements of law. This reduces the need to have detailed provisions set out in companies' constitutions of the type previously required to be.
- Directors' common law fiduciary duties have been codified in the Act, which include the obligation to act with care, skill and diligence. These exist alongside the many existing statutory duties of directors which continue to apply.
- Under section 225, Directors of (i) all PLCs; and (ii) certain large private companies which reach prescribed thresholds (i.e. private companies limited by shares (LTDs), Designated Activity Companies (DACs) and Companies Limited by Guarantee (CLGs) where the balance sheet for the year exceeds €12.5 million and the turnover for the year exceeds €25 million) must prepare a statement of compliance with company and tax law to be included in the

[6] SI 560/2016 was replaced by SI 110 of 2019 (European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019) in March 2019. This SI also established a central register of beneficial ownership.

directors' report and to ensure that the company adopts appropriate compliance measures.

- Company directors are required to ensure that the company secretary has either the skills or the resources necessary to discharge his or her statutory and other legal duties.

Alongside company law, companies must comply with other legal requirements such as the treatment of employees and creditors, disclosure to Revenue and the protection of the environment. Taken together, these regulations make up a wide ranging legal framework for the conduct of business. However, corporate governance requirements are more onerous for larger companies in line with Better Regulation and Think Small First principles. This is consistent with international best practice.

Financial Statements

Companies are required to keep proper books of account which give a true and fair view of the company's financial affairs. Companies are also required to disclose details of their financial statements at the Annual General Meeting (AGM) and to attach a copy of those financial statements to the annual return filed with the Companies Registration Office (CRO). In addition, they are required to observe certain standards in the preparation of financial statements, following specimen formats and disclosing certain information by way of notes to the financial statements.

The Companies Act 2014 requires directors of all companies to lay the following financial statements and reports before the company members at the AGM:

- a profit and loss account (or an income and expenditure account if the company is not trading for profit);
- a balance sheet;
- a directors' report; and
- a statutory auditor's report.

The annual financial statements and directors' report must be signed on behalf of the directors by two directors. (Where the company is an LTD Company, a Private Company Limited by shares, registered under the Companies Act 2014 and has only one director, the documents should be signed by the sole director).

The above-listed documents are required to be annexed to the annual return of a limited company on delivery to the CRO. (Small and Micro companies have certain exemptions). In addition, there must be a certificate, signed by both a director and the secretary, certifying that the financial statements and reports are true copies of those laid before or to be laid before the company's AGM.

If a company fails to comply with the requirements, the annual return will be rejected by the CRO. In addition, the company and every officer of the company who is in default will be liable to a category 3 offence - fine not exceeding €5,000.

Further information is available at https://www.cro.ie/Annual-Return/Accounts-Requirements.

Accounting Standards

The requirements of Company Law in relation to financial statements are underpinned by accounting standards, in particular:

- FRS 102, available at https://www.frc.org.uk/getattachment/69f7d814-c806-4ccc-b451-aba50d6e8de2/FRS-102-FRS-applicable-in-the-UK-and-Republic-of-Ireland-(March-2018).pdf; and

- FRS 105, available at https://www.frc.org.uk/getattachment/fbe6b585-4b9e-412e-adcd-0567a9ce78cc/FRS-105-FRS-Applicable-to-the-Micro-entities-Regime-(March-2018).pdf

Additional requirements for companies listed on the Irish Stock Exchange

Since the Irish Stock Exchange Act 1995, the Listing Rules of the Irish Stock Exchange have required every company listed on the Main Securities Market to state in its annual report how the principles of UK Corporate Governance Code have been applied and whether the company has complied with all relevant provisions. Where a company has not complied with all relevant provisions of the Code it is required to set out the nature, extent and reasons for non-compliance.

Ongoing review and current legislative development

The Irish Government is committed to ensuring that the Companies Act 2014 continues to deliver a robust yet competitive corporate regulatory framework for business in Ireland. Consequently, the provisions of the Companies Act 2014 are under continuous review. The Companies (Statutory Audits) Act 2018 was fully commenced on 21 September 2018 and this Act aims to ensure a comprehensive regulatory framework exists for statutory audit. Work is underway to transpose the EU Shareholders Rights Directive (EU/2017/828) which will support enhanced shareholder engagement in companies.

Information available to the public explaining compliance requirements for company law

The Office of the Director of Corporate Enforcement provides Company Law Guidance publications at http://www.odce.ie/en-gb/publications/companylawguidance.aspx. This includes Information Booklets setting out the principal duties and powers of Companies, Company Directors, Company Secretaries, Members & Shareholders, Auditors, Creditors, Liquidators, Receivers & Examiners.

The Companies Registration Office provides Information Leaflets at https://www.cro.ie/Publications/Publications/Information-Leaflets. These include explanations of requirements and offences under the Companies Act 2014.

Auditing and Accounting

Financial reporting

With regard to financial reporting by companies, the main financial reporting frameworks in use in Ireland are IFRS (as endorsed by the EU), issued by the International Accounting Standards Board (IASB) and Irish and UK GAAP, issued by the Financial Reporting Council in the UK (FRC) and promulgated for use in Ireland by Chartered Accountants Ireland.

A number of recent legislative developments in Ireland in the area of financial reporting have enhanced corporate transparency. Ireland has recently transposed the EU Accounting Directive (2013/34/EU) into national legislation by way of the Companies (Accounting) Act 2017. As a result of the Directive and Act, a number of new transparency measures have been introduced for some companies. For example, large companies operating in extractive industries will be obliged to prepare and publish reports on payments they have made to Governments. This is designed to improve transparency of payments associated with the exploitation of natural resources that are made to governments by companies active in mining, quarrying and logging of primary forests. Part 26 of the Companies Act 2014 (as inserted by section 87 of the Companies (Accounting) Act 2017) transposes Chapter 10 of Directive 2013/34/EU. As such, a company to which Part 26 applies is obliged to comply and is not exempted if a foreign government opposes publication. Under the

Act, the Companies Registration Office makes these reports publicly available. The obligation first arises with financial years beginning on or after 1 January 2017, so it is expected that the first reports would become available in the course of 2018.

Another recent development in Irish company law is the requirement for unlimited companies whose ultimate owners have limited their liability or which trade through limited liability subsidiaries to publicly file their financial statements. Up to now, many of these companies have not had to disclose their financial information in public. More recently, on 30 July 2017, Regulations were made by the Minister for Jobs, Enterprise and Innovation to transpose Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. These Regulations oblige specific types of large companies to prepare annual reports on non-financial matters, such as bribery and anti-corruption matters. These reports will also be publicly available.

Training opportunities for accounting professionals in the area of corruption-risk awareness

Auditing Standards would require the profession to know any relevant legislative impacts on their sector of work. Auditors are legally required to approach their work with professional scepticism.

The Professional Bodies, of which accountants/auditors are members, provide general training for their members which may include corruption-risk awareness. Individual members may receive continuous professional development from either their Professional Body or from any other organisation and may avail of corruption-risk awareness training in this way.

By way of background, in Ireland there are 8 Prescribed Accountancy Bodies (PABs) which come within the supervisory remit of the Irish Auditing and Accounting Supervisory Authority (IAASA). 5 of the PABs are also Recognised Accountancy Bodies (RABs). RABs are permitted to approve their members / member firms to practice as statutory auditors / audit firms.

The term ‘accountant’ does not currently have any legal recognition in Ireland therefore an individual, or group of individuals, can own an accountancy firm and offer accountancy services, excluding audit services, without being a member of a PAB. However, accountants that are members of a PAB are subject to the supervision and regulation of that PAB. Each PAB sets down rules and regulations for its members.

Accountants who are members of a PAB, and auditors who are members of a RAB, must comply with the PABs / RABs anti-money laundering regulations. Each PAB / RAB would hold its own training courses for its members on anti-money laundering regulations. The training provided by the accountancy bodies may also cover other aspects of corruption risk awareness. Individuals can pursue other training related to corruption risk awareness.

Obligations to report any suspicion of corruption-related financial behaviour to the law enforcement authorities

While the primary purpose of audit is not to detect corruption or other crimes, auditors have obligations in Irish law to report offences and other matters to the authorities once they become aware of those offences.

Auditors are required to report under certain circumstances to various authorities, including the Office of the Director of Corporate Enforcement (ODCE), an Garda Síochána and the Revenue Commissioners. These requirements are set out in:

- Sc. 393 of the Companies Act 2014 - http://www.irishstatutebook.ie/eli/2014/act/38/section/393/enacted/en/html, and
- Sc. 42 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 - http://www.irishstatutebook.ie/eli/2010/act/6/section/42/enacted/en/html#sec42
- The Companies (Statutory Audits) Act 2018 requires statutory auditors to conduct their audits in accordance with standards adopted by IAASA. The standards adopted by IAASA require auditors to consider any indications or suspicions of non-compliance with laws and regulations, including corruption laws, and where such indications or suspicions exist, to report those to the relevant authorities.

Under section 393 of the Companies Act 2014, where in the course of, and by virtue of, the statutory auditors carrying out an audit of the financial statements of a company, information comes into their possession that leads them to form the opinion that there are reasonable grounds for believing that the company or an officer or agent of it has committed a category 1 or 2 offence, the statutory auditors must notify that opinion to the Director of Corporate Enforcement and provide the Director with particulars of the grounds on which they have formed that opinion. In addition, the statutory auditor, when requested, will furnish the Director with such further information, and give such access to books and documents, in their possession or control relating to the matter. For greater detail, see "Reporting Company Law Offences by Statutory Auditors under the Companies Act 2014" on the ODCE's website. These offences include more than just corruption-related financial behaviour suspicions.

Section 1384A of the Companies Act 2014 could also be taken into account, as it applies section 393 to a company to which Part 23 applies, though not directed at corruption as such.

Section 42 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (as amended by the Criminal Justice Act 2013) requires a designated person, which includes an auditor, external accountant or tax adviser, who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing to report to the FIU and tax authorities. For this purpose, an "external accountant" means a person who by way of business provides accountancy services, irrespective of whether or not the person holds accountancy qualifications or is a member of a professional body; it does not extend to a person in employment who provides accountancy services to his or her employer.

As external accountants are also deemed to be designated persons under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, the requirement to report also applies to them.

Audit

In Ireland, new Regulations came into force on 16 June 2016 to transpose and give effect to EU Directive2014/56/EU and Regulation 537/2014 on audit. These made changes designed to strengthen both the independence of statutory auditors and the system of public oversight of audit. These new rules did this by, among other features, introducing mandatory rotation of auditors and restrictions on the supply of non-audit services for entities such as banks, insurance undertakings,

and companies listed on the main stock exchange (referred to as "public interest entities" or "PIEs"). These are entities such as credit institutions, insurance undertakings and listed companies.

The EU rules were transposed in Ireland by way of statutory instrument (S.I. 312 of 2016). This SI was subsequently revoked and replaced by the Companies (Statutory Audits) Act 2018. The rules provide for mandatory rotation of auditors after 10 years rather than a longer period of up to 20 years, which is allowed under EU rules. The Irish Auditing and Accounting Supervisory Authority (IAASA) is designated in the Regulations as the single competent authority with ultimate responsibility for oversight and enforcement.

As competent authority, IAASA supervises the conduct of audit oversight tasks, such as approvals and continuing education of statutory auditors, by the professional accountancy bodies. IAASA also has direct responsibility for quality assurance inspections of statutory audit firms in relation to the audits of their clients that are PIEs. IAASA pursues any investigation and disciplinary action arising from those inspections. IAASA has been given new administrative sanctions and powers in those Regulations.

IAASA is also responsible for adopting auditing standards for Ireland. It adopts auditing standards for use in Ireland under licence from the Financial Reporting Council in the United Kingdom. The current international standards on auditing for use in Ireland are:

- Ethical Standard for Auditors (Ireland) 2016
- International Standards on Auditing (Ireland)
- Auditing Standards Schedule of Changes

The Regulation of Lobbying Act 2015 provides restrictions and conditions on the taking up of certain employments by certain designated public officials for a specified period of time, other than with the consent of the Standards in Public Office Commission. The Standards in Public Office Commission applies certain criteria in order to determine whether the taking up of certain employments is in the public interest.

Consultations with the private sector

The Department of Business, Enterprise and Innovation has a policy of encouraging public consultation regarding legislative amendments.

The Company Law Review Group (CLRG) is a statutory advisory expert body charged with advising the Minister for Business, Enterprise & Innovation on the review and development of company law in Ireland. The members of the CLRG are appointed by the Minister in accordance with Section 960 of the Companies Act 2014. The CLRG consists of members who have expertise and an interest in the development of company law, including practitioners (the legal profession and accountants), users (business and unions), regulators (implementation and enforcement bodies) and representatives from Government Departments including the Department of Business, Enterprise and Innovation. The current membership of the CLRG can be found at www.clrg.org/About-Us/Members/.There are currently 30 members, including the Chairperson.

The Companies Registration Office (CRO) Combined Stakeholder Forum is a forum for the exchange of views on developments in the CRO and company law. It meets 3 times a year, unless there is an indication of special merit. Membership contains representatives of CRO client base, including representatives of the accountancy bodies.

Cooperation with law enforcement agencies

In 2017, the Office of the Director of Corporate Enforcement received over 1,000 statutory reports and referrals from liquidators, auditors, examiners, professional bodies and other regulatory and enforcement authorities. In addition, 234 complaints received from members of the public.

The Companies Registration Office (CRO) email newsletter is a publication that is available to all subscribers. It is published once a month, with interim e-zines issued where necessary. The newsletter details any change to the legislation that affect the CRO practices, the introduction of new forms, changes to opening hours etc.

Presentations and trainings

ODCE

In 2017, the Office of the Director of Corporate Enforcement issued approximately 9,500 copies of its various publications during 2017. Staff of the ODCE delivered 26 presentations to approximately 1,350 people and the ODCE was also represented at 16 exhibitions. Many of these presentations dealt specifically with the Companies Act 2014 and the ODCE's remit and enforcement policies.

In 2017, the Companies Registration Office (CRO) undertook a major information campaign focused on mandatory e-filing of annual returns which came into effect on 1 June 2017. An information and advertising campaign aimed at ensuring that the CRO's stakeholders had sufficient notice of the impending changes began at the end of 2016 and intensified in 2017. There was a further short campaign before the peak annual return filing period in October 2017 to remind stakeholders of the new arrangements.

Taking Care of Business is a one-stop-shop which aims to allow members of the business community to meet state offices, agencies and services to find out what regulations may affect them, how best to deal with them, and what helps and supports (including access to finance} may be available. An event in Dublin Castle in November 2017 attracted 30 public-sector exhibitors, six private-sector business representative groups, and nearly 500 members of the public. The Companies Registration Office and the Office of the Director of Corporate Enforcement attended, operating information stands and giving short presentations. Both bodies also attended a further event in the Mid-West on 25 September 2018.

None of these events are specifically targeted at police although members of An Garda Síochána are welcome to attend.

Garda Síochána Anti-Corruption Unit

Members of the Garda Síochána Anti-Corruption Unit deliver lectures on internal courses in relation to Bribery and Corruption, including Detective Training Courses, Fraud Investigation Courses and at investigator's conferences. Externally the Anti-Corruption Unit is available to deliver presentations to businesses and government departments on request. It is intended that in the future, lectures will be delivered by Anti-Corruption Unit staff at business and trade conferences. The delivery of presentations and lectures will be a key element in the bribery and corruption crime prevention strategy which is currently being formulated.

Post-employment restrictions for civil servants

Sections 20 and 21 of the Civil Service Code of Conduct provide that:

Civil servants shall not within twelve months of resigning or retiring from the Civil Service, accept an

appointment, or particular consultancy project, where the nature and terms of such appointment could lead to a conflict of interest or the perception of such, without first obtaining the approval of the Outside Appointments Board or the Secretary General or Head of Office as appropriate. Additionally, civil servants who hold positions which are "designated positions" for the purposes of the Ethics Acts must, within twelve months of resigning or retiring, obtain the approval of the Outside Appointments Board or the Secretary General or Head of Office as appropriate, before taking up any outside appointment.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

A number of Memorandums of Understanding between the Office of the Director of Corporate Enforcement (ODCE) and other regulatory bodies are in place. The Office of the Director of Corporate Enforcement Annual Report 2017 (pages 19 to 21) sets out the arrangements that Office has with various bodies to support its work. This includes Memoranda of Understanding with the Revenue Commissioners, Central Bank and the Irish Stock Exchange (now using the trading name Euronext Dublin). The 2017 Annual Report is available at:

http://www.odce.ie/Publications/CorporateStatutory/AnnualReportsReviews/TabId/497/ArtMID/906/ArticleID/650/ODCE-Annual-Report-2017.aspx:

For convenience, the relevant material from the 2017 Annual Report is replicated below.

Companies Registration Office

As the public repository of information on companies and company officers, the CRO plays a critically important role in supporting the Office in its work. In addition to meeting regularly on matters of mutual interest, CRO staff regularly supply evidence in ODCE proceedings and, where identified, of prima facie breaches of company law.

Garda National Economic Crime Bureau ("GNECB")

The Office's staff complement includes a number of Gardaí. These Gardaí are on secondment from the GNECB. The Office's close working relationship with An Garda Síochána, and GNECB in particular, is critical to its criminal enforcement work. In that context, the Office meets with GNECB senior management on a regular basis on matters of mutual interest.

Irish Auditing and Accounting Supervisory Authority ("IAASA")

In accordance with the provisions of the Act, the Director is a member of IAASA and has the consequential right to nominate a member to its Board of Directors. The Office's Head of Insolvency & Corporate Services is, in that context, a member of IAASA's Board of Directors.

In addition to this statutory relationship as outlined above, the Office engaged regularly with IAASA during the year on matters of mutual interest, and one formal meeting was held with senior staff of IAASA on matters of mutual interest during the year under review.

Company Law Review Group ("CLRG")

The CLRG is a statutorily established advisory body to the Minister on matters relating to company law. The Director is a member of the CLRG and the ODCE is represented at both plenary meetings and at meetings of Committees whose work is pertinent to its remit.

The Office's Head of Insolvency & Corporate Services is a member of the Corporate Insolvency

sub-committee which has been examining, inter alia, the UNCITRAL Model Law on Cross-Border Insolvency, the European Proposal for a Directive on Insolvency, Restructuring and

Second Chance, and has been tasked with reviewing the legislation on the winding up of companies.

The Director is the Chairman of the Compliance & Enforcement sub-committee which has been charged with examining current compliance and enforcement aspects of company law and reporting its recommendations back to the plenary.

The Office's Head of Insolvency & Corporate Services is a member of the Corporate Governance sub-committee, which has been charged with examining certain submissions referred to the CLRG by the Department of Business, Enterprise and Innovation relating to measures (dealing with the governance of companies) contained in Part 4 of the Companies Act 2014 and the appropriate chapters of Parts 16, 17, 18 and 19. The subcommittee will also consider other codes of best practice in corporate governance, as recommended and/or required by relevant regulators.

Central Bank

The ODCE and the Central Bank have in place a Memorandum of Understanding ("MoU") which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit.

Office of the Revenue Commissioners

The Revenue Commissioners are an important partner of the Office in the furtherance of its work, particularly in respect of insolvency related matters. The ODCE and the Revenue Commissioners have in place an MoU which, based on their respective grounding legislation, allows each body to refer information to the other where they are satisfied that such information is relevant to the other's remit. In that context, the two bodies met on a number of occasions during the year. Moreover, the two bodies shared information in respect of five separate matters (2016: 5). This represents a reduced level of exchange compared with previous years and is explained by the decision to defer taking any new disqualification applications against the directors of struck-off companies pending the conclusion of an appeal taken by the Office to the Court of Appeal. This matter is elaborated upon further in Chapter 3 of the 2017 Annual Report.

Accountancy profession

The accountancy profession plays an important role in assisting the work of the Office, through both auditors' reporting obligations (which are elaborated upon in the next Chapter) and the profession's wider support for, and communication of, the Office's compliance message. As such, the Office seeks to work closely with the professional accountancy bodies to support them in ensuring that their members are fully informed of their statutory reporting obligations and to apprise them of the assistance that the Office can be to those of their members' clients that occupy positions as company directors and officers.

Irish Stock Exchange

The Stock Exchange (now using the trading name Euronext Dublin) is another body with which the ODCE has a MoU in place and, in that context, one formal meeting was held with senior staff of the Irish Stock Exchange on matters of mutual interest during the year under review.

International Association of Insolvency Regulators ("IAIR")

The IAIR is an international body that brings together the collective experiences and expertise of national insolvency regulators from 26 jurisdictions around the world. The IAIR, of which the Office has been a member since 2003, is a valuable forum for the promotion of liaison and co-operation between its members and for sharing information on areas of common interest

and best practice.

In addition, under subsections 935A(14) and (15) of the Companies Act 2014 (as amended), IAASA and the ODCE can exchange information in relation to situations where a director has contributed to a breach of audit rules by a statutory auditor or audit firm.

In 2017 the Companies Registration Office (CRO) continued to enforce the Companies Act 2014 against companies in default of their annual return filing obligations by way of involuntary strike-off. To encourage compliance the CRO issues reminder letters to all companies in relation to annual return dates. By end 2017 over 94.70% of companies were up to date with the filing of annual returns.

21 cases were prosecuted by the CRO in the District Court for failing to file their 2016/17 annual returns on time. 4 companies (7 cases) were convicted. 9 companies (14 cases) were adjourned to January 2018. Fines ranged from €600 to €1,200 in all convicted cases.

In terms of prosecutions, the Director of Corporate Enforcement is statutorily empowered to initiate summary prosecutions (i.e. prosecutions of relatively minor offences in the District Court). More serious alleged breaches of company law are prosecuted on indictment in the Circuit Court and only the Director of Public Prosecutions ("DPP") can direct that charges be preferred on indictment.

The table below summarises the Office's achievements for each of the years 2012 to 2017 with respect to case assessment, insolvency and enforcement work in accordance with company law.

Liquidator Reports	2012	2013	2014	2015	2016	2017	Total
Liquidator Reports Received	1787	1803	1512	1269	944	892	8207

Enforcement Cases	2012	2013	2014	2015	2016	2017	Total
Court Proceedings Initiated	4	5	10	3	0	0	22
Court Orders / Judgments Secured	3	0	0	0	0	0	3
Convictions	16	17	19	7	0	0	59
Disqualifications (on foot of Undertakings or Court Orders)	33	36	22	14	22	10	137
Restrictions (on foot of Undertakings or Court Orders)	228	222	184	172	186	122	1,114

Activity in the Enforcement area has reduced in recent years. This is consistent with the ODCE having taken a decision in recent years to concentrate its resources on more serious and complex investigations, the result of which is usually the submission of a file to the Director of Public Prosecutions (DPP) for consideration, as opposed to a summary prosecution.

More serious alleged breaches of company law, which can include corruption, are prosecuted on indictment in the Circuit Court. The Director of Corporate Enforcement cannot initiate prosecutions on indictment. Only the Director of Public Prosecutions ("DPP") can direct that charges be preferred on indictment.

Since June 2015, company directors facing restriction or disqualification proceedings before the Courts, can avoid Court proceedings by voluntarily agreeing to be restricted or disqualified for certain periods. This provision ensures that company directors, who are found to be in breach of the Act and facing restriction or disqualification, are dealt with in an efficient and effective administrative manner without the need for the involvement of the Courts.

The ODCE also exercised its right to make certain compliance applications to the High Court under Section 371 of the Companies Act 1963, now Section 797 of the Companies Act 2014, to secure compliance with Orders sought. However, it should be borne in mind that working within the context of a rectification policy, many issues can be addressed by exercise of powers without the necessity of bringing issues to the Courts for determination, e.g. production of registers, directing the holding of Annual General Meetings, production of minutes of meetings and regularising breaches of the director loan provisions, which in 2017 secured the rectification on a non-statutory basis, of suspected infringements of the Companies Act 2014, in relation to Directors' loans in 39 cases, to an aggregate value of €15.5m approximately.

(b) Observations on the implementation of the article

Ireland prevents corruption in the private sector through a number of legislative and policy measures. First, the Companies Act 2014 regulates transparency among private entities by requiring disclosures of ownership and management information and establishing corporate governance rules. The Act also establishes the Office of the Director for Corporate Enforcement which ensures compliance with the Act and may take enforcement measures when company law is breached.

During the country visit, the authorities highlighted the work of Enterprise Ireland, the government agency responsible for the development and growth of Irish companies abroad. Enterprise Ireland provides guidance to companies by publishing relevant information on anti-corruption legislation on its website.

Regarding corporate governance rules and standards, the authorities explained during the country visit that Euronext Dublin, the main stock exchange of Ireland, requires listed companies to adhere to the UK Corporate Governance Code and state in their annual reports how they are complying with it. The Central Bank of Ireland has a corporate governance code for credit institutions as well. In this regard, **it is recommended that Ireland continue promoting appropriate corporate governance standards by adopting codes of conduct for a wider range of businesses and relevant professions**.

The Companies Registration Office (CRO) registers new companies and business names and maintains a public record accessible through the company name, business name or company number. It also enforces the Companies Act in relation to the filing obligations of companies. Companies shall to CRO audited financial statements unless they are clearly exempted from this obligation. It is a criminal offence to knowingly or recklessly make a false return or lodge a false document with CRO in purported compliance with any provision of Companies Act (sects. 406 and 876, Companies Act).

The main financial reporting frameworks for private sector are the International Financial Reporting Standards, issued by the International Accounting Standards Board, and the generally accepted accounting principles issued by the Financial Reporting Council in the United Kingdom.

Auditors have obligations to report offences and other matters to the authorities once they become aware of those offences.

As stated under articles 7 and 8 above, certain post-employment restrictions for public officials are provided in the Civil Service Code of Conduct and the Regulation of Lobbying Act. Also, the Protected Disclosures Act extends its protections to private sector employees.

With reference to the above recommendation, it was concluded that Ireland has largely implemented the requirements of this provision of the Convention.

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of off-the-books accounts;

(b) The making of off-the-books or inadequately identified transactions;

(c) The recording of non-existent expenditure;

(d) The entry of liabilities with incorrect identification of their objects;

(e) The use of false documents;

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

(a) Summary of information relevant to reviewing the implementation of the article

Irish company law contains offences in relation to falsification of company books and documents. This is covered under relevant provisions under the Companies Act 2014. See response to previous paragraph.

Section 406 of the Companies Act 2014 and section 10 of the Criminal Justice (Theft and Fraud Offences) Act 2001 prohibit the specific accounting practices listed in the provision under review:

The Companies Act 2014:

False statements in returns, financial statements, etc.

406. If a person in any return, statement, financial statement or other document required by or for the purposes of any provision of this Part intentionally makes a statement, false in any material particular, knowing it to be so false, the person shall be guilty of a category 2 offence.

The Criminal Justice (Theft and Fraud Offences) Act 2001:

False accounting

10.—(1) A person is guilty of an offence if he or she dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another—

(a) destroys, defaces, conceals or falsifies any account or any document made or required for any accounting

purpose,

(b) fails to make or complete any account or any such document, or

(c) in furnishing information for any purpose produces or makes use of any account, or any such document, which to his or her knowledge is or may be misleading, false or deceptive in a material particular.

(2) For the purposes of this section a person shall be treated as falsifying an account or other document if he or she—

(a) makes or concurs in making therein an entry which is or may be misleading, false or deceptive in a material particular, or

(b) omits or concurs in omitting a material particular therefrom.

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

See above.

(b) Observations on the implementation of the article

During the country visit, the authorities confirmed that the above cited provisions prohibit all acts listed under paragraph 3 of article 12.

Ireland has implemented this provision of the Convention.

Paragraph 4 of article 12

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

(a) Summary of information relevant to reviewing the implementation of the article

Section 83A of the Taxes Consolidated Act 1997 denies the deduction of any expenses for payments that constitute a criminal offence under Irish law or for payments outside the State that would constitute a criminal offence if they were undertaken in the State. While illegal payments have never been tax deductible this section explicitly denies a tax deduction in computing the amount of any income chargeable to tax for any payment the making of which constitutes a criminal offence or, in

the case of a payment made outside the State, where the payment, if made in the State, would constitute a criminal offence.

Section 58 of the Taxes Consolidated Act 1997 may also be proper in addressing this section of the questionnaire:

> 58. (1) Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made
>
> (a) the source from which those profits or gains arose was not known to the inspector,
>
> (b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or
>
> (c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity, and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains.
>
> (2) Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) or charged to tax by virtue of or following any investigation by anybody (in this subsection referred to as "the body") established by or under statute or by the Government, the purpose or one of the principal purposes of which is-
>
> (a) the identification of the assets of persons which derive or are suspected to derive, directly or indirectly, from criminal activity,
>
> (b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and
>
> (c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the purposes mentioned in paragraphs (a) and (b), shall be charged under Case IV of Schedule D and shall be described in the assessment to tax concerned as "miscellaneous income".

Regarding the obligation of tax officers to report to the law enforcement authorities any suspicion on the lawful purpose of declared expenses, Revenue are bound by the provisions of confidentiality of tax payer information as set out in S.851A TCA 1997 (introduced in Section 77 of the Finance Act 2011 and passed into law on 6th Feb 2011).

Key pieces of legislation in 851A are in subsections:

(2) All tax payer information held by Revenue is confidential

(5) Subsection (2) does not apply to criminal proceedings or legal proceedings (to include appeals) relating to the administration or enforcement of the Acts

(6) (a) where a Revenue officer has information that leads him/her to suspect that a criminal offence may have been committed, he can report the matter and provide information to an investigative authority (IA)

IA is defined in S.851A as meaning "a statutory body responsible for the investigation of alleged criminal offences". As An Garda Síochána is an IA, Revenue can share information with them as case specifics require under S.851A.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

(b) Observations on the implementation of the article

The Taxes Consolidated Act 1997 prohibits the tax deductibility of any expenses for payments that constitute a criminal offence under Irish law or for payments outside Ireland that would constitute a criminal offence if they were made in Ireland.

Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

(a) Summary of information relevant to reviewing the implementation of the article

Relevant legislation has been enacted in this area including Freedom of Information Act 2014, Data Protection Act 2003 and the Protected Disclosures Act 2014. (See earlier content).

In addition, Ireland participates in the Open Government Partnership (OGP) which is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. Ireland's first Open Government Partnership (OGP) National Action Plan was published in 2014. The current National Action Plan runs from 2016-2018 and sets out commitments across four

themes.

1. Increased Citizen Engagement, to improve policies and services

2. Increased Transparency, to better understand government activities and decisions

3. Open Data, for transparency and innovation

4. Anti-Corruption and Strengthened Governance and Accountability, to ensure integrity in public life

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

A description of the measures above is provided in the Final National Action Plan 2016-2018 and examples of the implementation of the measures are available at https://www.opengovpartnership.org/members/ireland/

The Department of Education and Skills introduced an appropriate education system which is tailored to all school levels including higher education. These courses and modules include aspects related to corruption and create a fundamental basis for operating competently in society and to understand social responsibilities. An excellent example is the curriculum for the primary level called "Myself, Myself and others and Myself and the wider world".

Public information/education activities that contribute to the non-tolerance of corruption

The Government recently launched a revamped anti-corruption website (www.anticorruption.ie) which is aimed at raising awareness of bribery and corruption. The site provides published reports on Ireland's compliance with various International Anti-Corruption Conventions, including the United Nations Convention Against Corruption. This is to ensure that this information is available and easily accessible to the public. There are also links to legislation and other helpful resources relevant to the area of corruption prevention. This is initiative is funded by the Department of Justice and Equality.

Additionally, Ireland participates in the Open Government Partnership (OGP) which is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. Ireland's first Open Government Partnership (OGP) National Action Plan was published in 2014. The current National Action Plan runs from 2016-2018 and sets out commitments across four themes.

1. Increased Citizen Engagement, to improve policies and services
2. Increased Transparency, to better understand government activities and decisions
3. Open Data, for transparency and innovation
4. Anti-Corruption and Strengthened Governance and Accountability, to ensure integrity in public life

The National Action Plan 2016-2018 was established following extensive, open and inclusive consultation with the public and civil society groups. The Department commissioned CiviQ and TCI Engagement to help engage the public and civil society in this consultation. This process focused on engaging a broad range of perspectives and information from civil society, citizens, businesses, and minority or marginalised groups. They used a combination of traditional

consultation tools and new digital methods. This focus was essential to ensure that: 1) the initial set of proposed actions in the draft National Action Plan 2016-2018 were drawn from a broad social base for whom OGP can have substantive impact and 2) deliberations in civic forums were diverse and inclusive.

The initial consultation encouraged the greatest possible engagement by individuals and civil society groups. The early steps focused on designing a national communication campaign which included two Facebook campaigns - one targeting young people aged between 18 and 25 years, and another targeting citizens' around the country with an interest in politics and community. Other interested parties were contacted by email and telephone. Additional methods used to promote and raise awareness of the consultation included a dedicated Webpage as well as Press and Radio advertisements. A phone line was available for citizens to ask questions and to make submissions.

The initial consultation document, "Have your say - Creating a New National Action Plan 2016-2018" was published online via CiviQ's open consultation portal at https://www.opengovpartnership.org/. The main aim of this online approach was to reach as many people as possible, encourage discussion, and inspire a sense of community. Individuals and civil society groups viewed the consultation document online and made submissions on possible actions to include in the second National Action Plan. Given that it was an 'open' portal, individuals could view, share and comment on other peoples' suggestions. Submissions were also received by post and telephone. These were manually inputted to the system to ensure all voices were represented together.

Following the close of the first stage of the consultation, CiviQ analysed, reviewed and combined all of the feedback received to provide an independent report which includes a list of possible actions to include in Ireland's second National Action Plan.

The independent report was published online in an interactive table at https://www.opengovpartnership.org/actions-for-a-more-inclusive-open-government-partnership/ Each action is linked to the related submissions and comments from the civic forums, demonstrating the relationship between citizen's input and output.

The Department of Public Expenditure and Reform considered the list of possible commitments to develop this Draft National Action Plan. This draft was published for public comment on the consultation portal https://www.opengovpartnership.org/. CiviQ have contacted Civil Society groups and those who made contributions to let them know that the draft is available for review. CiviQ have also initiated a social media awareness campaign to advertise the draft plan's publication.

Comments from the public on this draft plan were invited on the portal, where people were able to view, share and comment on other peoples' suggestions.

Commitment 14 of the Ireland's National Action Plan 2016-2018 is to Strengthen Anti-Corruption Measures; Commitment 15 is to Establish a Register of Beneficial Ownership.

Review of the Protected Disclosures Act 2014

A further consultation process was also carried out from August to October 2017 in relation to a review of the Protected Disclosures Act 2014. The Report of this review was published in July 2018 and sent to each house of the Oireachtas.

Ireland's legislation in this area has been viewed internationally in a positive light and cited by a number of EU and international organisations, including Eurofound (the EU agency for the improvement of living and working conditions), as an example of a comprehensive regulatory framework for protecting whistleblowers.

(b) Observations on the implementation of the article

Ireland has implemented this provision of the Convention.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

All the Government Departments and Bodies mentioned previously (such as the Standards in Public Office Commission) are Public Bodies with Websites, and as such the general public would be aware of their existence. In addition, reporting mechanisms for corruption can be found at www.anticorruption.ie.

Persons may report cases of bribery and corruption anonymously to the Garda Confidential Telephone Line, where their information will be forwarded to the relevant Garda Unit for further action. A dedicated confidential line for the reporting of bribery and corruption is currently in the process of being set up by the Anti-Corruption Unit at the Garda National Economic Crime Bureau.

Anonymous reports in relation to bribery and corruption may also be sent to the Anti-Corruption Unit via the post or email address advertised on the Garda Síochána website.

All persons who report crime anonymously, in good faith, are protected by the common law principle of 'Informer Privilege'. This means that their identities are protected and privilege may be claimed by the State on their identities in subsequent legal proceedings. This privilege has been consistently upheld by the Irish Courts. See DPP v Special Criminal Court 1999 1 IR 60 for reference.

(b) Observations on the implementation of the article

Following the country visit, Ireland provided an update that An Garda Síochána had launched a Confidential Line for the reporting of Bribery and Corruption at 1800 40 60 80.

The system is message based and enables the caller to leave a confidential voicemail which will be evaluated by staff attached to the Garda Anti-Corruption Unit.

Ireland has implemented this provision of the Convention.

(e) Technical assistance needs

No assistance would be required.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(a) Summary of information relevant to reviewing the implementation of the article

Ireland has enacted the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013 [hereinafter the "CJA 2010"] [7]. Part 4 of the CJA 2010 contains the domestic and regulatory regime for credit and financial institutions and for designated non-financial businesses and professions. Contained within Part 4 are the AML/CFT preventative measures set out in the Third EU AML Directive and the FATF 40 Recommendations. These preventative measures include customer due diligence measures (including beneficial ownership), policies and procedures and reporting. It also contains the statutory mandate for AML supervision with powers for supervisors and penalties for non-compliance.

The Central Bank of Ireland ("Central Bank" or CBI) is the competent authority for the supervision of credit and financial institutions' compliance with AML/CFT obligations set out in the CJA 2010. This involves monitoring credit and financial institutions' compliance with their AML/CFT obligations and taking reasonable steps to secure compliance, which includes remedial actions and enforcement action, if appropriate.

The Department of Justice and Equality is the competent authority for the supervision of DNFBPs along with self-regulatory bodies (SRBs).

The eight Designated Accountancy Bodies are as follows:

• ACCA - Association of Chartered Certified Accountants,

• ICAEW - Institute of Chartered Accountants in England & Wales,

• ICAI or CAI - Institute of Chartered Accountants in Ireland, Chartered Accountants Regulatory Board (CARB) is CAI's supervisory body.

• ICAS - Institute of Chartered Accountants of Scotland,

• ICPA or CPA - Institute of Certified Public Accountants in Ireland,[8]

• AIA - Association of International Accountants,

• CIMA - Chartered Institute of Management Accountants and

[7] In November 2018, the CJA 2010 was further amended by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018.

[8] The Institute of Incorporated Public Accountants in Ireland (IIPA) ceased to exist in March 2018 and its members joined the CPA

• CIPFA - Chartered Institute of Public Finance & Accountancy.

The FATF Mutual Evaluation Review concluded the following – (para 299, pages 100-101)

"Each of the eight designated accountancy bodies has its own assessment of risk, although they do not specifically focus on AML/CFT matters, but rather on professional standards. ... However, there is no common risk assessment framework adopted by the nine designated accountancy bodies."

A national risk assessment for money laundering and terrorist financing was carried out in 2016 as part of the FATF mutual evaluation process.

The Central Bank supervises credit and financial institutions for AML/CFT compliance on a risk-sensitive basis. This means that it allocates its supervisory resources commensurate with the money laundering ("ML") and terrorist financing ("TF") risks identified in the sectors and institutions that it supervises.

The Central Bank implements a graduated risk-based approach to AML/CFT supervision. What this means is that higher intensity supervisory measures (e.g. onsite inspections) are used to monitor firms that are higher risk from a ML/TF perspective. Other supervisory measures that are used as part of the Central Bank's AML/CFT supervisory programme, are AML/CFT Review Meetings, Risk Evaluation Questionnaires and outreach activities (e.g. presentations and seminars).

Please see below table which describes the CBI's Risk Based approach to AML/CFT supervisory engagement generally, which includes the engagement model for High ML/TF risk firms and a footnote describing the approach for Ultra High firms.

	High ML/TF Risk[1]	**Medium High ML/TF Risk**	**Medium Low ML/TF Risk**	**Low ML/TF Risk**
Inspection Cycle	3 years	5 years	Strategic, spot check & responsive	Strategic, spot check & responsive
AML/CFT review meetings	Annually	5 years	Strategic, spot check & responsive	As required.
AML/CFT Risk Evaluation Questionnaires	Annually	2 years	3 years	Strategic, spot check & responsive

Certain firms with the highest level of ML/TF risk associated with the nature and scale and complexity of their business model and/or operations have been assigned an "Ultra High" ML/TF risk rating. Such firms are subject to a more intensive/frequent level of supervisory engagement can include: a relationship manager; additional inspections/supervisory engagement meetings; and where relevant, the establishment of an AML/CFT supervisory college:

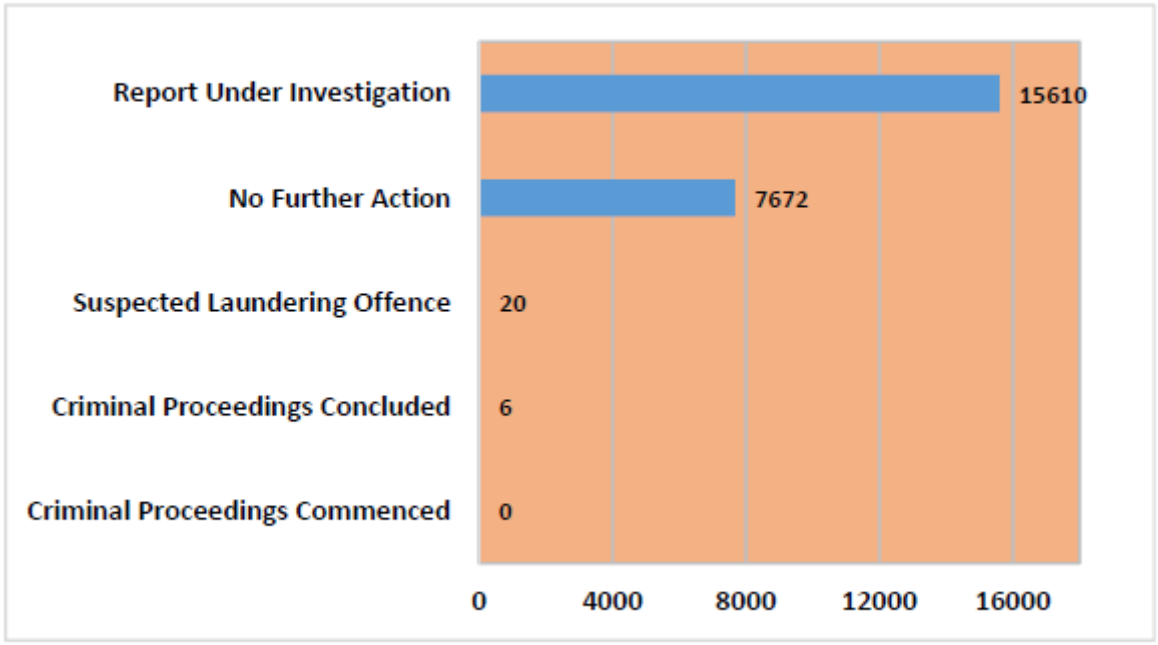
The CBI's risk-based approach to AML/CFT supervision ensures that firms with a higher level of

risk are subject to more frequent and comprehensive supervision, while also providing for responsive inspections based on specific intelligence. The CBI continues to apply a graduated risk-based approach to AML/CFT supervision. In 2017[9] the Bank's AML Division carried out 77 on-site inspections, held 83 review meetings and issued 309 Risk Evaluation Questionnaires to firms for completion.

Examples of the implementation of those measures, including related court or other cases, available statistics etc.

STR reporting and follow up:

Figure 4 Outcome of reported Suspicious Transaction Reports



The frequency and intensity of AML/CFT supervisory engagement for an individual firm is dependent on its ML/TF risk rating. The Minimum Supervisory Engagement model is set out in the table below:

	High ML/TF Risk*	Medium High ML/TF Risk	Medium Low ML/TF Risk	Low ML/TF Risk
Inspection Cycle (Years) Strategic, Spot Check & Responsive	3	5	Strategic, Spot Check & Responsive	
AML/CFT review meetings (Years) Strategic & as required	Annually	5	Strategic, Spot Check & Responsive	
Risk Evaluation Questionnaires (Years) Strategic, Spot Check & Responsive	Annually	2	3	

[9] In 2018, the Central Bank carried out 72 on-site inspections, held 59 review meetings and issued 259 Risk Evaluation Questionnaires to firms for completion. Please see the Central Bank of Ireland Annual Report 2018

* Certain firms with the highest level of ML/TF risk associated with the nature, scale and complexity of their business model and/or operations have been assigned an "Ultra High" ML/TF risk rating. Such firms are subject to a more intensive/frequent level of supervisory engagement.

(a) On-site inspections

The primary tool used by the Central Bank to supervise designated persons is through on-site inspections. The Central Bank conducted a total of 34 inspections in 2016[10]. As part of the inspections process, the Central Bank conducts follow-up with credit and financial institutions that have been subject to inspection and, where deficiencies or breaches have been identified, requires remedial action to be taken to bring about compliance with AML/CFT obligations.

(b) Risk Evaluation Questionnaires

The Central Bank conducts offsite reviews of designated persons through the issuance of risk evaluation questionnaires ("REQs"). An REQ is a questionnaire completed by firms and submitted to the Central Bank for review and assessment. REQ's facilitate an analysis by the Central Bank of ML/TF risks through an evaluation of the inherent risk posed by the firm's business model as well as the firm's AML/CFT control framework. The REQ also contains a Statement of Compliance that must be completed by firms.

(c) Review Meetings

The Central Bank holds on-site AML/CFT Review meetings with senior management of credit and financial institutions. The meetings take place to discuss key AML/CFT issues, including ML/TF risk assessment, Customer Due Diligence, Financial Sanctions and Suspicious Transaction Reporting. The Central Bank conducted a total of 28 AML/CFT Review Meetings in 2016[11].

The Table below contains a breakdown of inspections conducted and REQs issued in 2015/2016. Number of Inspections and REQs in 2015/2016

	Inspections		Risk Evaluation Questionnaires	
	2015	2016	2015	2016

[10] In 2017, the Central Bank carried out 77 on-site inspections; please see the Central Bank of Ireland Annual Report for 2017 while in 2018, the Central Bank carried out 72 on-site inspections. Please see the Central Bank of Ireland Annual Report 2018. From 2017 onwards the resourcing levels of the AML division of the Central Bank increased significantly in order to implement a robust risk based and graduated supervisory strategy. As a result of this increase in resourcing levels the numbers of supervisory engagements increased accordingly.

[11] In 2017, the Central Bank conducted 83 review meetings; please see the Central Bank of Ireland Annual Report for 2017 while in 2018, the Central Bank conducted 59 review meetings. Please see the Central Bank of Ireland Annual Report 2018. From 2017 onwards the resourcing levels of the AML division of the Central Bank increased significantly in order to implement a robust risk based and graduated supervisory strategy. As a result of this increase in resourcing levels the numbers of supervisory engagements increased accordingly.

Retail Banks	1	3	0	5
Non-Retail Banks	2	2	1	0
Retail Credit Firm	1	0	0	0
Credit Unions	2	2	5	0
Insurance	5	0	3	0
Payment Institutions	4	11	0	21
E-Money	0	1	0	1
Funds/Fund Service Providers	0	0	3	0
Markets	3	9	2	0
Moneylenders	1	2	0	0
Multi-agency Intermediary	4	1	0	0
Trust of Company Service Providers	6	0	0	0

Bureaux de Change	3	3	0	13
Total	32	34	14	40

(d) Outreach and engagement

The Central Bank participated in 15 speaking events to the private sector held in Cork, Donegal, Dublin, Limerick and Meath. The Central Bank uses these speaking events to ensure financial institutions are made aware of their obligations and have a clear understanding of the ML/TF risks associated with their business. The Central Bank also focuses on ensuring that credit and financial institutions are aware of the importance of adopting a risk based approach when applying preventive measures. Furthermore, the Central Bank uses its outreach and engagement events to highlight patterns of issues/gaps identified during the course of the inspection process and to communicate regulatory expectations around AML/CFT compliance.

The Central Bank provides guidance[12] and feedback on AML/CFT to industry through sectoral reports and thematic bulletins. These publications provide credit and financial institutions with guidance as to the Central Bank's expectations in respect of AML/CFT compliance. In 2016, the Central Bank published a Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Life Insurance Sector, a special AML/CFT edition of the Intermediary Times[13] and a thematic bulletin on Third Party Reliance[14].. The Central Bank also published updated guidance on its website on AML/CFT obligations and risk-related materials.

(e) Enforcement

Where serious breaches of AML/CFT obligations are identified during an inspection, the Central Bank may take enforcement action under its administrative sanctions procedure ("ASP").

Recent examples[15]:

- In November 2017, the Central Bank fined Intesa Sanpaolo Life dac €1 million and reprimanded it for four breaches of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 (the CJA Act 2010).

[12] In September 2018, the Central Bank published Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector in order to assist credit and financial institutions in understanding their AML/CFT obligations under Part 4 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

[13] This was followed up with the publication of a piece within the Retail Intermediary Times in September 2017 discussing feedback to ML/TF Risk Assessments.

[14] The Central has subsequently published further bulletins on Money Remitter Agent Training, Investment Firms, Customer Due Diligence and Suspicious Transaction Reporting.

[15] The Central Bank has taken enforcement action in two further cases since the drafting of the last version of this Report, please see links to both of the cases: Campbell O'Connor & Company and Appian Asset Management Limited.

- In May 2017, the Central Bank fined Bank of Ireland €3.15 million and reprimanded it for breaches of the CJA 2010.
- In April 2017, the Central Bank fined Allied Irish Bank €2.275 million for breaches of the CJA 2010.
- In November 2016, the Central Bank fined Ulster Bank Ireland DAC €3.325 million and reprimanded it for breaches of the CJA 2010.
- In addition, in December 2016, the Central Bank fined Bray Credit Union Limited €98,000 in respect of breaches of the CJA 2010.

(b) Observations on the implementation of the article

As a member of the FATF, Ireland shall implement and apply all recommendations of FATF and has recently carried out a national risk assessment of AML/CFT risks. In addition, Ireland has transposed most of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (the Fourth EU AML Directive) into national law (Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018).

Ireland has a robust and mature regime for combating money laundering. The main piece of legislation for the prevention of and fight against money laundering is the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice Act 2013 and the Criminal Justice (Money Laundering and Terrorist Financing)(Amendment) Act 2018. The CJA2010 follows a risk-based approach and establishes three levels of due diligence (standard, enhanced and simplified).

The AML/CFT supervisory authority for credit and financial institutions is the Central Bank of Ireland, while other obliged entities ("designated persons") are supervised by the Department of Justice and Equality, the Property Services Regulatory Authority or the appropriate self-regulatory bodies (e.g. for auditors and legal professions). Obliged entities are listed in Sec. 25 CJA2010. The list includes, inter alia, legal professionals, trust or company service providers, property service providers and traders in high value goods.

Ireland has adopted an all-crimes approach to money laundering. Proceeds of crime are defined in section 1 of the Proceeds of Crime Act, as amended by the Proceeds of Crime (Amendment) Act 2005 and in section 6 of the CJA2010. Accordingly, proceeds of crime means any property obtained or received at any time by or as a result of or in connection with criminal conduct.

Identification and verification of customers and beneficial owners is provided for in Sect. 33 of the CJA2010. According to Sec. 33(2)(b) of the CJA2010, the identity of the beneficial owner is systematically verified. Enhanced due diligence obligations with regard to politically exposed persons are set out in the Sec. 37. Under Chapter 4 ("Reporting of suspicious transactions and of transactions involving certain places") of the CJA2010 (sec. 41 et seq.), designated persons have an obligation to make suspicious transaction reports to the Irish financial intelligence unit and the Revenue Commissioners.

The reviewers observed that in its 2017 evaluation report, the FATF stated that: "Ireland has assessed and acknowledges that **legal persons** and arrangements may be used by persons seeking to launder illicit proceeds. But there is not yet a comprehensive understanding of the vulnerabilities and the extent to which legal persons created in the country can be, or are being, misused for ML/TF."

Ireland replied that the Department of Finance is the chair of the Anti-Money Laundering Steering Committee (AMLSC) and coordinator of the Action Plan for responding to the FATF review. As part of the 3-year Anti-Money Laundering action plan arising out of our recent Mutual Evaluation Report (MER), a sub-group of the AMLSC is undertaking a risk assessment of all types of legal persons not already covered in our National Risk Assessment (NRA). This is due for completion Q3 2019.

The reviewers also asked about the kind of due diligence controls that apply to **real estate transactions**.

Ireland replied that in relation to customer due diligence (CDD) on real estate transactions, the general obligations on Property Service Providers (PSPs) are set out on the Property Service Regulatory Authority PSRA website. These are as follows:

- PSPs are required to identify and verify customers and, where applicable, the beneficial owners, prior to the establishment of a business relationship or the carrying out of an occasional transaction or service.
- For certain high-risk categories of customer, enhanced customer due diligence steps must be taken.
- The Department of Justice and Equality's Anti-Money Laundering Compliance Unit has drawn up a detailed guide on the application of CDD measures. Property Service Providers are advised to take account of that Guide.
- In the event that Property Service Providers are unable to apply CDD measures due to failure on the part of customers to furnish the designated person with documents or information as required by law, then the Property Service Providers must refrain from providing the service or carrying out the transaction sought until the failure is rectified and must discontinue any business relationship with the customer.

For further details, see:
http://www.psr.ie/website/npsra/npsraweb.nsf/0/A3D6AA024A9108BB80258025004AC0C2/$File/Money%20Laundering%20Overview%20Sept%202016.docx

The reviewers also observed that in its 2017 mutual evaluation report, FATF recommended that "Authorities are encouraged to work more closely with the FIs and **DNFBPs** (in particular), to strengthen their understanding and controls in relation to CDD, especially for PEPs and higher risk customers."; "FIs such as bureaux de change, credit unions, moneylenders and DNFBPs, such as PMCs, PSMDs, law firms and some TCSPs, should seek to use and develop better (and more sophisticated) AML/CFT tools, particularly in relation to the identification and detection of PEPs, as well as designated entities in relation to TFS."

Ireland replied that the transposition of the Fourth Anti-Money Laundering Directive via the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 introduces specific provisions governing the definition of higher risk and widens the applicability of PEP related measures to cover all PEPs rather than only those residing outside the State. Following commencement of these measures, further work is contemplated to develop guidelines on the identification of PEPs. The Department of Justice & Equality's Anti Money Laundering Compliance Unit continues its programme of outreach to PMCs, non-FI TCSPs and PMSDs in this respect, and the outputs of the PEP guidelines referenced above will form part of this outreach in due course.

In relation to the question of CDD on real estate transactions, the general obligations on PSPs are set out on the PSRA website at:

http://www.psr.ie/website/npsra/npsraweb.nsf/0/A3D6AA024A9108BB80258025004AC0C2/$File/Money%20Laundering%20Overview%20Sept%202016.docx

The specific CDD reporting template which PSPs are required to use is at: http://www.psr.ie/website/npsra/npsraweb.nsf/0/F2D79DFDB7010CF580258191003832D9/$File/AML%20Procedures%20V7.pdf

With regard to **high**-risk third countries, it was noted that in line with the obligations arising from the Fourth EU AML Directive, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 requires enhanced due diligence to be carried out on customers from high risk third countries. The Act also requires measures to be taken by a designated person who has a branch or subsidiary in a third country that does not permit the application of established AML standards.

It was concluded that Ireland has largely implemented this provision of the Convention. However, **it was recommended that Ireland:**

- **finalize the transposition of the fourth EU AML directive to address the existing gaps in its anti-money laundering/counter-terrorist financing legislation, notably on beneficial ownership registers, and**
- **consider establishing a single, unified AML supervisory authority for designated non-financial businesses and professions**.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

The authorities engaged in combating money laundering in Ireland meet in a forum known as the Anti Money Laundering Steering Committee (AMLSC). This body meets regularly and is chaired by the Department of Finance. The other members are the Department of Justice and Equality, the Department of Business, Enterprise and Innovation, the Central Bank of Ireland, the Revenue Commissioners, the Financial Intelligence Unit of An Garda Síochána, the Criminal Assets Bureau and the Office of the Director of Public Prosecutions.

The AMLSC plays a central role in the development of Ireland's anti-money laundering policy. Its objective is to assist Government Departments, agencies and Competent Authorities to fulfil their mandate with respect to measures to combat money laundering (and terrorist financing), as provided for in legislation.

Section 34 of the Central Bank (Supervision and Enforcement) Act 2013 provides for the sharing of information internally within the Bank where the information has been acquired by the Bank in the performance of its functions under financial services legislation, as defined within that Act.

> Section 34:
>
> "Information acquired by the Bank or an authorised officer in the performance of any functions conferred on the Bank or the authorised officer under financial services legislation may be used by the Bank for the purposes of the performance of any of its functions under financial services legislation."

In terms of disclosing confidential information outside of the CBI, Section 33AK of the Central Bank Act 1942 sets down the CBI's professional secrecy obligations and outlines the circumstances in which it may disclose confidential information. Section 33AK(5) provides that the CBI may disclose confidential information to specified categories of persons. It includes, among a wide number of gateways, an ability to disclose information to law enforcement agencies; to other financial regulators outside of the State; to any institution of the European Community because of the State's membership of the Community, or to the European Central Bank.

On an international level members of the AMLSC are actively involved in shaping European anti-money laundering strategy and policy development, and representatives regularly attend international and European meetings, such as the EU's Expert Group on Money Laundering and Terrorist Financing (EGMLTF),which enhances cross-border policy making on AML/CFT; the EU's Supervisory Authorities' Anti-Money Laundering Committee (AMLC) which enhances cross-border AML/CFT supervisory work; the EU's Supranational ML/TF Risk Assessment working group, which enhances and harmonises Member States' ratings of both ML and TF risks; and the EU's FIU Platform Group, Egmont, Europol, and CARIN, which enhances cross-border financial intelligence collaboration.

(b) Observations on the implementation of the article

The national authorities engaged in combating money laundering regularly meet in a forum known as the Anti Money Laundering Steering Committee (AMLSC). This body is chaired by the Department of Finance and includes, inter alia, the Central Bank of Ireland, the FIU, the CAB and the ODPP. The FIU can share information with other units of the Garda, the CAB and the Revenue Commission.

Mutual legal assistance, also in relation to money laundering, is regulated in the MLA Act and the Banking Act.

Concerning measures to ensure that the **FIU can seek information** from reporting entities to assist international counterparts, to the same extent that it can seek this information for domestic purposes, Ireland clarified that the Criminal Justice (Money Laundering and Terrorist Financing) Act 2018 gives a power to the FIU to compel information from designated persons which it needs to carry out its functions. The Act also includes provisions in relation to information sharing with other FIUs.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure

proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

(a) Summary of information relevant to reviewing the implementation of the article

There are a number of measures in Ireland to allow for the seizure of the proceeds of crime, or funds which are reasonably suspected of being the proceeds of crime. Specifically, under Section 39 of the Criminal Justice Act 1994, a Judge of the Circuit Court may order the forfeiture of any cash which has been seized under Section 38 of the Act, if satisfied that the cash directly or indirectly represents the proceeds of crime. Section 38 of the Act authorises the seizure of cash where a member of An Garda Síochána or an officer of Customs and Excise has reasonable grounds for suspecting that the cash (including cash found during a search) represents any person's proceeds from criminal conduct. The Criminal Assets Bureau is also empowered to freeze or seize assets which are suspected of being the proceeds of crime.

Under the provisions of Section 38 Criminal Justice Act 1994, where Revenue suspect links to criminality, the Revenue Cash Team in Investigations & Prosecutions Division investigate cash that has been seized within the State with a view to having same forfeited. Most of these cash cases are intercepted at the airports and ports by Customs Enforcement Officers in the course of their daily duties. Sec 38 CJA 1994 has no declaration requirements and proof of criminality must be obtained to ensure forfeiture.

The European Communities (Controls of Cash Entering or Leaving the Community) Regulations 2007 contains provisions covering the control of cash entering or leaving the EU. This Regulation was updated in 2018 (Regulation 1672/2018 of 23 October 2018) and extends the definition of cash to cover not only banknotes but also other instruments or highly liquid commodities such as cheques, traveller's cheques, prepaid cards and gold. This regulation is also extended to cover cash that is sent by post, freight or courier shipment.

Link to the new Regulation can be found here: https://eur-lex.europa.eu/eli/reg/2018/1672/oj

Section 42 Customs Act 2015 states that the Customs authority in the State are the competent authority to apply that Regulation. Persons travelling into and out of the EU are obliged to declare details of cash valued in excess of €10,000 to Customs and failure to do so could result in a fine of €5,000 on summary conviction. Points of entry into the State clearly highlight the public's obligations and have facilities in place for the travelling public to make the required declarations.

Sub-section 5 of this Regulation [see hereunder] provides that Revenue may apply the provisions of Sec 38 CJA 1994 to such EU cash and may have same detained where Revenue can satisfy a District Court Judge of sufficient links to criminality.

> (5) If at a time when any cash is being detained by virtue of these Regulations a judge of the District Court if satisfied, on an application made by an officer of the Revenue Commissioners that that cash could, on the basis of information available at the time of the detention or subsequently available, have been detained under section 38 of the Criminal Justice Act 1994 , then the judge may make the order under subsection (2) of the said section 38 as if the cash had been seized and detained under that section, and the Criminal Justice Act 1994 shall have effect and apply accordingly to the cash

Examples of the implementation of those measures, including related court or other cases, available statistics etc.

Below are figures for cash detentions undertaken by Revenue under Section 38 Criminal Justice

Act, 1994.

These relate to seizures of cash made by Revenue at ports where there is a suspicion that the funds are the proceeds of crime.

Year	No. of detentions	Amount
2016	73	€979,886
2015	45	€1,620,000
2014	38	€906,222
2013	60	€1,341,222
2012	48	€1,191,601
2011	39	€1,029,038
2010	46	€1,693,290

(b) Observations on the implementation of the article

The legal framework relating to the declaration or disclosure of cross border movement of cash is based on the European Communities (Controls of Cash Entering or Leaving the Community) Regulations 2007 and s42 of the Customs Act 2015. In particular, persons travelling into and out of the EU are obliged to declare details of cash valued in excess of €10,000 to Customs and failure to do so could result in a fine.

The reviewers observed that in its 2017 evaluation report, the FATF stated that "the overall value of cash seizures is relatively modest and the value of confiscations does not appear commensurate with the risks associated with cash. Allocation of additional resources to Customs and tightening of the legislative framework will enhance efforts in this area which should be considered a priority given Ireland's identified risk in respect of cash and the level of cash usage in domestic ML."

Ireland replied that the Revenue Commissioners have committed in the national AML Action Plan to implement measures to identify and seize cash transported via parcels, freight and cargo. As part of this the Revenue commissioners will review existing legislation, procedures and policies and consider amendments as appropriate. This is to be concluded by Q1 2020.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

(a) Summary of information relevant to reviewing the implementation of the article

These measures are implemented under EU law by the Funds Transfer Regulation [FTR] (EU 2015/847) that has direct legal effect in Irish law since June 2017.

The European Supervisory Authorities (ESA) published Joint Guidelines under the FTR on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information. The Central Bank as a member of the ESA provided input into the drafting of these Guidelines.

The European Union (Information Accompanying Transfers of Funds) Regulations 2017 [S.I. No. 608 of 2017], which entered into force in December 2017, gives enhanced powers to the Central Bank, in its role as the competent authority, to enforce the provisions of Article 21 of EU Regulation 2015/847.

The Central Bank is the competent authority under the Wire Transfer Regulation and supervises for compliance with the provisions of the Regulation and AML legislation.

The number of money remitters operating in Ireland that are designated persons under the CJA 2010 is currently 31 firms. The Central Bank considers such firms to be high risk from a ML/TF perspective, with the largest firm being considered to come within the ultra-high-risk category. High risk money remitters are subject to a three-year inspection cycle, an annual AML/CFT review meeting and the requirement to complete a risk evaluation questionnaire ('REQ') annually. The ultra-high risk firm is subject to an even more enhanced level of supervision as set out in the table previously provided. This firm has a dedicated relationship manager, is subjected to an annual supervisory inspection, supervisory engagement meetings, and completes an annual REQ. It has also been the subject of an AML/CFT supervisory college hosted by the Central Bank of Ireland.. For the remaining 30 high risk money remitters, supervisory engagements for a typical year will involve conducting 10 inspections, 30 review meetings and issuing 30 REQ's for completion by the firms.

Payment Institutions (Money Remitters) are categorised as High/Ultra High from an ML/TF risk perspective. At present, the CBI has 31 PI Money Remitters in its supervisory population which includes firms that are domestic and those that are authorised elsewhere and have a physical presence in Ireland. The CBI hosted a supervisory college to discuss the overall supervisory approach and share information in relation to a particular Money Remitter that is established in Ireland, and which has agents in a number of EU Member States. AML Supervisors from such other member states attended this Supervisory College.

Ireland's National Risk Assessment (available at: http://www.finance.gov.ie/wp-content/uploads/2017/05/NRA-FINAL-for-Publication.pdf) found (pp.39-40) that money remittance firms hold a risk level of 'High' for money laundering and terrorist financing. It stated:

> The nature of the service provided exposes money remitters to High ML/TF risk because of the easily accessible nature of the service and because of the wide jurisdictional reach of money remittance services. Money remitters deal with high volumes of low value and instant transactions, which are predominantly cash based. In addition, money remitters tend to facilitate once off transactions as opposed to providing services to an established existing customer base. Money remitters may use extensive networks of agents to provide payment services on their behalf. The services provided by these agents are often ancillary to an agent's core business, which is not related to financial services e.g. newsagents. Statistics for 2015 indicated that over 6% of all STRs reported in 2015 were raised by payment institutions.

(b) Observations on the implementation of the article

Measures on electronic funds transfers and money remitters are implemented through the EU Funds Transfer Regulation (EU 2015/847) that has direct legal effect in Irish law.

Shortcomings that were highlighted by the FATF in its 2017 evaluation report have been fully addressed through the implementation of the new Funds Transfer Regulation. In particular, EU Regulation 2015/847 (the 'Funds Transfer Regulation') brings EU law into line with the Financial Action Task Force (FATF) Recommendation 16. Further, Statutory Instrument 608 of 2017 created offences and penalties for breaches of the Regulation's provisions.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland has been a member of FATF (the Financial Action Task Force) since 1991 and is committed to continuously strengthening its AML/CFT framework to reduce its vulnerabilities in relation to the threat of money laundering and the financing of terrorism.

The 40 FATF recommendations are incorporated into European law through EU Directives on money laundering and terrorist financing. These FATF-based rules have been tailored to meet the EU's needs and are transposed into national law by Member States. The EU Directives are minimum harmonisation, and accordingly Member States may choose to exceed the provisions of the legislation when they are transposing them into national law. Successive EU Directives have sought to reduce the EU's vulnerability to ML/TF by improving and strengthening the legislative provisions as FATF updates its recommendations and as knowledge of the ML/TF risks to the EU improves. The current EU law on money laundering and terrorist financing is set out in the Fourth Anti-Money Laundering Directive (4AMLD).

Ireland transposed the majority of the Fourth Anti-Money Laundering Directive by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018,[16] which entered into force in November 2018 and is currently in the process of transposing the 5th Directive.

After undergoing the FATF Mutual Evaluation process in 2006 Ireland implemented the recommendations which emerged from that process, most notably through the passage of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010, as amended, which now forms the core of Irish anti-money laundering legislation. The 2010 Act initially transposed the Third Anti-Money Laundering Directive (3AMLD) and its Implementing Directives, Directives 2005/60/EC and 2006/70/EC, into Irish law, while later amendments in 2013 gave further effect to recommendations of the FATF. The Act requires financial institutions and other designated non-financial businesses or professions to take measures to prevent ML/TF. Preventative measures set out in Part 4 of the Act include requirements to establish the identity of customers and to report suspicious transactions to Ireland's police-based FIU (within An Garda Síochána).

[16] SI's 16 and 110 of 2019 completed the transposition of the 4th AML Directive.

Ireland has recently completed another FATF Mutual Evaluation process and will be working with the FATF to implement further improvements to systems and practices in the wake of this. As part of this process Ireland also completed its first National Risk Assessment, in itself a FATF-aligned requirement of 4AMLD. This document will serve to enhance the understanding of Ireland's risk and will be updated periodically.

The Central Bank is the Irish representative on the ESA's AML Committee (AMLC). The ESA's are mandated under EU law to provide guidelines and regulatory technical standards (RTS) under the Fourth EU AML Directive. The Central Bank, as a member of the AMLC, has actively engaged in the drafting of these guidelines and RTS. The guidelines are implemented within the EU on a "comply or explain" basis. The RTS are binding on Member States as they are level 2 legal instruments. Of the guidelines issued to date, the Central Bank has indicated its intention to comply and can do so either by effecting legal change or by the incorporation of the guidelines into its supervisory processes.

(b) Observations on the implementation of the article

Ireland has been a member of FATF since 1991 and its implementation of the FATF recommendations has been assessed in mutual evaluation reports in 2006 and 2017. The FIU is a member of the Egmont group of Financial Intelligence Units and of the EU's FIU Platform Group.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

In addition to membership of FATF, Ireland, as a member of the EU, also contributes to:

- the formulation of AML policy through active involvement in the EU's Expert Group on Money Laundering and Terrorist Financing (EGMLTF)which enhances cross-border policy making on AML/CFT;
- the EU's Supervisory Authorities' Anti-Money Laundering Committee (AMLC) of the Joint Committee of European Banking Authority, European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, which enhances cross-border AML/CFT supervisory work;
- and the EU's Supranational ML/TF Risk Assessment working group, which enhances and harmonises Member States' ratings of both ML and TF risks and which is responsible for the Supra National Risk Assessment which informs the National Risk Assessment.

The FIU is a member of the Egmont group of Financial Intelligence Units and of the EU's FIU Platform Group. The FIU actively cooperates with law enforcement agencies in other jurisdictions in matters relating to suspected money laundering and terrorist financing. This includes the exchange of intelligence via FIU.Net, Egmont Secure Web, Interpol and Europol.

The FIU is also a member of the Anti-Money Laundering Operational Network (AMON) while the Criminal Assets Bureau works with the Camden Assets Recovery Interagency Network (CARIN).

The Central Bank of Ireland has provided assessors to the FATF/IMF assessment of Canada, the United Kingdom (2018) and Finland (2019). The Bank is also represented on the working group for the drafting of proposed FATF Risked Based Approach to Securities Supervision Guidance and is an active member of the ESA's Joint AML Committee. The CBI has contributed to the drafting of the ESA's Risk Factor Guidelines and was/is represented on many ESA's Working Groups including those for ESAs Guidance on Central Contact Points, and Supervisory Co-operation, and has recently presented to the ESA's Joint AML Committee on the Risk Based Approach to supervision at the invitation of the EBA.

The Central Bank plays a key role in multiple initiatives in order to ensure the effective supervision of regulated financial services providers (RFSPs), including hosting best practice visits; participating in regular bilateral engagements with other National Competent Authorities; and the establishment of a supervisory college.

The Central Bank has hosted a number of best practice visits with AML/CFT regulators and supervisors from other jurisdictions over the past number of years. The best practice visits, supervisory college, and regular bilateral engagements have allowed the Central Bank to share its risk-based approach to the AML/CFT supervision of RFSPs (such as money remitters), encourage cooperation and coordinated supervisory approaches, and ensure the effective supervision of RFSPs that operate on a cross-border basis.

(b) Observations on the implementation of the article

Ireland has been a member of FATF since 1991 and its implementation of the FATF recommendations has been assessed in mutual evaluation reports in 2006 and 2017. The FIU is a member of the Egmont group of Financial Intelligence Units and of the EU's FIU Platform Group. As a member of the EU, Ireland also contributes to the formulation of AML policy through active involvement in the relevant EU bodies.

It was concluded that Ireland has implemented this provision of the Convention.

Chapter V. Asset recovery

Article 51. General provision

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

(a) Summary of information relevant to reviewing the implementation of the article

Article 51 is covered by an extensive range of legislation, including proceeds of crime, anti-money laundering, terrorism financing and mutual assistance legislation.

Ireland has established a **Financial Intelligence Unit (FIU)** and a specialized police Anti-Corruption Unit. Both the FIU and the **Anti-Corruption Unit** are constituent parts of the National Economic Crime Bureau of *An Garda Síochána*. The Anti-Corruption Unit has the following tasks:

- Investigating credible allegations of foreign and domestic bribery and corruption exclusively;
- Taking a proactive role in identifying possible cases of bribery and corruption;
- Where necessary, supporting personnel at District and Divisional level to progress allegations/complaints of bribery, corruption, at local level;
- Providing anti-corruption advice to businesses and the public generally;
- Proactively liaising with outside agencies, including the OECD and others;
- Acting as a Centre of Excellence in the investigation of all aspects of corruption;
- Developing a crime prevention strategy in the area of bribery and corruption.

Ireland has also established a **Criminal Assets Bureau** (CAB) under the Criminal Assets Bureau Act, 1996 (as amended).

The CAB is a State body established in 1996 under law.

The objectives and functions of the CAB are provided for under Section 4 and 5 of the Criminal Assets Bureau Act, 1996 (as amended). Section 4 defines the objectives of CAB as:

4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—

a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,

b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).

Section 5 defines the functions of CAB as:

5.—(1) without prejudice to the generality of section 4, the functions of the Bureau, operating through its bureau officers, shall be the taking of all necessary actions—

a) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use,

freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct,

b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or activities, as the case may be,

c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and

d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation, and such actions include, where appropriate, subject to any international agreement, cooperation with any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State.

The role of CAB has been clarified by the courts. In a decision of the Courts from 1999, the role of CAB and its relationship to the Garda Síochána was clarified. The Court set out:

"The CAB is established as a body corporate with perpetual succession. While the Chief Bureau Officer must be appointed from members of An Garda Síochána of the rank of Chief Superintendent, nevertheless the CAB is independent of An Garda Síochána, although it has many of the powers normally given to that body. ... The CAB is a creature of Statute, it is not a branch of An Garda Síochána. It was set up by the Oireachtas as a body corporate primary for the purpose of ensuring that persons should not benefit from any assets acquired by them from any criminal activity. It is given power to take all necessary actions in relation to seizing and securing assets derived from criminal activity, certain powers to ensure that the proceeds of such activity are subject to tax, and also in relation to the Social Welfare Acts. However, it is not a prosecuting body, and is not a police authority. It is an investigating authority which, having investigated and used its not inconsiderable powers of investigation, then applies to the Court for assistance in enforcing its functions. The Oireachtas, in setting up the CAB, clearly believed that it was necessary in the public interest to establish a body which was independent of An Garda Síochána, and which would act in an investigative manner. However, I do not think it is the same as An Garda Síochána, which investigates with an aim to prosecuting persons for offences. The CAB investigates for the purpose of securing assets which have been acquired as a result of criminal activities and indeed ultimately paying those assets over [to] the State."

The CAB is primarily focused in relation to Section 5(1) in implementing same through Sections 2, 3 and 4 of the Proceeds of Crime Act 1996. These are Ireland's **Non Conviction Based** restraint and forfeiture orders relating to assets which have been found by the court to represent directly or indirectly the proceeds of criminal conduct.

In 2005, the Proceeds of Crime Act, 1996 was amended to provide for the making of a **Corrupt Enrichment Order** pursuant to Section 16B. This allows for a Chief Superintendent of the Garda Síochána, an authorised officer of the Revenue Commissioners, or the CAB to apply to the Court for a Corrupt Enrichment Order. Where such an application is made, the High Court may make a corrupt enrichment order directing a defendant to pay to the Minister or such other person as the Court may specify an amount equivalent by which that the defendant has been so enriched. Both the FIU and the Garda Anti-Corruption Unit are constituent parts of the Garda National Economic Crime Bureau.

The CAB is not responsible for receiving, analysing or disseminating reports of suspicious financial transactions. The FIU for Ireland is a constituent element of the national police force of Ireland, namely the Garda Síochána. Section 62 of the Garda Síochána Act 2005 imposes confidentiality of certain information. A number of statutory exceptions are provided for. Section 62(4) provides, inter alia, that the restrictions on disclosure of information imposed by Section 62(1) do not apply if a disclosure is made to the Criminal Assets Bureau. Accordingly, information may be disseminated by the Garda Síochána to the CAB.

Ireland uses various models of **forfeiture and confiscation**, including extended confiscation and non-conviction based (NCB) forfeiture:

Model 1: Confiscation or forfeiture after the defendant has absconded.

Under section 13 of the Criminal Justice Act 1994, 1994 as amended by the insertion of subsection (5B) through SI 540/2017, the High Court may make a confiscation order where proceedings have been instituted but not concluded and the defendant has **absconded** or where proceedings have been discontinued by reason of the defendant being ill. In the case of the defendant being ill, it is a further requirement that the proceedings could have led to a conviction if the proceedings had continued.

The High Court can also make an order under this section if the defendant has **died** but only if the defendant has been convicted.

Model 2: 'Extended confiscation' [17]

Under the provisions of section 4 of the Criminal Justice Act 1994 (as amended) once a person has been **convicted** on indictment of a drug trafficking offence and sentenced, the Court of trial must determine whether the convicted person has benefited from the offence, the extent to which he has benefited and the amount that is realisable to discharge a Confiscation Order. The Court then makes a Confiscation Order for that figure. This is a mandatory investigation and the Court is assisted in identifying the proceeds of drug trafficking by the **presumptions** set out under section 5 of the Act, i.e. the presumption that any money received by the accused person within six years before the institution of proceedings was received as a payment or award in connection with drug trafficking. These presumptions can be challenged by the accused and in order to succeed, he has to prove on the balance of probabilities that they are wrong.

Section 9 of the 1994 Criminal Justice Act 1994 (as amended) applies to offences other than drug offences prosecuted on indictment except that the Court makes a determination only where an application is made by the Director of Public Prosecutions. The **presumptions** available to the Court under section 4 enquiries are **not available** in section 9 cases. The monies that can be confiscated under section 9 cases are limited to the benefit gained from

[17] S.I. No. 540/2017 and S.I. No. 470/2019 amended the CJA 1994 in regard to extended confiscation and to give effect to Directive 2014/42/EU.

the particular offence for which the person has been convicted. The standard of proof set by the Act under both provisions is the civil standard on the balance of probabilities. The amount set by the Court becomes a judgment debt payable by the convicted person which can if necessary be enforced by a prison term.

Under section 24 of the Act the High Court has the power to grant a restraint order freezing the assets of an accused person once the DPP has decided to bring a prosecution. These orders are designed to prevent the dissipation of assets prior to a possible conviction being recorded against an accused person. A receiver can also be appointed before conviction to gather up identified assets, particularly depreciating ones, and either dispose of, or manage them to ensure the maximum value available to the Court if it makes a confiscation order. Section 20 allows for the appointment of a receiver, once a confiscation order has been made, to realise identified assets to meet the sum decided by the Court as being the benefit gained by the accused from his offence.

Section 61 of the Act allows for forfeiture of any property used to commit, or to facilitate any offence, in either the District Court or Circuit Court. The Court have upheld the power of a court to make an order under this section in respect of the affected property, and the Court may do so whether or not it deals with an offender in respect of the offence in any other way. The DPP brings applications under this section in relation to a wide variety of assets, such as cars used to transport criminals to and from crime scenes, as well as money and instruments of crime such as drug preparation equipment found at the crime scene, or near to it.

Model 3: Civil Confiscation ('forfeiture.')

The legislative framework underpinning the **non-conviction based** model is contained in the Proceeds of Crime Act 1996 (as amended). The Criminal Assets Bureau Act 1996 created a statutory body known the Criminal Assets Bureau ('the Bureau') whose primary aim is to target the proceeds of crime. The Proceeds of Crime legislation does not operate as an alternative to criminal prosecution. Rather, where there is sufficient evidence to pursue criminal proceedings, a criminal prosecution will be prioritised. In circumstances where property may be subject to confiscation under the criminal justice legislation and or civil forfeiture under the Proceeds of Crime legislation, the application of the relevant orders under the criminal justice legislation takes precedence. The Proceeds of Crime legislation provides for a number of very important safeguards such as notice provisions, the opportunity for a respondent to seek to vary an order, the opportunity for any persons claiming ownership to be heard, provision for legal aid, freezing before disposal of property, provision for compensation, etc. These safeguards are vital in ensuring that the system is fair. Since its introduction, the Proceeds of Crime legislation has been the subject of a number of challenges on whether it meets the standards of fundamental rights enshrined in the Constitution of Ireland and the European Convention on Human Rights.

Proceeds of Crime Act, 1996 (amended). For legislation see:

http://revisedacts.lawreform.ie/eli/1996/act/30/front/revised/en/html

Criminal assets Bureau Act, 1996 (amended). For legislation see:

http://revisedacts.lawreform.ie/eli/1996/act/31/revised/en/html

Model 4: **Unexplained Wealth.**

Ireland does not have a Model 4 system *per se* but does have a tax system which equates to it.

Profits or gains arising from illegal activities are chargeable to tax as miscellaneous income under Case IV of Schedule D of the Taxes Consolidation Act, 1997 (as amended). Section 58 of the 1997 Act enables assessments to be raised in respect of any profits or gains the particular source of which cannot be identified.

Profits or gains are chargeable to tax notwithstanding that at the time the assessment in respect of those profits or gains was made —

- the source from which the profits or gains arose was not known to the inspector (this provision enables an inspector to assess income arising from a source, whether legal or illegal, which he/she cannot identify),
- the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or
- the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity.

The chargeability of such profits or gains is not to be affected by the question whether they arose in whole or in part from an unknown or unlawful source or activity. This aspect can, therefore, be simply disregarded in determining the chargeability to tax of such profits or gains. The legality or otherwise of the source cannot affect the validity of the assessment. Notwithstanding anything in the Tax Acts, any profits or gains charged to tax by virtue of subsection (1) or any profits or gains charged to tax following an investigation by the Criminal Assets Bureau are chargeable under Case IV of Schedule D and are to be described as "miscellaneous income" in the assessment.

Any such assessment may be made solely in the name of the Criminal Assets Bureau. In addition, any such assessment cannot be discharged either by the Tax Appeal Commissioners or a court by reason only of the fact that the income should, apart from this section, have been described in some other manner or by reason only of the fact that the profits or gains arose wholly or partly from an unknown or unlawful source or activity. Payment of any tax charged in any such assessment may be demanded solely in the name of the Criminal Assets Bureau. On payment to the Criminal Assets Bureau of any such tax, the bureau is required to issue a receipt, lodge the payment in the bank account of the Revenue Commissioners and transmit details of the assessment and payment to the Collector-General.

Taxes Consolidation Act, 1997, see:

http://www.irishstatutebook.ie/eli/1997/act/39/section/58/enacted/en/html

During the country visit, representatives from the Criminal Assets Bureau and the Office of the Director of Public Prosecutions expanded on the above tables to identify a number of conceptual differences that distinguish civil and criminal non-conviction-based confiscation. In brief, these were that **criminal** non-conviction-based confiscation acts *in personam* (against the person), is

punitive in nature and establishes a debt that is owed and that is not attached to any particular asset. Conversely, **civil** non-conviction-based confiscation acts *in rem* (against the property), is reparative in nature, and seeks to establish that a person never held rightful ownership of a property.

During the UNCAC country visit, the Irish delegates also discussed the difference between the meaning of **forfeiture** ("giving up") and **confiscation** ("taking"), with the former term applying to civil non-conviction-based expropriation and the latter applying to criminal non-conviction-based expropriation. While there are real differences between both terms, in practice they are frequently used interchangeably. In light of the above, Ireland feels that for the purposes of the UNCAC review process it might be best to bracket this discussion on the distinction between forfeiture and confiscation and instead focus on those other established and widely accepted attributes that differentiate between civil and criminal forms of legal expropriation.

Table 5: Annual value and number of confiscation and forfeiture orders associated with the Office of the Director of Public Prosecutions (ODPP), 2013 – 2017

	Forfeiture Orders (cash & instrumentalities)		Confiscation Orders		Restitution Orders		Cooperation confiscation / forfeiture orders		Total	
Year	**No.**	**Value €**	**No.**	**Value €**	**No.**	**Value €**	**No.**	**Value €**	**No.**	**Value €**
2017	38	906,396.28	3	81,900.00	0	0	0	0	41	988,296.28
2016	18	581,765.39	6	339,145.57	1	40,000.00	0	0	25	960,910.96
2015	41	1,347,992.43	10	2,071,589.00	0	0	0	0	51	3,419,581.43
2014	44	1,011,812.53	6	259,346.68	0	0	0	0	50	1,271,159,21
2013	37	710,331.39	7	490,418.01	0	0	2	53,378.39	46	1,254,127.79
Total	**178**	**4,558,297.82**	**32**	**3,242,399.16**	**1**	**40,000.00**	**2**	**53,378.39**	**213**	**6,622,916.46**

[1] *Please note that the ODPP only records confiscation or forfeiture orders that it is notified of. The figures in the table above include Revenue figures for cash forfeitures where the ODPP directs the application to be brought. Other agencies such as An Garda Síochána may seek forfeiture orders acting in their capacity as delegated prosecutors where amounts forfeited are not recorded by the ODPP. Amounts forfeited by the Criminal Assets Bureau are also not recorded by the ODPP.*

Table 6: Non-conviction-based freezing and confiscation actions brought by the Criminal Assets Bureau under the Proceeds of Crime Act 1996 (as amended), 2012 – 2016

					Returned to Exchequer		
	Section 2 Interim Orders		Section 3 Interlocutory Orders		Section 4 Disposal Orders	Section 4A Consent Disposal Orders	
Year	**No.**	**Value €**	**No.**	**Value €**	**No.**	**No.**	**Value €**
2016	13	643,063.07	11	1,919,261.54	4	7	1,412,920.41

2015	13	941,078.59	11	7,225,091.98	9	4	1,642,962.29
2014	10	6,760,182.00	9	1,563,841.75	3	1	467,152.37
2013	8	2,821,305.00	14	2,180,940.21	7	7	1,038,680.52
2012	15	2,110,334.78	10	2,017,512.54	7	6	4,850,540.17
Total	**59**	**13,275,963.44**	**55**	**14,906,648.02**	**30**	**25**	**9,412,255.76**

Table 7: Number of Section 3(3) Orders, Respondents, and Amounts disbursed under the provisions of the Proceeds of Crime Act 1996 (as amended), 2011 – 2016 [1]

Year	Amount €
2011 [2]	2,843,012.96
2012 [3]	741,552.06
2013	0
2014	0
2015	0
2016	0
Total	**3,584,565.02**

[1] *Under the provisions of the Proceeds of Crime Act 1996 (as amended) once a Section 3 Order is in place it is open to any person to seek to vary or set aside such a freezing Order via a Section 3(3) variation Order if that person can satisfy the Court that they have a legitimate right to the property and/or the property is not the proceeds of criminal conduct.*

[2] *In 2011, the Bureau secured an order pursuant to Section 3(3), transferring the sum of €2.682 million to a liquidator to be distributed for the benefit of victims of a fraud. This related to funds which had been determined to be proceeds of crime following an application brought by the Bureau. In a further proceeds of crime case brought by the Bureau, a sum of £300,000 sterling was forwarded to HM Courts and Tribunals Services UK in satisfaction of a criminal confiscation debt.*

[3] *In 2012, a number of orders were made under Section 3(3) of the Proceeds of Crime Act 1996 (as amended) whereby monies amounting to €741,552.06 was returned by the Bureau to victims of crime as directed by the High Court.*

(b) Observations on the implementation of the article

Ireland has a comprehensive legislative and policy framework for the return of assets. The PoC Act, the CAB Act, the MLA Act and the AML/CTF Act provide a legal basis for identifying, restraining and confiscating assets derived from the commission of an offence. Ireland uses various models of forfeiture and confiscation, including extended confiscation and non-conviction based (NCB) confiscation.

The Criminal Assets Bureau is responsible for civil non-conviction based confiscation to deny and deprive criminals of their ill-gotten gains. The ODPP is responsible for criminal asset confiscation and forfeiture of cash and the instrumentalities of crime in accordance with the Criminal Justice Act 1994.

The FIU and the Anti-Corruption Unit are constituent parts of the National Economic Crime Bureau of *An Garda Síochána*.

It was concluded that Ireland has implemented this provision of the Convention.

(c) Successes and good practices

The establishment of the Criminal Assets Bureau and a "civil" non-conviction based confiscation ("forfeiture") system was identified as a good practice.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) sets out the measures required to be taken by financial institutions to verify the identity of customers, the identity of beneficial owners, to conduct enhanced Customer Due Diligence measures and to monitor transactions.

Section 33 requires credit and financial institutions to identify and verify customers and beneficial owners.

Section 35 obliges credit and financial institutions to monitor dealings with customers with whom they have a business relationship. Such monitoring shall include the scrutinizing of transactions and the source of wealth and source of funds for transactions to ensure that they are consistent with the firm's expectations for that customer and to ensure that the customer is not involved in money laundering or terrorist financing.

Section 37 sets out the measures which a credit or financial institution must take prior to establishing a business relationship or carrying out an occasional transaction for a customer or beneficial owner. Section 37 also specifies the enhanced due diligence measures which a credit or financial institution must apply when a firm has knowledge or reasonable grounds to believe that a customer is a **PEP**, an immediate family member or close associate of a PEP.

Section 37 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as

amended):

"politically exposed person" means an individual who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including either of the following individuals (but not including any middle ranking or more junior official):

a) a specified official;
b) a member of the administrative, management or supervisory body of a state-owned enterprise;

"specified official" means any of the following officials (including any such officials in an institution of the European Communities or an international body):

a) a head of state, head of government, government minister or deputy or assistant government minister;
b) a member of a parliament;
c) a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal;
d) a member of a court of auditors or of the board of a central bank;
e) an ambassador, chargé d 'affairs or high-ranking officer in the armed forces.

"close associate" of a politically exposed person includes any of the following persons:

a) any individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the politically exposed person;
b) any individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the politically exposed person;

"immediate family member" of a politically exposed person includes any of the following persons:

a) any spouse of the politically exposed person;
b) any person who is considered to be equivalent to a spouse of the politically exposed person under the national or other law of the place where the person or politically exposed person resides;
c) any child of the politically exposed person;
d) any spouse of a child of the politically exposed person;
e) any person considered to be equivalent to a spouse of a child of the politically exposed person under the national or other law of the place where the person or child resides;
f) any parent of the politically exposed person;

any other family member of the politically exposed person who is of a prescribed class

The legislation also extends the requirement to apply Enhanced Customer Due Diligence (ECDD) to an immediate family member, or a close associate, of a PEP.

Under EU Directive 2015/849, obliged entities will have to apply the same level of ECDD to domestic and foreign PEPs thereby eliminating any prior distinction between the two. The Directive also introduces an increased range of administrative measures and sanctions applicable to all entities upon failure to meet their AML obligations.

The Central Bank's supervisory engagement programme monitors financial institutions' compliance with AML preventative measures set out in the Criminal Justice (Money Laundering

and Terrorist Financing) Act 2010. Where a financial institution does not demonstrate compliance to the satisfaction of the Central Bank, steps are taken to secure compliance including remedial actions by the financial institutions and if deemed necessary the imposition of administrative sanctions.

Information relating to the Central Bank's supervisory programme and recent figures on inspections and enforcement is contained in the response to Article 14.

Guidance is provided to financial institutions about their AML obligations through the publication of sectoral reports (Banking, Insurance, Funds reports) and the Central Bank's AML outreach programme, which involves regular speaking engagements with industry and meetings with individual financial institutions.

The Central Bank is about to issue guidelines on the new PEPs regime that will come into force with the implementation of the Fourth EU AML Directive.

(b) Observations on the implementation of the article

As indicated above, provisions governing the identity of customers and beneficial owners are contained in Sec. 33 of the AML/CTF Act. Section 35 obliges credit and financial institutions to monitor dealings with customers with whom they have a business relationship. A register of beneficial owners will be introduced with the full implementation of the Fourth and Fifth EU AML Directive.

Politically exposed persons (PEPs) are defined in Sec. 37(10) of the AML/CTF Act and include domestic PEPs (section 16 of the Criminal Justice (Amendment) Act 2018). Under Sec. 37, PEPs are subject to special measures and enhanced due diligence.

It was recommended that Ireland finalize the transposition of the fourth EU AML directive to address the existing gaps in its anti-money laundering/counter-terrorist financing legislation, notably on beneficial ownership registers.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 contains provisions to deal with enhanced scrutiny including where it is warranted by the risk of money laundering/terrorist financing (section 35), politically exposed persons (section 37), correspondent banking (section 38) and where there is a heightened risk (section 39).

The Central Bank applies supervisory measures to monitor whether financial institutions have

adequate policies and procedures in place to assess and manage risks of money laundering and terrorist financing including internal controls and internal reporting controls.

Guidance is provided to financial institutions about their AML obligations through the publication of sectoral reports (Banking, Insurance, Funds reports) and the Central Bank's AML outreach programme, which involves regular speaking engagements with industry and meetings with individual financial institutions.

The Central Bank implements robust supervisory engagement measures to assess the adequacy of financial institutions' policies and procedures and its control measures including customer due diligence, transaction monitoring and the reporting of suspicious transactions. It monitors in particular how a financial institution assesses and manages its money laundering and terrorist financing risks. During the course of 2017, the Central Bank took **action against four financial institutions** for breaches under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 including breaches in relation to AML/CFT policies and procedures. The total fines imposed in respect of the breaches committed by the financial institutions amounted to just over €6.5million. The breaches identified in the enforcement actions taken against the four financial institutions are specific to each of the separate cases (further information can be obtained from the Central Bank's website).

(b) Observations on the implementation of the article

Politically exposed persons (PEPs) are defined in Sec. 37(10) of the AML/CTF Act. Under Sec. 37, PEPs are subject to special measures and enhanced due diligence. The Central Bank is about to issue guidelines on the new PEPs regime that has come into force with the implementation of the Fourth EU AML Directive.

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

The Central Bank maintains and updates its own website on sanctions list. Obliged entities can access this information.

(b) Observations on the implementation of the article

The reviewers observed that in this context, the FATF recommended: "The CBI should continue to take dissuasive sanctions against FIs that do not comply with their AML/CFT requirements, and where appropriate, sanction individual senior management (none have been taken to date)."

Ireland replied that dissuasive sanctions are already fully available under the CJA 2010 against individuals who fail to comply with their obligations under the CJA 2010 in respect of AML/CFT requirements. Chapter 3 of the CJA 2010 sets out requirements in relation to customer due diligence and makes it an offence to fail to carry out such diligence. Chapter 4 and Chapter 5 sets out requirements in relation to the making, and the keeping confidential, of suspicious transaction reports, and again makes it an offence to fail to comply with these requirements. Chapter 6 sets out requirements in respect of internal policies, etc, and again creates an offence of failing to comply. Chapter 7 establishes specific requirements in respect of Financial and Credit Institutions, and again creates an offence of failing to comply. Each of these offences is punishable on indictment by an unlimited fine and up to five years imprisonment; thus, dissuasive sanctions are available to be applied against individuals including managers of FIs.

The implementation of such sanctions rests with CBI in their role as competent authority in supervising the FIs and notifying suspicions of criminal conduct to AGS, and with AGS FIU in their role as investigator of the commission of offences under the CJA 2010 should the circumstances warrant such investigation. To date, such circumstances do not appear to have arisen. It is to be noted that FATF gave a generally favourable evaluation of CBI's performance of its responsibility as a competent authority in supervising FIs, and from this it seems fair to infer that the sanctions are available, but that it has not yet proven necessary to use them. It could be argued, indeed, that they have proven their dissuasive character by that very fact.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Section 55 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the keeping of records by designated persons (financial institutions and DNFBPs).

It obliges designated persons to keep records evidencing the procedures applied, and information obtained, by the designated person in relation to customer due diligence measures. This includes keeping copies of documents used by the designated person for the purposes of CDD including all documents used to verify the identity of customers and beneficial owners. A designated person is obliged to keep records evidencing the history of services and transactions carried out in relation to each customer of the designated person. There is an obligation to retain the documents and other records during the business relationship and for a period of not less than 5 years after the business relationship has ended.

The Central Bank monitors compliance with the record keeping provisions set out in the Criminal

Justice (Money Laundering and Terrorist Financing) Act 2010 as part of its supervisory engagement programme and it takes steps to secure compliance, including remediation and administrative sanctions (if warranted).

In a number of actions taken against credit and financial institutions for breaches of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) findings were made in respect of:

- a failure to maintain appropriate records of CDD documentation obtained from customers; and
- breaches of a firm's own policies and procedures in respect of record keeping.

(b) Observations on the implementation of the article

Section 55 of the CJA 2010 provides for the keeping of records by obliged entities during the business relationship and for a period of not less than five years after the business relationship has ended.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Shell banks are prohibited under Irish law. Section 59 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides, inter alia, that a credit institution shall not enter into a correspondent relationship with a shell bank. It is also obliged to have appropriate measures to ensure that it does not enter into or continue a correspondent banking relationship that permits its accounts to be used by a shell bank.

So far, none of the settlement agreements entered into between FIs and the CBI concerned a breach of Section 59 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended).

(b) Observations on the implementation of the article

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

The Ethics Acts provide for the disclosure of interests by office holders, the Attorney General, members of the Houses of the Oireachtas (Parliament), special advisers and holders of designated directorships and occupiers of designated positions in the civil service and the semi-state sector.

The Standards in Public Office Commission's role is to supervise the operation of the Ethics in Public Office Act 1995 (the Ethics Act) as amended by the Standards in Public Office Act 2001 (the Standards Act), in so far as it concerns office holders, an Attorney General who is not a member of a House of the Oireachtas, Ministerial special advisers, designated directors and employees of specified public bodies and certain civil servants; to provide guidance and advice on the applicability of the Ethics Acts and to carry out investigations into possible contraventions of the Ethics Acts and/or Part 15 of the Local Government Act.

The investigative function of the Commission is a formalised procedure giving its Chairman statutory powers that include the power to compel the attendance of witnesses and to procure documents or other material. The Ethics Acts oblige the Commission to hold sittings for the purpose of investigations. The detailed procedure determined by the Commission for the conduct of investigations is available on the Commission's website.

Having carried out an investigation under section 23 of the Ethics Act to determine whether there has been a contravention of the Ethics Acts or of Part 15 of the Local Government Act, the Commission, pursuant to section 24 of the Ethics Act and section 180 of the Local Government Act, is required to prepare a report and to furnish a copy of the report to: the person the subject of the investigation, a person who made a complaint, where a report relates to the Cathaoirleach of a local authority, to the Leas-Cathaoirleach and the Chief Executive of the authority, where a report relates to any other member of a local authority, to the Cathaoirleach and the Chief Executive of the authority and the Minister for Public Expenditure and Reform.

In addition, section 24(2) of the Ethics Act provides that, where the Commission is of the opinion that a person the subject of an investigation may have committed an offence relating to the performance of his or her functions, it shall prepare a report in writing in relation to the matter and furnish it to the Director of Public Prosecutions.

The Commission's latest *Annual Report 2016* contains details of its various investigations into public officials. Its investigation reports are also published on the Commission's website. See, for instance: https://www.sipo.ie/reports-and-publications/investigation-reports/Brian-O-Domhnaill-Investigation-Report.pdf

The Standards in Public Office Commission's annual reports contain details of their investigations in the course of a particular year. Investigation reports are published on the Commission's website.

Where it decides to do so, the Standards Commission will carry out an investigation in accordance with the provisions of the Ethics Acts. The legislation provides that it shall hold sittings for the purpose of an investigation and that it may receive submissions and evidence as it thinks fit at such sittings. Provision is made for cross-examination of witnesses. At the conclusion of an investigation, the Standards Commission prepares a report of the result of the investigation, which is provided to the relevant parties and others specified in the legislation.

Further details of reports by the Commission are provided below:

- April 2017: Investigation Report: Mr Richard Hickey formerly a member of the Board of the Family Support Agency
- December 2016: Investigation Report: Senator Brian Ó Domhnaill formerly of Donegal County Council and Údarás na Gaeltachta
- November 2015: Investigation Report: Mr Tim Caffrey, Chief Executive, Longford County Council
- December 2014: Investigation Report: Former Councillor Dessie Larkin, Donegal County Council and the Border, Midland and Western Regional Assembly
- June 2014: Investigation Report: Councillor Pádraig Doherty, Donegal County Council and formerly Údarás na Gaeltachta
- September 2013: Record of Decision - Michael Lowry T.D.
- February 2012: Investigation Report: Councillor Oisín Quinn, Dublin City Council
- April 2011: Letter to the Minister for the Environment, Heritage and Local Government re Mayo County Council investigation
- April 2011: Investigation Report - Councillor, Donegal County Council
- March 2011: Investigation Report - Senior Executive Engineer, Mayo County Council
- May 2007: Investigation Report - Killarney Town Councillors

(b) Observations on the implementation of the article

The Ethics Acts provide for the disclosure of interests by, inter alia, members of the Houses of the *Oireachtas* (Parliament), and designated positions in the civil service and the semi-state sector. The Standards in Public Office Commission supervises the operation of the Ethics Act.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

The main legislation regulating the ethical conduct of public officials is the Ethics in Public Office

Act 1995, and the Standards in Public Office Act 2001. This legislation provides for the disclosure of registrable interests by members of the Oireachtas (Parliament) and public servants. The Public Sector Standards Bill, which is currently before the Houses of the Oireachtas, will significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, to achieve a shift towards a more dynamic and risk-based system of compliance and to ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.

(b) Observations on the implementation of the article

There are no requirements for public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship.

It was recommended that Ireland consider requiring appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

As a State is a legal body, in principle there is no reason why it cannot institute civil proceedings before the Irish Courts. State parties are automatically recognised as legal persons. However, that is not to say that issues regarding legal standing and the jurisdiction of the Irish Courts which can arise in any civil case may not arise in respect of any particular civil action instituted by a foreign State.

In relation to criminal confiscation, the Mutual Assistance Acts 2008 to 2015 provide for confiscation cooperation orders, freezing orders and forfeiture orders to be applied for and registered against property in the Irish state by designated countries on application through the Irish Central Authority.

Under Ireland's civil confiscation system, the Criminal Assets Bureau is the only body which can bring proceedings under the Proceeds of Crime Act, 1996 (as amended).

(b) Observations on the implementation of the article

As a matter of common law, foreign States have standing (*locus standi*) in Irish civil courts. They can thus initiate civil action in court to establish title to or ownership of property or seek

compensation or damages. Foreign States have to retain local counsel and the courts have discretion to require a deposit for court fees.

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

(a) Summary of information relevant to reviewing the implementation of the article

Ireland referred to its answer under Art. 53(a).

Further, under section 6 of the Criminal Justice Act 1993, a court can order a defendant to pay compensation to the victim after a conviction in criminal proceedings.

However, the practicability and/or likely success of any action by a foreign state to establish property rights or recover property is uncertain, having regard to the absence of any significant precedent for foreign States instituting (such) proceedings in the Irish courts.

(b) Observations on the implementation of the article

As a matter of common law, foreign States have standing (*locus standi*) in Irish civil courts. They can thus initiate civil action in court to establish title to or ownership of property or seek compensation or damages.

Under section 6 of the Criminal Justice Act 1993, a court can order a defendant to pay compensation to the victim after a conviction in criminal proceedings. Similarly, as clarified during the country visit, a trial court can make restitution orders in relation to offences proved under the the Criminal Justice (Theft and Fraud Offences) Act 2001 (section 56).

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Section 42 of the Criminal Justice (Mutual Assistance) Act 2008 permits a claim by the Requesting state to be made to the High Court. All communications regarding the realisation of assets are made through the Central Authority to the Requesting state. Section 53 of the Act deals with the appointment of a receiver in cases where a confiscation cooperation order for the payment of a sum of money has not been satisfied or such an order is for the confiscation of property. Section 53(6) requires the court not to take any action in relation to the appointment of a receiver unless a reasonable opportunity has been given to persons holding an interest in the property to make representations to the Court.

In addition, Section 12 of the Criminal Justice Act 1994 (as amended) provides that when considering whether to make a confiscation order under Section of the 1994 Act, the court may take into account any information placed before it that shows that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence

In addition, under the Proceeds of Crime Act 1996, (as amended), an application can be made by another State Party pursuant to Section 3(3) to show reason why the property is not the proceeds of crime and claim ownership. In addition, Section 4 of the Act provides that on application by the Criminal Assets Bureau, the Court "may make an order…directing… the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine". This latter part leaves open the possibility of transferring property to the legitimate owners.

In 2011, in a Proceeds of Crime case (i.e. non-conviction-based confiscation) brought by the Criminal Assets Bureau a sum of £300,000 sterling was forwarded to HM Courts and Tribunals Services UK in satisfaction of a criminal confiscation debt.

(b) Observations on the implementation of the article

The MLA Act contains a number of provisions (Sections 42, 51G, 53(6)) to ensure that legitimate owners of property can have their interest recognised. In addition, under Section 3(3) POCA, another State Party may make an application to show that the property is not the proceeds of crime and claim ownership.

It was concluded that Ireland has implemented this provision of the Convention.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Sections 50 to 57 of the Criminal Justice (Mutual Assistance) Act 2008 meet Ireland's obligations in this regard.

Section 50 - Transmission to State of external confiscation order, allows for an external confiscation order to be transmitted to the Central Authority in the State for enforcement. Section 50(2) sets out what must accompany the order, in order for the Central Authority to cause an application under s.51 to be made to the High Court for a confiscation co-operation order. There must be a certified copy of the order, a statement that the order is in force, not subject to appeal and that if the order was made in absentia, notice was received in good time for the person concerned to defend the proceedings. Section 50(2)(c) relates to the requirement for verification of double criminality that the conduct, if it occurred in the State, would constitute an indictable offence

Section 51 - Confiscation cooperation order, provides that the Central Authority on receipt of an external confiscation order and accompanying documents may cause an application to be made to the High Court for making a confiscation co-operation order in respect of property in the State. Section 51(4) sets out the requirements a judge must be satisfied of before an order is made, namely that the Minister has consented to the making of the application, the order is in force, is not subject to appeal, the conduct resulting in the order constitutes criminal conduct for the purpose of establishing double criminality and it is made in accordance with the relevant international instrument. Any third parties claiming to have any interest in the property must also have been given opportunity to object to the making of the order before it is made.

Section 51(5) provides an order may be varied or discharged on application by third parties claiming an interest in the property and that the court may consult with the court that made the external confiscation order in this regard. The court must vary an order in the same terms as any variation made by the court that made the external confiscation order and discharge the order if satisfied the external confiscation order has been revoked or satisfied

Section 52(1) enables the DPP to enforce confiscation co-operation orders without prejudice to s.38 which deals with the Exercise of powers by the High Court or receiver. Section 52(1) allows the DPP to make use of the full panoply of enforcement procedures which would otherwise be available in civil proceedings, i.e. distress, discovery in aid of execution, garnishee orders, bankruptcy and winding up as may be appropriate.

The prohibition in sec. 52(2) on imprisonment on foot of any of the means of execution employed pursuant to sec. 52(1) reflects the prohibition under the European Convention on Human Rights of imprisonment as a result of default in respect of civil liabilities. However, s. 52(3) provides that a person who has not satisfied a confiscation co-operation order within the time allowed may be imprisoned for a time that does not exceed the relevant period set out in the table to the section. A term of imprisonment in default of payment will not be made unless the defendant has been given reasonable opportunity to be heard and the court has taken into account anything the defendant has said and the DPP by way of reply. Section 52(5) provides that imprisonment for non-compliance with the confiscation co-operation order will not be ordered if specified in the request for the external confiscation order and in the relevant international instrument

Section 53 - Realisation of property subject to confiscation cooperation order, relates to the realisation of property which is the subject of a confiscation co-operation order and empowers the High Court, on foot of an application by the DPP, to appoint a receiver where the order is for the payment of a sum of money or for the confiscation of property that is not a sum of money. Sections 53(2) to 53(5) set out the powers that may be conferred on the receiver by the High Court and orders to persons to give possession or control or payment to the receiver relating to the realisation of the property concerned. Under s.53(6) no order shall be made if a person holding interest in the property has not been given reasonable opportunity to address the court.

Section 54 - Interest on sums unpaid under confiscation cooperation orders, mirrors that of s.21 of the

Criminal Justice Act 1994 providing that a person who defaults in paying a sum under a confiscation co-operation order will be liable to pay interest on that unpaid sum, however the interest will not be taken into consideration for the purposes of calculating any term of imprisonment under s.52.

Section 55 -Payments under confiscation cooperation orders to be expressed in euro. The purpose of this section is to ensure that payments relating to confiscation co-operation orders are to be properly expressed in euros

Section 56 - Exercise of powers under this Chapter by High Court or receiver, limits the powers of the High Court or receiver under s.53 when recovering property that is liable for recovery under the confiscation co-operation order in question. Section 56(2) should protect the interests of innocent third parties whose property may have become intermingled with a confiscation co-operation order. Section 56(3) provides that a person holding realisable property and to whom the defendant has made a gift will not have any more than the value of the gift confiscated. Section 56(4) disregards any obligation of the defendant or recipient of any gift that conflicts with the obligation to satisfy the order.

Sections 39, 40, 41, 42 and 43 apply in relation to confiscation co-operation orders as they apply in relation to freezing co-operation orders, and accordingly-

(a) references to section 36 in sections 39, 40 and 43 shall be construed as references to section 53, and

(b) references in sections 40, 41, 42 and 43 to a freezing cooperation order shall be construed as references to a confiscation co-operation order.

CHAPTER 3
Confiscation of Property

Transmission to State of external confiscation order.
50.— (1) An external confiscation order may be transmitted by or on behalf of the court that made it to the Central Authority with a request for its enforcement.
(2) The external confiscation order shall be accompanied by—
(a) a duly certified copy of the order,
(b) a statement by or on behalf of the court that made the order—
(i) that it is in force and not subject to appeal, and
(ii) that, if the person against whom it was made did not appear in the proceedings concerned, notice thereof was received by the person in good time to defend the proceedings,
(c) a brief description of the conduct constituting the offence which resulted in the making of the order, and
(d) any required translations,
and shall include any further information required by the relevant international instrument.

Confiscation cooperation order.
51. (1) The Central Authority, on receipt of an external confiscation order and accompanying documents transmitted by or on behalf of a court in a designated state other than a member state, may cause an application to be made to the High Court for an order (a 'confiscation co-operation order') for the confiscation of realisable property to which the external confiscation order relates and that is in the State.
(2) The application shall be accompanied by the request, the accompanying documents and any other related documents or by copies thereof.
(3) On the application the Court may, subject to *section 51B, 51C* or *51D*, as may be appropriate, make a confiscation co-operation order.

…

Enforcement, etc., of confiscation co-operation orders.

52.— (1) Where the High Court makes a confiscation co-operation order for the payment of a sum of money, the order may, without prejudice to *section 38* enabling property of the defendant in the hands of a receiver appointed under this Act to be applied in satisfaction of the order, be enforced by the Director of Public Prosecutions at any time after it is made (or, if the order provides for payment at a later time, then at any time after the later time) as if it were a judgment of the Court for the payment to the State of the sum specified in the order or of any lesser sum remaining due under it.
(2) Nothing in *subsection (1)* enables a person to be imprisoned.
(3) Subject to *subsections (4)* and *(5)*, if, at any time after payment of a sum due under a confiscation co-operation order has become enforceable in the manner provided for by *subsection (1)*, it is reported to the Court by the Director of Public Prosecutions that any such sum or any part of it remains unpaid, the Court may, without prejudice to the validity of anything previously done under the order or to the power to enforce the order subsequently in accordance with *subsection (1)*, order that the defendant be imprisoned for a period not exceeding that set out in the second column of the table to this section opposite to the amount remaining unpaid under the confiscation co-operation order as set out in the first column thereof.
(4) An order under *subsection (3)* shall not be made unless—
(*a*) the defendant has been given a reasonable opportunity to make any representations to the Court, and
(*b*) the Court has taken into account those representations and any representations made by the Director of Public Prosecutions in reply.
(5) A defendant shall not be imprisoned for non-compliance with a confiscation cooperation order if the request for the enforcement of the external confiscation order so specifies and the relevant international instrument so provides.
(6) Any term of imprisonment imposed under *subsection (3)* of this section shall be reduced in proportion to any sum or sums paid or recovered from time to time under the confiscation co-operation order.

(b) Observations on the implementation of the article

A foreign confiscation order from an EU member State is directly enforceable (section 51A MLA Act). Confiscation orders from other States that are designated States, may be transmitted to the Irish Central Authority with a request for its enforcement (section 50(1) MLA Act). The Central Authority may then make an application to the High Court for a 'confiscation co-operation order' (section 51(1) MLA Act); that order may then be enforced by the DPP as if it were a judgment of the High Court (section 52(1)).

With reference to the recommendation under article 55 (1) and (2) below, it was concluded that Ireland has implemented this provision of the Convention.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence

of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Ireland has both conviction-based and non-conviction-based confiscation (the latter is known as 'forfeiture').

Conviction-based confiscation

The provisions of section 117 of the 2010 Money Laundering Act allow for extended confiscation in money laundering offences where there is evidence that the property is linked to drugs. Under SI No. 540/2017 – European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulation 2017, **extended confiscation** can now be sought in relation to money laundering offences whatever the predicate offence. Therefore, extended confiscation can now be sought in relation to an offence provided for under the Criminal Justice (Corruption Offences) Act 2018.

The extended confiscation regime under section 5 of the 1994 Act and SI 540/2017 provides that an application can be made in respect of all of the finances of the person convicted of the relevant offence. It is **presumed** (subject to rebuttal) that all income generated in the six years before the defendant is charged was generated as a result of criminal activity. If the court so finds against the defendant on the balance of probabilities the court can made an order ordering the confiscation of the benefit obtained by the Defendant based on what is realisable (property that is identifiable and can be realised to meet the confiscation order directed by the court).

The convicted person is personally liable for the satisfaction of the confiscation order made and a separate order can be made to the High Court for the imprisonment of the convicted person based on a table of tariffs detailed under section 19 of the 1994 Act which depend on the size of the confiscation order granted.

Applications for Confiscation orders under SI 540/2017 and all non-drug trafficking conviction cases are made at the discretion of the DPP and heard at the discretion of the court. In drug trafficking cases there is no discretion unless it is established to the satisfaction of the court that no property can be realised as no property is available.

Non-conviction-based confiscation ('forfeiture')

Section 2, 3 and 4 of the Proceeds of Crime Act allow for the CAB to bring proceedings to seize, freeze and ultimately **forfeit** property where it is shown to the satisfaction of the court the property constitutes in whole or in part the proceeds of criminal conduct. Criminal conduct is defined broadly in the following terms and includes foreign criminality:

"'criminal conduct ' means any conduct —

(a) which constitutes an offence or more than one offence, or

(b) which occurs outside the State and which would constitute an offence or more than one offence —

(i) if it occurred within the State,

(ii) if it constituted an offence under the law of the state or territory concerned, and

(iii) if, at the time when an application is being made for an interim order or interlocutory order,

any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with the conduct is situated within the State;"

In the context of corruption, there are two cases that CAB can demonstrate where actions were taken under the Proceeds of Crime Act in respect of the proceeds of criminal conduct connected to corruption. In both instances orders were obtained by the CAB. One involves funds held in Ireland that were under the control of the family of a former Nigerian politician and another under the control of a former Thai politician.

(b) Observations on the implementation of the article

During the country visit, Ireland confirmed that the proceeds of predicate offences committed outside of Ireland would be considered as proceeds of money laundering offences if the latter occurred in Ireland. Therefore, Ireland may confiscate proceeds of foreign corruption offences through the adjudication of a money laundering offence.

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

The Criminal Justice Act 1994 allows for **NCB confiscation** in certain circumstances.

Under section 13 of the Criminal Justice Act 1994, 1994 as amended by the insertion of subsection (5B) through SI 540/2017, the High Court may make a confiscation order where proceedings have been instituted but not concluded and the defendant has absconded or where proceedings have been discontinued by reason of the defendant being ill. In the case of the defendant being ill, it is a further requirement that the proceedings could have led to a conviction if the proceedings had continued.

The office of the DPP has obtained two such orders in the past by way of application to the High Court.

The High Court can also make an order under this section if the defendant has died but only if the defendant has been convicted.

In addition, Ireland's **non-conviction-based confiscation ('forfeiture')** system is a civil process which does not require a person to be convicted of a criminal offence. The CAB only has to prove that assets are proceeds of crime ("in rem procedure").

The legislative basis of the non-conviction-based civil confiscation regime is the **Proceeds of**

Crime Act 1996 (as amended). In summary, the key provisions of this Act are:

Section 1A: Seizure and Detention of Property

Under the provisions of Section 1A(1) of the Proceeds of Crime Act 1996 (as amended) a Bureau Officer may seize property for a period of 24 hours if he or she has reasonable cause to believe it constitutes the proceeds of crime and has a value of not less than €5,000. Prior to the expiration of this 24-hour period, Section 1A(2) of the Act empowers the Chief Bureau Officer to detain this property for a further period of 21 days if the property is under investigation by the Bureau with the purpose of bringing a Section 2 or Section 3 order and if they believe the property is at risk of disposal in the interim.

Section 2: Interim Order

A Section 2 Interim Order is a court order which prohibits dealing with property and which may be obtained if the Court is satisfied, on the civil standard of proof, that such property is the proceeds of crime and has a value of not less than €5,000. Subject to any intervening proceedings, the order may stay in place for 21 days.

Section 3: Interlocutory Order

A Section 3 Interlocutory Order is a court order which, in effect, freezes the property until further notice, unless the court is satisfied that all or part of the property is not the proceeds of criminal conduct. An interlocutory order may be sought within 21 days of the granting of an interim order, although there is nothing to preclude the order being be sought in circumstances where no interim order is in place. Subject to any intervening proceedings, the order may stay in place for 7 years. The purpose of this 7-year statutory suspension period is to allow for an adequate period during which *anyone* who has a claim to a property subject to a Section 3 application, including the respondent (the person deemed in possession of the proceeds of crime), could litigate that claim.

Section 3(3): Variation Order

A Section 3(3) Variation Order under the Act is a court order either discharging or, where appropriate, varying the interlocutory order on foot of an application made by the respondent or other person claiming ownership of the property. In general terms, a variation order may be made in circumstances where it is shown to the satisfaction of the Court that the property does not constitute, or was not acquired through, the proceeds of crime and or where the Court is satisfied that the order causes any injustice.

Section 4: Disposal Order

A Section 4 Disposal Order under the Act is a court order transferring assets, which have been the subject of an interlocutory order for at least seven years, to the Minister for Finance for the benefit of the Central Fund.

Section 4A: Consent Disposal Order

A Section 4A Consent Disposal Order under the Act is a court order with the consent of all the parties concerned transferring assets, which have been the subject of an interlocutory order for less than seven years, to the Minister for Finance for the benefit of the Central Fund

(b) Observations on the implementation of the article

Under section 13(5B) of the Criminal Justice Act 1994, as amended by SI 540/2017, the High Court may make a confiscation order where proceedings have been instituted but not concluded and the defendant has absconded or where proceedings have been discontinued by reason of the defendant being ill.

Moreover, Ireland has a 'civil' non-conviction-based confiscation ('forfeiture') system. The CAB can bring 'civil' proceedings to seize, freeze and ultimately forfeit property, also at the request of a foreign country.

It was concluded that Ireland has implemented this provision of the Convention.

(c) Successes and good practices

The establishment of the Criminal Assets Bureau and a "civil" non-conviction based confiscation ("forfeiture") system was identified as a good practice.

Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

A freezing or seizure order issued by a foreign court may be enforced under section 34 MLA Act, which provides for '**freezing cooperation orders'**. Section 34(2) of the Act of 2008 clearly indicates that a request for a freezing cooperation order may also be made by a designated State that is not a Member State of the EU.

The relevant provisions relating to a decision to give effect to a freezing order issued by a court of competent authority of a State Party are set out in Section 32(2), 32(3) and 46(1) of the MLA Act (as amended) which sets out the grounds on which such a freezing order may be refused. It is a matter for the court to decide on the basis of the strength of the evidence presented by the requesting State whether or not to make the order. The evidentiary standard is a civil one (balance of probabilities).

Section 44 states that such an order shall remain in place until the High Court, under section 45, decides to vary or discharge it upon application by the Central Authority or any person affected by the order. Otherwise, the order stays in place until there is a confiscation order.

Section 34 - 39 of the MLA Act provides:

> Section 34 -Transmission of external freezing orders to State for enforcement, gives effect to arts 4 and 9 of the Framework Decision relating to external freezing orders to be enforced in the State. Section 34(1) provides for the transmission of such an order to the Central Authority. This may be subject to

change by virtue of art.4.2 of the Framework Decision if Ireland modifies or withdraws any declaration made to the General Secretariat of the Council regarding transmission through the Central Authority. Section 34(2) sets out the documents that must accompany a request from any other designated state for the enforcement of a freezing order in addition to any other requirements set out in the relevant international instrument. Section 34(3), 34(4) and 34(5) provide that the transmission of any documents must be capable of producing a written record in order for authenticity to be established by the Central Authority or the court. Section 34(6) permits the Minister to make regulations in relation to prescribing procedures and equipment necessary to ensure the accuracy of documents transmitted under this section.

Section 35 - Recognition and enforcement of external freezing orders, deals with the mutual recognition and enforcement of external freezing orders in the State. Sections 35(1) and 35(2) provide that when the Central Authority receives an external freezing order with the relevant accompanying documents, including a certificate, where appropriate, it shall cause an application, which may be made ex parte and in private to the High Court for a freezing co-operation order. In the case of a designated state (other than an EU member state) the Minister's consent is required. Once made this order prohibits any other person from dealing with the property identified in the order.

Section 35(3) gives effect to art.5.3 of the Framework Decision in relation to the State's obligation that it must deal expediently with an application for the enforcement of a freezing order under this section and where practicable within 24 hours of receiving the order and completed certificate from the member state. This obligation reflects an obligation as between the State and the requesting member state. It is clearly not intended to give rise to any actionable right on the part of a person affected by the making of the order. In practical terms, this means that the non-observation of the time limit is not something which can be invoked by anyone except the requesting member state. See Minister for Justice Equality and Law Reform v SMR, unreported, Supreme Court, November 15, 2007 in the context of the European Arrest Warrant Act 2003 where Finnegan J. held that an equivalent provision was directed towards internal discipline on the part of member states and was not intended to confer individual actionable rights.

Section 35(4) provides the order may be made subject to any conditions specified in it and subject to s.35(5) which gives the court discretion to refuse making a freezing co-operation order on grounds listed in s.3 or s.46 or postpone making the order on grounds set out in s.47. Section 3 sets out various exceptions to the general rule that mutual assistance be rendered on request. It provides that the Minister is entitled to refuse assistance where there is a concern in relation to national security, sovereignty or other concerns based on public policy. It also provides exceptions in relation to situations where there are grounds for believing that rights may be breached. Section 46 provides for specific rather than general reasons for refusing such an application as to which see below.

In accordance with art.3.2 of the Framework Decision, s.35(6) provides that the State may not refuse to make a freezing co-operation order if the conduct concerned does not correspond with an offence in the State, provided the offence is one that is encompassed in the list of offences in art.3.2, as defined in the issuing member state and is punishable in that member state by a maximum term of imprisonment of not less than three years.

Subsection 35(6) dispenses with the requirement that the 32 offences listed are subject to verification of double criminality before a freezing co-operation order may be made. Articles 3.4 and 3.5 of the Framework Decision permit member states regarding offences not listed in art.3.2, to subject the recognition and enforcement of freezing orders to the condition that the offence corresponds with an offence under the laws of the State, regardless of the constituent elements of the offence or however the law of the issuing State describes it. See Minister for Justice Equality and Law Reform v Desjatnikovs [2008] I.E.S.C. 53, regarding similar provisions in the context of the European Arrest Warrant Act 2003. See also the decision of the European Court of Justice of Advocaten voor de WereldVZW v Leden van de Ministerraad (Case C-303/05) [2007] E.C.R. I-3633 which inter alia concerned an unsuccessful challenge to Belgian Law transposing the Framework Decision on the European arrest warrant and the surrender procedures between Member States, that the removal of verification of double criminality for certain offences mentioned in the Framework Decision is contrary

to the principle of legality in criminal matters. Section 35(7) mirrors that of s.33(3) where a request from an issuing judicial authority for enforcement of external freezing order is for the protection of evidence. Any person who is or appears to be affected by the making of a freezing co-operation order under s.35(8) shall be notified unless it is not reasonably possible to determine that person's whereabouts

Section 36 -Application, etc., of freezing cooperation orders, provides for the manner in which external freezing orders are to be executed in practical terms. Section 36(2) allows the court to make appropriate provision in relation to the living and legal expenses of the person who is in possession of the property concerned. An ad hoc legal aid scheme has been put in place in relation to proceedings under the Proceeds of Crime Act 1996 (as amended). Clearly the existence of such a scheme may well dispense with the necessity of such an application at least insofar as legal expenses are concerned. The power to appoint a receiver under s.36(3) is a wide one and allows the court to make whatever ancillary orders or arrangements may be required in relation to the management of the property in question.

The power granted to members of the Garda Síochána and officers of customs and excise by s. 36(4) is a power at large rather than one which needs to be reflected in the freezing co-operation order itself. As such the intention is for such officers to seize the property once they anticipate that some attempt will be made to remove it from the State. Section 36(5) presupposes that where property has been seized under s.36(4) that such seizure will be brought to the attention of the court in order that it can thereafter regularise the situation in whatever way it deems appropriate.

Section 37 - Registration of freezing cooperation orders, provides for ancillary notification of the making of a freezing co-operation order to certain bodies.

Section 37(1) provides that where an order is made in relation to land that the appropriate notification and a copy of the order shall be sent to the Property Registration Authority who in the case of registered land shall cause an entry to be made in the register reflecting the making of the order. The nature of the entry to be made is provided for by s.37(2). Similar provisions apply in relation to unregistered land under s.37(3).

Where a freezing co-operation order is made in relation to the property or interests of a company s.37(4) provides that the Registrar of Companies shall be notified in a similar manner and requires that the notice be entered on the Register of Companies for general public inspection in accordance with s.37(5).

Section 38 - Exercise of powers under this Chapter by High Court or receiver, limits the powers of the High Court or receiver under s.36 when recovering property that is liable for recovery under any confiscation co-operation order that may be made in the defendant's case. Section 38(2) protects the interests of innocent third parties whose property may have become intermingled with a confiscation co-operation order. Section 38(3) provides that a person holding realisable property and to whom the defendant has made a gift will not have any more than the value of the gift confiscated. Section 38(4) allows the court or receiver to disregard any obligation of the defendant or recipient of any gift that conflicts with the obligation to satisfy the order.

Section 39 - Receivers: supplementary provisions, provide a statutory indemnity in respect of the actions of receivers

(b) Observations on the implementation of the article

A freezing or seizure order issued by a foreign court may be enforced under section 34 MLA Act, which provides for ‘freezing cooperation orders’.

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Domestic freezing orders, also at the request of a foreign country, can be issued under the Proceeds of Crime Act 1996 and the CAB Act.

(b) Observations on the implementation of the article

It was concluded that Ireland has implemented this provision of the Convention.

Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

(a) Summary of information relevant to reviewing the implementation of the article

Pro-active preservation orders without prior request for mutual legal assistance can be sought by the CAB. Under Sections 2 and 3 of the Proceeds of Crime Act 1996 (as amended), the Criminal Assets Bureau can apply for an order freezing property which is the proceeds of crime.

The FIU can issue administrative freezing orders for 7 days: Section 17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 allows a court, on application by the Garda Síochána, to order a person not to carry out any specified service or transaction for a period up to 28 days if there are grounds to suspect it would comprise or assist in money laundering or terrorist financing and an investigation for that ML/TF is taking place.

The MLA Act 2008 deals only with scenarios where an external freezing order has been received from a designated State. Section 9 of the MLA Act allows for the spontaneous exchange of information between law enforcement agencies. It is possible that such an exchange could result in the initiation of a criminal investigation in this jurisdiction that could result in applications being made to the courts to freeze or confiscate property.

(b) Observations on the implementation of the article

Under Section 2 and 3 of the Proceeds of Crime Act 1996 (as amended), the Criminal Assets Bureau can apply for an order freezing property without a prior request for mutual legal assistance.

It was concluded that Ireland has implemented this provision of the Convention.

Article 55. International cooperation for purposes of confiscation

Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland referred to Sec. 51 and 51A of the MLA Act.

Pursuant to Sec. 51, the Central Authority, on receipt of an external confiscation order and accompanying documents transmitted by or on behalf of a court in a designated state other than a member state, may cause an application to be made to the High Court for an order (a 'confiscation co-operation order') for the confiscation of realisable property to which the external confiscation order relates and that is in the State.

Table 1: Requests processed by Ireland's Central Authority where the offences(s) recorded included corruption, 1 January 2015 – 15 June 2018

	EU	Non-EU	Total	Requested Measure	
				Production Order	Search Warrant
IN	4	1	5	4	1
OUT	1	2	3	-	-
Total	**5**	**3**	**8**	**4**	**1**

Table 2: Requests processed by Ireland's Central Authority where the Convention quoted is UNCAC, 1 January 2015 – 15 June 2018

	EU	Non-EU	Total
IN	0	1	1
OUT	0	1	1
Total	**0**	**2**	**2**

Table 3: Confiscation requests processed by Ireland's Central Authority, 1 January 2015 – 15 June 2018

	EU	Non-EU	Total
IN	15	4	19
OUT	1	0	1
Total	**16**	**4**	**20**

Table 4: Freezing requests processed by Ireland's Central Authority, 1 January 2015 – 15 June 2018

	EU	Non-EU	Total
IN	43	11	54
OUT	2	0	2
Total	**45**	**11**	**56**

(b) Observations on the implementation of the article

With regard to the application of the provisions on cooperation in confiscation to a concrete case under art. 55, Sec. 51(1) MLA Act provides that when a non-EU member State requests Ireland to give effect to a confiscation order issued in that State, the Central Authority enjoys discretion ("may") whether or not to make an application to the High Court for an order for confiscation.

It was recommended that Ireland ensure that the Central Authority exercises its discretion under section 51 MLA Act in a way that observes the binding obligations under art. 55(1) and (2).

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The procedure giving effect to this obligation is set out in the Criminal Justice (Mutual Assistance) Act 2008 (as amended) in Sections 34 and 35 in respect of freezing and Sections 50 and 51 in the case of confiscation. Generally, an application is made to the High Court or the matter is referred to the DPP as the case may be.

(b) Observations on the implementation of the article

During the country visit, it was confirmed that there are also procedures available for identifying, tracing and seizing property following a request.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

The provisions of Sec. 50 and 51 of the Criminal Justice (Mutual Assistance) Act 2008 meet Ireland's obligations in this regard.

Section 50(2) of the MLA Act 2008 sets out the information that is required to accompany an external confiscation order and refers to the need to include any information required by the relevant international instrument.

(b) Observations on the implementation of the article

The content of requests for mutual legal assistance for purpose of confiscation is determined by the MLA Act.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

The provisions of the Criminal Justice Act 1994 and the Criminal Justice (Mutual Assistance) Act 2008 meet Ireland's obligations in this regard.

Sections 49 to 57 of the Criminal Justice (Mutual Assistance) Act apply and deal with the enforcement of confiscation orders.

(b) Observations on the implementation of the article

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland indicated that it had not furnished copies of its laws and regulations that give effect to this article to the Secretary-General of the United Nations.

(b) Observations on the implementation of the article

In the course of the country review of Ireland, the relevant laws and regulations were provided to UNODC.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland makes cooperation for purposes of confiscation conditional on the existence of a treaty. The relevant international instruments under which Ireland may offer mutual assistance for criminal investigation purposes are set out in the schedules to the Criminal Justice (Mutual Assistance) Act 2008 as amended and include Articles 46, 49, 50 and 54 to 57 of UNCAC.

Therefore, the Convention can serve as a basis for cooperation in confiscation, but additionally, a designation under the MLA Act is required. Schedule 1 of the Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012 (S.I. No. 222 of 2012) contains the list of States designated for the purposes of mutual assistance between Ireland and foreign States in accordance with Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption.

Cooperation under the CAB Act is possible irrespective of designation.

(b) Observations on the implementation of the article

Ireland can use the Convention as legal basis for cooperation in confiscation. However, Ireland can only cooperate with designated States.

The reviewers noted that the list of designated States in Schedule 1 of the Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012 contains all States parties to the UNCAC as of June 2012. Ireland took note the comments of the reviewing and the UNCAC Secretariat regarding discrepancies in the number of States designated for the purposes of UNCAC in 2012 when compared to the current number of States parties to the Convention. The matter has been raised with the Department of Foreign Affairs and it is expected that it will be addressed in the near future.

It was recommended that Ireland ensure that international cooperation for purposes of article 55(1) and 55(2) regarding Convention offences can be provided to all States parties, regardless of their designation under the 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.)

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

There is no de minimis value required to provide assistance. Ireland can provide assistance in asset recovery regardless of value.

The PoC Act contains a threshold of €5,000.

(b) Observations on the implementation of the article

Sections 3, 46 and 51B MLA Act outline the grounds for refusal of assistance, which do not include the *de minimis* value of the property.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

In relation to freezing, Section 45(1) of the Criminal Justice (Mutual Assistance) Act 2008 as amended provides that the High Court, on application by the Central Authority or any person affected by a freezing cooperation order, may vary or discharge the order.

> Section 45(2) provides that notice of an application under this section and of the grounds for it shall be given by the applicant in the manner as may be prescribed by the rules of court or as the Court may direct, to the Central Authority for transmission to the issuing State.
>
> Section 51D (1) and 51D (2) of the 2008 Act applies similar arrangements in the case of confiscation

(b) Observations on the implementation of the article

Section 51D(1) and (2) of the MLA Act as amended provide for a mechanism for the requesting State party to present its reasons in favour of continuing the measures before lifting any provisional measure. The DPP would represent the foreign State.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Anybody on notice of confiscation applications has the right to make applications to either the High Court in freezing order applications or in the Circuit Court to have their interests detached from the confiscation procedures and realised in their favour.

The Criminal Justice (Mutual Assistance) Act 2008 provides for a system of review of an order of confiscation granted by the Irish High Court on foot of a request from a designated State, including an EU Member State.

Section 51B(3) of the Criminal Justice (Mutual Assistance) Act 2008 states that the High Court shall not make a confiscation order if it is satisfied that the rights of any person holding an interest in the property concerned makes it impossible to execute that order.

Section 51D provides that the High Court may vary or discharge a confiscation co-operation order

(an order made in response to a confiscation request by a designated State that is not an EU Member State) on application by any person affected by that order.

Section 51E of the Criminal Justice (Mutual Assistance) Act 2008 provides that a person who claims to be affected by an external confiscation order issued by an EU Member State to Ireland may make an application to the High Court to vary or discharge that external confiscation order.

Further, bona fide third parties have a right in the case of Freezing cooperation orders to be notified of the granting of such orders and to make representations to the High Court for their variation or discharge.

According to section 51B(3) of the Consolidated Criminal Justice Mutual Legal Assistance Act 2008

> 3) The High Court shall not make a confiscation co-operation order or, as the case may be, shall make an order refusing the execution of the external confiscation order if it is satisfied that the rights of any person holding an interest in the property the subject of the external confiscation order concerned make it impossible to execute that order

Section 3 of the Criminal Justice Act 1994 provides:

> (2) For the purposes of this Act the amount that might be realised at the time a confiscation order is made against the defendant is-
>
> (a) the aggregate of the values at that time of all the realisable property held by the defendant, less together with the aggregate of the values at that time of all gifts caught by this Act.

Section 12 provides:

> 12.-(1) When considering whether to make a confiscation order under section 9 of this Act (but not when considering whether to make such an order under section 4 of this Act), the court may take into account any information placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.
>
> (2) Where a court makes a confiscation order, it may direct that payment of the amount to be recovered in respect of the order shall be made forthwith or at some other time specified in the order.
>
> (3) Where a court makes a confiscation order against a defendant in any proceedings, it shall, in respect of any offence of which he/she is convicted in those proceedings, take account of-
>
> (a) any fine imposed on him/her,
>
> (b) any order involving any payment by him, or
>
> (c) any forfeiture order made under section 30 of the Misuse of Drugs Act, 1977 , or section 61 of this Act.
>
> (4) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 10 of this Act or otherwise), the court may issue a certificate giving the opinion of the court as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be-
>
> (a) (in the case of a conviction for a drug trafficking offence or offences) the value of the defendant's proceeds of drug trafficking, or
>
> (b) (in the case of a conviction for an offence or offences other than a drug trafficking offence) the value of the defendant's benefit from the offence or offences in respect of which the order may be made.

(b) Observations on the implementation of the article

The rights of bona fide third parties are protected under the MLA Act (sections 51B(3), 51D and 51E) and the Criminal Justice Act 1994 (sections 3 and 12).

Further, bona fide third parties have a right in the case of Freezing cooperation orders to be notified of the granting of such orders and to make representations to the High Court for their variation or discharge.

It was concluded that Ireland has implemented this provision of the Convention.

Article 56. Special cooperation

> *Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

Section 9 of Part 1 of the Criminal Justice (Mutual Assistance) Act 2008 provides a basis for spontaneous exchanges of information by the DPP, *An Garda Síochána* and Revenue Commissioners with relevant authorities in designated States.

> **Spontaneous exchange of information**
> **9**.— (1) Without prejudice to *section 100*, the Director of Public Prosecutions, Commissioner of the Garda Síochána or Revenue Commissioners (in this section referred to as the "providing authority") may, in accordance with the relevant international instrument and without receiving a request to that effect, communicate information to a competent authority in a designated state either relating to matters which might give rise to such a request or for the purpose of current criminal investigations or criminal proceedings or of initiating either of them.
> (2) The providing authority may impose conditions on the use by the competent authority of the information so communicated.
> (3) *Subsection (2)* does not apply in relation to the competent authority of a designated state which has made a declaration under paragraph 4 of Article 11 of the Second Additional Protocol unless, as required by such a declaration, the authority has received prior notice of the nature of the information to be communicated and has agreed to its being communicated.
> (4) Any conditions imposed by a competent authority in a designated state on the use of information communicated by it to the providing authority shall be complied with pursuant to the relevant international instrument.
> (5) In this section references to a competent authority in a designated state are references to the authority in such a state appearing to the providing authority to be the appropriate authority for receiving or communicating the information concerned.

(b) Observations on the implementation of the article

The sharing of information held by An Garda Síochána with foreign countries is governed by the MLA Act. Section 9 of Part 1 provides a basis for spontaneous exchanges of information by the DPP, An Garda Síochána and Revenue Commissioners with relevant authorities in designated States. The sharing of information held by the FIU with EU Member States is governed by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended.

Police-to-police information sharing with other States would also be possible on the basis of common law.

It was concluded that Ireland has implemented this provision of the Convention.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

All money arising from **confiscation** is paid to the central exchequer under Section 22 of the Criminal Justice Act 1994. The Government can then make decisions on the return and disposal of these assets which may include returning money to prior legitimate owners.

In relation to **civil forfeiture**, Section 4 of the Proceeds of Crime Act 2005 (as amended), allows the Court to make a disposal order directing that the whole or, part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister for Finance or to such other person as the High Court may determine.

There have been no requests from EU Member States arising from which property has been returned. Disaggregated data in respect of non-EU States is not readily available.

(b) Observations on the implementation of the article

Pursuant to Section 22 of the Criminal Justice Act 1994, all money arising from confiscation is paid to the central exchequer. The Government can then make decisions on the return and disposal of these assets which may include returning money to prior legitimate owners.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities

to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Sec. 53(8) MLA Act contains an asset sharing provisions for EU member States for property above a value of €10,000.

> (8) Where property recovered by the execution of an external confiscation order transmitted by or on behalf of a court in a designated state that is a member state is a sum of money or the proceeds of a sale under *subsection (7)(b)* —
> (a) if that sum is less than €10,000, it shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct, and
> (b) if that sum is €10,000 or more, 50 per cent of the sum shall be transferred to the designated state concerned and the remaining 50 per cent shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

In the case of **embezzlement**, Sections 84-87 MLA Act contain provisions on the return of property to its owner.

Disposal orders made under the proceeds of crime legislation, may direct that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the court may specify, to the Minister for Finance or to such other person as the High Court may determine.

If there are third parties with an interest in the property, they can apply to court prior to confiscation. The court must take into account all ***bona fide*** **third-party interests** which are incumbrances on the property.

In relation to cash-based forfeitures applications under section 39 of the Criminal Justice Act 1994 (as amended), any party who has an interest in the property must be put on notice of any application for its forfeiture and are entitled to apply to court for the return of their interest if legitimate. Application must be made within two years of its seizure under section 38 (while the origin of the cash is being investigated). While the cash is being detained pursuant to section 38 any party affected by its detention may seek to have the detention order varied or discharged before the District Court. If a section 39 forfeiture order is sought in the Circuit Court any party put on notice of the application. In general, this means anybody who claims an interest in the cash may also apply to the Circuit Court for its return.

In all freezing order applications under section 24 of the Criminal Justice Act 1994 as (amended) persons affected by such orders may apply to the High Court seeking its variation or discharge in order that they may realise legitimate interests. Section 56 of the Criminal Justice (Theft and Fraud Offences) Act 2001 permits the restitution of property to third parties that was seized in connection with offences prosecuted under that Act.

Third party interests have in the past realised their interests in properties before any confiscation order was made and third parties have been notified of applications to confiscate properties where relevant so that they can apply to court. There are no legal aid provisions for third parties but in the case of freezing order applications they may apply for their costs

Confiscation applications can be brought shortly after a person has been sentenced on indictment.

In practice all parties affected by such orders would be put on notice by direction of the court of the application.

There is provision for the furnishing of compensation pursuant to section 65 of the Criminal Justice Act 1994 as amended.

(b) Observations on the implementation of the article

If there are third parties with an interest in the property, they can apply to court prior to confiscation. The court must take into account all *bona fide* third-party interests which are incumbrances on the property.

Pursuant to section 53 of the MLA Act, Ireland may return confiscated property which is not a sum of money to any designated State. If the confiscated property is a sum of money, it may be returned to a designated State that is a EU member State. However, there is no explicit legal basis for the return of confiscated property which is a sum of money to a designated State that is not a EU member State.

Therefore, it was recommended that Ireland ensure that the MLA Act clearly provides for the return of confiscated property which is a sum of money to any State party.

Subparagraph 3 of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

(a) Summary of information relevant to reviewing the implementation of the article

Ireland referred to its answers under Article 57, paragraphs 1 and 2.

In the case of **embezzlement**, Sections 84-87 MLA Act contain provisions on the return of property to its owner.

84.— (1) An order under paragraph (i) of section 56 (orders for restitution) of the Criminal Justice (Theft and Fraud Offences) Act 2001 may be made by the court by or before which a person is convicted in relation to property in a designated state.
(2) The return of property to its owner in accordance with such an order does not prejudice the rights of any *bona fide* third parties in relation to it.
(3) The Central Authority, on the application of the person entitled under the order to recover the property, shall send a copy of the order to the person or body in the designated state appearing to it to have the function of dealing with a request for the restitution of the property concerned.
(4) The request shall be accompanied by a document provided by the applicant containing—
(*a*) a statement that—
(i) a specified person obtained the property concerned by committing an offence under the law of the State, and
(ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,
and
(*b*) the following information:
(i) a description of the property;
(ii) its location;
(iii) the name and address of its owner; and
(iv) any other information likely to facilitate compliance with the request.
Request to State for restitution of stolen property.

85.— (1) This section applies to a request for property obtained by criminal means to be placed at the disposal of the requesting authority with a view to the return of the property to its owner.
(2) The request shall be in writing and shall include or be accompanied by—
(*a*) a statement that—
(i) a specified person has obtained the property by committing an offence under the law of the requesting state, and
(ii) the return of the property to its owner does not prejudice the rights of any *bona fide* third parties in relation to it,
and
(*b*) the following information:
(i) a description of the property;
(ii) its location;
(iii) the name and address of its owner; and
(iv) any other information likely to facilitate compliance with the request.

86.— (1) On receipt of the request the Minister may, if of opinion that the request complies with *section 85*, cause an application to be made to the District Court for an order under *section 87* in relation to the property.
(2) The Court shall provide for notice of the application to be given to any person who appears to be or is affected by such an order unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

Order for restitution.

87.— (1) On application by or on behalf of the Minister, the District Court may, if satisfied—
(*a*) that *sections 85* and *86(2)* have been complied with, and
(*b*) that the property concerned is in the possession or control of a specified person,

order that person to deliver the property to the member in charge of the Garda Síochána station named in the application.
(2) The Central Authority shall arrange for the delivery of the property to the requesting authority with a view to the return of the property to its owners.
(3) An order may also be made by the District Court under this section for the delivery of property which is in the custody of the Garda Síochána.
(4) An order under this section may not be made—
(*a*) where the property is required as evidence in civil or criminal proceedings, or
(*b*) unless an opportunity has been given to any person claiming to own, or have an interest in, the property to show cause why the order should not be made.
(5) A person who does not comply with an order under this section is guilty of an offence and liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.
(6) The jurisdiction of the District Court under this section may be exercised—
(*a*) by the judge of that Court assigned to the district court district in which the property is located, or
(*b*) if the property is located in more than one district court district, by a judge of that Court assigned to any one of those districts.

(b) Observations on the implementation of the article

Pursuant to section 53 of the MLA Act, Ireland may return confiscated property which is not a sum of money to any designated State. If the confiscated property is a sum of money, it may be returned to a designated State that is an EU member State. However, there is no explicit legal basis for the return of confiscated property which is a sum of money to a designated State that is not a EU member State.

Therefore, it was recommended that Ireland ensure that the MLA Act clearly provides for the return of confiscated property which is a sum of money to any State party.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Such instances would be dealt with on a case-by-case basis.

(b) Observations on the implementation of the article

Cooperation requests are, in principle, executed free of charge. During the country visit, it was added that Sec. 53(8) MLA Act contains an asset sharing provisions for EU member States. Otherwise, Ireland regularly bears the cost of cooperation.

It was concluded that Ireland has implemented this provision of the Convention.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

The need to conclude such agreements or mutually acceptable arrangements has not arisen to date in this jurisdiction.

(b) Observations on the implementation of the article

Ireland has concluded two bilateral MLA Treaties, one with the United States and the other with Hong Kong. Ireland can also conclude agreements on a case-by-case basis for the final disposal of confiscated property.

Article 58. Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

A Financial Intelligence Unit (FIU) has been established in Ireland in accordance with the provisions of the Criminal Justice Act 1994. This legislation was updated with the introduction of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, Section 42 of which provides for the reporting of Suspicious Transaction Reports (STRs). Such Reports include all suspicions of money laundering and terrorist financing along with suspicions of laundering of proceeds of corruption and related offences.

Both the FIU and the Garda Anti-Corruption Unit are constituent parts of the Garda National Economic Crime Bureau.

The FIU as such does not have the power to “freeze” funds which are suspected to be proceeds of crime at the request of another Member State. These actions are dealt with directly by the Mutual Assistance Section in the Department of Justice and Equality on foot of an MLAT. However, a member of the Garda not below the rank of superintendent can impose an administrative freeze of transactions for 7 days under Sec. 17 of the CJA 2010.

If proceeds of corruption or related offences are laundered through the Irish financial system, domestic legislation allows for the initiation of a criminal investigation in Ireland into suspected money laundering. Any assets identified as proceeds of this crime can be “frozen” and confiscated

upon conviction on indictment for money laundering or the associated predicate offence(s). These assets are then forfeited to the Irish State. The Criminal Assets Bureau (CAB) also has a role in this regard.

An Anti-Corruption Unit has recently been established within the Garda National Economic Crime Bureau (GNECB) and all financial intelligence from STRs suspected to be linked with corruption and related offences will be forwarded for investigation to this Unit.

There is dual reporting of Suspicious Transaction Reports (STRs) in Ireland, to both the Financial Intelligence Unit (FIU), and the Revenue Commissioners. The FIU is the central reception point of such reports for An Garda Síochána. The STRs are analysed to ascertain if the transactions can be linked with money laundering, terrorist financing, or other profit-generating crime, and depending on the outcome of this analysis, information contained in STRs can be disseminated for investigation within An Garda Síochána. The Revenue Commissioners use information gleaned from STRs as part of their remit in relation to the investigation of tax evasion. Bi-monthly meetings are held between the FIU and the Revenue Commissioners to discuss the STR reporting regime, and to ensure that there is no duplication of work.

Revenue receive STRs under Sec 42(1) CJA 2010 for the purpose of identifying tax and excise offences. Revenue are not a competent agency for the investigation and prosecution of money laundering or terrorist financing. Once an STR is received by Revenue it is graded by monetary value, the tax payer concerned is identified and their PPSN is added to the report which is then added to the Revenue tax payer database. The report is available on the taxpayer's Revenue profile so that Revenue officers can utilise the information to identify any suspected tax or excise offences.

(b) Observations on the implementation of the article

The FIU is part of the National Economic Crime Bureau of An Garda Síochána. It is a member of the Egmont group of Financial Intelligence Units and of the EU's FIU Platform Group.

The obligation to report suspicious transactions to the FIU is established in Ch. 4 (sec. 41 et seq.) of the AML/CTF Act.

It was concluded that Ireland has implemented this provision of the Convention.

Article 59. Bilateral and multilateral agreements and arrangements

> *States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

(a) Summary of information relevant to reviewing the implementation of the article

Ireland has MLA Treaties with the United States and Hong Kong. Schedule 14 of the Criminal Justice (Mutual Assistance) Act refers. There are no plans to negotiate further treaties at this time.

(b) Observations on the implementation of the article

It was recommended that Ireland consider concluding further bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation beyond the member States of the European Union.