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FIFTH ROUND OF MUTUAL EVALUATIONS  
"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

**REPORT ON IRELAND**

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**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**  
**REPORT ON IRELAND**

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## 1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)<sup>1</sup> on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations<sup>2</sup>, two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter<sup>3</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG<sup>4</sup>.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed<sup>5</sup>. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA<sup>6</sup>.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen<sup>7</sup>.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

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<sup>1</sup> Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

<sup>2</sup> 6546/08 CRIMORG 34.

<sup>3</sup> 10540/08 CRIMORG 89.

<sup>4</sup> 16710/08 CRIMORG 210.

<sup>5</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>6</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>7</sup> 11060/09 JAI 404.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation<sup>1</sup> visits. Ireland was the twenty-first Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Stephanie Jeavens (United Kingdom), Lucien Schiltz (Luxemburg) and Andreas Schneider (Germany). Two observers were also present: Teresa Gálvez Díez (Eurojust) and Stefan de Moor (Commission, OLAF), together with Ms Anna Lipska and Mr Peter Bröms from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place in Dublin between 4 and 8 July 2011, and on Ireland's detailed replies to the evaluation questionnaire<sup>2</sup> together with their detailed answers to ensuing follow-up questions.

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<sup>1</sup> 5046/1/09 REV 1 CRIMORG 1.

<sup>2</sup> SN 4016/10 RESTREINT UE.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1. Specialized units

In Ireland, there are several specialised units or authorities that deal exclusively or mainly with financial crime or financial investigations. These are described below.

#### 2.1.1. *Investigative authorities*

##### 2.1.1.1. **An Garda Síochána**

Most specialised units dealing with financial crime or financial investigations are units within the National Support Services of An Garda Síochána, Ireland's National Police Service. The Garda Commissioner is responsible for the general direction, management and control of An Garda Síochána. While the Minister for Justice, Equality & Defence is responsible to the Government for the performance of An Garda Síochána, it is the Commissioner who runs the organisation on a day to day basis. The Commissioner is appointed by the Government. According to the Garda website, An Garda Síochána is a community based organisation with over 14,500 Garda and Civilian employees, who serve all sections of the community.

Most relevant units are situated within the National Support Services (NSS) which is under the control of the Assistant Commissioner who directly reports to the Commissioner of An Garda Síochána. NSS consists of five units, dealing with specific aspects of crime: Garda National Drug Unit (GNDU), The Garda Technical Bureau, which includes Fingerprints, Ballistics, Mapping and Documents sections the Garda Bureau of Fraud Investigation (GBFI), the Garda National Immigration Bureau (GNIB), the National Bureau of Criminal Investigations (NBCI) which includes the Organised Crime Unit. Every unit within NSS is headed by a Detective Chief Superintendent. In addition, the Criminal Assets Bureau (CAB), a statutory agency established under the Criminal Assets Bureau Act 1996, is also supported through the NSS structures.

The Garda National Drugs Unit (GNDU) has two full time financial investigators dealing specifically with financial gains from drug crime. During the visit, the evaluation team was informed that crime prevention work is dealt with by a dedicated Crime Prevention Unit, within An Garda Síochána but that GBFI also carries out elements of crime prevention. Otherwise, work aimed at financial crimes is mainly performed by the Garda Bureau of Fraud Investigation and the Criminal Assets Bureau.

The powers utilised by both the Garda Bureau of Fraud Investigation and the Criminal Assets Bureau derive primarily from:

- Criminal Justice Act 1994
- Proceeds of Crime Act 1996(amended in 2005)
- Criminal Justice (Theft and Fraud Offences) Act, 2001
- Criminal Assets Bureau Act 1996
- Criminal Justice (Drug Trafficking) Act 1996
- Criminal Justice (Mutual Assistance) Act 2008
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- Finance Act 2011

#### **The Garda Bureau of Fraud Investigation**

**The Garda Bureau of Fraud Investigation** (GBFI) is a unit within An Garda Síochána, which deals with financial investigations, *inter alia* fraud-related crime involving complex issues of criminal law or procedure. The mission of the Garda Bureau of Fraud Investigation is the investigation of all serious fraud, computer crime and money laundering, terrorist financing and the confiscation of criminal proceeds.



According to the Garda website, the Garda Bureau of Fraud Investigation is organised into the following sections:

- Fraud Assessment Unit & Commercial Fraud Investigation Unit
- Money Laundering Investigation Unit (including the Financial Intelligence Unit)
- Cheque, Payment Card, Counterfeit Currency and Advance Fee Fraud Investigation Unit
- Computer Crime Investigation Unit
- Corporate Enforcement (Detectives from GBFI are seconded to the Office of the Director of Corporate Enforcement).

The Garda Bureau of Fraud Investigation was established in April 1995 and is based at Harcourt Square, Dublin 2. It is headed by a Detective Chief Superintendent who reports to the Assistant Commissioner in charge of National Support Services. The Garda Bureau of Fraud Investigation is responsible for the investigation of all types of financial crimes including commercial fraud, credit card and ATM frauds, internet frauds, money laundering and terrorist financing. The Garda Bureau of Fraud Investigation investigates serious and complex cases of commercial fraud, cheque and credit card fraud, counterfeit currency, money laundering, computer crime and breaches of the Companies Acts and the Competition Act. In addition a number of Garda personnel from the various Garda Divisions throughout the jurisdiction are trained to a high standard in the area of financial crime investigation. These trained personnel are utilised to investigate all types of financial crime within their area of responsibility, either at district or divisional level. Financial crime investigations cover financial gains from robberies, burglaries, organised prostitution, people smuggling/trafficking, car ringing etc., in effect all criminal conduct from which a monetary gain is derived. The Bureau's proactive fraud-prevention policy involves regular partnership with stakeholders in the business community, financial institutions, professional bodies, educational institutions and the general public.



The Financial Investigations Unit/Money Laundering Investigation Unit assists Garda Divisions in financial investigations when requested to do so and in identifying assets derived from criminal conduct. The Financial Investigations Unit/Money Laundering Investigation Unit can bring its specialised knowledge to bear on the relevant aspects of such investigations and can make use of resources not readily available at Divisional level. Information held in the Financial Investigations Unit database gleaned from the Suspicious Transaction Report (STR)-reporting mechanism is a vital component in these investigations.

The Garda Bureau of Fraud Investigation currently has a total staff of 108 including all ranks. Non-police personnel within this number include 13 civilian staff and 2 Forensic accountants. Also included in the total of 108 are the 8 staff seconded full time to the Office of the Director of Corporate Enforcement - where they investigate breaches of Company Law - and 1 staff member who is seconded full time to the Competition Authority to aid the Authority in their Cartels investigations.

Additionally 206 Garda personnel from the Garda Regions have been trained by GBFI over the years in fraud investigation techniques. Until 2010, courses were run twice per year with 25 personnel participating on each course, however, in 2010 and 2011 only one course was held.

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The following are the number of complaints that were received by the Assessment Unit in the Garda Bureau of Fraud Investigation in 2010:

<b>Total of Files Received at Assessment Office</b>	<b>Section 59's<sup>1</sup></b>	<b>Allocated to Regions<sup>2</sup></b>	<b>Allocated in GBFI (incl. Assessment)<sup>3</sup></b>	<b>Awaiting Assessment at year end</b>
<b>527</b>	<b>56</b>	<b>94</b>	<b>300</b>	<b>133</b>

The complaints that are reported to the Garda Bureau of Fraud Investigation are complex in terms of the facts associated with them as well as the proofs required by law. Every complaint received is investigated as a potential crime. Statistics are not available in regard to how many crime cases lead to financial investigations.

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<sup>1</sup> Section 59 refers to Section 59 Criminal Justice (Theft & Fraud Offences) Act, 2001 that deals with the reporting of offences by 'relevant persons' who audit the accounts of a firm or who otherwise with a view to reward assists or advises a firm in preparing accounts.

<sup>2</sup> GBFI has provided fraud investigation training to personnel in the five Garda Regions outside the Dublin Metropolitan Region. This allows the Bureau to allocate less serious fraud investigations to those personnel where the offences were committed in their region.

<sup>3</sup> Serious Fraud investigations are complex and can last for several years. They may be allocated in one year and may not be completed (file sent to the Director of Public Prosecutions) until one to two years later.

## The Criminal Assets Bureau

**The Criminal Assets Bureau (CAB)** was established in 1996. The Bureau's statutory remit is to carry out investigations into the suspected proceeds of criminal conduct. The Criminal Assets Bureau identifies assets of persons which derive, (or are suspected to derive), directly or indirectly from criminal conduct. It then takes appropriate action to deprive persons of such proceeds of crime. The legal basis for this action is the Proceeds of Crime Act 1996, as amended by the 2005 Act, and Social Welfare and Revenue legislation.<sup>1</sup>

The evaluation team was told during the visit to Ireland that the Criminal Assets Bureau is centrally funded and not through the police budget. Section 4 and 5 (in the Criminal Assets Bureau Act 1996) specifies the objectives of the Criminal Assets Bureau.

The mission of the Criminal Assets Bureau is:

- 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

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<sup>1</sup> In the context of the Criminal Assets Bureau, "Social Welfare" refers to the role of the Department of Social Protection within CAB. Up to early 2011, the Department of Social Protection was known as the Department of Social Welfare. Social Welfare Legislation refers to the 30 recent pieces of legislation listed at <http://www.welfare.ie/EN/Policy/Legislation/Acts/Pages/ActsIndexPage.aspx>. These Acts broadly give effect to various Social Welfare measures announced in annual Budgets, increases (and recently, decreases) to the various rates of payment, and the conditions for entitlement to these measures. Revenue Legislation refers to the 28 recent pieces of legislation listed at <http://www.revenue.ie/en/practitioner/law/acts.html>. These Acts broadly give effect to the various Revenue (income tax, value-added tax, capital gains tax, etc) measures announced in annual Budgets, changes to the various rates of tax, and the conditions necessitating payment of taxes or otherwise. Revenue legislation also empowers Revenue Officials, including Tax Inspectors and Customs & Excise Officers to carry out various functions in the State and at its borders. Social welfare legislation was also consolidated in the Social Welfare Consolidation Act of 2005, and Revenue legislation in the Taxes Consolidation Act of 1997.

(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).

Starting in 1996 with a staff of 20, the total number of staff at the Criminal Assets Bureau as of 31<sup>st</sup> December 2010 was 68 with one Clerical Officer vacancy. This vacancy was expected to be filled in 2011. In addition the Chief State Solicitor assigns two Solicitors, two Legal Executives and two Clerical Officers to provide the necessary legal support services to the Bureau. Following the resignation of a Solicitor in 2009, a vacancy still exists. The Bureau continues to press for the assignment of a full complement of staff in light of ongoing and increased legal services required by the Bureau.

The Criminal Assets Bureau is a multi-agency organisation consisting of members of An Garda Síochána, along with staff from Customs & Revenue Commissioners, Departments of Social Protection, and Justice & Equality and it has established its own in-house expertise which is made up of accountants, analysts and IT personnel. Staff from the Department of Justice & Equality are allocated to the Bureau while staff from An Garda Síochána, Revenue Commissioners and Social Protection are seconded to the Bureau.

The evaluation team was told during the visit to Ireland that the Criminal Assets Bureau has 6 investigation teams working on some 40 on-going cases. Some 80% of the cases are linked to drugs.<sup>1</sup> The Criminal Assets Bureau operates on a national basis. However, all of the cases of the Criminal Assets Bureau are brought to the High Court in Dublin.

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<sup>1</sup> Following the visit to Ireland, the evaluation team learnt that there are no legal or practical reasons as to why the Criminal Assets Bureau target any particular type of criminal conduct. The Criminal Assets Bureau targets all types of criminal conduct, including drug trafficking. Investigations conducted by the Criminal Assets Bureau into assets deriving from criminal conduct are governed by the available information, intelligence and evidence in relation to criminality and assets linked to such criminality. Many of the organised crime groupings targeted by the Criminal Assets Bureau have involvement in drug trafficking related activities and other criminal activities. The reference to 80% of Criminal Assets Bureau cases being linked to drugs was made in that context. Assets deriving from criminal conduct including fraud, corruption, theft, fuel laundering, cigarette smuggling and prostitution are regularly targeted.

Certain Bureau Officers attached to the Criminal Assets Bureau have also been granted specific powers arising from their assignment to the Bureau, mainly:

- Warrant to search for evidence about criminal assets (Section 14 of the Criminal Assets Bureau Act 1996)
- Production orders (Section 14a of the Criminal Assets Bureau Act 1996)

Otherwise, the agencies in the Criminal Assets Bureau brought with them their own powers. As for search warrants, the Criminal Assets Bureau has the power to search whole premises, also in the offices of accountants, solicitors and banks. The Criminal Assets Bureau can bring with them any person deemed necessary.

According to the Criminal Assets Bureau, the main source of referrals to the Criminal Assets Bureau is from within an Garda Síochána (inter alia the National Criminal Intelligence Unit (NCIU), but also Customs. The GBFI deals with the criminal side of a case, and the Criminal Assets Bureau looks into the assets and mainly deals with civil confiscation.

The basis for starting an investigation would be fulfilment of the following requirements:

- Evidence of criminality
- Evidence of assets

Intelligence would come from a wide variety of sources, including earlier convictions. The suspected proceeds of crime has to be higher than EUR 13,000. Actions by the Criminal Assets Bureau are against property, *in rem*, not persons. It is non-conviction based and the respondent is the person controlling the asset.

In its work, the Criminal Assets Bureau uses a multi-agency, multi-disciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct. It works closely with international crime investigation agencies, and has successfully targeted proceeds of foreign criminality from countries such as the US and the UK. The Criminal Assets Bureau also works with international bodies such as the European Commission and the Camden Assets Recovery Inter-agency Network (CARIN). Significant benefits accrue in the international arena from this multi-agency approach. However, there may be an obstacle to its further success as information exchange with a foreign ARO is often limited by the fact that several are mainly information exchange channels rather than operational units. In Ireland CAB is both the designated ARO and an operational unit, and will take action wherever possible.

In addition, the Criminal Assets Bureau has its own in-house solicitor who is the Bureau Legal Officer and advises the Bureau on legal matters and representatives of the Chief State Solicitors Office who prepare files for presentation in Court, are seconded to the Criminal Assets Bureau and have a presence there. The Criminal Assets Bureau engages with the Director of Public Prosecutions and its Prosecution Service in the same way as all the other law enforcement agencies do within the State and have the same level of access.

The Criminal Assets Bureau has developed a network of Divisional Assets Profilers, to date one hundred and sixty seven officers, in each of the 26 police divisions, albeit under the control of the local police chief, who are tasked with identifying possible persons for investigation where they believe such persons are in possession of assets derived from criminal activity. These profilers also carry out enquiries at the request of officials from the Criminal Assets Bureau. Each profiler is given training by the Criminal Assets Bureau following which they are given the necessary skill sets to conduct an investigation and to produce investigation files about the assets and the criminal activity of the persons under investigation. These profilers are utilised by their authorities for financial investigations and act as contact points with CAB, however in some instances they are not solely dedicated to that role.

The Criminal Assets Bureau is the designated ARO in Ireland. Its role is to receive the requests from other Member States and to carry out the necessary enquiries; the results of which are then sent back to the requesting Member State. Communication to and from the Criminal Assets Bureau is by way of email. The SIENA system is operational in Ireland at the Garda Europol National Unit. CAB does not currently have direct access to the SIENA system, but management of CAB are satisfied that ARO requests are channelled effectively and securely through the Garda Europol National Unit. CAB management are aware that the ARO platform group and the CARIN network are very much in favour of having a direct SIENA link in each ARO.

The evaluation team was told that the Criminal Assets Bureau has received 39 requests in total: 9 in 2009; 19 in 2010, and so far 11 in 2011. About 95% of them come from the United Kingdom. The Criminal Assets Bureau has sent 5 requests in total during the same period. Much of the communication goes through other channels, Europol, Interpol, etc. but also MLA are used. Even if the Irish authorities have found a lot of property abroad, it is often the case that the evidence of this is found in Ireland. Thus, no request is necessary. Moreover, the Criminal Assets Bureau has good working relationship with other Member States. Still, according to the Criminal Assets Bureau, further training is needed in the EU law enforcement community to inform about ARO.

The Criminal Assets Bureau has a closed internal database detailing all activities of the Bureau including data received, stored, investigated and actions taken within the Bureau. This database is designed to record all activities of the Criminal Assets Bureau. The information contained in this database is only available within the Offices of the Criminal Assets Bureau and is not available to outside Asset Recovery Offices or any other agencies. The data contained within the database of the Criminal Assets Bureau would include a record of all requests from other Asset Recovery Offices and all requests made to other Asset Recovery Offices in Europe and the enquiries conducted relating to those requests.



In respect of the databases, the ARO office within the Criminal Assets Bureau accesses the databases of the respective competent authorities such as An Garda Síochána (it is worth emphasising that the norm is that all reported crime is recorded on the Garda PULSE computer system), Revenue and Social Protection. It also accesses other database available to it, most of which have open source information. These databases relate to the ownership of assets within the State. They include databases relating to the ownership of vehicles, the ownership of land, the details of registered companies and businesses and the ownership of boats.

Within those databases and in particular, the Companies Office, the Criminal Assets Bureau has access to companies registered in a number of foreign jurisdictions. However, this is a limited database. In respect of the conditions of use, the ARO can access these databases at any time and do so when conducting enquiries on behalf of other AROs or internally as part of a Criminal Assets Bureau investigation.

#### 2.1.1.2. Revenue Commissioners

The Office of the Revenue Commissioners was established by Government Order in 1923. The Order provided for a Board of Commissioners. The Board comprises a Chairman and two Commissioners all of whom carry the rank of Secretary General. The Chairman of the Board is also the Accounting Officer for Revenue.

The Mission of the Revenue Commissioners is 'to serve the community by fairly and efficiently collecting taxes and duties and implementing Customs controls'.

Power to search for cash, power of seizure, detention and forfeiture of cash is provided for in the Criminal Justice Act 1994 as amended by Proceeds of Crime (Amendment) Act 2005.

A primary goal in the strategy policy of the Revenue Commissioners is to ensure that everyone complies with both their Tax and Customs/Excise responsibilities in meeting their obligations under Revenue law and that they pay the correct amount of both tax and duty when due. In the furtherance of this objective, Investigations & Prosecutions Division are charged with the task of applying appropriate sanctions to detect, to punish and thus deter non-compliance.

The Investigation and Prosecutions Division has several branches including the Customs Criminal Investigations Branch and the Taxes Criminal Investigations Branch. The Cash Investigations team is located within the Customs Criminal Investigations Branch. The Customs Criminal Investigations Branch is located within Investigations & Prosecutions Division. The remit of the Investigations & Prosecutions Division includes prosecuting customs, excise and tax offences, co-ordinating special investigation projects, intelligence development, and the management of national and international liaison and cooperation functions.

Revenue criminal investigators are authorised with specific powers under Revenue legislation to apply to the Courts for production orders and search warrants and to so execute in order to obtain information and uplift evidence in the course of investigating tax fraud/offences. The evaluation team was told that Revenue can make house-searches, in companies as well as in a private houses, under a search warrant. They do not have the power of arrest to question suspects..

The core business of the Revenue Commissioners is the assessment and collection of taxes and duties. Revenue's mandate derives from obligations imposed by statute and by Government and as a result of Ireland's membership of the European Union. In broad terms the work includes:

- Assessing, collecting and managing taxes and duties that account for over 93% of Exchequer Revenue
- Administering the Customs regime for the control of imports and exports and collection of duties and levies on behalf of the EU
- Working in co-operation with other State Agencies in the fight against drugs and in other cross Departmental initiatives
- Carrying out Agency work for other Departments

- Collection of PRSI for the Department of Social Protection
- Provision of policy advice on taxation issues.

The Investigations and Prosecutions Division (IPD) of the Revenue Commissioners investigate cases where cash in excess of €6,348 is encountered (usually at entry to or exit from the State) and is suspected of being derived from or was intended to be used in connection with criminal activity. Such cash is detained and an investigation is conducted by Revenue to identify and establish a link with criminality.

Where such link is identified a file is prepared and sent to the Director of Public Prosecutions who will decide whether an application for forfeiture of the cash should be made in the Circuit Court. The evaluation team was informed that, in Ireland, Revenue is allowed to make inland seizures of cash, and they need not be linked to drugs cases. This change was introduced in 2005. In 2010, there were 46 seizures of cash, amounting to EUR 1,711,490; the largest cash seizure amounting to EUR 670,000. At the time of the visit to Ireland, in July 2011, 14 seizures of cash had been made for 2011. A large number of the seizures are linked to drugs or cigarette smuggling.

The Investigations & Prosecutions Division of the Revenue Commissioners have responsibility for challenging and punishing serious tax evasion by carrying out criminal investigations and forwarding completed files to the office of the Director of Public Prosecutions, who is the prosecuting authority in the State. Offenders are prosecuted pursuant to breaches of the statutory provisions of the Revenue Acts. In confronting tax crimes/offences the tax evaded is pursued and both interest and civil penalties are also recovered.

As noted, Revenue do not have a dedicated financial investigation unit, however there are a number of different areas within IPD which deal with financial investigations. These include VAT/Tax evasion investigations with in the region of 50 staff, processing of Suspicious Transaction data

involving 10 staff and 5 staff involved in Proceeds of Crime/Cash Seizure investigations.. There would be a number of Criminal Taxes Investigations which involve financial investigations but are primarily focused on tax issues. During the visit to Ireland, the team was informed that there are 6 investigation teams for tax cases and 6 investigation teams for customs and excise cases, with between 3to 5 investigation staff per team.

The Revenue Commissioners prosecute 20-30 tax related cases per year; in total 131 cases were on-going at the time of the visit to Ireland.<sup>1</sup> An investigation will take some 12 months before going to court. Some 10,000 cases per year are audited.

### 2.1.2. Prosecuting authorities

The Director of Public Prosecutions (DPP) is the sole prosecuting authority in Ireland in indictable matters, including offences of a financial nature. The Office of the Director of Public Prosecutions has no role in the investigation of crime. An Garda Síochána and other investigation agencies submit files to the Directing Division of the Office of the Director of Public Prosecutions for decision. If a prosecution is directed the case is conducted by the Office of the Director of Public Prosecutions in the courts. So, when a direction to prosecute for an offence is given, the Office of the Director of Public Prosecutions is then in charge of the prosecution case. In cases of less serious offences the Director of Public Prosecutions has given consent to An Garda Síochána, without requiring an investigation file, to prosecute on behalf of the State in the Director's name.

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1 The evaluation team learnt after the visit to Ireland that, according to the Revenue Commissioners, the cases referred to were those involving serious tax fraud. They are from a broad spectrum of tax law. The majority of cases relate to VAT, income tax, capital gains tax, and corporation tax. All of the cases relate to serious tax fraud and are investigated with a view to criminal prosecution. MTIC or cases involving Intra Community VAT Zero-rated acquisitions account for 19 cases. Not all MTIC cases investigated are suitable for criminal prosecution. Following An Garda Síochána, if, during the course of the investigations being conducted by the Criminal Assets Bureau, evidence indicating that criminal revenue offences were committed is secured, files are submitted to the Director of Public Prosecutions and in some cases, prosecutions are directed. Details of these prosecutions are contained within the Annual Reports of the activities of the Bureau. On average the Bureau might bring three to four such prosecutions for revenue related offences annually.

Thus, in the vast majority of cases, the evaluation team was told, they are handled by the police only. Normally the police will have to present their case to the District Court. In some cases, the police cannot charge without the Director of Public Prosecutions, for instance murders and other serious crimes. In international cases, the Director of Public Prosecutions is always involved being the judicial part in international cooperation. All request must go here as the Director of Public Prosecutions sign them. The Director of Public Prosecutions employ barristers in serious cases, including financial crimes. The separation of the investigation power and the prosecuting power between Garda Síochána and the Director of Public Prosecutions is clearly regulated under Section 8 of the Garda Síochána Act 2005, defining the circumstances and conditions under which a member of the Garda Síochána may institute and prosecute in the name of the Director of Public Prosecutions. This section 8 seems to be the first existing statutory basis for the relationship between the members of the Garda Síochána and the Director of Public Prosecutions and allows the latter to release specific directions – related to the prosecution of a person for a specific offence – as well as general directions – related to a class of prosecution. These directions are binding and welcomed by the Garda Síochána. Up to date, two General Directions have been issued by the Director of Public Prosecutions, the first one came into effect on the 1st February 2007 and the second one on the 7th December 2009.

The Director of Public Prosecutions has no role in the investigation of financial crime. However, the Director of Public Prosecutions may from time to time request additional proofs (enquiries/investigation) subsequent to the receipt of an investigation file before determining whether or not criminal charges are to be preferred.

Although the Director of Public Prosecutions has no power to conduct or direct criminal investigations the Director's Office may from time to time provide advice with regard to evidence and procedure during an investigation. As explained to the evaluation team, the police approach the Director of Public Prosecutions a) when presenting a file for prosecution and b) when seeking guidance, for instance in financial crime cases and then for legal advice. The latter is not formalised, but rather a process where the Director of Public Prosecutions tells the police to go in a certain direction as another one will not work.

The visit to Ireland provided the evaluation team with further information regarding the organisation of the Director of Public Prosecutions. There are two legal Divisions in the Office- the Directing Division where decisions on all serious cases are made and the Solicitors Division which is responsible for the presentation of cases in the courts in Dublin, including all superior courts. There is no specialised financial crime unit within the Director of Public Prosecutions, save for the Asset Seizing Unit which is a unit that specialises in all aspects of confiscation that concerns the Director's Office. The Unit also provides internal and external training to An Garda Síochána. The Office of the Director of Public Prosecutions does not have designated staff to deal solely with financial crime cases, rather all staff deal with what arises including those cases involving financial crime. There are 24 legal officers within the Directing Division of Director of Public Prosecutions' Office, dealing with all crimes in Ireland. The work is divided between three units, each of them working with all types of crimes. However, there is some specialisation involved, as one of the teams focuses on revenue offences, another one on money laundering. There are also Units dealing with issues such as corporate enforcement, corruption and competitive infringements. The Directing Division has 9-10,000 cases to deal with per year.

The Director of Public Prosecutions can become involved at an early stage in highly complex cases such as fraud cases. Otherwise, the norm is that the Director of Public Prosecutions becomes involved only at the end of the investigation. The Director of Public Prosecutions can indict and prosecute legal persons, including the Chief Executive Officer who is also liable to prosecution.

In relation to the confiscation of assets the Director of Public Prosecutions has an important role in three areas. First, when an accused has been convicted on indictment confiscation orders can be made against the accused to deprive him of the benefits of the crime. Secondly, in summary and indictable cases the court can forfeit cash and other items which were related to the case (in drugs cases) or were used or intended to be used in relation to the case (in non-drugs cases). Thirdly, as mentioned earlier the Director can apply in civil proceedings to the Circuit Court under section 39 of the Criminal Justice Act 1994 for the forfeiture of cash which had been seized by An Garda Síochána or Revenue Officers on the basis that it represents the proceeds of crime. This power is confined to cash seizures in excess of €6,348.68. In 2009 the Director's Assets Seizing Unit obtained the forfeiture of €974,069.16 and in 2010 €2,552,376.09 under section 39.

2.1.3. *Court involvement in the pre-trial phase*

Courts are not involved in the investigation of financial crime, and there are no pre-trial judges in Ireland. As noted above the investigation of criminal offences is a matter for the law enforcement agencies i.e. An Garda Síochána and Revenue Commissioners. The prosecution of offences is a matter for the Office of the Director of Public Prosecutions. Under Irish law the judiciary have no role in relation to the investigation of offences other than for the purposes of sanctioning intrusive measures such as the search of a premises.

The issue of court involvement in the fight against financial crime was expanded upon to the evaluation team during the visit to Ireland. There are no courts in Ireland specialised in financial crimes. All cases are dealt within the general case load. There are no courts specifically established to try financial crime. The courts with jurisdiction to try financial crime on indictment (the Circuit Court) and summarily (the District Court) are both courts of general jurisdiction.

A candidate for judicial office must have a minimum level of experience in professional legal practice - 12 years in the case of the Supreme Court, High Court and Circuit Court, and 10 years in the case of the District Court. Candidates from the legal profession suitable for appointment to judicial office are identified according to specific and express criteria specified by statute following public advertisement by the Judicial Appointments Advisory Board and must undertake in writing to that Board their agreement, if appointed, to take such course or courses of training and/or education as may be required by the Chief Justice or President of the court to which that person is appointed. Appointment to judicial office is made by the President of Ireland on the advice of the Government. Appointees to judicial office will generally have considerably longer professional experience than the minimum required by statute.

The Committee for Judicial Studies has facilitated members of the judiciary in participating in seminars and conferences on the subjects of financial crime and tax offences, EU Criminal Justice Instruments and EU Criminal Justice Cooperation. Knowledge in the area of financial crimes can be gathered through the Committee for Judicial Studies. The function of the Committee for Judicial Studies is to organise conferences, seminars and lectures on legal subjects for the members of the judiciary, or through the study of bench books which are produced for criminal areas including list of statutes and jurisprudence. The object is to enhance knowledge and understanding of law and legal principles among judges with particular regard to new developments in the law, including legislation. The role of the judge in cases tried before a jury (i.e. on indictment) is to decide on legal issues and instruct the jury as to the applicable law, summarise for the jury the evidence and issues as appropriate and direct the jury as to their function in the trial. The jury in turn decides whether the prosecution's case has been proven beyond all reasonable doubt on the facts in the case. Thus, judges play a more limited role in criminal proceedings than may be the case in civil law tradition jurisdictions.

The team was told that, since 2009, legislation is in place where there is an opportunity to change how organised crime is addressed in court: non jury trials are now possible (to avoid jury tampering and intimidation) and organised crime cases can be processed through the Special Criminal Court without a jury present. Instead, the court will be presided over by three judges. The judges are specialised in organised crime, counter-terrorism, proceeds of crime etc., not through special training but through building up expertise. It is a criminal offence to participate in, or contribute to certain activities of a criminal organisation.

There is talk about setting up specific revenue courts (currently, Revenue has specific hearing days in the Dublin Courts). These would still be jury based. The Law Reform Commission has recommended that there should be no Revenue Court and that revenue cases should be heard in 'normal' courts.



There is a strong opinion in favour of creating a pre-trial preparatory mechanism in Ireland, especially for indictment cases. A number of reports and commentaries in recent years have identified a need for a pre-trial procedure to facilitate the preparation for trial of cases which may be tried on indictment. Such an arrangement would require modifications in the criminal legal aid arrangements, for instance to allow legal representatives to be paid during the pre-trial period. A new Criminal Procedure Bill is being developed to address pre-trial procedures.

*2.1.4. Other authorities involved*

There are a number of other bodies that may be considered of interest to the fight against financial crimes. These include the following outlined below.

2.1.4.1. The Office of the Director for Corporate Enforcement

**The Office of the Director for Corporate Enforcement** (ODCE) (website [www.odce.ie](http://www.odce.ie)), which was established under the Company Law Enforcement Act 2001, is an Office attached to the Department of Jobs, Enterprise & Innovation (D/JEI) but the Director is statutorily independent. Among the ODCE's functions are the investigation of criminal offences under the Companies Acts. The Office has no prosecution powers in relation to non-Companies Acts offences but can provide cooperation to bodies such as the Gardaí, Revenue, the Central Bank and the Competition Authority. The ODCE also has a significant role in relation to the conduct of directors of insolvent companies.

It has the power to prosecute certain criminal offences on a summary basis (i.e. in the District Courts); more serious offences are prosecuted in the Circuit Courts on the Office's behalf by the Office of the Director of Public Prosecutions. In addition, the Office has the power to initiate civil proceedings in the High Court.

ODCE investigations are conducted into a range of matters, some of which have a financial dimension but for which the broad description "financial crimes" would not be appropriate. However, it should be noted that the large-scale investigation into matters in Anglo Irish Bank Ltd is being conducted by a combination of Garda Bureau of Fraud Investigation and ODCE personnel and is currently the predominate focus of the Office and its personnel.<sup>1</sup>

Typical offences which are prosecuted (and which have resulted in approximately 300 convictions since the ODCE's establishment) would be:

- failure by a company and its directors to keep proper financial books and records
- persons acting in breach of High Court restriction and disqualification orders (e.g. acting as a company director while being barred from doing so)
- persons and firms carrying out statutory audits while not qualified to do so
- the submission of falsified information to the Companies Registration Office companies advancing loans to their directors in excess of prescribed limits.

While some suspended custodial sentences have been imposed by the Courts in these cases, the penalties are normally financial (up to a maximum of €1,900 per charge at District Court level). The ODCE has certain powers to seek Court orders restraining directors and others from moving assets (under Section 55 of the Company Law Enforcement Act 2001).

The origin of many of these prosecutions is Indictable Offence Reports submitted by statutory auditors, who have a legal responsibility to report such matters and to provide subsequent cooperation to the ODCE. Among the investigative tools available to the Office, in certain circumstances, are the power to demand certain company documents, to execute search warrants, to arrest persons and to inspect bank account details.

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<sup>1</sup> The evaluation team learnt after the visit to Ireland that this is a joint investigation team. Section 3 of the Company Law Enforcement Act 2011 defines an officer of the Director of Corporate Enforcement as including a member of An Garda Síochána on secondment to the Director of Corporate Enforcement. The Government decision "S228463" of 9th March 1999 approved the assignment of 1 detective Inspector, 2 Detective Sergeants and 4 Detective Gardaí from An Garda Síochána to the office of the Director of Corporate Enforcement.

The Office is based in a single location in Dublin and comprises approximately 50 staff, some recruited directly for the Office (legal and accountancy staff), with the balance moving to and from other parts of the Department of Jobs, Enterprise & Innovation (D/JEI). The Garda Unit in the ODCE comprises approximately 10 officers on secondment from the Garda Bureau of Fraud Investigation and is managed by a Detective Inspector.

#### 2.1.4.2. The Central Bank of Ireland

**The Central Bank of Ireland** is important in this field as well. One of the main roles of the Central Bank is the proper and effective regulation of credit and financial institutions. The Central Bank's supervisory departments investigate regulatory breaches or complaints about regulated entities and refer any criminal matter to the Gardaí. The Central Bank has no responsibility, in the capacity of a competent authority, in the detection and enforcement of fraud.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("the CJA 2010") designated the Central Bank as the competent authority for financial institutions under the national AML-CTF regime. The CJA 2010 requires the Central Bank to effectively monitor financial institutions and take measures reasonably necessary to secure compliance by financial institutions with the obligations imposed upon them by the CJA 2010. A new unit has been set-up within the Bank's Enforcement Directorate to oversee the performance of its AML-CTF functions. The unit has recruited specialists<sup>1</sup> from industry to provide experience of and insight into industry practice. The Financial Sanctions unit is responsible for the enforcement and administration of EU financial sanctions in Ireland, including those relating to terrorism. It also issues notifications advising of the introduction, amendment, suspension or lifting of financial sanctions regimes with a view to making entities and individuals affected by financial sanctions aware of their obligations.

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<sup>1</sup> There are currently ten people within the AML-CTF unit and it is hoped by the Irish authorities to have conducted 44 on site and desk top inspections of designated persons by the year end.

## 2.1.4.3. The Competition Authority

**The Competition Authority** ([www.tca.ie](http://www.tca.ie)) is the State body responsible for enforcing Irish and European competition law in Ireland. It investigates anti-competitive practices such as cartels and price fixing. There is one Police financial investigator on secondment to this agency. The Competition Authority also has a specific investigative role in the investigation of breaches of Competition Law and a Garda officer is seconded full time to aid the Authority in its criminal investigations. Indictable matters are referred to the Director of Public Prosecutions.

The Authority is an executive office attached to the Department of Jobs, Enterprise & Innovation. The criminal breaches of the Competition Act might be better described as white collar crime rather than financial crime. For example, it is a criminal offence to enter into a price fixing or bid rigging agreement with another or other conspirators even if the agreement was never actually implemented. The fruits of entering into and implementing agreements on prices or market sharing or bid rigging is often described as "unjust enrichment", as opposed to theft or fraud.

The Cartels Division of the Competition Authority investigates alleged breaches of competition law which are considered to be "hard-core" competition offences.<sup>1</sup> Other breaches of competition law are prosecuted through the civil courts.

In the field of cartels, practices may take different forms but they all constitute criminal offences under the Competition Act 2002 because they all involve specifically prohibited activities (fixing prices, sharing markets or limiting access to goods or services). Cartel agreements are serious offences under section 4 of the Competition Act 2002 and Article 101 of the Treaty on the Functioning of the European Union (TFEU). Businesses and individuals found guilty of hardcore cartel offences face serious penalties, including fines of up to €4 million and imprisonment of up to 5 years.

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<sup>1</sup> "Hard-core" competition offences are best explained and understood to mean as those breaches of the Competition Acts that would cause the greatest economic harm to the consumer and to the economy. As such, "hard-core" offences would be treated as criminal investigations and prosecuted in this jurisdiction in the Criminal Courts.

Cartels are criminal conspiracies that are often very complex and uncovering them requires specialised investigative skills. Staff who investigate cartels include former members of An Garda Síochána and of other law enforcement agencies involved in the investigation of complex white-collar crimes, as well as individuals with experience in competition law enforcement from other jurisdictions around the world. In addition, a Detective Sergeant with the Garda Bureau of Fraud Investigation is seconded to work full-time with the Cartels Division and is designated as an authorised officer of the Competition Authority. The Competition Authority has search, summons and arrest powers under the Competition Act. Investigations involve forensic examination of documents, electronic data etc., interviewing of suspects, collation of witness statements etc. Where the Competition Authority obtains enough evidence of a cartel, it submits a file to the Director of Public Prosecutions with a recommendation that the parties involved be prosecuted on indictment. Indictable competition cases are prosecuted through the Central Criminal Court. If the Authority believes that the case is not serious enough to warrant prosecution on indictment, the Authority itself may bring a summary prosecution in the District Court where the maximum penalty is a fine of €3,000.

## **2.2. Training**

### *2.2.1. An Garda Síochána*

As noted above, some 206 Garda personnel from the Garda Regions have been trained by GBFI over the years in fraud investigation techniques. Courses were run twice per year with 25 personnel participating on each course, however, in 2010 and 2011 only one course was held.

The Money Laundering Investigation Unit (MLIU) within GBFI also runs a training course once a year to train Financial Investigators from the Dublin Metropolitan Region and the other five Garda Regions. To date 56 investigators have been trained to enable them to conduct financial enquiries in the Regions with support from the MLIU when required.

Gardaí are trained internally (classroom and placements) to equip them with all the skills and tools essential in the investigation of financial crimes.

Trained Garda detectives are supported by trained computer forensic investigators, and forensic accountants. Internal training in the area of financial investigations is provided together with European Union funded exchange programmes for financial investigators. Courses provided under the auspices of CEPOL are also utilised to enhance the level of expertise available to the units.

The Financial Investigation Unit/Money Laundering Investigation Unit conduct a number of training courses specifically for Detective Sergeants based in each Garda Division tasked with investigating Suspicious Transaction Reports (STRs). These courses are held twice yearly or as the need arises.

Presentations are given to members of An Garda Síochána attending Detective Training Courses, Fraud Investigation Courses and Divisional Asset Profilers Courses in order to increase their knowledge and investigative skills when dealing with financial crimes.

Presentations are also given to the various "designated persons"<sup>1</sup> as a training tool to increase their awareness of current money laundering/terrorist financing trends, typologies and how STRs are investigated.

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<sup>1</sup> The definition of a "designated person" is set out in Section 25 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. There, it is stated that a "designated person" means any person, acting in the State in the course of business carried on by the person in the State, who or that is—

- (a) a credit institution, except as provided by *subsection (4)*,
- (b) a financial institution, except as provided by *subsection (4)*,
- (c) an auditor, external accountant or tax adviser,
- (d) a relevant independent legal professional,
- (e) a trust or company service provider,
- (f) a property service provider,
- (g) a casino,
- (h) a person who effectively directs a private members' club at which gambling activities are carried on, but only in respect of those gambling activities,
- (i) any person trading in goods, but only in respect of transactions involving payments, to the person in cash, of a total of at least €15,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other), or
- (j) any other person of a prescribed class.

The Financial Investigation Unit /Money Laundering Investigation Unit also participates and delivers presentations when requested, at various international fora including CEPOL Courses, Europol meetings - AWF Sustrans & AWF Hydra and courses run by the FBI and other agencies.

The Divisional Criminal Assets Profiler Programme continued throughout 2010 with the training of fifty one additional Criminal Asset Profilers (forty seven of which were Gardaí and four Customs Officers). This increased the number of trained Criminal Asset Profilers to one hundred and sixty seven. The Divisional Criminal Asset Profilers continue to liaise and assist the Bureau with investigations within their respective Divisions and Districts. In addition, Criminal Asset Profilers prepare profiles on criminals operating within their operational area and refer these profiles to the Bureau for consideration of action pursuant to the Bureau's statutory remit.

#### 2.2.2. *Revenue*

General training in the examination of company accounts is provided to all Revenue staff involved in audit/financial investigations.

Revenue officials involved in cash seizure investigations receive in-house enforcement training which includes a specific Cash Seizures Course, evidence gathering, questioning & interviewing techniques and courtroom procedures.

Specialised skills are acquired through in-house training modules, e.g. search of premises courses, court skills courses, etc, together with extensive experiential learning opportunities, to optimise the training needs of Revenue's criminal investigators.

#### 2.2.3. *Prosecuting authorities*

As for Prosecuting authorities, the Director of Public Prosecutions' Office has Units specialising in the following areas of financial crime: assets seizing, company law, money laundering, revenue offences, people trafficking, competition cases and corruption. The Office provides in house

training and provides access to appropriate training. The Office has also contributed to Garda training programmes for financial profilers run by Garda Bureau of Fraud Investigations and CAB and has conducted seminars on conviction based asset confiscation to Dublin and Regional Garda drug units.

### 2.3. Criminal policy

As explained during the visit to Ireland there is currently no formal crime strategy document in Ireland. However, the process of formulating the Policing Strategy and subsequent Annual Policing Plans (as provided for in the Garda Síochána Act 2005) was expanded upon to the evaluation team. In setting the three year Policing Strategy and the Annual Policing Plan, there is consultation between the Ministry of Justice, An Garda Síochána and the Revenue Commissioners so as to identify priorities and set down a planned response. Both the three year Policing Strategy and the Annual Policing Plan are influenced by the OCTA. In addition, from time to time, directives are issued by An Garda Síochána with regard to particular matters e.g. Garda HQ Directive 16/2010 (Financial Crime Strategy).

Furthermore, the Ministry of Justice is currently working on a White Paper on crime which will look at a broad range of measures to combat crime. Other policy papers which would also inform legislative proposals supporting the fight against crime include the Government Programme (which currently includes a focus on proceeds of crime, white collar crime and cybercrime), and the work of the Law Reform Commission which keeps the law under review and makes recommendations for law reform.

The key question related to criminal policy is if, and to what extent, criminal investigations in Ireland are driven by a "proceeds-oriented" policy and which authorities are involved.



In cases where it is believed that an individual has benefited from criminal conduct, there is now internal Garda policy relating to the preparation of a financial profile with a view to identifying assets of persons being tried on indictment for profit-generating crimes so that the trial judge can determine the actual benefit realised by the accused/convicted person. Garda policy also stresses the necessity to be mindful of the potential for monetary gain by individuals involved in criminal enterprises.

From a Criminal Assets Bureau perspective the Bureau takes action pursuant to its statutory remit against assets which represents directly or indirectly the proceeds of criminal activity; this includes action under the Proceeds of Crime Act 1996 and the Proceeds of Crime (Amendment Act) 2005, Revenue legislation and the Social Welfare Acts.

Criminal investigations in Ireland are not driven by a "proceeds orientated" policy. The success of the Criminal Assets Bureau had, in the past, left many investigators with the view that the responsibility for the target and forfeiture of criminal assets rests purely with the Criminal Assets Bureau. Few had a full understanding of the benefit of the utilisation of the criminal model of asset forfeiture. This is a view not held by the Director of Public Prosecutions who has, with the assistance of the Garda Commissioner adopted a policy of informing all stakeholders of the benefits of this model with a view to extended use thereof. This policy includes the training of "Divisional Profilers" in each Garda area who have a prime responsibility to assist investigators in the identification of assets which are the proceeds of the criminal activity which is being investigated. The Criminal Assets Bureau provides the training, as does the Assets Seizing Unit of the Director of Public Prosecutions' Office.

As to whether there is an official investigation or prosecution policy to trace crime proceeds (financial investigation), and on what is it based, the Irish authorities noted that the organisation with primary responsibility for the tracing of the proceeds of criminal assets is the Criminal Assets Bureau. It has available to it the non-conviction based remedy referred to above together with its own specific search warrant. On occasions when its investigation is complete and if it views the

criminal model as a better legal remedy, the Bureau will inform the Director of Public Prosecutions and provide all necessary information and evidence to assist the Director, should she consider it appropriate to proceed. The Bureau will also investigate criminal cases and submit a file to the Director of Public Prosecutions for directions. A number of high profile cases have been prosecuted as a result. After the mission to Ireland, the evaluation team learnt that in almost all cases brought by the Office of the Director of Public Prosecutions under the Criminal Confiscation legislation, it would also be possible to bring proceedings under the civil Proceeds of Crime Legislation. There are currently twelve cases where the Bureau is assisting the Office of the Director of Public Prosecutions with Criminal Confiscation proceedings.

Acquisitive crime such as theft in all its various forms is accorded significant priority in terms of investigation and prosecution policy. It is the norm that all reported crime is recorded on the Garda PULSE computer system and each crime, be it acquisitive or another form of crime, is investigated to a conclusion. PULSE is accessible to all officers of Garda Síochána. If the crime is summary (minor) in nature it can be prosecuted in the District Courts by the Gardaí without reference to the Office of the Director of Public Prosecutions. If the matter is indictable directions as to prosecution and Court venue will be given by the Director of Public Prosecutions.

According to An Garda Síochána, freeze, seize and confiscation are motivation at early stages of an investigation. However, the tracing, seizing and confiscation of assets is not a separate goal in criminal investigations. It would be seen as part of the criminal investigation assisted by the divisional profiler. As stated before, divisional profilers will enjoy the benefit of training from the Criminal Assets Bureau. However completely separate from a criminal investigation, the Criminal Assets Bureau (Assets Recovery Office in Ireland) has a separate specific statutory obligation, objective and function to trace, seize and confiscate the proceeds of criminal conduct, whether or not a person has been convicted in relation to it.

In addition to the issues above, the Department of Justice & Equality presented a comprehensive picture of on-going legislative work to the evaluation team. The Criminal Justice Act 2011 was passed in August 2011. The Act's provisions are based on the experiences of those involved in investigations and prosecutions of financial crime, and in particular on the experiences of those involved in current investigations. The Act aims to facilitate the more effective investigation of financial crime and to reduce associated delays. For instance, the Act includes a new power for An Garda Síochána to apply for court orders to require witnesses to produce documents, answer questions and provide information. The court may also order documents to be identified and categorised in a particular manner when they are produced. This measure is aimed at reducing delays associated with the production of large volumes of poorly ordered and uncategorised documents. Another key provision is a new system to make more effective use of detention periods where a person is being questioned about a relevant offence.

The Ministry of Justice is also reviewing its Proceeds of Crime legislation with a view to identifying possible improvements which would serve to strengthen the operation of the Criminal Assets Bureau. At European level, the Ministry of Justice is anxious to explore further possibilities to enhance cooperation at European level in the confiscation of proceeds of crime including the possibility of enhanced cooperation in the context of non-conviction based regimes such as that operated by the Bureau.

The current MLA legislation is also being amended and should be enacted and verified early next year. The legislation gives recognition to about 12 international agreements. It will introduce the Framework Decision on confiscation, the strengthened Eurojust Decision of 2009 and mutual recognition of financial penalties. In short, many Framework Decisions and international instruments will be worked into one legal instrument. Ireland is also working on legislation about the Framework Decision on Europol.

The Ministry of Justice accepts the need to introduce the new tools, and also see the benefit of a common legal basis. One problem regarding EU legislation, however, is that the EU does not amend legislation but rather replaces legal acts. This creates problems at the national level and a stop-start system.

## 2.4. Conclusions

- The distribution of powers seems to be quite strong in Ireland, with all agencies and relevant actors having a clear mandate assigned to them. The formal separation of powers is followed by informal processes. For instance, the Revenue Commissioners is in constant contact with the Director of Public Prosecutors and Garda from an early stage of investigation. No formality is required, and no Memorandum of Understanding in place, but, as noted by all parties involved, it is deemed to be very efficient. This informal setup could also be its weakness. There are no clear structures to assess the quality and regularity of these meetings and, although the separation of powers seems to be quite strong, the question remains whether there are guidelines for how to make decisions, *inter alia* when competencies are overlapping.
- The Irish law enforcement agencies have an impressive crime prevention system in place. For instance, they have alerts on public TV, in newspapers as well other publications, partnerships with selected private companies – mostly in the university domain – conferences, and presentation material which is at the same time informative and easily accessible. A specific media strategy has been established under the responsibility of the press office. The presence of dedicated Crime Prevention Sergeants at the local level is another good example.
- The Garda Bureau of Fraud Investigation is responsible for the investigation of all types of financial crimes. This broad remit helps in avoiding turf battles and is an efficient setup for professional resource allocation. The agency employs a total staff of 108 including all ranks. This is a respectable amount of staff, not least considering the relatively small police organisation at hand.
- According to Garda, freeze, seize and confiscation are motivation at early stages of an investigation and form part of the criminal investigation assisted by the divisional profiler.

- The setup with Divisional Assets Profilers is a very noteworthy example of spreading the good practise of the criminal model of asset forfeiture. However, as these profilers are not solely used for financial investigations, there is a constant risk that they will be used for other purposes, such as criminal investigations without a financial dimension.
- An Garda Síochána regards the fact that there is only one national police force as a considerable advantage. The relative ease with which a centralised police system can work efficiently is worth emphasising. The same is true for the DPP and Customs. Even if the model cannot easily be transferred to other jurisdictions, the model is nevertheless a useful such for others to study.
- The total number of staff at the Criminal Assets Bureau as of 31<sup>st</sup> December 2010 was 68. This is a respectable amount of staff. The Criminal Assets Bureau is a multi-agency organisation which uses a multi-disciplinary partnership also with international partners. This is a very good organisational setup, and should be highlighted as a good practise for other Member States as well. Another good practice is that the agencies in the Criminal Assets Bureau bring with them their own powers, complementing one another and thus promoting efficient operational work.
- Basically, investigations within the Revenue Commissioners are pursued either "backline", meaning by auditors trailing through the paper trail in tax investigations, or "frontline" by Customs studying the movements of containers etc. Sometimes, as in VAT cases, both will be applied. Considering the amount of time which has to be invested in "backline" investigations, and its benefits in terms of crime fighting, it would be advisable to strengthen this branch of the Revenue Commissioners.

- All fiscal fraud is investigated by Revenue. The Admission's Committee of the Revenue Commissioners meets twice a month to look at what cases to take on as tax related criminal investigations. Customs and Excise fraud cases are not discussed by the Admission's Committee; only tax cases. The system with a constant dialogue in place enables an efficient prioritisation between cases. Considering the resource requirements which tax related investigations may entail, this is a necessary and simple model for levelling out possible hindrances between or linked to individual cases. Revenue have clear guidelines on the criteria required for the selection of cases for criminal investigation with a view to prosecution.
- Formally, the Director of Public Prosecutions does not play a role in criminal investigations other than to offer advice to the investigators. In practical terms, the Director of Public Prosecutions of course play a vital role, if nothing else since they at the end decide to prosecute. When the relationship between the Garda and the Director of Public Prosecutions is viewed in this light, the similarities to other, continental, systems are quite clear. The relatively small staff of the Director of Public Prosecutions is understandable in the Irish system,.
- Although the Director of Public Prosecutions has no power to conduct or direct criminal investigations the Director's Office may from time to time informally provide advice with regard to evidence and procedure during an investigation.
- Within the Office of the Director of Public Prosecutions, there is usually no involvement in investigation of cases from the beginning. which could have an effect on how good they can get into the cases at hand. According to the Office of Director of Public Prosecutions they have relatively few complex financial crime cases every year. The financial crime cases they deal with are often rather straightforward. However, they noted that when they get a large case they exceptionally form a group of various experts (to deal with many documents due to the complexity of case).

- Apart from specialised investigative services, there are a number of other bodies that are of interest to the fight against financial crimes. These include:
  - The Office of the Director for Corporate Enforcement, responsible also for the investigation of criminal offences under the Companies Acts;
  - The Central Bank of Ireland, with one of its main roles being the proper and effective regulation of credit and financial institutions;
  - The Competition Authority, which is the State body responsible for enforcing Irish and European competition law in Ireland.
  
- At a general level, there are codes of conduct and public procurement guidelines in Ireland which are used for knowledge purposes. The Standards and Public Office Commission (which is an independent body) provides much of the general guidelines and investigates complaints regarding ethical standards. The Control and Auditor General's Office checks that EU standards are upheld.
  
- The Garda is free to use external experts but prefers to build its own in-house capability of specialists, such as accountants and lawyers. The gathering of expertise among Garda officers is a good practice worth highlighting, together with their extensive training. Internal training is compulsory for staff working in GBFI and CAB as in all Garda Units. Detective Training Courses are also mandatory for all staff appointed to GBFI or CAB. Generally provided Continuous Professional Training is also compulsory, though is also resource intensive and may suffer from cutbacks. Moreover, even if the staff get a percentage of a grant to cover costs of studying, it seems that the Garda staff working with financial crime are burdened by such heavy workloads that unfortunately may hinder them from following additional training courses. However, GBFI and CAB have procedures in place to balance workload with the necessity to have investigators fully trained, and several staff members have successfully undertaken third level courses.

- Garda also give training to other institutions, for instance on money laundering to banks, thus also enabling further good contacts with agencies and stakeholders outside Garda. Revenue provides regular feedback sessions with the Money Laundering Reporting Officers (MLROs).
- There is no centralised training focusing on financial crime, but some 150 Garda and 17 Revenue officers provide training in the field. Everyone gets an induction course and a 2 week GBFI course on fraud investigation, and staff could continue to get accredited by the University of Limerick. The Criminal Assets Bureau also has trainers who give training all across the world and bring back knowledge to the rest of the staff. According to the agencies themselves, they are quite progressive when it comes to training. There is no question about the agencies taking training and expertise seriously. However, it would be advisable to have a mandatory set curriculum about financial crime obligatory to pursue for all staff working, or intending to work, in this area. Senior investigators undergo the Senior Investigating Officers training course at the Garda Síochána College which is a Diploma level training course. All training programmes would also benefit from having a nationally recognised qualification attached.
- Although there is no formal crime strategy document available (see 2.3. above), the building blocks for a clear, strategic view on crime fighting seems to be in place in Ireland. This is particularly the case with a view to policing. Even if the white paper about crime will not be a binding document providing ground for legislative proposals, it should nevertheless be a strong policy signal in the future. Given the Irish approach when it comes to prevention and pro-activity, especially in view of how Ireland manages to engage the private sector, such a strategy document would be valuable also for others. This is a good practise worth promoting elsewhere. Also, with a focus on financial crime, a specific financial crime plan would be useful and interesting to others in view of how the various competent authorities are engaged.



- The Garda Commissioner sets the policing strategy in Ireland.<sup>1</sup> The strategy is based on input from the agencies, and the Minister of Justice will get policy input from this work. For instance, the ENU and NCIU produce the OCTA contribution which is also used for domestic purposes. Thus, there is a joint approach in place for formulating both threat and strategy. As Ireland is a small country, the agencies involved are in regular contact. National law sets out the steps necessary to take for the policing strategy, and there is a legal requirement in place to publish strategies. The Irish approach is commendable. The formulation of strategic directions based on a clear view of the threat is a very fruitful way forward, and guaranteeing the link between the two parts in the Irish policy cycle (Ministry of Justice and agencies) almost guarantees it success. The informal way this is done is complemented by strict rules on how to do it, and also a clear requirement to be transparent about the work. This balances the need for efficiency with the general public's right to be informed in a very tasteful manner.
- Revenue is consulted by the Department of Justice & Equality on relevant emerging Criminal Justice legislation. Revenue were also consulted when the White Paper on White Collar Crime was being drawn up. Revenue draws on its own sources but also input from the Criminal Assets Bureau and Garda - especially through the cross-border working group - to produce the Revenue report which is operational in nature, intelligence-oriented and setting national targets. If possible, it would be advisable to bring the Revenue Commissioners closer to the overall policy setting work. Their role in crime fighting is invaluable, and with a particular view on financial crimes, they are in many respects at the frontline of the fight. It seems that the Revenue Commissioners direction is quite specific in scope, setting operational targets in a yearly basis rather than formulating a wider crime fighting strategy.

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<sup>1</sup> The Annual Report of An Garda Síochána 2010 provides a summary of the activities of the organisation and its various specialised units during 2010. Various policing priorities and strategies, and their subsequent outcomes are reflected in the text. These are assessed by internal audit, and by input from community organisations and statutory bodies such as the Central Statistics Office.

- Much work is being undertaken in Ireland with amendments to legal acts which are intended to improve the conditions for crime fighting authorities in the country and align legislation with EU Framework Decisions. For instance, the Criminal Justice Act 2011 aims to facilitate the more effective investigation of financial crime and to reduce associated delays. Its provisions are based on the experiences of those involved in investigations and prosecutions of financial crime, and in particular on the experiences of those involved in current investigations. The process leading up to the passing of the Act is again a good illustration of the close and good relationship between the Department of Justice, other Government Departments and the agencies, where identified difficulties in financial investigations are dealt with by legislative proposals.

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### 3. INVESTIGATION AND PROSECUTION

#### 3.1. Available information and databases

There is no national database in respect of bank accounts in Ireland. National databases are available in respect of:

- Real Estate: Property Registration Authority (land registry) ([www.landregistry.ie](http://www.landregistry.ie))
- Companies: Companies Registration Office (CRO) ([www.cro.ie](http://www.cro.ie))
- Vehicles: National Vehicle and Drivers File. This database is maintained by the Department of Transport, and is not available to the general public.

While there are registers of boats maintained by a number of State agencies by reference to their respective roles, there is no single compulsory database for all boats.

##### 3.1.1. *Bank accounts*

As stated above, there is no national database in respect of bank accounts in Ireland. There are no provisions in Irish Law to provide for a "trawling exercise" to be conducted when searching for individual bank account information. There is a national database held by the Gardaí and the Revenue Commissioners, of bank accounts where suspicious transaction reports have been made. This database is used by the Revenue Commissioners to source cases for investigation. Similarly there are databases held by the Revenue Commissioners of accounts returned by financial institutions in the context of reporting of interest payments as required by Irish legislation and the EU Savings Tax Directive. In cases where it is suspected that an individual is involved in money laundering/terrorist financing, "a credit institution or financial institution that is a designated person shall have systems in place to enable it to respond fully and promptly to enquiries from the Garda Síochána" (Section 56 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010).

3.1.2. *The Property Registration Authority*

**The Property Registration Authority** holds information about owners of properties, land etc. (however this is not exact as ownership does not by law have to be registered). For those that are registered it will generally give previous owner and Solicitor handling the conveyance. The majority of the Property Registration Authority's services are available online to subscribers. The Property Registration Authority provides Government Departments, Offices and Agencies on request with access to its database free-of-charge.

3.1.3. *Companies Registration Office*

Information that is available via the **Companies Registration Office** (CRO) in respect of Irish-registered companies includes:

- the registered office (which is required to be in Ireland),
- the names and residential addresses of company directors and the company secretary, shareholder information;
- the status of the company (for instance, Normal, Strike Off Listed, Liquidation, Dissolved).<sup>1</sup>

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<sup>1</sup> After the evaluation visit, the team learnt that the Office of the Director of Corporate Enforcement has access to all information contained within the CRO database. Details regarding beneficial ownership are not currently recorded by CRO. GBFI also has full access to the database. The Criminal Assets Bureau also has access to the Companies Registration Office (CRO) database. CAB agrees that the summary of the services provided by the Companies Registration Office found on their website comprehensively sets out the available information which obviously can be provided in a timely, accurate and up-to-date fashion.

The Companies Registration Office register is a public register. The register is maintained electronically and is publicly searchable 24 four hours a day, seven days per week via the online search facility on the CRO website. Nominal fees apply for CRO searches and for the supply to the public by the CRO of copy documents that have been filed pursuant to statutory obligation in relation to Irish-registered companies, registered business names, and external companies as having established a branch or place of business in Ireland. The Companies Registration Office provides Government Departments, Offices and Agencies on request with access to its database free-of-charge, including for instance, the ODCE, the Revenue Commissioners, and the Central Statistics Office.

#### 3.1.4. *The National Vehicle and Drivers File*

**The National Vehicle and Drivers File** contains details of each vehicle and names and addresses of each owner registered. Gardaí have online access to the National Vehicle File through the Garda Computer system and documentary evidence can be obtained on request by a Garda Superintendent to the licensing authority. Revenue also has online access to this data in view of its law enforcement role and the close relationship between VRT and the licensing process.

### 3.2. **Cooperation at national level**

According to Garda, the cooperation with banks works very well. Garda has a very good working relationship with the banks. The banks would even hold a transaction asking for advise from the Garda. They can query the banks before doing this formally. Cooperation with credit card institutions works similarly well.

According to Revenue, Revenue does not have direct access to bank accounts. Access is enabled using one of the Revenue powers or by court order. In circumstances where Revenue has received a suspicious transaction report related to a bank account it may contact the financial institution to clarify certain facts on the report. In criminal cases, the banks are requested not to inform the account holder about enquiries.

**The identification of an unknown bank account belonging to a specified person** is provided for. Irish authorities, when conducting an investigation into money laundering or terrorist financing can, under Irish legislation enquire with a financial institution if a specified person has a bank account and the nature of the business of the account. In practical terms, such enquiries conducted with a credit/financial institution are only made if the available information upon which the enquiries are made suggests some form of a relationship between the individual and a particular credit/financial institution. The merging or acquisition of Irish banks has no bearing on conducting such enquiries.

Such information provided by a credit/financial institution is, of course, for intelligence purposes only and must be formally uplifted on foot of an appropriate Court Order if it is to be used in any form of judicial proceedings. The Financial Investigation Unit, by its nature, has a close working relationship with all designated persons and is primarily based on the understanding between all interested parties of the sensitivity of exchanging financial intelligence. This relationship is vital in the fight against money laundering and terrorist financing. In extreme cases, such as missing persons, kidnappings, etc. designated persons will assist, where practicable, in providing relevant financial intelligence pertaining to particular individuals associated with these situations. The Criminal Justice (Money Laundering & terrorist Financing) Act 2010 puts this working relationship on a more formal footing. However, if this working relationship is to continue/develop, the sensitivity surrounding the exchange of financial intelligence from designated persons cannot be overemphasised. It is possible that the bank account/person in question is reported to the Financial Intelligence Unit under the provisions of Section 42 Criminal Justice (Money laundering & Terrorist Financing) Act 2010 and can be identified this way.

Section 56 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 provides for measures to be in place for the retrieval of information in relation to the business relationships held between customers/clients and their respective Credit/financial institutions. This can be requested by specially designated members of An Garda Síochána. When an account is identified and conducting a financial investigation where bank account information is required to prove a criminal offence, there are a number of criminal statutes which give An Garda Síochána power to access such information.

The legal basis for this is:

- Bankers' Books Evidence Amendment Act 1959 as amended,
- Criminal Justice (Theft & Fraud Offences) Act 2001
- Section 63 of the Criminal Justice Act 1994 as amended by Section 105 Criminal Justice (Mutual Assistance) Act 2008.
- Section 13 of the Criminal Justice (Mutual Assistance) Act 2008

Each of these statutes allows An Garda Síochána to make an application to the District Court on sworn information to seek a Court Order to obtain the relevant information.

When it comes to revenue offences, the legal basis is Section 908 and 908A of the Taxes Consolidation Act 1997.

**The identification of the unknown owner of a specified bank account** can be done on foot of a High Court Order pursuant to Section 13 of the Criminal Justice (Mutual Assistance) Act 2008, and/or an application to the District Court for a Production Order pursuant to Section 63 of the Criminal Justice Act 1994 as amended by Section 105 of the Criminal Justice (Mutual Assistance) Act 2008, The Bankers' Books Evidence Amendment Act 1959 or the Criminal Justice (Theft & Fraud Offences) Act 2001.

**The identification of operations from and to a specified bank account in a specified period in the past** can be done on foot of a High Court Order pursuant to Section 13 of the Criminal Justice (Mutual Assistance) Act 2008 and/or an application to the District Court for a Production Order pursuant to Section 63 of the Criminal Justice Act 1994 as amended by Section 105 of the Criminal Justice (Mutual Assistance) Act 2008, The Bankers' Books Evidence Amendment Act 1959 as amended or the Criminal Justice (Theft & Fraud Offences) Act 2001.

**The monitoring of operations to and from a specified bank account in the future** is provided for mainly in Section 13 of the Criminal Justice (Mutual Assistance) Act 2008. It provides for Account Information Orders and Account Monitoring Orders to be applied for by a member of An Garda Síochána not below the rank of Inspector. Such applications are made to the High Court when there is an investigation into "whether a specified person has committed an offence" or "is in the possession or control of assets or proceeds deriving from criminal conduct". Section 14 of the Criminal Justice (Mutual Assistance) Act 2008 provides for similar provisions on foot of a Request from another designated State.

The measures can be obtained for all indictable crimes where it is suspected that there has been financial proceeds.

When it comes to the maximum duration of the measure or, where applicable (notably for the monitoring of a bank account), the conditions for a prolongation of the measure, it should be noted that there are no time limitations specified in Section 13 of Criminal Justice (Mutual Assistance) Act 2008. With regard to Production Orders pursuant to Section 63 of the Criminal Justice Act 1994 as amended by Section 105 Criminal Justice (Mutual Assistance) Act 2008, it remains in force for a period of seven days unless a shorter/longer period is considered appropriate by a Judge of the District Court. In practice, further applications for such Production Orders can be made. District Court Orders pursuant to Section 52 of the Criminal Justice (Theft & Fraud Offences) Act 2001 and The Bankers' Books Evidence Amendment Act 1959 as amended may specify the period within which the Order must be complied with by the financial/credit institution concerned.

The authority competent to request/take the measure is (members of) An Garda Síochána. If prior authorisation is required, the authority competent to authorise the measure would be a judicial authority except for when it comes to the identification of an unknown bank account belonging to a specified person where no prior authorisation required. Members of An Garda Síochána are the authority competent to enforce the measure.

As the applications for the Court Orders are made *ex-parte* the persons concerned are informed when members of An Garda Síochána serve/execute the Orders. With regard to the identification of an unknown bank account belonging to a specified person the persons affected by the measure are informed through a verbal request.



The various statutes override any bank/client secrecy. However, legal professional privilege is the only matter that may affect the full execution of an Order. Members of An Garda Síochána would still invariably seize the disputed material and have an independent legal person review the material and decide whether the material is privileged or not.

These measures work well in practice as the financial/credit institutions comply with Court Orders. As noted above, there are excellent relations/cooperation with financial/credit institutions and An Garda Síochána and Revenue. The Irish Financial Intelligence Unit has designated contact persons in all financial/credit institutions. As previously stated, there is no central register of bank accounts in Ireland.

If the investigators are from the Irish Financial Intelligence Unit, updated banking transactions can be transmitted by way of Suspicious Transaction Reports, but such financial information is for intelligence purposes only until formally uplifted by way of a Court Order(s). Invariably investigators call to financial/credit institutions by arrangement after service of the relevant Court Order and information sought in the Court Order is handed over.

The Financial Intelligence Unit maintains a secure financial database containing all sensitive information supplied by way of Suspicious Transaction Reports which can be of assistance in the identification of bank accounts held by individuals. This database can only be accessed by Financial Intelligence Unit/Money Laundering Investigation Unit personnel and the use of such financial intelligence is very restricted to protect the source of same.

### **3.3. Cooperation at European level**

Ireland has yet to ratify the Protocol to the Convention on Mutual Legal Assistance. The legal provisions necessary to give effect to the protocol have been provided in the Criminal Justice (Mutual Assistance) Act 2008. However, Part 3 of that Act has not yet been commenced in law due to technical legal issues. Once that Part is commenced the Protocol will be ratified.

It is not possible to use Framework Decision 2006/960/JHA to identify a bank account or monitor operations of a bank account as this would be outside the scope of that agreement.

The Criminal Justice (Mutual Assistance) Act 2008 sets out the definition of a "requesting authority" in an issuing State as:

- (i) a court or tribunal exercising jurisdiction in criminal proceedings in a designated State and making a request, or
- (ii) any other authority in that State appearing to the Minister<sup>1</sup> to have the function of making the request.

The competent authority for receiving and executing a request is the Central Authority for Mutual Assistance. The evaluation team was informed that the MLA unit is a department under the Ministry of Justice. The Mutual Legal Assistance Unit of the Division has six staff dealing with all cases, including financial crime. The Ministry of Justice is the central authority when it comes to MLA requests. As there are no investigative judges in Ireland, the Minister fills the gap as investigation judge or investigation prosecutor. All requests are channelled through the Central Authority. Ireland is a small country, one jurisdiction with one police force: this makes control over MLA requests easy. According to the Irish response to the questionnaire, no legal and practical problem have been encountered in practice.

The Ministry of Justice is also the central authority when it comes to EAW, and the Central Authority is contact point for contacts with Europol, Eurojust, EJN and, possibly, EIO. In effect, Ireland being a small and centralised country, the Central Authority is the international cooperation department of the Ministry of Justice with all international functions situated in the same place.

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<sup>1</sup> Minister for Justice & Equality.

### 3.4. Financial investigation and use of financial intelligence

By virtue of the various Criminal Statutes dealing with financial matters, such as the Bankers' Books Evidence Amendment Act 1959, the Proceeds of Crime Act 1996, the Criminal Justice (Theft & Fraud Offences) Act 2001, the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010 etc., it could be said that the State has a specific framework for financial investigations. However, these Acts are also used in context of normal criminal investigations. Financial crime investigations are conducted in parallel with investigations into criminal activity surrounding organised crime gangs operating within their local districts/divisions. In major investigations they are supported by the national units such as the Garda Bureau of Fraud Investigation and/or the Criminal Assets Bureau, and the Mutual Legal Assistance Section.

On the question who does what, especially when other than financial crime related predicate offences are involved, the answer provided to the evaluation team was quite clear. All criminal cases will be followed by a financial investigation, and in drugs cases it is mandatory to commence a financial investigation looking back at the financial aspects 6 years back; either to forfeit assets directly or to link the confiscation to the conviction. In the latter case, the assets would still be frozen. The investigation would be pursued either by the criminal investigators, profilers from the Criminal Assets Bureau if it is about non-conviction based confiscations (with its lower levels of proof), or the Garda Bureau of Fraud Investigation. For non-conviction based confiscations, the principle of reversed burden of proof applies.

Financial investigations thus form part of all criminal investigations and are deemed by the Irish authorities an effective tool in combating all serious organised crime. The use of information held by Financial Institutions can be crucial in identification of perpetrators of criminal activity. It is particularly beneficial with regard to depriving organised criminal gangs of their ill gotten gains through the seizure of their assets.

With regard to the question whether it is possible to continue an investigation into the proceeds of crime or more generally its financial aspects, after the proper criminal investigation has been closed or after the conviction, the Irish answer is clearly affirmative. In the case of a conviction for drug trafficking the trial judge must inquire whether or not the individual/s benefited from the crime and if so the Judge who presided over the hearing will determine the amount to which the suspect has benefited and will direct that this amount be forfeited. In non-drugs cases an application must be made by the Director of Public Prosecutions in appropriate cases.

The Criminal Assets Bureau can conduct a financial investigation into whether or not a person's property is derived from criminal conduct on the balance of probability after the criminal investigation has been closed.

It is quite common for a money laundering investigation to continue alongside the criminal investigation or indeed after conviction for a serious offence.<sup>1</sup>

Where cash is seized and is being investigated by the Customs Authorities, An Garda Síochána (Garda Bureau of Fraud Investigation) can initiate a corresponding money laundering criminal investigation. Both investigations can run in parallel. However, where a money laundering prosecution is successful before conclusion of the Customs Investigation, the seized cash can then be forfeited on foot of that prosecution.

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<sup>1</sup> The evaluation team learnt after the visit in Ireland that, prior to 15th July 2010 when new AML/CTF legislation was introduced, that is, the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, it was necessary to link the person and their funds with a 'predicate offence' before a full money laundering investigation commenced (see Irish High Court Case Stated *DPP v DESMOND MCHUGH*). Therefore, it was "quite common" or normal practice that such an investigation would be simultaneous with the investigation of the 'predicate offence' or take place after a criminal conviction for such an offence. In the 2010 legislation there are presumptions at Section 11 which will go some way to aid the prosecution of Money Laundering offences, but these will have to be tested in the Courts to establish what weight the Courts will attach to them.

There are special legal powers or tools available to investigate the proceeds or financial aspects of criminal activities. The Criminal Justice Act 1994, the Proceeds of Crime Act 1996 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provide extensive powers in the investigation of financial crime.

It is not possible to involve private experts (accountants, financial experts) in order to investigate the proceeds/financial investigations of criminal activities. All experts – forensic accountants utilised - are directly employed by State, and it is rare for a private expert to be used.

Irish authorities conduct financial investigations in the intelligence phase. Intelligence gleaned from Suspicious Transaction Reports (STRs) in the course of investigating the same can, on occasion, trigger a full criminal investigation into a particular individual if he/she can be directly/indirectly linked with criminal conduct and the funds from the same are suspected of being channelled through accounts/policies held with a designated person. The analysed financial intelligence information is used as an indicator to initiate a criminal investigation and financial investigation. Financial intelligence from, for example, the national FIU is used both in the intelligence phase and as an indicator to initiate an intelligence phase/investigation. According to the Irish authorities, financial intelligence can be extremely beneficial in initiating a criminal investigation. Moreover, financial intelligence is collected from other authorities in the intelligence phase and An Garda Síochána cooperate on a case by case basis and would share intelligence deemed relevant to another Member State.<sup>1</sup>

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<sup>1</sup> The evaluation team was informed after the visit that the progression from an intelligence-driven investigation into a full criminal investigation necessitates the uplifting of all relevant financial material by way of Production Orders obtained by investigating officers from a Judge of the District Court. In order to arrive at this phase, it will be necessary to convert the intelligence gleaned in the course of the criminal investigation into ‘hard information’ which can be presented to the Judge by way of sworn information. It will be necessary to provide details of the subject(s) links with criminal conduct and to justify why the uplifting of financial material is necessary to progress the criminal investigation. While such applications for Production Orders are made “ex-parte”, additional oral information can be provided to the Judge if necessary. While no reference is made in the written applications of the existence of an STR, there are no provisions within the AML/CTF legislation precluding mentioning the STR to the Judge. All investigations into STRs are criminal-based, i.e. the criminal burden of proof applies as to whether or not a subject and his/her funds can be linked directly/indirectly with criminal conduct.

The evaluation team was informed that, in 2010, there were 13,416 STRs in Ireland, following 14,400 in 2009. Some 90% of these are linked to tax offences. Some 500 investigations have been completed by Revenue since 2007 which were solely based on STRs. There are 10 staff in the Suspicious Transactions Reports Office in Revenue. This Office disseminates STR information to over 30 centres around the country where more than 600 staff investigate the information. The information is assessed for risk. Most of the data is used to source civil investigations with a small number facilitating criminal prosecutions for tax and customs offences. There is an obligation for designated persons to submit STRs promptly. There is no time limit on when an STR has to be reported - even though "civil cases" are usually started on the basis of an STR. All STRs go to Garda, the FIU, and Revenue. Revenue staff and Garda staff meet regularly to ensure dual investigations do not take place. If the report indicates that multiple offences might have taken place, Revenue will normally await the outcome of Garda enquires before commencing investigations for Revenue offences.

The FIU will deal with all STRs and all requests regarding money laundering from the Egmont group, Europol etc. Communication will go through the Egmont group, then, if need arises, an MLA will be issued through the Central Authority at the Ministry of Justice.

Revenue also operate joint investigation teams with the Department of Social Protection to combat employer offences and social welfare fraud. There is a limited gateway of exchange of information between Revenue and Social Protection in a formal sense but there is adequate informal cooperation within the teams to be an effective deterrent against social welfare offences.

### 3.5. Cooperation with Europol and Eurojust

#### 3.5.1. Cooperation with Europol

Europol has supported Ireland in a very large number of financial investigations, but not including via a Joint Investigation Team (JIT) to date. The Garda Commissioner is the competent authority when it comes to JITs. In recent months, Europol has provided analytical assistance to the financial aspect of investigations via Ireland's membership of AWF FURTUM (itinerant crime groups); AWF SMOKE (cigarette smuggling); AWF SUSTRANS (suspicious transactions, cash seizures, and Operation SHOVEL); AWF SOYA (forgery of the Euro); and a huge volume of material regarding AWF TERMINAL (credit card fraud and ATM skimming). Irish competent authorities have provided expert delegates to Europol meetings on financial crimes, and an Irish delegate chairs Europol's Cybercrime Training and Education Group (ECTEG). Europol is also a partner with An Garda Síochána in the ISEC funded programme JLS/2008/ISEC/FPA/C2/050 "Cyber Crime Training". On the terrorism front, Ireland is also in active partnership with Europol in the investigation and analysis of the financing of terrorism, including via Expert Group meetings and the EU-US Terrorist Finance Tracking Programme.

In the future, it is expected that Europol will continue to support financial investigations in Ireland as requested, and the new, simplified AWF Concept is expected to be of assistance in this regard. The move to the new Europol HQ, as well as ongoing ICT innovations have further increased the quality of analysis and assistance provided to Ireland. Other initiatives, such as the 24/7 Operational Centre, and the deployment of the Europol Mobile Office (used twice in Ireland in 2010) are expected to further enhance the activities of Europol and, in turn, the effectiveness of national operational activities.

OLAF is an important contact point for Revenue Customs. Revenue officers regularly attend OLAF organised workshops and conferences and officers are assigned to relevant EU wide, OLAF coordinated investigations. Revenue has a liaison officer attached to the ENU and another officer is posted to Den Haag as part of the Irish Desk at Europol. This illustrates the growing engagement of Revenue with Europol but Revenue believes there is still some way to go in improving the involvement and profile of Customs within Europol particularly in the field of drugs enforcement. Revenue believes these issues are well known to Europol management and there are some indications that Europol is trying to address this issue. Revenue has had only limited engagement with Eurojust to date.

### 3.5.2. *Cooperation with Eurojust*

Ireland's national member of Eurojust is an official of the Office of the Director of Public Prosecution.

It is generally the case that assistance may be sought in circumstances where such assistance may be required in addressing an issue or a misunderstanding. This is of practical benefit given the different legal systems across the Member States. The Criminal Justice (Joint Investigation Teams) Act 2004 allows for the establishment of joint investigation teams. In practice, no joint investigation team has been established to date.

In the future, it is expected that Eurojust would continue to support financial investigations across the Member States.

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### 3.6. Conclusions

- There is no central database on bank account information in Ireland. The Ministry for Justice indicated that it was not aware of any current proposals for establishing such a database. As the ministry further pointed out, such a matter may, in any event, be more appropriately considered in the context of financial regulation. Although the cooperation with the banking system works informally and efficiently, thus safeguarding necessary access to relevant information, it could nonetheless be worth considering the option of setting up such a central database.
- National databases are available in respect of real estate, companies and vehicles. There is no single compulsory database for all boats.
- There are centralised criminal records in Ireland. However, the register is not based on legislation but administratively governed through common law. Ireland is currently working on legislation regarding this issue. It is currently kept under the responsibility of the Garda Commissioner at the Garda Central Vetting Unit accessible to all regional Garda Services. As identified during the evaluation visit, there is rather extensive access to data for the purposes of investigations. For instance, there is an obligation in place to share obtained information with other law enforcement agencies.
- The identification of an unknown bank account belonging to a specified person is provided for. The identification of the unknown owner of a specified bank account, and the identification of operations from and to a specified bank account in a specified period in the past, can be done on foot of a High Court Order and/or an application to the District Court for a Production Order.
- The various statutes override any bank/client secrecy. However, legal professional privilege is the only matter that may affect the full execution of an Order. Members of An Garda Síochána would still invariably seize the disputed material and have an independent legal person review the material and decide whether the material is privileged or not.

- Garda can receive information from parties outside Garda, *inter alia* the Revenue Commissioners and Social Welfare agencies - and they can send it, not only to the Criminal Assets Bureau, but also to other Departments of State, agencies and bodies having, by law, responsibility for any matter relating to any aspect of the objectives of the Garda Síochána.<sup>1</sup> Via the Data Protection legislation, Garda can request information from private companies, for instance in the telecom sector. The Criminal Assets Bureau has access to the real estate database, the database at the Companies Registration Office and the vehicle database. According to the Ministry of Justice, one of the issues which is to be considered further in the context of the current review of Proceeds of Crime legislation is the question of sharing information internationally. The provisions of the Proceeds of Crime Act dealing with information sharing are being examined to see if these provisions can be enhanced having regard to experience to date. As it is today, Irish authorities can exchange personal data with the private sector for preventive and intelligence purposes. Tax investigations have access to all revenue data (Experts seconded to the Criminal Assets Bureau do not. Instead they have to

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<sup>1</sup> The evaluation team was informed after the mission to Ireland that Section 18 Company Law Enforcement Act 2001 (CLEA) allows information which in the opinion of the Competition Authority, a member of An Garda Síochána or an officer of the Revenue Commissioners which may relate to the commission of an offence under the Companies Acts may be disclosed by the Competition Authority, member of An Garda Síochána or officer of Revenue to the Director of Corporate Enforcement or one of his officers. Under Section 17 CLEA 2001, the Director of Corporate Enforcement or his officers can disclose information to a member of An Garda Síochána in relation to offences which are not offences under the Companies Acts which come to their attention during the course of their investigations. Additionally, under Section 62 Garda Síochána Act 2005, members of AGS can disclose information to a range of listed agencies as set out in the section and the Garda Commissioner under Section 62 (4) (e) can authorise the disclosure of information to any agency should he deem it necessary. In addition the provisions of Section 7(2) of the Garda Síochána Act 2005 can be utilised whereby “ the Garda Síochána shall co-operate, as appropriate, with other Departments of State, agencies and bodies having, by law, responsibility for any matter relating to any aspect of “ ... the objectives of the Garda Síochána.

ask for such information from the Investigation and Prosecutions Division.) It seems that both the Garda and the Criminal Assets Bureau have access to all necessary databases to pursue their work expediently. The same is true for the Revenue Commissioners. The possibilities to exchange intelligence with the private sector is a noteworthy and positive example where intelligence can flow in both directions. Again, the Irish informal setup seems to enable smooth cooperation between the sectors involved.

- Financial investigations form part of all criminal investigations<sup>1</sup> and are deemed by the Irish authorities an effective tool in combating all serious organised crime. Irish authorities conduct financial investigations in the intelligence phase. The analysed financial intelligence information is used as an indicator to initiate a criminal investigation and financial investigation. A good practice worth highlighting is the Irish insistence on the search for assets from the very beginning of the investigation.
- The Criminal Assets Bureau would be very interested in working more with intelligence but there is no time available for this. This would help them work more pro-actively against criminal emerging threats. Otherwise, the key to the Criminal Assets Bureau is intelligence sharing and communication. Time and resource restraints are always in place. However, the full use of financial intelligence should always be promoted, and Irish authorities should consider adding to the resources available in this field.
- Prioritisation and coordination works at many different levels within the Garda and other law enforcement agencies. According to the Criminal Assets Bureau, the Tasking and Co-ordination Unit, new since two years ago, within the National Support Service, co-ordinates all police activity within National Support Services – CAB, Garda Bureau of Fraud Investigation, Garda National Drugs Unit, Garda National Immigration Bureau, and National Bureau of Criminal investigations. The Tasking and Coordination Unit holds information about all cases and all suspects so that the cases and the threats may be coordinated. Accordingly, the risk of duplication of efforts is quite well settled and the setup seems quite successful.

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<sup>1</sup> The evaluation team was told that it is mandatory for financial aspects to be considered in all serious criminal investigations, although financial aspects are often more apparent in relation to drugs offences as opposed to, say, murders.

- The FIU will send information to the NCIU about their targets on a regular basis. The same is true for Revenue, this time based on a Memorandum of Understanding. NCIU is the Garda National Criminal Intelligence Unit, which functions as a central criminal intelligence office for An Garda Síochána throughout the country. Garda investigators in specialist units such as GBFI, as well as Senior Investigating Officers and Criminal Intelligence Officers throughout all of An Garda Síochána, regularly update NCIU about their targets and operations. The National Criminal Intelligence Unit has a broader role vis-à-vis all operations and investigations throughout Ireland, whereas the Tasking & Coordination has a coordination role vis-à-vis national specialist units. (The Tasking & Coordination Unit within National Support Services (NSS) assists the Assistant Garda Commissioner in charge of NSS in coordinating the activities of the various NSS operational units – Garda Bureau of Fraud Investigation; Criminal Assets Bureau; National Bureau of Criminal Investigations, and Garda National Drugs Unit.)
- There is no restriction on units of An Garda Síochána initiating investigations or taking other actions including arrests on the basis of intelligence information. The use of intelligence does not require the authorisation of any Prosecutor or Judge, other than in cases requiring a search warrant. Where applying to a Judge for a search warrant, the basis and evaluation of the intelligence information must be provided, and the grounds for applying for a search warrant must not be based on intelligence alone – i.e. some further grounds must be adduced, such as surveillance information, suspicious behaviour, or other observations. However, An Garda Síochána, including CAB, can and do initiate investigations based on reliable intelligence, including intelligence from covert human sources. NCIU has a national role in evaluating intelligence using the 4x4 system, and comparing intelligence from different sources to establish veracity. NCIU will then update the relevant investigative units in order to initiate or update investigations.

- According to Garda, the assessment unit within the Garda Bureau of Fraud Investigation makes the initial judgement whether a case should be dealt with as a criminal or a civil case. As for the Criminal Assets Bureau, decisions within the Criminal Assets Bureau are done jointly. The agencies in the Criminal Assets Bureau decide what kind of cases to run, mainly whether they should be criminal or non-criminal. Criminal cases are preferred. If a "collision" would occur, it is up to the Criminal Assets Bureau and the Garda to decide to go on with either a civil or a criminal case. The main role of the Assessment Unit is to analyse and review each complaint made to the Bureau to 1) establish whether or not a prima facie case of criminality is disclosed requiring Garda action and 2) make recommendations as to the scope and nature of the required investigation. The criteria applied essentially are a) the complexity of the case, b) diversity of the criminal acts involved, c) venue of the crime and d) amount at risk. The initial analysis of files that are allocated for assessment is considered on the basis of a risk assessment. All such risk assessments embody the principles of minimising ongoing losses where possible, freezing of accounts with stolen funds where applicable and prevention of the destruction of evidence. Thereafter the Political, Economic, Social, Technological (PEST) risk analysis model is used to determine the priority of the case under investigation.
- Within the Criminal Assets Bureau, there are no set of guidelines setting out as to what cases are to be investigated or in what order they are prioritised. Once information comes to the Bureau indicating that the suspected persons are involved in criminal conduct and in possession of assets, a preliminary investigation is conducted by a Bureau team comprising all of the agencies that make up the Bureau. Once this is completed, a further decision is made by management within the Bureau, taking into account the available evidence, the value of the assets identified, the criminality involved and other considerations, as to whether the investigation should continue. Once all the information is gathered, a decision is made as to what action (normally either pursuant to the Proceeds of Crime legislation, the Revenue legislation or the Social Welfare legislation) is to ensue from the information gathered during the course of the investigation. The Criminal Assets Bureau is an independent body and makes

it decisions as to which assets to target independently of any other body. However, consideration is also given during the course of the Bureau's investigations as to the possibility of criminal confiscation provisions and the Bureau will liaise with the investigating Gardaí conducting the criminal investigation and the Office of the Director of Public Prosecutions in this regard, if necessary.

- A few additional questions remain, the answers to which would shed light on the outcome of the decision-making processes and the overall results. For instance, it is not clear what is the ratio between frozen or seized assets on the one hand, and confiscated as well as collected assets on the other. Furthermore, it is not clear what is the ratio between the cases dealt with as criminal versus civil cases. In addition, it is not clear what is the ratio between cases taken over by CAB, denied ones and what is the overall success quota.
- An Garda Síochána are the competent authority for investigations into OC. In the case of fiscal investigations, Revenue do not differentiate whether the suspect is an individual or a member of an Organised Crime Group. All investigations are conducted in the same manner, Revenue being the competent authority in fiscal matters. Splitting cases is never easy, and working them in parallel requires a lot of coordination. There is a risk that much effort is spent on coordination to the detriment of the cases themselves, but also that resources are either spent on double work or aspects falls between the proverbial chairs. A safeguard in place seems to be the close contacts present between Garda and the Revenue Commissioners.
- Revenue cannot compel someone to give statement, only invite. They can search premises, also private houses. On the issue of coordination and cooperation, the witness statements could prove vital to the success of a case. Thus, a good working relationship is required between the Revenue Commissioners and Garda, to guarantee that limited police resources are used also for the benefit of the Revenue Commissioners, and vice versa.
- Ireland has yet to ratify the 2000 Convention on Mutual Legal Assistance and its protocol. The competent authority for receiving and executing a request is the Central Authority for Mutual Assistance. According to them, no legal and practical problem have been encountered in practice.

- MLA requests for evidence from private companies are dealt with by the Central Authority. Evidence may be obtained using production orders or from witnesses brought before a judge. In the latter case, the police will not get involved (unless for questionings etc.). Instead, the discussions will take place via the Central Authority in the Ministry of Justice and the data holders, for instance the telecom sector.<sup>1</sup> International requests could also be transmitted through the CARIN or ARO networks, FIU.net and other channels, but for evidential purposes, an MLA request is necessary. CARIN is used extensively by CAB and the ARO is a relatively new channel. As Garda officers, CAB members also continue to use appropriate police channels for enquiries, including Europol, Interpol, and bilateral liaison officers as appropriate. CAB does not use FIU.net as this facility is only available to the FIU/MLIU. FIU.net is used extensively by GBFI. Nevertheless, the CARIN or ARO networks, FIU.net and other channels could be used more, to employ them to their full potential.
- A Superintendent can decide on prosecution of simpler cases in District Courts, for instance burglaries of EUR 7000 or less. Here, the police functions as prosecutor. In complex cases, Garda will send an investigation file to the Director of Public Prosecutions for decision. The Gardaí may also seek the advices of the Director on procedural and other issues during the investigation. The Director of Public Prosecutions can request that further information is sought from the investigators. This is not based on a formal arrangement such as an Memorandum of Understanding but is being dealt with in an informal manner.

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<sup>1</sup> Thus, this is not in conflict with the Swedish initiative (that all information held by police should be freely exchanged with other police forces).

- The Garda will conclude an investigation when they believe there is evidence enough, then they will send the file to the Director of Public Prosecutions for prosecution. Revenue does the same, prosecutes on part of the available information and continue in a civil process. Enough evidence means evidence such that a jury could be satisfied of the accused's guilt beyond a reasonable doubt: Guidelines for Prosecutors (available on [www.dppireland.ie](http://www.dppireland.ie)). The role given to the agencies is a double edged sword. On the one hand, their power over ongoing investigations is strong. This should have a positive effect on the case work. On the other hand, it could mean that the agencies use their limited resources to do work arguably done better together with a specialised prosecutor, which is not necessarily the most effective resource allocation. The decision to prosecute will be taken based on the evidence presented. The Director of Public Prosecutions does not have to prosecute on all indictments. However in serious matters the public interest would almost invariably require a prosecution. Examples of where the public interest might not require a prosecution are set out in the Guidelines for Prosecutors. The discretionary nature of the system supports a very efficient way of handling cases in Ireland. However, also here problems could materialise. Again, if nothing else, this could present a problem with transparency and transferability to other systems.
- When there is not enough information to build evidence for conviction, the Irish would go for non conviction confiscation. Here, the burden of proof is reversed. It was indicated during the visit that that there are clear advantages of using civil case in order to put pressure in the criminal case. The coupling of the civil and criminal procedures seems very efficient. When there is no way to act against a top-level criminal, the civil route has many merits. However, this has to be safeguarded properly to avoid that agencies un-necessarily move towards civil rather than criminal cases also when criminal cases would stand a good chance of success. In the view of the evaluation team, guidelines for this selection are valuable.
- During the wrap-up session on 8 July, it was stated that there is an increased focus today on criminal confiscation, following directives from both the Director of Public Prosecutions and Garda.



- The Revenue Commissioners will only investigate where the criminal evidence is available to sustain a prosecution. In such instances the civil process imposes stringent penalties as a deterrent. Considering there is an increased focus today on criminal confiscation following directives from, inter alia, the Director of Public Prosecutions in place calling for criminal cases rather than civil ones, this stance makes perfect sense, and there is no question about the potential to hurt a defendant through the civil procedure. Regardless of criminal prosecution, civil recovery with penalties is pursued in all cases.
- A guideline on the website of the Director of Public Prosecutions states that prosecutors should not overcharge but instead limit the prosecution to the charge that is justified by the evidence. As noted during the wrap-up session, both common law and civil law systems have the same motivation: limit investigations and prosecutions as much as possible, if nothing else than for resource reasons. As noted during the wrap-up session, serial crime will be a problem in the future, especially because of the Internet where it is difficult to establish the location of witnesses as well as perpetrators. Internet will become a European problem. For Revenue, the same is true for instance with regard to VAT fraud. The problem is that mobile criminal groups and criminals involved in serial crime can get away with petty crimes whilst they in reality may be engaged in a series of crimes which, taken together, should result in much higher penalties. The prosecution of itinerant criminality and serial crime is not the only problematic aspect here. The limiting of prosecutions is inherently difficult to marry with pro-active intelligence work. This is particularly true when the issue is where to employ special investigative techniques. In many cases, they might only be used for investigative purposes and not in intelligence work.
- Europol has supported Ireland in a very large number of financial investigations, but not including via a Joint Investigation Team (JIT) to date. In the future, it is expected that Europol will continue to support financial investigations in Ireland as requested.

- OLAF is the normal contact point for Customs. Interestingly, the Revenue Commissioners stated during the evaluation team's visit that they do not engage regularly with Eurojust or Europol. It seems that Europol is regarded as a police organisation. However, contrary to the statements during the visit, the website of the Revenue Commissioners identifies the important role played by the Customs Liaison Officer assigned to Europol in The Hague; according to the website one of five officers currently assigned abroad who are directly involved in the international exchange of information and intelligence and work to Customs Division/IPD.
- Ireland's national member of Eurojust is an official of the Office of the Director of Public Prosecution. In the future, it is expected that Eurojust would continue to support financial investigations across the Member States.

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#### 4. FREEZING AND CONFISCATION

##### 4.1. Freezing

Following the implementation of Council Decision 2007/845/JHA the Criminal Assets Bureau was designated as the Irish Asset Recovery Office (ARO). The Criminal Assets Bureau was established on a statutory basis in October 1996 under the Criminal Assets Bureau Act 1996. The Criminal Assets Bureau operates under the Proceeds of Crime Act 1996 as amended. This is the only designated ARO in this jurisdiction. As the ARO is based in the Criminal Assets Bureau, all ARO requests are dealt with by the staff of the Criminal Assets Bureau. As such, the staff of the Criminal Assets Bureau are available to deal with receiving the requests, processing the enquiries requested and returning appropriate replies to the requesting countries.

The cases taken by the Criminal Assets Bureau in the High Court to confiscate assets are done using the Proceeds of Crime Act 1996/2005 which is a civil process and does not require that the person in possession or control of the asset be convicted of a criminal offence.

The Criminal Justice Act 1994 as amended sets out the law to allow the Director of Public Prosecutions to confiscate assets after a person has been convicted on indictment in the Circuit Court. The process to confiscate post conviction only requires a civil standard of proof.

The mandate of the Assets Recovery Office is to respond to all the requests received which are deemed to be appropriate requests as outlined under the Council Decision 2007/845/JHA in the manner prescribed. The Criminal Assets Bureau carries out a check of the necessary databases in the tracing of assets. The Criminal Assets Bureau only checks the databases for which it has access to and does not carry out investigations on foot of these requests.

As stated, the ARO office is situated within The Criminal Assets Bureau. The Criminal Assets Bureau itself and those working within the ARO form part of the investigations carried out by the Criminal Assets Bureau. These investigations relate to the confiscation of assets which are believed to represent directly or indirectly, the proceeds of criminal activity which is done on a civil standard of proof. The Criminal Assets Bureau also assesses people for income tax in respect of miscellaneous income and this would include money from criminal activity. In respect of criminal confiscations of assets in respect of criminal proceedings, these are handled separately by the investigating members themselves and the matters which are dealt with directly by the Director of Public Prosecutions and form part of the criminal process where a person has been convicted by an indictable offence on indictment and the Court believes this person is in possession of assets or wealth which represent the proceeds of crime. This work is not the primary function of ARO or the Criminal Assets Bureau, however, the ARO has assisted in a number of these investigations.

*4.1.1. At national level*

The material below outlines two models in Ireland which provide for freezing criminal assets. One is a criminal based model and the other is a non-conviction based model. No difference is made between physical and legal persons in terms of assets. In addition there are two further freezing mechanisms provided for in Section 32 of the Criminal Justice (Mutual Assistance) Act 2008, and Section 15 of the Criminal Justice (Terrorist Offences) Act 2005.

4.1.1.1. Criminal based model

Where a person has been charged with, or is about to be charged with an indictable offence and a confiscation order might be made following conviction, the High Court is empowered to make a freezing order over all the assets of the accused. Section 24 of the Criminal Justice Act 1994 ensures that those assets will not be dissipated prior to the making and execution of a confiscation order.

The procedure can apply to any offence which has the capacity to generate a profit. The freezing order stays in place either until the person has been acquitted of the charge, or, if a confiscation order is made and then the confiscation has been satisfied. No other condition necessary to obtain the measure is necessary.

The Director of Public Prosecutions is the authority competent to take/request the measure. The High Court makes the order, and is the authority competent to enforce the measure, often through the agency of a Receiver appointed by the High Court at the request of the Director of Public Prosecutions.

The person affected by the measure is informed by the personal service of a copy of the High Court order freezing his assets. The application is made ex parte.

Legal remedies include a right to apply to the High Court to seek to have the freezing order varied. This is generally done to allow for living expenses, legal expenses or use of motor vehicles, farm or industrial machinery.

Management of assets following freezing are usually handled by a receiver appointed by the High Court for that purpose.

Generally the involvement of the Asset Recovery Office in this process is to assist in the investigation and where required, the presenting of evidence supporting the existence of assets and the generation of profits.

The freezing order is generally only withdrawn where the prosecution does not proceed, the accused is acquitted or a confiscation order has been discharged or satisfied. On one occasion however, a confiscation order was varied to limit its effects on the total of the accused assets where it was acknowledged that the maximum total of a confiscation order could be was only a certain figure which was significantly less than the total assets of the accused. In those circumstances the accused lodged a sum of money to that certain figure and the order was varied to apply only to that figure lodged.

4.1.1.2. Non-conviction based model

This is a procedure, established on a statutory basis (Proceeds of Crime Act 1996), which allows the High Court to freeze assets for a period of 7 years. If no person or respondent has within that period successfully applied to overturn that freezing order, the assets are then forfeited to the State. The measure can be applied to any offence that constitutes "criminal conduct".

The freezing order generally stays in place for seven years following which the Criminal Assets Bureau applies for a forfeiture order. At that stage the freezing order automatically lapses. Generally the freezing would be extended where there is extended legal challenges and procedures.

To obtain the measure, the High Court has to be satisfied that specified assets are either the specific proceeds of a criminal conduct or obtained in connection with assets which were the proceeds of criminal conduct.

With regard to the authority competent to take/request the measure, the application to the High Court is made by a member of An Garda Síochána not below rank of Chief Superintendent. In practice it is invariably done by the Chief Bureau Officer of the Criminal Assets Bureau.

The High Court is the authority competent to authorise the measure and makes the order. The competent authority to enforce the measure is the High Court occasionally through the agency of a Receiver appointed by that High Court on the request of the Criminal Assets Bureau.

The persons affected by the measure are informed by personal service of the order made. The person concerned has a number of legal remedies which allow them to, on evidence, come back before the High Court to have the order varied or altered. Generally a freezing order can be lifted to allow the release of essential funds for living expenses or legal expenses. Furthermore, persons concerned or victims can apply on evidence to prove to the court that the property frozen is not the proceeds of crime and therefore the order should be vacated.

The management of the asset during freezing is the responsibility of the High Court often exercised through the agency of a receiver appointed at the request of the Criminal Assets Bureau by the High Court. The receiver is invariably the Bureau Legal Officer who is a member of staff of the Criminal Assets Bureau. However as he is also a solicitor and accordingly an officer for the Court, it is acknowledged by the Court that he has the ability to exercise his responsibilities as a receiver independent of the Bureau and under the directions of the Court.

The Assets Recovery Office (the Criminal Assets Bureau) is the prime mover at all stages during this procedure. The Criminal Assets Bureau is invariably the plaintiff and has usually conducted the investigation from instigation, and puts the file together, instructs counsel and makes all primary decisions.

Freezing orders can be withdrawn and are often withdrawn as part of a settlement were they might be varied, with some funds going back to the respondent and others to the State. The issue was further expanded upon during the evaluation visit to Ireland. Section 4a deals with final confiscation. Before the 7 years have passed, an agreement can be made to complete the process. Section 3 cases (open until the end of the 7 year period after which the case is presented in court again for final disposal orders) are fairly rare. Instead, Section 4a is used in as many as 95-98% of the cases.

*4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA*

Framework Decision 2003/577/JHA was implemented and transposed into Irish legislation in the Criminal Justice (Mutual Assistance) Act 2008. The implementation of Framework Decision 2003/577/JHA in the Criminal Justice (Mutual Assistance) Act 2008 introduced simplified procedures for requesting and receiving freezing orders between Member States. In implementing Framework Decision 2003/577/JHA in the Criminal Justice (Mutual Assistance) Act 2008, the previous domestic regime (as contained in Part VII of the Criminal Justice Act 1994) was repealed.

Since the implementation of the Framework Decision in the Criminal Justice (Mutual Assistance) Act 2008 with effect from September 2008 fifteen (15) requests for Freezing Orders have been received by the Central Authority. Five (5) Freezing Orders have been obtained; six (6) requests which were received were withdrawn by the Member State and four (4) requests are currently under consideration.

With regard to the added value of Framework Decision 2003/577/JHA compared to the previous regime, the implementation of Framework Decision 2003/577/JHA simplified procedures for requesting and receiving freezing orders between Member States. Ireland would be open to considering practical or legislative steps to further increase the practical efficiency of Framework Decision 2003/577/JHA subject to constitutional and legislative requirements.

#### 4.1.2.1. Experience when acting as an issuing State

The Director of Public Prosecutions is the authority competent to take/request the measure and the High Court makes the order.

The High Court is the Judicial Authority who makes the Order and the Central Authority for Mutual Assistance arranges for the transmission of the Order to the appropriate authority for enforcement of the Order in the Member State concerned

If the Order is for the protection of evidence the High Court may indicate to the judicial authority in the Member State any formalities and procedures in enforcing the order that are necessary to ensure that the evidence is admissible in criminal proceedings in Ireland.

The transmission of a request of an order for the freezing of assets, evidence etc. is the responsibility of the Central Authority for Mutual Assistance.

The Central Authority for Mutual Assistance may contact the Irish National representative in Eurojust if there are difficulties in locating a recipient authority.



Ireland has no experience of executing Member States questioning the appropriateness, the manner in which the certificate was completed, or the scope of a freezing order (for example in terms of the application of the double criminality regime). Ireland has not encountered any difficulties specifically with time-limits for the provision of language-compliant versions of the certificate.

Prior to a decision on the execution of the freezing order, the executing judicial authority may require additional information/documentation to assist in the execution/consideration of the freezing order. In Ireland, the Central Authority facilitates the provision of additional information sought in relation to all mutual legal assistance requests including freezing orders. Outgoing requests from Ireland are usually accompanied by a translation into the language of the executing authority. It is estimated that only 20% of outgoing requests are to English speaking countries.

In the event that the Central Authority was experiencing difficulties it would probably consult with the Irish Representative in Eurojust to help resolve issues or misunderstandings.

The number of outgoing requests is negligible however Ireland has been satisfied with the information provided on the progress of requests.

#### 4.1.2.2. Experience when acting as an executing State

Section 34 of the Criminal Justice (Mutual Assistance) Act 2008 provides for the transmission, from a Member State, of a freezing order with a completed certificate, certified as accurate together with a request and any instruction regarding the treatment of the evidence or property concerned, to the Central Authority for Mutual Assistance for enforcement. The Act provides for the documents to be transmitted by facsimile and if not in English that a translation be provided. There is provision for the Central Authority and the High Court to seek the original or a copy of the documents to be transmitted to the Central Authority, if necessary.

With regard to the issue whether there are any questions that habitually require additional information/documentation to be sought, in some cases the certificate under Article 9 is not completed properly.

The Central Authority's role in the execution of freezing orders is to make an application to the High Court for the enforcement of the order if it complies with legislative requirements.<sup>1</sup>

As to a possible formal process for checking whether a request for further and better information is merited, the Central Authority examines the request for compliance with legislative requirements and may seek legal advice before an application is made to the High Court for enforcement. All legislative requirements are required to be met before an application is made to the High Court for enforcement. There have been no instances of requests for freezing orders being refused by the High Court because of reasons arising from the quality of the freezing order and/or the certificate being considered by the courts: e.g. translation errors, insufficiently detailed certificates (fact or law), issues surrounding authentication, missing documents or the like.

The Central Authority liaise with issuing States as required, which is the normal practice for liaising with issuing States to keep them informed of progress in proceedings.

With regard to the legal remedies which are available to interested parties regarding frozen property, the Criminal Justice (Mutual Assistance) Act 2008 provides for notice to be given to any person who appears to be affected by the freezing order unless the court is satisfied that it cannot ascertain the person's whereabouts. Section 45 of the Act also provides for the variation or discharge of a freezing order under certain conditions.

#### **4.2. Confiscation (including 2005/212/JHA and 2006/783/JHA)**

A Criminal Justice (Mutual Assistance) (Amendment) Bill is being drafted to give effect to Framework Decision 2006/783/JHA. This will replace existing legislation on Confiscation Orders contained in the Criminal Justice (Mutual Assistance) Act 2008. As the number of requests received by Ireland from other Member States is minimal, the Irish authorities are not expecting any major difficulties with implementation.

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<sup>1</sup> It should be recalled that Article 4(2) of Framework Decision 2003/577/JHA limits to the United Kingdom and Ireland the possibility to require that a freezing order shall be sent via a Central Authority.

It is possible for a competent authority of a Member State where the Framework Decision has been implemented to issue a confiscation order together with a certificate and forward it to Ireland for it to be treated as a request for judicial cooperation under the "normal" regime. There is provision in the Criminal Justice (Mutual Assistance) Act 2008 to enforce a confiscation co-operation order. Such a request would have to be examined to determine if it comes within the scope of the 2008 Act.

A confiscation order, once made, is enforceable by the Director of Public Prosecutions as if it was a "judgement debt". The Director is inclined to employ any of the usual debt collecting procedures. In addition there are other remedies including the ability to seek from the High Court an order directing the defendant shall be imprisoned for a period not exceeding that as set out in a pre-determined schedule relevant to the amount outstanding. Furthermore, the Director can seek to have a Receiver appointed to sell or realise certain assets, the proceeds of which can be applied towards discharging any sum outstanding on the confiscation order.

In addition to the above Section 9 of the Criminal Justice Act 1994 provides for a court to make a confiscation order after conviction for an offence other than a drug trafficking or terrorist financing offence. Section 4 of the Criminal Justice Act 1994 provides for a confiscation order to be made after conviction for a drug trafficking offence. The Criminal Justice (Terrorist Offences) Act 2005 provides for a court to freeze and dispose of funds that are being used or may be intended for use in committing, or facilitating the commission of a terrorist offence. A disposal order under the Act is not dependent upon a conviction for an offence.

The procedure can apply to any offence which has the capacity to generate a profit. However, the confiscation order will only apply where a person has been convicted on indictment. The authority confident to decide on the confiscation is primarily the Director of Public Prosecutions. It is he who will move applications to enforced confiscation order as a judgement debt or imprisonment or the appointment of a receiver. The authority competent to enforce the confiscation order, i.e. enforce the judgement debt, is the High Court.

Persons affected by any measures must be put formally and personally on notice of any motion brought by the Director of Public Prosecutions to the High Court to enforce the confiscation order. Generally a person on notice of the application can seek to persuade the High Court either that it is unnecessary or that the judgement or confiscation order has actually been paid or discharged.

Generally the involvement of the Asset Recovery Office in this process is to assist in the investigation were required presenting evidence supporting the existence of assets and the generation of profits. Furthermore, ongoing training is provided for "Divisional Profilers" who are members of An Garda Síochána around the country who have enhanced training in the recovery of criminal assets. On occasions the Criminal Assets Bureau Legal Officer, who is the Receiver and asset manager for the Criminal Assets Bureau, may act as Receiver or assist in the provision of advice for the Director of Public Prosecutions in the execution of the Confiscation Orders.

In addition, with regard to possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, as for cash forfeiture, where a Customs Officer or a member of An Garda Síochána has reasonable grounds to suspect that a sum of cash (it must be in excess of €6348) may constitute the proceeds of criminal conduct, or is intended to be used in criminal activity, he/she can seize and detain that cash, and investigate its provenance/ intended use. If he/she wishes to detain it beyond 48 hours he/she must seek from a District Court an extension of time for such detention, which can be granted for a maximum of 3 months for every order, up to a total of 2 years. Thereafter, following the completion of the investigation, the Director of Public Prosecutions can apply in the Circuit Court to have the funds forfeited, if the Court is satisfied, on the civil burden of proof, that the cash is the proceeds of crime. It is also possible following conviction to have any item, which may have assisted in the commission of that offence, or in any other offence, forfeited. This would be described as forfeiture of instrumentalities.

It is possible, in effect, to "pierce the corporate veil" under non-conviction based remedy simply because the litigation focuses on the property "in rem" and not so much on ownership. The Criminal Assets Bureau seeks to prove that the property itself, regardless of or what company or trust may be the beneficial owner, is the proceeds of somebody's or some corporation's criminal conduct. It is always open to any person or corporation to seek to prove/establish that they have a legitimate right to the property.

It is arguable that when seeking to enforce a confiscation order, or when a trial court is seeking to determine the total amount that is realisable by a convicted person, that a court could look behind a sham corporation and in effect "pierce the corporate veil". However, no case of such a nature has come before the Court and accordingly the matter has not been litigated. Until there has been appropriate litigation, it is impossible to be definitive on this issue.

As described by the Central Authority, in 2010, there were 361 substantial MLA requests, about taking evidence, searching premises, confiscation, interviewing witnesses etc. The number does not include requests about the service of documents, adding another 158 requests. The main parties requesting assistance were the United Kingdom (87), The Netherlands (59) and Germany (36). The main type of crime was fraud (122 requests) followed by assault (32). During the same year, Ireland made 83 requests, mainly to the United Kingdom (18 requests) and the US (9 requests). Again, the most common type of crime was fraud (22 cases) followed by murder (10 cases). Some 95% of the work is about incoming requests. For outgoing requests, the Central Authority is a transit point.

Since 2004 till (including) July 2011 there have been 14 cases registered at Eurojust, which involved the crime type "Crimes against property or public goods, including fraud", Money Laundering and Criminal offences affecting the European Union's financial interest. Ireland was the requesting country mostly in cases on other types of crimes against property and public goods (7), followed by money laundering cases (3) and cases on computer fraud (2). Furthermore, Ireland issued its requests equally in a case on swindling and fraud, a case on advanced fee fraud and a case

involving criminal offences affecting the EU financial interests. In the reported period, Ireland was requested in 96 cases, in which the above listed crime types were mentioned. Ireland was mostly requested in cases on other types of crime against property or public goods (27), followed by cases on money laundering (18) and cases on forgery of money and means of payment (10).

Since the beginning of the year 2007 (the information on coordination meetings, organised in cases registered at Eurojust, is only available from the beginning of the year 2007) till (including) July 2011, the Irish desk at Eurojust was involved only in one coordination meeting related to financial crimes.

According to data retrievable from the CMS at Eurojust, Ireland was requested in 2 cases on assets recovery activities in the reporting period.

There has been a huge increase in EAW requests. Ireland expects the number will be some 400-450 in 2011; 70% of which from Poland. Unfortunately, many requests are about minor crimes. An example was where the underlying crime was failure to pay the bus fare. There is a risk, according to the Central Authority, that public confidence in the instrument will fall if EAW is used for minor crimes.

#### **4.3. Conclusions**

- Framework Decision 2003/577/JHA was implemented and transposed into Irish legislation in the Criminal Justice (Mutual Assistance) Act 2008. The implementation of it simplified procedures for requesting and receiving freezing orders between Member States. As the ARO is based in the Criminal Assets Bureau, all ARO requests are dealt with by the staff of the Criminal Assets Bureau.
- There are two main models in Ireland which provide for freezing criminal assets. One is a criminal based model and the other is a non-conviction based model. Freezing orders can be withdrawn and are often withdrawn as part of a settlement were they might be varied, with some funds going back to the respondent and others to the State.

- There has been 15 incoming freezing requests in 2011; no outgoing requests has been made. In practice greater use has been made of the Proceeds of Crime Act 1996 rather than the FD on Freezing. Cases from the Criminal Assets Bureau do not pass through the Central Authority. They mainly work with civil cases, and since the FD on freezing is about criminal cases it cannot be used.
- On the question whether there is a mechanism in place to help requests being processed properly, the answer is yes. Informal calls are made, drafts are sent etc. for especially in emergency situations, to certain states in particular, namely the United Kingdom (especially concerning EAW) and the US (in particular).
- According to the Money Laundering and Terrorism Financing Act 2010, assets can be frozen for 7 days if there is reasonable reason to suspect criminal behaviour coupled with an offence with a possible sentence of 5 years or more in prison. This can be done over the phone, but must be followed up in writing. Legislation also allows for freezing following an enquiry from abroad. The Garda would check before execution. This speedy step is there to hinder money from leaving the country.
- Under the "civil procedure", after a judge makes a decision, any interested person will have 7 years to come back on the case and claim that the assets are not proceeds of crime. There has been no successful cases to date. This implies that the preparation of cases and presentation before court is very effective. However, the evaluation team believes that the longevity of the seven year rule is cumbersome and unnecessarily long. The Criminal Assets Bureau would like the 7 year period to be shortened to 2-3 years, since virtually no one comes back to successfully claim their non-criminal income. On another note, it could be the case that the civil procedure allows criminals to avoid criminal liability. If this would be the case, it would be extra unfortunate as the legislation is very much in place to successfully run the criminal course. As noted elsewhere, it is even a criminal offence to participate in, or contribute to certain activities of a criminal organisation.

- The Criminal Assets Bureau can get a temporary freezing for 21 days during which time information is collected against the suspected offender. The package is then presented as evidence and presented to the High Court, to a dedicated judge dealing with issues linked to the Criminal Assets Bureau. After a positive judgement from the court, based on the balance of probability, the assets will be frozen for 7 years. During this time, the offender has the chance to provide evidence of a reasonable income. During the time leading up to the court hearing, normally some 18 months, every stakeholder is contacted, including victims. A liquidator (as this has to do with property) will put an ad in the newspaper to get in contact with them. The court decides how to divide the money between the victims.
- The Criminal Assets Bureau can link an on-going civil case to a criminal one if they want to. Usually, there will be no problems. The offenders targeted by the Criminal Assets Bureau are usually not the ones committing the predicate offences. Assets confiscated through civil procedures can be transferred to criminal cases, but the assets have to be released before.
- The Criminal Assets Bureau also uses tax law against criminals. They can be taxed also on criminal income, meaning that all income is taxable. The Criminal Assets Bureau only identifies a volume of income without having to specify the source of income. This is up to the defendant to do. Thus, there is a good ground for efficient "non conviction based confiscation". The value of the assets/proceeds of crime is assessed on the basis of the entire value of the items at hand as it was at the moment of freezing.
- The Irish use of mutual legal assistance is still largely based on the 1959 Council of Europe Convention. New legislation is incoming and will probably enacted by early 2012. A Criminal Justice (Mutual Assistance) (Amendment) Bill is being drafted to give effect to Framework Decision 2006/783/JHA. This will replace existing legislation on Confiscation Orders. As the number of requests received by Ireland from other Member States is minimal, the Irish authorities are not expecting any major difficulties with implementation.



- Ireland received 361 MLA requests, and sent 83 in 2010. All MLAs are channelled via the Central Authority. Ireland has a good working relationship with all states but an especially close relationship with US and UK colleagues. However, the evaluation team noted that in 2010, only 32% of Ireland's outgoing requests were to the UK and the US and 68% were to other Member States. If nothing else, this indicates that there is also a need to coordinate the work also with other partners than the UK and the US.
- Ireland would only send an MLA to satisfy the needs of the receiving state. There has been no formal MLA request to other Member States about assets abroad. The Irish explanation is that the objective is achieved also using informal ways, and that it is good enough. As the Garda is not a judicial body, requests would go via the Director of Public Prosecutions or directly to the Central Authority.
- Exchange of information internationally is possible without MLA, but there are some restrictions, which are being addressed in the legislation review process.
- According to the Revenue Commissioners, they do not issue requests as they operate only at a national level. Revenue, if seeking international assistance, has to go via the Central Authority. However, the number is quite small. Of 361 requests last year, there were only 3 or 4 outgoing requests. The number of incoming requests was larger.
- The judicial authority in the context of MLA is the Director of Public Prosecutions. However, it seems that their role de facto is rather limited.
- Judges cannot re-evaluate the basis of the request, but only decides whether it falls within the remit of the Framework Decision. The Central Authority responds to requests from whoever sent it. They do not have to communicate with a central authority. When getting a request, an Irish judge needs to know it is a criminal case and that it is also a crime in Ireland. Essentially, the judge looks at the case as an Irish case, but the judges are not looking behind the case in the sending Member State. The whole file is not needed.

- An outgoing request for MLA will have to pass many stages. From the requesting officer, it will go to the Mutual Assistance Division of the Garda, then to the Director of Public Prosecutions after which it would return to the Mutual Assistance Division of the Garda before going to the Central Authority. Both the Director of Public Prosecutions and the Central Authority will be in a position to ask for additional information to ensure the request meets standards. On the request, the investigating officer is named as the contact person, to avoid the lengthy process if additional information is needed. The specificity of the Irish common law system aside, and appreciating that the mechanism of transmitting MLA requests is there to assure the release of only the best quality requests, the system seems cumbersome, introducing delays.
- An incoming MLA request could be executed within 24 hours. Routinely, a request will be processed in 2 or 3 months, but it could take up to one year. The execution time depends on the request. The most common requests are about bank account information. Such requests normally go to the court once a month unless there is an emergency, or the requesting state take informal steps to hasten the procedure. Most states do not. This is identified by the evaluators as a weakness, raising the question why the processing has to take such a long time. Perhaps the answer is to be found in the process. The Central Authority does a full check of the case to assess that it is criminal case and that the necessary evidence is present. The Central Authority has to go to a judge who will issue a warrant and decide on the case. This may seem cumbersome but it seems to be a consequence of the common law system structure, where the proceedings are adversary and someone needs to present the case to the judge. Judges do not decide "in camera".

- According to Central Authority, many requests are withdrawn because they are incomplete or wrong. Requests are never refused, but they will be sent back for improvement, for instance as the result of a poor translation. There seem to be a mutual lack of follow-up to requests which have been made. Neither the Irish nor other Member States seem to send follow-up questions on their requests. Conversely, the Irish will not receive feedback about what has happened with cases in requesting Member States. However, Ireland usually contacts its counterparts in the United Kingdom and the US. This is linguistically easy, with common law countries with similar police powers. Thus, because of common language and common legal systems, there tends to be greater contact with colleagues in US and UK. In addition, both the US and UK operate Central Authority models so ongoing relationships form. Ireland also has contacts with other states but these are less frequently.
- The most common delays are introduced due to need for extra information, waiting for banks to respond, etc. A perfect request normally takes two months to process. Ireland gets back to the requesting state in 50% of the cases asking for additional information.<sup>1</sup> Ireland also encourages requesting states to limit their requests to make them more workable. For instance, limiting time period for request from 20 to 5 years, or number of bank accounts from 50 to 5. Sometimes, delays are introduced because translations are so poor that the Central Authority has to guess what is requested from them.
- Overall, translation is a big issue. The Central Authority needs the sending state to translate for judicial correctness. When Ireland sends a request, it is sent in English (to allow the recipients to start working on the request) followed up with a translation into the official language(s) of the receiving state.

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<sup>1</sup> Specifically, Ireland, reverts in about 50% of cases involving freezing/forfeiture of assets (usually in relation to the absence of the certificate). They revert in far fewer cases generally (requests seeking the taking of evidence, searches etc).

- If information requested is not with the police, the Central Authority looks for the information, for instance with telecom companies or banks. In effect, the Central Authority in these cases functions as an investigation judge. The most common way to retrieve the information is to subpoena staff in a bank. They are then called in front of a judge to give testimony under oath. The judge passes on the information to the Central Authority which in turn delivers the information to the requesting state.
- The Central Authority encourages informal police to police contacts, for instance when it comes to interviewing witnesses or willing suspects. However, it seems such informal contacts are limited to other English speaking jurisdictions, mainly the United Kingdom.
- A receivership process takes care of confiscation and disposal of confiscated assets. The Criminal Assets Bureau manages all assets which are confiscated, via legal officer through the courts. If the court agrees, for instance, the Criminal Assets Bureau sells. There are no targets set for the Criminal Assets Bureau about how much money to bring in per year.
- One common problem when it comes to asset confiscation is when a criminal uses criminal proceeds for consumption and legal means for investment. Then it is difficult with criminal confiscation. In Ireland, a way around this problem is to present a good case that this was done deliberately so. Then the problem will be solved.
- Non-conviction based confiscation also offers a solution, and the envisaged shortening of the period of freezing from 7 to 3 years could further enhance confiscation.

**5. Protection of the financial interests of the EU - available mechanisms, particularly cooperation WITH OLAF**

In so far as Customs are concerned, information on irregularities affecting the European Union's own resources are advised to OLAF under Regulation 515/97. Irregularities are advised to a central national office for the purpose of notifying OLAF.

Information supplied by OLAF regarding customs matters are dealt with on a case by case basis but invariably involve risk analysis & profiling as well as the issuance of an Information Bulletin where appropriate and alerting the customs offices concerned.

The European Commission (OLAF) can play a role in criminal investigation mainly as experts. This would generally be on invitation and would be as observer status. In addition there is provision in the European Communities (on-the-spot checks and inspections) Regulations, 1998 for Commission Inspectors to carry out investigations in the State. This Statutory Instrument confers powers of investigation on Commission Inspectors. A Commission Inspector shall be accompanied by an Administrative (National) Inspector during the course of such investigations.

OLAF agents can be invited to participate in Joint Investigation Teams. They would be as observer status.

OLAF's involvement has been with coordinating international investigations where the investigation involved 3<sup>rd</sup> countries.

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The coordinating body for contacts with Olaf in concrete cases is dependent upon the issue under investigation. If it relates to customs and is combined with protection of the European Union's financial interests then the coordinating body will be Customs Criminal Investigations Branch and in particular in Customs Investigations Unit. OLAF have been advised that this unit is the National Contact Point for such operations involving customs competence. Investigations in other areas are carried out by the Police but there are also joint operations involving Customs and Police as well as sharing of information between the Police and Customs where appropriate and where provided for by law.

The Garda Bureau of Fraud Investigation is a contact point for OLAF, especially the Cheque & Payment Card Unit in relation to counterfeit currency, etc.

Experience has shown that OLAF provide their full support to the State. Their support has mainly been in the coordination of investigations and information involving multiple countries and jurisdictions.

## **5.1. Conclusions**

- Ireland has ratified the first protocol about corruption as well as the Convention on the protection of the financial interests of the EU. Ireland has also ratified the second protocol to the aforementioned convention. Ireland introduced strengthened anti-corruption legislation in 2010, including sections on whistleblowers. Already in 2001, it was possible to prosecute Irish nationals for corruption committed abroad. Ireland wants to consolidate its legislation dealing with corruption.
- Normally, OLAF coordinates cases, not as experts. Customs would take care of that in relationship to their own jurisdiction.

## 6. RECOMMENDATIONS

As regards financial investigations and the fight against financial crime the expert team was able to review the Irish system satisfactorily, expertly supported by the helpfulness of the Irish hosts. Overall, it is clear that the working principles and legal framework of the Irish system are robust and functional and the various actors are well aware of their roles and responsibilities.

Based on its findings, the expert team would like to make certain recommendations to Ireland to contribute to the further development of the system. Furthermore, based on the various good and, without doubt, even best practices of Ireland, the team would also like to make related recommendations to the Member States, the EU, its institutions and agencies.

Ireland is requested to inform the Council Secretariat within 18 months of adoption of this report of the action it has taken on these recommendations. The information will be submitted to, and if necessary discussed by, the relevant working group.

### 6.1. Recommendations to Ireland

1. The regular exchange between An Garda Síochána and the Director of Public Prosecutions, which is clearly regulated under Section 8 of the Garda Síochána Act 2005 and the General Direction which have been issued by the Director of Public Prosecutions, is a positive example of how to exercise delegated powers between agencies involved in financial investigations. The Irish authorities are encouraged to continue with providing such clear guidelines about the delegation or distribution of powers between competent authorities in the field of financial investigations.
2. In view of the Communication from the Commission to the European Parliament and the European Council, COM(2008) 766 final from the 20th November 2008, about the proceeds of organized crime ensuring that crime does not pay and its underlying ten strategic priorities, Ireland is encouraged to keep going on in the direction elaborated in this Communication. The efforts made are welcomed, in the area of high training standards of their members, adjunction of a high level of expertise to assist them in the area of financial investigating – such as support from forensic accountants and computer forensic investigators as well as expert-witnesses, and financial criminal analysis.

3. The efforts in the training area already started could be strengthened by setting up training programmes following set curricula, with recognisable diploma. The Irish authorities are encouraged to consider this route, and also to make such training programmes multi-disciplinary in scope. Ireland is recommended to introduce similar training to the judiciary as well.
4. Ireland should further enhance the use of the ARO-network. Training is needed to inform about the ARO. Better education would make people more aware of and therefore more active users of this channel in the area of targeting proceeds of crime. Ireland is recommended to strengthen their efforts to inform about the ARO and, when possible, pro-actively and exclusively use this channel in the fight against financial crime.
5. Fiscal auditing undertaken by Revenue and Customs is a very effective and powerful investigative tool. Ireland is recommended to rely more on fiscal auditing and widen its use.
6. It is recommended that the Revenue and Customs Service in Ireland is given the power to compel witnesses and suspects to attend interviews.
7. Ireland keeps its legislation under ongoing review in cooperation with enforcement agencies. Ireland furthermore wants to consolidate its legislation dealing with corruption. Ireland is encouraged in its efforts, in particular to meet its timetable for completion by early 2012.
8. Ireland is recommended to strengthen its efforts in the field of international judicial cooperation, in particular by ratifying the 2000 MLA Convention and its protocol, and make better use of the tools available in this field, such as Eurojust and the EJN.
9. Ireland is recommended to review the MLA process, including all parties, counting courts and the DPP, the Central Authority and the Garda MLA unit, to make the system more efficient and effective. As response times from banks seem to be rather long, the judiciary should set tighter time-restraints on banks to this effect.



10. Ireland is recommended to make enhanced use of the ARO network and other channels such as Eurojust and the EJM, to speed up the process of MLA requests.
11. Ireland is invited to consider the option of setting up a central database of bank accounts, or an effective alternate mechanism.
12. Given the small number of criminal confiscation orders (16-17 in 2009), efforts should be made towards achieving a higher level of criminal confiscation. With regard to successful criminal confiscation a clear strategy should be developed and implemented that describes blockages, shows potential benefits and identify best practices of criminal confiscation. Taking into account the deep knowledge and expertise of CAB, the procedure of criminal confiscation should benefit from those skills.
13. Training in financial crime and financial crime investigations should be provided to ordinary officers as well, as they often do not understand or recognise money laundering. A wider dissemination and better mainstreaming of knowledge regarding money laundering and proceeds of crime would provide an efficient platform for the fight against such issues.
14. Ireland is recommended to introduce statistics with regard to how many crime cases lead to financial investigations. Statistics are necessary; not as an end in itself but rather as a means to an end. They must fulfil a clear purpose. They should enable analysis and questions to further work upon, be comparative and show trends between from one financial year to another, inter alia to help identify loopholes and support decision-making as an effective management tool.

**6.2. Recommendations to the European Union, its Member States, institutions and agencies**

1. The Member States are recommended to consider the clear guidelines used by Ireland in terms of assigning mandates to various stakeholders to reduce ambiguity in the exercise of powers and the roles of agencies, thereby increasing accountability and transparency.
2. Member States are recommended to consolidate knowledge and better educate law enforcement officers about the use of the ARO network – to promote efficient cooperation and information sharing.
3. A multi-agency unit such as the CAB, composed of members of different authorities offers a multi-disciplinary partnership approach in its investigations into the suspected proceeds of criminal conducts is highly successful when empowered in a correct way. This should be an approach explored by all Member States, especially with a view to strengthening cooperation throughout such units and other competent authorities within the EU.
4. One aspect regarding EU legislation noted by the Irish Ministry of Justice is that the EU seems not to amend legislation but rather replaces legal acts. This creates problems at the national level and a stop-start system. The Member States are recommended to consider this position.
5. The provisions of the Irish Criminal Justice Act 2011 are based on the experiences of those involved in investigations and prosecutions of financial crime. The Member States are recommended to study the Irish system of engagement of all relevant parties and enable such transfer of knowledge from their competent authorities into the legislative process.

6. The Member States are recommended to proactively engage Eurojust in cross-border asset recovery cases.
7. MS are recommended to report successful as well as less successful complex cross-border cases to the ARO network.
8. Member States are recommended to consider providing information and know-how to “designated persons” in order to raise awareness of STRs and the way STRs are investigated in order to increase the number of STRs.
9. In a similar vein to Ireland, the Member States are also invited to introduce financial crime statistics, inter alia to help identify loopholes and support decision-making as an effective management tool.

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Annex A: Programme for the visit

**Tuesday 5th July:**

- 10.00 – 13:00 Department of Justice & Equality
- 14:30 – 17:00 An Garda Síochána:  
Garda Bureau of Fraud Investigation
- 18:30 Dinner hosted by An Garda Síochána

**Wednesday 6th July:**

- 10:00 – 13:00 Criminal Assets Bureau
- 14:30 – 17:00 Office of the Revenue Commissioners

**Thursday 7th July:**

- 10:45 – 12:30 Central Authority for Mutual Assistance, Department of Justice and Equality
- 14:00 – 15:30 Office of the Director for Public Prosecutions
- 15:30 – 17:00 Courts Services

**Friday 8th July:**

- 10:00 – 12:30 Department of Justice & Equality, 94 St. Stephen's Green, Dublin 2: - Wrap up meeting

Annex B: List of persons interviewed/met

Department of Justice & Equality:

Ms. Deirdre Meenan Drugs and Organised Crime Division

Mr. David Brennan, Criminal Law Reform Division

Ms. Aileen Harrington, Criminal Law Reform Division

Mr. David Fennell, Mutual Legal & Extradition Division

Ms. Anne Farrell, Mutual Assistance & Extradition Division

Ms. Anne Vaughan, Mutual Assistance & Extradition Division

Mr. Michael O'Donoghue, Legal Advisor, Mutual Assistance & Extradition Division

An Garda Síochána - Garda Bureau of Fraud Investigation:

Detective Chief Superintendent Martin McLaughlin

Detective Superintendent Pat Collins

Detective Superintendent Colm Featherstone

Detective Inspector Maureen McGrath

Detective Inspector Gerard Walsh

Detective Inspector Denis Heneghan

Detective Inspector Ray Kavanagh

Detective Sergeant Michael Gubbins

Detective Sergeant Clodagh White

Detective Sergeant John Poole

Detective Sergeant Tom Bourke

Detective Sergeant Joe McLaughlin

Mutual Legal Assistance Division:

Sergeant Thomas Whiteacre

Criminal Assets Bureau:

Detective Chief Superintendent Eugene Corcoran, Chief Bureau Officer

Detective Superintendent Denis O'Leary, Assistant Chief Bureau Officer

Detective Inspector Tom Matthews

Revenue Commissioners – Investigations & Prosecutions Division:

Mr. Paul Garland

Ms. Mary O'Dwyer

Mr. Andrew Keyes

Mr. Gerry Conway

Office of the Director of Public Prosecutions:

Mr. Barry Donoghue, Deputy Director of Public Prosecutions

Ms. Claire Loftus, Head of Directing Division

Mr. Michael Brady, Assets Seizing Unit

Mr. Henry Matthews, Directing Division

Courts Service:

Mr. Noel Rubotham, Director of Reform and Development

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Annex C: List of abbreviations/glossary of terms

<b>ACRONYM ABBREVIATION TERM</b>	<b>ACRONYM IN THE ORIGINAL LANGUAGE</b>	<b>ENGLISH TRANSLATION/EXPLANATION</b>
AML-CTF		
ARO	-/-	Asset Recovery Office
AWF	-/-	Europol's Analysis Work Files
AWF FURTUM		Europol's Analysis Work Files - Itinerant crime groups
AWF SMOKE		Europol's Analysis Work Files - Cigarette smuggling
AWF SOYA		Europol's Analysis Work Files - Forgery of the Euro
AWF TERMINAL		Europol's Analysis Work Files - Credit card fraud and ATM skimming
CAB		The Criminal Assets Bureau
CARIN	-/-	Camden Asset Recovery Inter- Agency Network
CEPOL		European Police College
CJA 2010		Criminal Justice Act 2010
CLEA		Company Law Enforcement Act
CRO		Companies Registration Office
D/JEI		Department of Jobs, Enterprise and Innovation

**RESTREINT UE/EU RESTRICTED**

DPP		Director of Public Prosecutions
EAW		European Arrest Warrant
ECTEG		Europol's Cybercrime Training and Education Group
EIO		European Investigation Order
EJN		European Judicial Network
ENU		Europol National Unit
EU		European Union
FBI		Federal Bureau Investigation
FIU	-/-	Financial Intelligence Unit
GBFI		Garda Bureau of Fraud Investigation
GNDU		Garda National Drug Unit
HQ		Head-quarters
JIT		Joint Investigation Teams
MDG		Multidisciplinary Group on Organised Crime
MLA	-/-	Mutual Legal Assistance
MLIU		Money Laundering Investigation Unit
MTIC		Missing Trader Intra Community Fraud
NCB		

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NCIU		National Criminal Intelligence Unit
NIU		
NSS		National Support Services
OC	-/-	Organised crime
OCTA	-/-	Organised Crime Threat Assessment
ODCE		Office of the Director for Corporate Enforcement
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
ROCTA	-/-	Russian Organised Crime Threat Assessment
SIENA	-/-	Europol Secure Information Exchange Network
STR	-/-	Suspicious Transaction Report
UK		United Kingdom
US		United States

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