



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of Ireland**

Review by Brunei Darussalam and Luxembourg of the implementation by Ireland of articles 15 - 42 of Chapter III. “Criminalization and law enforcement” and articles 44 - 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## **I. Introduction**

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

## **II. Process**

5. The following review of the implementation by Ireland of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Ireland, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Brunei Darussalam and Luxembourg, by means of telephone conferences and e-mail exchanges and involving, inter alia, the following experts:

### Ireland:

- Ms. Ursula Stapleton, Drugs and Organised Crime Division, Department of Justice and Equality;
- Ms. Anne Marie Treacy, Drugs and Organised Crime Division, Department of Justice and Equality;

### Luxembourg:

- Mr. Luc Reding, Direction des affaires pénales, Ministry of Justice;
- Mr. Jean Bour, Prosecutor, Ministry of Justice;

### Brunei Darussalam:

- Mr. Christopher Ng, Counsel and Deputy Public Prosecutor, Special Duties Unit, Criminal Justice Division, Attorney General's Chambers;
- Ms. Hasrina Suzanty Jamil, Special Investigator, International Unit, Anti-Corruption Bureau;
- Ms. Umi Kalthum Zatil Amali Abd Karim, Special Investigator, International Unit, Anti-Corruption Bureau;

Secretariat:

- Mr. Oliver Landwehr, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS
- Ms. Sophie Meingast, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS

6. A country visit, agreed to by Ireland, was conducted from 16 to 18 September 2014. During the country visit, the reviewing experts met with representatives from

- the Department of Justice and Equality;
- the Irish Prison Service
- the Office of the Attorney General;
- the Office of the Director for Public Prosecutions;
- the Criminal Assets Bureau;
- An Garda Síochána (National Police);
- the Department of Public Expenditure and Reform; and
- representatives from civil society.

### **III. Executive summary**

#### **1. Introduction**

##### **1.1. Overview of the legal and institutional framework of Ireland in the context of implementation of the United Nations Convention against Corruption**

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

Ireland is a Parliamentary democracy. The Parliament is the sole legislative authority of the State and consists of the President and two Houses: *Dáil Éireann* (the House of Representatives) and *Seanad Éireann* (the Senate) whose powers and functions derive from the Constitution of Ireland (1937).

Irish law is based on English Common Law, substantially modified by indigenous concepts, the written Constitution of 1937, statute law and judicial decisions. Ireland's reliance on doctrine is only secondary to case law and legislation. Ireland follows a dualistic approach with regard to the incorporation of public international law. Following its ratification, the Convention is part of Irish law. This means that the courts can have reference to the Convention and should interpret domestic law in conformity with the Convention. However, the Convention cannot be invoked to override national law. The Convention is not self-executing.

The structure of the court system comprises a court of final appeal, the Supreme Court, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction, the Circuit Court and the District Court.

*An Garda Síochána* is the national police service of Ireland. It has responsibility for carrying out all policing duties in the Irish State, including the fight against corruption. The prosecution of offences is the task of the the Office of the Director of Public Prosecutions (DPP). The main piece of anti-corruption legislation is the Prevention of Corruption Act (POCA), as amended.

## **2. Chapter III: Criminalization and Law Enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### *Bribery and trading in influence (arts. 15, 16, 18, 21)*

The provision on active bribery is contained in Section 2 (2) of the Prevention of Corruption (Amendment) Act 2001. Passive bribery is criminalised in Section 2(1) of that act. In Section 2(5), the definition of the bribee (“agent”) includes not only national and foreign officials but also any kind of employees. Therefore, the Irish bribery legislation covers arts. 15, 16 and 21 UNCAC in the same provision.

The element of “undue advantage” is implemented as “any gift, consideration or advantage” which is “corruptly” given or received. The term “corruptly” is defined in section 2 and includes acting with an improper purpose.

While Ireland stated that the ‘promise’ of a bribe is covered under the present law, the reviewers noted that such a “promise” – i.e. a unilateral act (unlike “agrees to give”) geared towards a deal in the future (unlike “offer”) – is not explicitly included in the text of the law as it stands. Third party beneficiaries of the advantage are explicitly mentioned in the text of the law (“for the benefit of ... another person”) and include entities, as the term “person” encompass legal persons.

Trading in influence is currently not criminalized comprehensively, although some forms will be captured by the existing provisions of Sections 2(1) and (2). It is intended that, also for the purpose of clarity, the forthcoming Criminal Justice (Corruption) Bill will provide distinct trading in influence offences (cf. Head 3 in the General Scheme of the Bill).

#### *Money-laundering, concealment (arts. 23, 24)*

The principal money laundering offences are set out in Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (AML Act). Section 11 of the AML Act contains important presumptions as to the knowledge or belief of accused persons which can reasonably be inferred from actions and circumstances. Section 7 (2) of the AML Act criminalises attempts to commit a money laundering offence and Section 7 of the Criminal Law Act 1997 criminalises aiding and abetting. Conspiracy is punished under common law.

Ireland has adopted an all-crimes approach without a *de minimis* threshold. Section 6 of the AML Act defines the predicate for money laundering to include conduct occurring in a place outside the State. The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized conduct.

The offences in part 2 of the AML Act also cover concealment, as foreseen in article 24 of the Convention.

#### *Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20, 22)*

The existing common law offences of larceny, embezzlement, and fraudulent conversion were replaced by a new offence of “theft” under the Criminal Justice (Theft and Fraud Offences) Act 2001, which also covers the embezzlement offence. The definition of property does not distinguish between public or private property.

Art. 19 UNCAC is implemented through the provisions of Section 8 POCA 2001.

Ireland stated that it has not adopted and criminalized illicit enrichment but has considered introducing the offence. Section 16B of the Proceeds of Crime Act provides civil proceedings whereby the proceeds derived from corrupt conduct may be recovered from an official. The General Scheme of the Criminal Justice (Corruption) Bill contains in Head 12 a provision whereby wealth which is disproportionate to an official’s emoluments and interests as declared in his or her statement of registrable interests is presumed to derive from a bribe.

### *Obstruction of justice (art. 25)*

Art. 25 UNCAC is implemented through the common law crime of subornation of perjury, i.e. the encouragement of a witness to perjure themselves. Perverting the course of justice is also an offence at common law, as is the offence of embracery.

Section 41 of the Criminal Justice Act 1999 makes it an offence for a person to harm or threaten, menace or intimidate another person who is assisting in the investigation by the *Garda Síochána*. In addition, the obstruction of public officials is criminalised by section 7 of the Offences Against the State Act 1939 (as amended).

### *Liability of legal persons (art. 26)*

The common law doctrine of identification provides for the liability of legal persons whereby the acts of the controlling officers of a legal person are viewed as constituting the acts of the legal person itself. The General Scheme of the Criminal Justice (Corruption) Bill makes specific provision for the liability of legal persons where an offence is committed by any employee of a legal person with the intention of obtaining or retaining business.

Under the current common law system of liability, the liability of a natural person or persons with sufficient control over the legal entity must be established first in order to hold the legal person liable. All relevant indictable offences carry unlimited fines to which legal persons would be liable.

### *Participation and attempt (art. 27)*

Art. 27 UNCAC is implemented through Section 7 of the Criminal Law Act 1997, Sections 7, 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, and Section 71 of the Criminal Justice Act 2006.

### *Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30, 37)*

The range of punishment for corruption crimes makes it possible to take into account the gravity of the relevant offences. All of the indictable offences carry a maximum penalty of an unlimited fine, along with a substantial period of imprisonment.

There is no immunity from criminal prosecution or investigation for any person in Irish law, other than the President.

Ireland has a discretionary prosecution system. The discretion relating to the prosecution of persons for serious corruption offences vests in the Director of Public Prosecutions (DPP). The prosecution guidelines explicitly mention corruption.

Art. 30(6) UNCAC is implemented through disciplinary codes within the various sectors. While Ireland indicated the possibility for disqualification from membership of Parliament, there are no other laws providing for disqualification for other officials. Disciplinary measures can also be applied if no criminal sanction has been imposed.

The legislation promotes the reintegration into society of persons convicted of offences. The Irish Prison Service provides reintegration programmes to all those in custody, subject to certain qualifying periods.

The Irish legislation does not provide for plea bargaining agreements. However, cooperating offenders/accomplices have been granted immunity from prosecution in some cases. Cooperation with the investigation and the prosecution itself are matters that a court must take into account.

*Protection of witnesses and reporting persons (arts. 32, 33)*

The Criminal Justice Act 1999 provides a number of protections to witnesses, jurors and others in the context of criminal prosecutions. Ireland has a comprehensive witness protection programme, which is the task of the national police. Protection is given to certain witnesses, in particular child witnesses, to allow evidence to be given by video link. Ireland has established a Victims of Crime Office and a Victims of Crime Charter.

Specific protection for whistleblowers is contained in the POCA 2010. In addition, further comprehensive whistleblower protection arrangements are contained in the Protected Disclosures Act 2014. The act is extraordinarily broad in its personal scope of application. It covers all employees, whether in the public or private sector. The Act does not include a public interest or good faith requirement.

*Freezing, seizing and confiscation; bank secrecy (arts. 31, 40)*

The criminal confiscation system set out in the Criminal Justice Act 1994 is value based.

For conviction-based provisions, Section 9 of the Criminal Justice Act 1994 provides that the DPP may make an application to the court for a confiscation order, requiring the person concerned to pay such sum as the court sees fit having regard to the benefit and/or pecuniary advantage obtained and the amount which might be realised. In order to enhance effective compliance with these provisions, the DPP has established a specialist unit.

In relation to non conviction-based (NCB) confiscation, carried out by the Criminal Assets Bureau, there are comprehensive provisions in the Proceeds of Crime Acts 1996 and 2005. This is a civil process which does not require that the person in possession or control of the asset be convicted of a criminal offence. The objective is to deprive or deny the person the benefits of proceeds of crime.

The Office of the Director of Public Prosecutions has established a specialist unit which is responsible for asset management. The Criminal Assets Bureau also has responsibilities with regard to asset management.

Section 56 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, requires a financial institution, as provided therein, to have systems in place to respond efficiently and appropriately to Garda enquiries in relation to its business relationships. Ireland does not have a central register of bank accounts and it is not sufficient to claim that proceeds of crime are in a bank in Ireland in order to obtain a court order allowing to request all banks in Ireland to provide information. Requests must be sent to individual banks on the basis of information provided.

The Proceeds of Crime Act does not contain a full reversal of the burden of proof. It remains for the State to establish to the satisfaction of the court on the balance of probabilities that the respondent is in possession or control of assets which comprise proceeds of crime.

The rights of bona fide third parties are protected under the Proceeds of Crime Act.

*Statute of limitations; criminal record (arts. 29, 41)*

There is no statute of limitations applicable in Ireland in respect of indictable offences.

Previous convictions of another State can be taken into account at sentencing.

### *Jurisdiction (art. 42)*

Ireland has established territorial jurisdiction, flag state jurisdiction, the active personality principle and jurisdiction in lieu of extradition. All these jurisdictional bases are foreseen in a consolidated jurisdiction provision in Head 9 of the General Scheme of the Criminal Justice (Corruption ) Bill 2012.

### *Consequences of acts of corruption; compensation for damage (arts. 34, 35)*

The Courts will not enforce illegal contracts. Corruption would be a relevant factor in a legal action to annul or rescind a contract. According to the EU public procurement directives, suppliers convicted of corruption offences are mandatorily excluded from the tendering procedures.

Persons suffering damage or loss can take civil action, for instance in torts. Persons can also pursue claims for contractual and non-contractual damages through the civil courts. A criminal conviction is not a precondition to the commencement of civil proceedings by a victim seeking compensation from an alleged wrongdoer.

### *Specialized authorities and inter-agency coordination (arts. 36, 38, 39)*

Ireland does not have a specialized anti-corruption agency. Instead, the national police, *An Garda Síochána*, and the other law enforcement bodies also deal with corruption offences. The Garda Bureau of Fraud Investigation (GBFI) is a specialist bureau within *An Garda Síochána* which undertakes specialised investigations (including foreign bribery investigations). Corruption offences would also be investigated by local units of *An Garda Síochána* with support and advice from the GBFI.

The GBFI includes the Financial Intelligence Unit (FIU). The FIU is a member of the Egmont Group and closely cooperates with the Criminal Assets Bureau. It has the power to impose a freezing order for 7 days.

The police have set up the Garda Knowledge Management Portal, a database containing all relevant legislation and case law; information on assets, proceeds of crime, and DNA as well as templates.

The Authority vested with the responsibility for the prosecution of persons for serious corruption offences is the Director of Public Prosecutions (DPP). A specialist unit has been established within the DPP's office, with appropriate training, retaining responsibility for the prosecution of serious corruption offences to which appropriate resources have been assigned. While the DPP, as a general rule, has no power to direct *An Garda Síochána* or other agencies in their investigations, she and her Office cooperate regularly with such investigating agencies during the course of criminal investigations.

The Criminal Assets Bureau is a statutory body whose remit is to carry out investigations into the suspected proceeds of criminal conduct. It identifies assets of persons which derive directly or indirectly from criminal conduct and then takes appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct.

## **2.2. Successes and good practices**

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The fact that the Irish anti-bribery legislation goes beyond the requirements of the Convention in that it applies equally to national and foreign officials, as well as the private sector (articles 15,16 and 21 UNCAC);
- The broad definition of the recipient of a bribe (“agent”), which includes “any person employed by or acting for another”, was highlighted as a good practice (articles 15,16 and 21 UNCAC);

- The civil remedy in Section 16B of the Proceeds of Crime Act, whereby the proceeds of corrupt conduct may be recovered from an official through a “corrupt enrichment order”, which was considered to constitute an effective alternative to the criminalisation of illicit enrichment (article 20 UNCAC);
- The non-existence of immunities from criminal prosecution or investigation for any public officials other than the President (article 30, paragraph 2, UNCAC);
- The comprehensive nature of the Irish witness protection programme (article 32 UNCAC);
- The comprehensive whistleblower protection legislation enacted in the Protected Disclosures Act 2014 (article 33 UNCAC);
- Ireland’s non conviction-based (NCB) confiscation legislation and its enforcement through the Criminal Assets Bureau (article 31 UNCAC);
- The establishment of the Garda Knowledge Management Portal (article 36 UNCAC).

### **2.3. Challenges in implementation**

While noting Ireland’s efforts in the field of anti-corruption, the reviewers identified a number of challenges in implementation and/or grounds for further improvement and made the following recommendations (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- Swiftly adopt and implement the Criminal Justice (Corruption) Bill;
- Concerning Art. 15 and 16 UNCAC:
  - explicitly criminalize the “promise” of a bribe;
  - implement a better case tracking system to be able to evaluate the effectiveness and identify any weaknesses in the current enforcement system;
  - to monitor the effective enforcement of Art. 16(1) UNCAC and take any necessary measures to strengthen its implementation;
- Concerning Art. 18 UNCAC, it was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to comprehensively criminalise trading in influence;
- Concerning Art. 26 UNCAC, it was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to
  - establish an effective and comprehensive system of corporate criminal liability;
  - establish an effective and comprehensive system of liability that is not dependent on the prior establishment of liability of a natural person or persons with sufficient control over the legal entity;
- Concerning Art. 30(7) UNCAC, it was recommended that Ireland take measures to allow for the disqualification of persons other than MPs convicted of corruption offences from holding public office;
- Concerning Art. 31(7) UNCAC, Ireland was encouraged to consider the introduction of a central register of bank accounts.

## **3. Chapter IV: International cooperation**

### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

Extradition is governed by the Extradition Act 1965, the Extradition (European Convention on the Suppression of Terrorism) Act 1987, the Extradition (Amendment) Act 1987, the

Extradition (Amendment) Act 1994, the Extradition (European Union Conventions) Act 2001, the European Arrest Warrant Act 2003, and the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012.

As Ireland does not make extradition conditional on the existence of a treaty, it can extradite on the basis of reciprocity. Ireland may also use the Convention as the legal basis for extradition.

Dual criminality is a fundamental requirement for extradition under Irish law. Ireland extradites its nationals unless there is an explicit exclusion of such extraditions in a bilateral treaty with the requesting State, which is not the case in any of Ireland's existing treaties. Should extradition be denied, section 38 of the Extradition Act 1965 (as amended), together with sections 7 and 8 of the Criminal Law Act 1997 (as amended), provide the legal basis for trying the offence in Ireland.

If the extradition of nationals for the purposes of enforcing a sentence is refused, Ireland can enforce foreign sentences from determined States on the basis of the Transfer of Execution of Sentences Act, 2005.

Extraditable offences are those punishable in both the requesting State and Ireland by imprisonment for a maximum period of at least one year or by a more severe penalty and for which, if there has been a conviction and sentence in the requesting State, imprisonment for a period of at least four months or a more severe penalty has been imposed. Ireland does not provide for accessory extradition in line with article 44, paragraph 3, of the Convention.

The decision to extradite lies with the High Court, and the general rules applicable to criminal trials also apply in extradition procedures.

No information was provided by the Irish authorities on the average length of extradition proceedings.

Several amendments to significantly simplify and expedite the extradition process have been made by the European Arrest Warrant Act 2003 (Application to Third Countries and Amendment) and the Extradition (Amendment) Act 2012, such as the repeal of provisions which required that evidence in extradition proceedings be provided by sworn affidavit, and allowing for providing accompanying legislation of the requesting state as reproduction instead of as a certified copy of the law.

Section 11 of the Extradition Act 1965 (as amended) establishes the grounds for refusal of an extradition. The threat of prosecution or punishment on account of the requested person's sex or ethnic origin are not included as reasons for denial of extradition. However, Irish courts are obliged to interpret any legislation in accordance with the European Convention on Human Rights, which establishes the prohibition of discrimination, inter alia on the grounds of sex and national or social origin or association with a national minority.

While the Extradition Act 1965 (as amended) does not set forth that offences established in accordance with the Convention offences are not to be considered political offences, the jurisprudence of the Irish courts provides a very narrow interpretation of political offences and it was considered unlikely that any of the offences established in accordance with the Convention would be regarded as such.

Extradition cannot be refused solely on the ground that the offence is also considered to involve fiscal matters.

Ireland has bilateral extradition treaties with Australia, the Hong Kong Special Administrative Region of the People's Republic of China and the United State of America. It is party to multilateral extradition agreements and arrangements, including the European Convention on Extradition.

With regard to the transfer of sentenced persons, Ireland is party to the Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol and has passed the Transfer of Sentenced Persons Acts 1995 and 1997.

While transferring criminal proceedings to and from Northern Ireland is possible for certain offences, this is not applicable in corruption cases.

*Mutual legal assistance (art. 46)*

Mutual legal assistance (MLA) is regulated by the Criminal Justice (Mutual Assistance) Act 2008. However, the Act is only applicable to Member States of the European Union, Iceland and Norway, as well as other states designated as per S.I. No. 222/2012 - Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012. Not all States parties to the Convention have been designated, or are members of the European Union. Nevertheless, the Act allows for effect to be given to certain international agreements, or provisions of such agreements, between Ireland and other states relating to mutual assistance in criminal matters, including articles 46, 49, 50 and 54 to 57 of the Convention.

Ireland can use the Convention as legal basis for assistance. Ireland has concluded two bilateral treaties and two multilateral treaties on MLA. Ireland is also party to the European Convention on Mutual Assistance in Criminal Matters and its two additional Protocols.

In the absence of dual criminality, Ireland renders assistance involving non-coercive action.

Ireland can provide MLA for a wide range of measures, also with regard to offences for which a legal person can be considered responsible. The identification or tracing of proceeds of crime, property, instrumentalities or other things for evidentiary purposes, as well as the facilitation of the voluntary appearance of persons other than prisoners in the requesting State party is not regulated. While the Criminal Justice (Mutual Assistance) Act 2008 provides for the execution of freezing order in sections 34 and 35, it does not address the identification and tracing of proceeds of crime in accordance with the provisions of chapter V of the Convention.

The Minister for Justice and Equality is the Irish Central Authority for Mutual Legal Assistance in Criminal Matters (Ireland has notified the Secretary-General of the United Nations accordingly), and has the function of receiving, transmitting and otherwise dealing with and co-operating with requests in accordance with relevant international instruments.

Section 65 of the Criminal Justice (Mutual Assistance) Act 2008 addresses the transfer of persons detained or serving a sentence to Ireland, while section 66 regulates the transfer of such persons from Ireland to another State.

Requests are accepted in English and Irish (Ireland has notified the Secretary-General of the United Nations accordingly). In urgent cases, requests can be received by email, if they are confirmed through the provision of hard copy documentation afterwards. Ireland does not accept oral requests for assistance.

The Criminal Justice (Mutual Assistance) Act 2008 provides for the hearing of witnesses through video conferencing in sections 67 to 70.

The Irish authorities did not provide information on the average time needed to afford assistance to other States.

Assistance may be refused in accordance with section 3 of the Criminal Justice (Mutual Assistance) Act 2008; requests cannot be refused on the sole ground that the offence is also considered to involve fiscal offences. Bank secrecy can be lifted to provide assistance.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)*

Law enforcement authorities cooperate through organizations and networks such as INTERPOL, Europol, the Egmont Group, the Camden Asset Recovery Inter-Agency Network, Fin.Net and others. *An Garda Síochána* has liaison officers working in several Irish embassies, as well as officers working with INTERPOL and Europol, and facilitates personnel to work with the Police Service of Northern Ireland.

The Criminal Justice (Joint Investigation Teams) Act 2004, as amended by section 96 of the Criminal Justice (Mutual Assistance) Act 2008, foresees the possibility of creating joint investigation teams with Member states of the European Union or designated states.

The Criminal Justice (Surveillance) Act 2009 allows for the use of surveillance techniques by competent authorities in criminal investigations. Sections 88-90 of the Criminal Justice (Mutual Assistance) Act 2008 provide for the use of controlled delivery in MLA cases with Member States of the European Union, Iceland and Norway, and other designated states. Ireland is party to several multilateral instruments that address the use of special investigative techniques at the international level. Irish legislation does not specify methods of controlled delivery.

### **3.2. Successes and good practices**

- The fact that, in order to simplify and expedite the extradition process, Ireland has made several amendments to its Extradition Act, which were acknowledged and welcomed as facilitating cooperation (art. 44, para. 9);
- The acceptance of draft requests in order to ensure their compliance with the requirements for extradition requests as a means to significantly improve the quality of the cooperation and accelerate the extradition process (art. 44, para. 17).
- The fact that Ireland has prepared and disseminated a guide on its mutual legal assistance system, entitled “Mutual Legal Assistance in Criminal Matters - A Guide to Irish Law and Procedures”, which is available online and can help requesting States in the formulation of their MLA requests (art. 46, para. 1).
- The lifting of bank secrecy in response to MLA requests is frequently carried out in practice and the *Garda Síochána* can request such information from banks and financial institutions (art. 46, para. 8).
- Ireland accepts request for police-to-police cooperation either directly by other States’ police services or through INTERPOL (art. 48, para. 1).
- Ireland has established a protocol for the exchange of evidence and the sharing of forensics with Northern Ireland to facilitate cooperation. A guidance manual for police and prosecution services from Ireland and Northern Ireland has been issued to streamline cooperation (art. 49).

### **3.3. Challenges in implementation**

With regard to international cooperation, it is recommended that Ireland:

- Consider amending the domestic legislation to allow for accessory extradition (art. 44, para. 3);
- In a future revision of existing extradition treaties concluded with other States parties, or in future extradition treaties, include the offences established in accordance with the Convention as extraditable offences (art. 44, para. 4);
- Consider extending the domestic legal framework to also allow for the execution of sentences imposed by the requesting State party when extradition of nationals is denied (art. 44, para. 13);
- Consider concluding further bi- and multilateral treaties in order to enhance the effectiveness of extradition (art. 44, para. 18);
- Consider concluding agreements for the transfer of sentenced persons with States that are not parties to the European Convention on the Transfer of Sentenced Persons (art. 45);
- Clarify the national ability to provide assistance to all States parties to the Convention, including those that are not designated States or Member states of the European Union; and

consider whether the collection of separate statistics on requests related to offences established in accordance with the Convention would be beneficial (art. 46, para. 1);

- Consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to article 46 in the absence of dual criminality (art. 46, subpara. 9 (c));
- Ireland could accept oral requests made in urgent circumstances if they are confirmed in writing afterwards (art. 46, para. 14);
- Ireland could consider providing to a requesting State party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public (art. 46, para. 29 (b)).
- Continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of mutual legal assistance (art. 46, para. 30);
- Consider the development of legal framework to regulate the transfer of criminal proceedings for the prosecution of offences established in accordance with the Convention and the adjudication of related criminal cases (art. 47);
- Consider establishing joint investigations also with States parties to the Convention that are not covered by the Criminal Justice (Joint Investigation Teams) Act 2004, as amended (art. 49);
- Ensure the use of controlled delivery and other special investigative techniques within the context of international cooperation with regard to all States parties to the Convention (art. 50, para. 1);
- With regard to States Parties not covered by the Criminal Justice (Mutual Assistance) Act 2008, ensure the use of special investigative techniques on a case-by-case basis (art. 50, para. 3);
- Consider allowing the use of controlled delivery to include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part (art. 50, para. 4).

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. The UN Convention against Corruption (UNCAC) was signed by Ireland on 9 December 2003. Following completion of the domestic procedures necessary to implement the Convention, the Convention was ratified on behalf of Ireland by Eamon Gilmore, TD, Minister for Foreign Affairs and Trade of Ireland on 9 November 2011. The Convention entered into force for Ireland on 9 December 2011.

#### The Convention in Ireland's legal system

8. Article 29 of Bunreacht Na hÉireann (the Constitution of Ireland) contains the provisions which relate specifically to international agreements. Article 29.6 provides that no international agreement can be part of the domestic law of the State, save as may be determined by the Oireachtas, (Irish Parliament). Under Article 29.3, Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other states. Ireland follows a dualistic approach with regard to the incorporation of public international law.
9. Following the completion of the necessary domestic procedures and the ratification procedures as set out above, the Convention is now part of Irish law. This means that the courts can have reference to the Convention and should interpret domestic law in conformity with the Convention. However, the Convention cannot be invoked to override national law. The Convention is not self-executing.
10. Article 15.2.1 of the Constitution expressly states that the sole and exclusive power to make law for the State is vested in the Parliament and its procedures. Thus International Conventions may only enter domestic law through domestic legislation for the purpose of internal ratification (unless the domestic law was previously in compliance in which case only more formal and procedural measures would be necessary for internal ratification). On occasions the Courts have gone slightly further and given some indirect effect to International Agreements by; having regard to the terms of same or citing relevant international judgments (*Hanahoe v Hussey* [1998] 3 IR 69, *Re National Irish Bank Ltd.* [1999] 3 IR 145); holding that a legitimate expectation can arise from the terms of an undertaking made in connection with an international agreement (*Fakih v Minister for Justice* [1993] 2 IR 427); or presuming the compatibility of domestic legislation with the terms of international agreements (*O Domhnaill v Merrick* [1984] IR 151). However these should be very much regarded as case specific exceptions to the general rule of Article 15.2.1.
11. Ireland is a common law jurisdiction, and, as such, statutes are interpreted having regard to the precedents in earlier cases as well as with regard to the pre-existing common law. And, of course, common law is developed by judges through the decisions of the courts.

### **B. Legal system of Ireland**

12. Ireland is a Parliamentary democracy. The Parliament is the sole legislative authority of the State and consists of the President and two Houses: Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate) whose powers and functions derive from the Constitution of Ireland (1937).
13. The President is elected directly by the people and exercises his powers on the advice of the Government. The President appoints the Taoiseach (Prime Minister) on the nomination of Dáil Éireann; and the other members of the Government on the nomination of the Taoiseach after Dáil approval.
14. Irish law is based on English Common Law, substantially modified by indigenous concepts, the written Constitution of 1937, statute law and judicial decisions. Aside from the Irish Constitution, government legislation is the most important source of Irish law. There are 5 main legislative influences in Irish Law: the statutes of the old Irish Parliament prior to 1800, the statutes of the English parliament (1719-1782), the statutes of the United Kingdom parliament (1800-1922), the statutes enacted by the Irish Free State (1922) and the enactments established by the 1937 Constitution. As a Common Law country, Ireland's reliance on doctrine is only secondary to case law and legislation.
15. The courts system in Ireland has its origins in the Constitution. The structure of the court system comprises a court of final appeal, the Supreme Court, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction, the Circuit Court and the District Court. Other courts in operation are the Special Criminal Court and the Court of Appeal. The Judiciary are completely independent in the performance of their functions
16. An Garda Síochána is the national police service of Ireland. It has responsibility for carrying out all policing duties in the Irish State. In addition, it provides State security services and carries out all criminal and traffic law enforcement. The general management and control of the Service is the responsibility of the Garda Commissioner who is appointed by the Government. The Commissioner is responsible to the Government through the Minister for Justice and Equality.
17. The investigation and prosecution of offences are separate and distinct functions within the Irish criminal justice system. The Director of Public Prosecutions (DPP), as a general rule, has no investigative function and no power to direct the Garda Síochána or other agencies in their investigations. The Director may advise investigators in relation to the sufficiency of evidence to support nominated charges and the appropriateness of charges or in relation to legal issues arising in the course of investigation.
18. Ireland listed the following laws, policies and/or other measures that are cited in the responses to the self-assessment checklist.
  - Air Navigation and Transport Act 1973
  - Bail Act 1997
  - Bankers Books' Evidence Act 1879
  - Bankers Books' Evidence (Amendment) Act 1959

- Children Act 2001
- Companies Bill 2012
- Companies Act 1990,
- Criminal Justice Act 1960
- Criminal Evidence Act 1992
- Criminal Justice Act 1993
- Criminal Justice Act 1994
- Criminal Justice Act 1999
- Criminal Justice (Surveillance) Act 2009
- Criminal Justice Act (Theft and Fraud Offences) Act 2001
- Criminal Justice (Temporary Release of Prisoners) Act 2003
- Criminal Justice (Joint Investigation Teams) Act 2004
- Criminal Justice (Mutual Assistance) Act 2008
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- Criminal Justice Act 2011
- Criminal Law Act 1997
- Criminal Law (Insanity) Act 2006
- Criminal Procedure Act 1967
- Criminal Procedure Act 2010
- Electoral Act 1992
- European Arrest Warrant Act 2003
- European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012
- European Parliament Elections Act 1997
- Extradition Act 1965
- Extradition (Amendment) Act 1994
- European Convention on Human Rights Act 2003,
- Income Tax Act 1967
- Income Tax Act 1997
- Merchant Shipping Act 1894
- Non Fatal Offences Against the Person Act 1997
- Offences Against the State Act 1939
- Prevention of Corruption Act 1906
- Prevention of Corruption Act 1916
- Prevention of Corruption (Amendment) Act 2001
- Prevention of Corruption (Amendment) Act 2010
- Proceeds of Crime Act 1996
- Proceeds of Crime (Amendment) Act 2005
- Prisons Act 2007
- Probation of Offenders Act 1907
- Prosecution of Offences Act 1974
- Protected Disclosures Act 2014
- Public Bodies Corrupt Practices Act 1889
- Standards in Public Office Act 2001
- Transfer of Sentenced Persons Act 1995
- Transfer of Sentenced Persons (Amendment) Act 1997
- European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument No. 329 of 2006)
- Council of Europe Convention on the Transfer of Sentenced Persons
- EU Council Framework Decision 2008/909/JHA on the application of the principle of

mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union -

- Civil Service Code of Standards and Behaviour
- Guidelines for Prosecutors

19. Ireland attached the relevant draft bills, policies and/or other measures that it wants to be taken into account in the present review:

#### Criminal Justice (Corruption) Bill 2012

20. The Programme for Government, which was published when the current Government commenced its term of office in 2011, contained a commitment to “enact a new consolidated and reformed anti-corruption law to punish white collar crime and end the impunity from consequences for corporate behaviour that threatens the economy”. This is evidence of the high priority placed on tackling white collar crime. The draft scheme of the Criminal Justice (Corruption) Bill 2012 provides for a consolidated corruption statute to replace and reform the provisions of the Public Bodies Corrupt Practices Act 1889 , the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, Section 38 of the Ethics in Public Office Act 1995, Part 5 of the Proceeds of Crime (Amendment) Act 2005, the Prevention of Corruption (Amendment) Act 2001, and the Prevention of Corruption (Amendment) Act 2010 . The scheme also aims to amend relevant provisions in other legislation such as the reference to corrupt conduct in section 16B of the Proceeds of Crime Act 1996. This scheme aims to clarify and strengthen the main corruption offences, to provide greater clarity regarding trading in influence offences and to provide for the specific liability of companies for the corrupt acts of their officers and employees. It strengthens the penalties for corruption, reflecting the damage it can do to society and the economy. To ensure that public officials who breach the public’s trust through corruption are no longer able to abuse their position, this scheme empowers courts to remove such officials from office and to bar them from holding office in the future.
21. The scheme aims to extend to trials for all criminal offences the power of a judge to order transcripts, recordings, diagrams and summaries of evidence to be given to juries to assist them in their deliberations where appropriate. This can be especially helpful in complex white-collar crime trials.
22. The Scheme of the Bill was published on 19 June 2012 and work is underway on the publication of the Bill to be presented to Parliament.

#### Protected Disclosures Act 2014

23. The provisions of the Protected Disclosures Act 2014 provide an overarching framework for the protection of workers in all sectors of the Irish economy who are penalised by their employers for having reported wrongdoing that came to their attention in the workplace and provide for a broad range of protections and safeguards for such persons. The Bill was published on 3 July

2013 and was enacted by the Irish Parliament in 2014. The Act can be found at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html>

### Guidelines for Prosecutors

24. The Guidelines for Prosecutors aims to set out in general terms principles to guide the initiation and conduct of prosecutions in Ireland. It is intended to give general guidance to prosecutors so that a fair, reasoned, and consistent policy underlies the prosecution process.
25. The Guidelines are available at [www.dpp.ie](http://www.dpp.ie)

### Statistics

26. The Central Statistics Office (CSO) was established in 1949 as Ireland's national statistical office. The mandate of the CSO, is the collection, compilation, extraction and dissemination for statistical purposes of information relating to economic, social and general activities and conditions in the State. The CSO is also responsible for coordinating the official statistics of other public authorities and for developing the statistical potential of administrative records.
27. The Garda Síochána Act 2005 makes provision for the compilation and publication of crime statistics by the Central Statistics Office as the national statistical agency, and the CSO has established a dedicated unit for this purpose.

### Extradition

28. The attached document on "General Matters" includes a note on bars to extradition under the Extradition Act 1965 which may be of assistance to the evaluators.

### Council of Europe's Group of States Against Corruption (GRECO)

29. Ireland has been assessed in 4 evaluation rounds by the Council of Europe's Group of States Against Corruption (GRECO).

#### **1st Round Evaluation (commenced 1999)**

- § an overview of anti-corruption Policy
- § the evaluation of independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption, and the extent and scope of immunities.

#### **2nd Round evaluation (commenced 2003),**

the application of Guiding Principles relating to -

- § seizure and confiscation of proceeds of corruption and connections between corruption and money laundering/organised crime, as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173);

- § public administration and public officials;
- § legal persons and fiscal legislation, as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173).

### **3rd Round (commenced 2006)**

- § the transposition into domestic law and practice of the incriminations provided for by the Criminal Law Convention on Corruption (ETS 173)
- § the transparency of party funding understood by reference to Recommendation Rec(2003)4 on Common Rules against Corruption and Funding of Political Parties and Electoral Campaigns.

### **4th Round (commenced 2013)**

- § Corruption prevention in respect of members of parliament, judges and prosecutors

30. All of GRECO's reports on Ireland are published on the GRECO website: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/index\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp)

### Financial Action Task Force

31. The last Mutual Evaluation (ME) of Ireland under the Financial Action Task Force (FATF) was published in June 2006. Since the adoption of its mutual evaluation report in 2006, Ireland has focused its attention on: strengthening the AML/CFT legislative framework with the enactment of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and the Criminal Justice Act 2013. Among other provisions, they address: Customer due diligence provisions and other preventive measures, which have been brought into line with the FATF Recommendations. Expanding the scope of the Act by including Trust and Company Service Providers, private members' gaming clubs and barristers. Enhancing a range of measures that are designed to prevent the financial and other sectors from being misused by criminals. Issuing Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing to expand on the provisions of the primary legislation.
32. In June 2013, the FATF recognised that Ireland had made significant progress in addressing the deficiencies identified in the 2006 mutual evaluation report and could be removed from the regular follow-up process.
33. The evaluation is available on the FATF website: <http://www.fatf-gafi.org/countries/d-i/ireland/documents/mutualevaluationofireland.html>

### OECD Anti-Bribery Convention

34. The OECD Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. Ireland has been reviewed by its OECD peers four times, once at Phase 1, twice at Phase 2 and once at Phase 3. The Phase 3 process began in March 2013 and was concluded in December 2013. Reports on Ireland by the

OECD Working Group Bribery are available here: <http://www.oecd.org/daf/anti-bribery/ireland-oecdanti-briberyconvention.htm>

35. The reports are also available at the Government's anti corruption website: [www.anticorruption.ie](http://www.anticorruption.ie)

UNODC

## C. Implementation of selected articles

### III. Criminalization and law enforcement

#### **Article 15. Bribery of national public officials**

##### **Subparagraph (a) of article 15**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

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

36. Ireland confirmed that it has fully adopted and implemented this provision of the Convention.

37. Ireland cited the following relevant text:

##### ***Section 2 (2) of the Prevention of Corruption (Amendment) Act 2001***

A person who

(a) corruptly gives or agrees to give, or

(b) corruptly offers, any gift, consideration or advantage to an agent or any other person whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

38. It is important to note that in Section 2(5), the definition of "agent" includes the following:

a) any person employed by or acting for another,

(b) (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid),

(ii) a member of Dáil Éireann or Seanad Éireann,

(iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997,

(iv) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann),

(v) the Comptroller and Auditor General,

(vi) the Director of Public Prosecutions,

- (vii) a judge of a court in the State,
- (viii) any other person employed by or acting on behalf of the public administration of the State.

and

- (c) (i) a member of the government of any other state,
  - (ii) a member of a parliament, regional or national, of any other state,
  - (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997 ),
  - (iv) a member of the Court of Auditors of the European Communities,
  - (v) a member of the Commission of the European Communities,
  - (vi) a public prosecutor in any other state,
  - (vii) a judge of 4a court in any other state,
  - (viii) a judge of any court established under an international agreement to which the State is a party,
  - (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and
  - (x) any other person employed by or acting on behalf of the public administration of any other state;
- ‘consideration’ includes valuable consideration of any kind;
- ‘principal’ includes an employer.”.

**(b) Observations on the implementation of the article**

39. As the legal provision indicated by Ireland makes no reference to an “entity”, “body” or “legal person”, the reviewers asked for more information (law provisions and/or court rulings) on how the Irish legal system ensures that “entities” are also covered by the concerned provision of the UNCAC.

40. Ireland confirmed that all entities are covered. The list provided includes "any person acting for another". The term "person" is defined Irish legislation as follows:

***Section 18 (c) of the Interpretation Act 2005***

"Person shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of "person" shall be read accordingly."

41. Concerning the definition of “agent” provided for in Section 2 (5) of that Act, Ireland stated that the definition is not exhaustive. The most common form of definition in Irish legislation uses the formula “ ‘x’ means ...”. Note that section 2 (5) states, “ ‘agent’ includes – “. This allows

for the term to be open to an interpretation that includes all the classes of persons listed in paragraphs (a), (b) and (c), but which also encompasses the ordinary meaning of the term in a manner which is teleologically consistent with the overarching framework and purposes of the Act.

42. Point (b) (viii) of that Section uses the notion of “public administration of the State”. There is no formal definition of the term “public administration of the State” in legislation. It is generally understood that the phrase “any other person employed by or acting on behalf of the public administration of the State” is intended to apply broadly to all persons involved directly or indirectly in public administration who may not have been captured by the preceding subparagraphs (i) to (vii) of paragraph (b). The interpretation of legislation is, however, ultimately a matter for the courts.

43. Section 2(b)(i)(II) of The Prevention of Corruption Act 2010 amends Section 1 of the 1906 Act by inserting the following into subsection 5(c)

“(x) any other person employed by or acting on behalf of the public administration of any state (other than the State), including a person under the direct or indirect control of the government of any such state, ”

44. This, while not a definition, will give a good understanding of the ambit of the term.

45. Regarding the omission of the term “promise” in the definition of active bribery, Ireland argued that it was covered by “offer”. The indirect commission of the offence would be covered by the general rules on aiding and abetting.

46. The reviewing experts also questioned the meaning of the term “corruptly”, which would seem tautological in a definition of bribery. The term “corruptly” is defined in section 2 of the Prevention of Corruption (Amendment) Act 2010 as follows:

“ ‘Corruptly’ includes acting with an improper purpose personally or by influencing another person, whether by means of making a false or misleading statement, by means of withholding, concealing, altering or destroying a document or other information, or by any other means.”

47. According to Ireland, the word “includes” in the definition leaves the term open to an interpretation which also encompasses the ordinary meaning of the term in a manner which is teleologically consistent with the overarching framework and purposes of the Act.

48. Concerning the notion of “undue advantage” used by UNCAC, the Irish legislation refers to “any gift, consideration or advantage”. The undue nature of the advantage is reflected in the fact that the active or passive act of offer or acceptance must be done “corruptly”.

49. Concerning the expression “in relation to his or her office or position”, the Irish authorities explained that the act or omission must relate to the office, position or business concerned. They gave the following example:

Take a scenario where a person accepts a bribe on a Wednesday at his place of employment as an inducement to do an act in relation to his position as a member of the local football club committee of which he is a member. His participation in the football club committee is a

weekend voluntary activity which is not related to his employment. It is irrelevant that the bribe was given and received at his place of employment during work hours. While it might be seen that the bribe was accepted at the occasion of his employment, it is not related to his employment, but to his position in the football club. In this scenario both the bribe giver and receiver could be prosecuted for the active and passive offences in relation to the position in the football club

50. Finally, Ireland clarified that the language of the legislation, when it refers to “in relation to his or her office or position or his or her principal’s affairs or business” is to ensure that a bribe, whether it relates to a person’s affairs or business or the person’s principal’s affairs or business, is incriminated. A court can draw reasonable inferences from the evidence before it as to which business or affairs a bribe was related. The prosecution would have to demonstrate that a bribe related to either the business or affairs of the persons or the principal, but ultimately it is for the court to be satisfied that all the elements of the offence are proven.
51. It was noted that there are very few court cases on corruption. During the country visit, it was indicated that altogether about 30 cases have been brought against natural persons under the Prevention of Corruption Act. This might indicate that the investigation and prosecution of corruption is not effective enough and/or that there is a need for a better case tracking system for the Irish authorities to be able to evaluate the effectiveness of the enforcement system.

**(c) Challenges**

52. It was recommended to explicitly criminalise the “promise” of a bribe since this term describes a unilateral act (unlike “agrees to give”) in the future (unlike “offer”).
53. It was recommended to implement a better case tracking system for the Irish authorities to be able to evaluate the effectiveness and identify any weaknesses in the current enforcement system.

**Subparagraph (b) of article 15**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

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

54. Ireland confirmed that it has fully adopted and implemented this provision of the Convention.
55. Ireland cited the following relevant text:

*Section 2(1) of the Prevention of Corruption (Amendment) Act 2001)*

An agent or any other person who

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept or attempts to obtain, for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

**(b) Observations on the implementation of the article**

56. The reviewing experts made the same observations, *mutatis mutandis*, as in the case of Art. 15(a) UNCAC.

**Article 16. Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1 of article 16**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

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

57. Ireland confirmed that it has adopted and implemented this provision of the Convention.

58. The offence of active corruption under the Prevention of Corruption Acts 1889 to 2010 (as described in the responses above) addresses bribery of an “agent” or other person. The term “agent” as defined in Section 2(5) encompasses a very wide category of people including

“any person employed by or acting for another” and specifically refers in paragraph c to a range of foreign public officials including:

(i) a member of the government of any other state,

(ii) a member of a parliament, regional or national, of any other state,

(iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),

(iv) a member of the Court of Auditors of the European Union,

- (v) a member of the Commission of the European Union,
- (vi) a public prosecutor in any other state,
- (vii) a judge of a court in any other state,
- (viii) a judge of any court established under an international agreement to which the State is a party,
- (ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party,
- (x) any other person employed by or acting on behalf of the public administration of any state (other than the State), including a person under the direct or indirect control of the government of any such state, and
- (xi) a member of, or any other person employed by or acting for or on behalf of, any international organisation established by an international agreement between states to which the State is not a party.

**(b) Observations on the implementation of the article**

59. Ireland clarified that the definition of “agent” is not exhaustive since section 2 (5) states, “ ‘agent’ includes – “. This allows for the term to be open to an interpretation that includes all the classes of persons listed in paragraphs (a), (b) and (c), but which also encompasses the ordinary meaning of the term in a manner which is teleologically consistent with the overarching framework and purposes of the Act.
60. The purpose of the list of specific foreign public officials is to make it clear that such officials, at a minimum, are captured by the legislation and to demonstrate that our obligations under UNCAC and other international conventions are addressed. It also reflects the somewhat artificial nature of the use of the term “agent” in the Irish legislation. For example, a judge of a court in Ireland would not in the ordinary understanding of the term be considered an agent. A judge is entirely independent and does not act on behalf of another as an agent, in the ordinary understanding of the word, does. It should be noted that Ireland intends to move away from the use of the term “agent” in the forthcoming Criminal Justice (Corruption) Bill.
61. The reviewing experts noted that, according to the OECD Report, no case of foreign bribery has been prosecuted over the last 12 years. Ireland confirmed that while investigations had been undertaken in relation to suspected bribery cases, these have not to date, led to prosecutions.

**(c) Successes and good practices**

62. It was noted as a good practice that the Irish anti-bribery legislation goes beyond the requirements of the Convention in that it applies equally to national and foreign officials.

**(d) Challenges**

63. It was recommended to monitor the effective enforcement of Art. 16(1) UNCAC and take any necessary measures to strengthen its implementation.

**Paragraph 2 of article 16**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

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

64. Ireland confirmed that it has adopted and implemented this provision of the Convention.

65. The offence of passive corruption under the Prevention of Corruption Acts 1889 to 2010 (as described in the response above to subparagraph (b) of article 15) addresses bribery of an “agent” or other person. The term “agent” as defined in the legislation encompasses a very wide category of people including “any person employed by or acting for another” and specifically refers to a range of domestic and foreign public officials as detailed in the replies to subparagraph (a) of article 15 and paragraph 1 of article 16 above.

**(b) Observations on the implementation of the article**

66. It was concluded that Ireland has implemented Art. 16(2) UNCAC.

**Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

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

67. Ireland confirmed that it has adopted and implemented this provision of the Convention.

68. The existing common law offences of larceny, embezzlement, and fraudulent conversion were replaced by a new offence of “theft” under the Criminal Justice (Theft and Fraud Offences) Act 2001. The key theft offence is contained in sections 4 and 5 of the Act. Thus, section 4 provides that a person is guilty of theft if they dishonestly appropriate property without the consent of the owner and with intent to deprive the owner of it. Note that consent obtained by deception or intimidation is not consent for this purpose. Under section 6 of the Act, persons making gains for themselves or causing loss to others are liable on conviction on indictment to an unlimited fine or imprisonment for a term not exceeding 5 years.

69. Ireland cited the following relevant texts:

**Section 4.**—(1) Subject to section 5, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it.

(2) For the purposes of this section a person does not appropriate property without the consent of its owner if—

(a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or

(b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,

but consent obtained by deception or intimidation is not consent for those purposes.

(3) (a) This subsection applies to a person who in the course of business holds property in trust for, or on behalf of, more than one owner.

(b) Where a person to whom this subsection applies appropriates some of the property so held to his or her own use or benefit, the person shall, for the purposes of subsection (1) but subject to subsection (2), be deemed to have appropriated the property or, as the case may be, a sum representing it without the consent of its owner or owners.

(c) If in any proceedings against a person to whom this subsection applies for theft of some or all of the property so held by him or her it is proved that—

(i) there is a deficiency in the property or a sum representing it, and

(ii) the person has failed to provide a satisfactory explanation for the whole or any part of the deficiency,

it shall be presumed, until the contrary is proved, for the purposes of subsection (1) but subject to subsection (2), that the person appropriated, without the consent of its owner or owners, the whole or that part of the deficiency.

(4) If at the trial of a person for theft the court or jury, as the case may be has to consider whether the person believed—

(a) that he or she had not acted dishonestly, or

(b) that the owner of the property concerned had consented or would have consented to its appropriation, or

(c) that the owner could not be discovered by taking reasonable steps,

the presence or absence of reasonable grounds for such a belief is a matter to which the court or jury shall have regard, in conjunction with any other relevant matters, in considering whether the person so believed.

(5) In this section—

“appropriates”, in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property;

“depriving” means temporarily or permanently depriving.

(6) A person guilty of theft is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

**Section 5.**—(1) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believes himself or herself to be acquiring shall, by reason of any defect in the transferor's title, amount to theft of the property.

(2) A person cannot steal land, or things forming part of land and severed from it by or under his or her directions, except where the person—

(a) being a trustee, personal representative or other person authorised by power of attorney or as liquidator of a company or otherwise to sell or dispose of land owned by another, appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him or her, or

(b) not being in possession of the land, appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed, or

(c) being in possession of the land under a tenancy or licence, appropriates the whole or part of any fixture or structure let or licensed to be used with the land.

(3) For the purposes of *subsection (2)*—

(a) “land” does not include incorporeal hereditaments,

“tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy,

“licence” includes an agreement for a licence,

and

(b) a person who after the expiration of a tenancy or licence remains in possession of land shall be treated as having possession under the tenancy or licence, and “let” and “licensed” shall be construed accordingly.

(4) A person who picks mushrooms or any other fungus growing wild on any land, or who picks flowers, fruit or foliage from a plant (including any shrub or tree) growing wild on any land, does not (although not in possession of the land) steal what is picked, unless he or she does it for reward or for sale or other commercial purpose.

(5) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed or ordinarily kept in captivity, or the carcase of any such creature, unless it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession.

**Section 6.**—(1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence.

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both. ‘

**(b) Observations on the implementation of the article**

70. Ireland clarified that the definition of property does not distinguish between public or private property. Section 2 of the Criminal Justice (Theft and Fraud Offences) Act 2001 defines property as follows:

“property” means money and all other property, real or personal, including things in action and other intangible property; ‘

71. The definition of “owner” in section 2 does not distinguish between public or private owner either.

72. The term “person” whether in reference to an owner or an offender is construed in accordance with the Interpretation Act, as mentioned above, to include legal persons as well as human individuals.

73. It was concluded that Ireland has implemented Art. 17 UNCAC.

## **Article 18. Trading in influence**

### **Subparagraph (a) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

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

74. Ireland confirmed that it has adopted and implemented this provision of the Convention.

75. The provisions in section 2 of the Prevention of Corruption (Amendment) Act of 2001 relating to active and passive corruption offences (see responses to subparagraph (a) and (b) of article 15 above) capture trading in influence. The active offence relates to the offering of a gift, consideration or advantage “to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of,

the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business”.

76. The passive offence relates to “An agent or any other person who (a) corruptly accepts or obtains, or (b) corruptly agrees to accept or attempts to obtain, for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of the agent doing any act or making any omission in relation to his or her office or position or his or her principal’s affairs or business shall be guilty of an offence.”
77. It is intended that the forthcoming Criminal Justice (Corruption) Bill will provide distinct trading in influence offences. Head 3 in the General Scheme of the Bill outlines the following -

' (1) A person who directly or indirectly, by himself or herself or with another person,

corruptly offers, gives, attempts or agrees to give any gift, consideration or advantage in order to induce another person to exert an improper influence over the acts or omissions of an Irish public official or a foreign public official shall be guilty of an offence.

(2) Any person who directly or indirectly, by himself or herself or with another person, corruptly accepts or obtains or corruptly agrees to accept or attempts to obtain for himself or herself, or for any other person, any gift, consideration or advantage on account of any person promising, attempting or asserting the ability, to improperly influence an Irish public official or a foreign public official to do any act or make any omission in relation to his or her office, employment, position or business shall be guilty of an offence.

(3) It is immaterial whether or not the alleged ability to exert an improper influence existed, whether or not the influence is, or is attempted to be, exerted or whether or not the supposed influence leads to the intended result.

(4) It is immaterial whether or not the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence. '

78. It is not proposed to define the term “improper” in the Criminal Justice (Corruption) Bill. It will be understood according to the ordinary meaning of the word in the context of the legislation. It is intended to capture any influence which is contrary to the proper exercise of official functions in accordance with any laws, guidelines, or established practices which seek to ensure the independence impartiality and probity of such functions. It will, like all legislation, be a matter for the courts to interpret.

#### **(b) Observations on the implementation of the article**

79. Trading in influence is currently not criminalized comprehensively, although some forms will be captured by the existing provisions of Sections 2(1) and (2). It is intended that, also for the purpose of clarity, the forthcoming Criminal Justice (Corruption) Bill will provide distinct trading in influence offences (cf. Head 3 in the General Scheme of the Bill).
80. It was concluded that Ireland has fulfilled its obligation to consider the criminalisation of trading in influence pursuant to Art. 18(a) UNCAC. However, it was recommended to swiftly

adopt the Criminal Justice (Corruption) Bill in order to remove all doubts about the comprehensive criminalisation of trading in influence.

### **Subparagraph (b) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

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

81. Ireland confirmed that it has adopted and implemented this provision of the Convention.

82. Ireland referred to its response at subparagraph (a) of article 18.

#### **(b) Observations on the implementation of the article**

83. It was concluded that Ireland has fulfilled its obligation to consider the criminalisation of trading in influence pursuant to Art. 18(b) UNCAC. However, it was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to comprehensively criminalise trading in influence.

### **Article 19. Abuse of functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

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

84. Ireland confirmed that it has adopted and implemented this provision of the Convention.

85. Ireland cited the following relevant text:

*Section 8 of the Prevention of Corruption (Amendment) 2001*

“A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence”

86. The main active and passive bribery offences (referred to above) are also relevant as they also capture the wrongdoing addressed in Article 19 of the Convention.

87. Section 3 of the 2001 Act presumes certain undeclared donations to elected officials to be given and received corruptly if the giver has an interest in certain functions carried out by the official.

' 3.-(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that-

(a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,

(b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and

(c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business unless the contrary is proved.

(2) This section applies to the following:

(a) a person required by section 24 of the Electoral Act, 1997, to furnish a donation statement to the Public Offices Commission,

(b) a person required by section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, to furnish to the local authority concerned a statement of donations under subsection (1) of that section.

(3) In this section-

“donation”

(a) in relation to persons referred to in section 24 of the Electoral Act, 1997, has the meaning assigned to it by section 22 of that Act,

(b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act; “donor” means the person who makes a donation or on whose behalf a donation is made.'

88. Section 4 of the 2001 Act presumes a gift given to an official to be given and received corruptly if the giver has an interest in certain functions carried out by the official.

' 4.-(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by section 2 of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that-

(a) any gift, consideration or advantage has been given to or received by a person,

(b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

(2) This section applies to the following functions:

(a) the granting, refusal, withdrawal or revocation by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State by or under any statute of any licence, permit, certificate, authorisation or similar permission,

(b) the making of any decision relating to the acquisition or sale of property by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State,

(c) any functions of a Minister or an officer of a Minister or of any other person employed by, acting on behalf of, or a member of a body that is part of the public administration of the State under the Planning and Development Act, 2000.

(3) In this section-

“functions” includes powers and duties and references to the performance of functions includes as respects powers and duties references to the exercise of functions and the carrying out of duties;

“Minister” means a person who is a Minister of the Government or a Minister of State. '

## **(b) Observations on the implementation of the article**

89. It was concluded that Ireland has implemented Art. 19 UNCAC.

## **Article 20. Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

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

90. Ireland stated that it has not adopted and implemented this provision of the Convention but has considered introducing the offence.

91. There is no specific criminal offence of illicit enrichment in Irish law, however, the presumptions referred to in the response to article 19 should be noted as providing an evidential link between property received by an official and corruption offences.

92. Article 20 requires a state party, subject to its constitution and fundamental principles of its legal system to consider establishing a criminal offence directed at significant increases in assets of officials that cannot be reasonable explained in relation to lawful income. Section 16B of the Proceeds of Crime Act provides civil proceedings whereby the proceeds of corrupt conduct may be recovered from an official.

93. While not dependent on a conviction for a criminal offence, Section 16B of the Proceeds of Crime Acts 1996 and 2005 provides a “corrupt enrichment order”. A court may order a person to pay an amount equivalent to the amount by which it determines that the defendant has been corruptly enriched. The standard of proof in such proceedings is that applicable to civil proceedings, i.e. on the balance of probabilities, and not the criminal standard, i.e. beyond reasonable doubt. **Section 16B** contains the following presumption

' Where-

(a) the defendant is in a position to benefit others in the exercise of his or her official functions,

(b) another person has benefited from the exercise, and

(c) the defendant does not account satisfactorily for his or her property or for the resources, income or source of income from which it was acquired,

it shall be presumed, until the contrary is shown, that the defendant has engaged in corrupt conduct. '

94. The General Scheme of the Criminal Justice (Corruption) Bill contains in Head 12 a provision whereby wealth which is disproportionate to an official's emoluments and interests as declared in his or her statement of registrable interests is presumed to derive from a bribe. While this will not create a direct offence of illicit enrichment it will facilitate a prosecution for passive corruption.

#### **(b) Observations on the implementation of the article**

95. Ireland indicated that the fact of being the owner or not has no influence on the burden and standard of proof. If the defendant is using in his daily life a car, house, etc. which legally are the property of another person, the case will turn on whether the property is beneficially owned by the person regardless of whether or not the property is registered in the name of a particular person.

96. It was concluded that Ireland has fulfilled its obligation to consider the criminalisation of illicit enrichment pursuant to Art. 20 UNCAC.

#### **(c) Successes and good practices**

97. The civil remedy in Section 16B of the Proceeds of Crime Act, whereby the proceeds of corrupt conduct may be recovered from an official through a “corrupt enrichment order”, was considered to constitute an effective alternative to the criminalisation of illicit enrichment.

## **Article 21. Bribery in the private sector**

### **Subparagraph (a) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

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

98. Ireland confirmed that it has adopted and implemented this provision of the Convention.

99. Ireland referred to its response to subparagraph (a) of article 15 above and in particular the broad definition of “agent” which includes “any person employed by or acting for another”.

100. The active and passive offences do not distinguish between public or private entities. The understanding of the term “person” as importing both legal and human persons is relevant here also.

#### **(b) Observations on the implementation of the article**

101. Ireland has gone beyond the requirement of the Convention in that it has criminalised bribery in the private sector in exactly the same way as bribery in the public sector.

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

#### **(c) Successes and good practices**

103. The reviewing experts noted as a good practice that the Irish anti-bribery legislation goes beyond the requirements of the Convention in that it applies equally to bribery in the public and private sector.

104. The broad definition of the recipient of a bribe (“agent”), which includes “any person employed by or acting for another”, was highlighted as a good practice.

## **Subparagraph (b) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

...

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

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

105. Ireland confirmed that it has adopted and implemented this provision of the Convention.
106. Ireland referred to its response to subparagraph (b) of article 15 above and in particular the broad definition of “agent” which includes “any person employed by or acting for another”.
107. The active and passive offences do not distinguish between public or private entities. The understanding of the term “person” as importing both legal and human persons is relevant here also.

### **(b) Observations on the implementation of the article**

108. Ireland has gone beyond the requirement of the Convention in that it has criminalised bribery in the private sector in exactly the same way as bribery in the public sector.
109. It was concluded that Ireland has implemented this provision of the Convention .

### **(c) Successes and good practices**

110. The broad definition of the recipient of a bribe (“agent”), which includes “any person employed by or acting for another”, was highlighted as a good practice.

## **Article 22. Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

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

111. Ireland confirmed that it has adopted and implemented this provision of the Convention.
112. Ireland referred to its response to article 17 above.

**(b) Observations on the implementation of the article**

113. The Irish provisions do not differentiate between embezzlement in the public and embezzlement in the private sector.
114. It was concluded that Ireland has implemented Art. 22 UNCAC.

## **Article 23. Laundering of proceeds of crime**

### **Subparagraph 1 (a) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a)*

*(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

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

115. Ireland confirmed that it has adopted and implemented this provision of the Convention.
116. The principal money laundering offences are set out in Part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. It provides for the principal offence of money laundering and related issues. In particular, section 6 provides for the definition of “criminal conduct” and “proceeds of criminal conduct” which are applied in section 7 which sets out the elements of the principal money laundering offence.
117. Section 7(1)(a) sets out a number of acts, which if engaged in by a person in relation to property that is the proceeds of criminal conduct, constitutes an offence (and section 7(1)(b) provides that a person must also know or believe or be reckless as to whether property is the proceeds of crime, in order to be guilty of an offence under this section). Section 7(4) provides that a reference to knowing or believing includes believing that the property probably comprises the proceeds of criminal conduct. Section 7(5) provides that for the purposes of subsections (1) [and (2)], a person is reckless as to whether or not property is the proceeds of criminal conduct

where he or she disregards a risk of such a nature and degree concerning property, that the disregard involves a high degree of culpability in light of the relevant circumstances.

***Criminal Justice (Money Laundering and Terrorist Financing) Act 2010***

***'Part 2 Money Laundering Offences***

6.—In this Part—

“criminal conduct” means—

(a) conduct that constitutes an offence, or

(b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State;

“proceeds of criminal conduct” means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of this Part.

7.—(1) A person commits an offence if—

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;

(ii) converting, transferring, handling, acquiring, possessing or using the property;

(iii) removing the property from, or bringing the property into, the State, and

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.

(2) A person who attempts to commit an offence under *subsection (1)* commits an offence.

(3) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(4) A reference in this section to knowing or believing that property is the proceeds of criminal conduct includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct.

(5) For the purposes of *subsections (1) and (2)*, a person is reckless as to whether or not property is the proceeds of criminal conduct if the person disregards, in relation to property, a risk of such a nature and degree that, considering the circumstances in which the person carries out any act

referred to in *subsection (1) or (2)*, the disregard of that risk involves culpability of a high degree.

(6) For the purposes of *subsections (1) and (2)*, a person handles property if the person—

(a) receives, or arranges to receive, the property, or

(b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person.

(7) A person does not commit an offence under this section in relation to the doing of any thing in relation to property that is the proceeds of criminal conduct so long as—

(a) the person does the thing in accordance with a direction, order or authorisation given under *Part 3*, or

(b) without prejudice to the generality of *paragraph (a)*, the person is a designated person, within the meaning of *Part 4*, who makes a report in relation to the property, and does the thing, in accordance with *section 42*.

118. **Section 11** of the Act contains important presumptions as to the knowledge or belief of accused persons which can reasonably be inferred from actions and circumstances.
119. Regarding the extent to which it must be proven that a person had or should have had knowledge about the illicit origin of laundered proceeds, many of the provisions contained in section 11 ‘Presumptions and other matters’ are particularly relevant.
120. Subsection (2) provides that in proceedings for an offence under section 7, [8 or 9] where an accused has engaged or attempted to engage in specified conduct in relation to property that is the proceeds of criminal conduct in circumstances in which it is reasonable to conclude that the accused knew or believed or was reckless as to whether or not the property was the proceeds of criminal conduct, the accused is presumed to have known or believed or been so reckless. This presumption applies unless the court or jury is satisfied that there is a reasonable doubt that the accused so knew or believed or was so reckless.
121. Subsection (3) provides that in proceedings under section 7, [8 or 9], where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances (see subsections (4) & (5)) are evidence that the property is the proceeds of criminal conduct.
122. Subsection (4) sets out the circumstances, for the purposes of subsection (3), in which it is reasonable to conclude that property is the proceeds of crime. Such circumstances include :
- the value of the property is disproportionate to the income and expenditure of the accused or another person on behalf of whom the accused acted,
  - the conduct involves the actual or purported purchase or sale of goods or services for an amount which is disproportionate to the market value,
  - relevant transactions involved the use of false names,
  - the accused stated that he or she engaged in the specified conduct on behalf of another

- person but has not assisted the Gardaí in identifying and locating this individual,
- an accused has, without reasonable explanation, concealed or disguised certain facts concerning the property.

123. Subsection (5) provides that subsection (4) does not limit the circumstances in which it may be reasonable to conclude that property is the proceeds of crime, i.e. the list of circumstances listed in subsection (4) is non-exhaustive and as such does not limit the circumstances in which it is reasonable to conclude that property is the proceeds of criminal conduct .
124. Subsection (6) provides that the presumptions under subsections (2) and (3) may both be applied in the same proceedings.
125. Subsection (8) provides that in proceedings under Part 2, it is not necessary in order to prove that property is the proceeds of criminal conduct to establish that a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property or that a particular person committed an offence comprising criminal conduct in relation to the property.
126. Subsection (9) provides that it is not a defence for the accused to show that he or she believed the property to be the proceeds of a particular offence comprising criminal conduct, when in fact it was the proceeds of another offence.

**11.—(1)** In this section “specified conduct” means any of the following acts referred to in *section 7(1)* (including *section 7(1)* as applied by *section 8* or *9*):

- (a) concealing or disguising the true nature, source, location, disposition, movement or ownership of property, or any rights relating to property;
- (b) converting, transferring, handling, acquiring, possessing or using property;
- (c) removing property from, or bringing property into, the State or a place outside the State.

(2) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged, or attempted to engage, in specified conduct in relation to property that is the proceeds of criminal conduct, in circumstances in which it is reasonable to conclude that the accused—

- (a) knew or believed the property was the proceeds of criminal conduct, or

- (b) was reckless as to whether or not the property was the proceeds of criminal conduct,

the accused is presumed to have so known or believed, or been so reckless, unless the court or jury, as the case may be, is satisfied, having regard to the whole of the evidence, that there is a reasonable doubt that the accused so knew or believed or was so reckless.

(3) In proceedings for an offence under *section 7, 8* or *9*, where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances are evidence that the property is the proceeds of criminal conduct.

(4) For the purposes of *subsection (3)*, circumstances in which it is reasonable to conclude that property is the proceeds of criminal conduct include any of the following:

(a) the value of the property concerned is, it is reasonable to conclude, out of proportion to the income and expenditure of the accused or another person in a case where the accused engaged in the specified conduct concerned on behalf of, or at the request of, the other person;

(b) the specified conduct concerned involves the actual or purported purchase or sale of goods or services for an amount that is, it is reasonable to conclude, out of proportion to the market value of the goods or services (whether the amount represents an overvaluation or an undervaluation);

(c) the specified conduct concerned involves one or more transactions using false names;

(d) the accused has stated that he or she engaged in the specified conduct concerned on behalf of, or at the request of, another person and has not provided information to the Garda Síochána enabling the other person to be identified and located;

(e) where an accused has concealed or disguised the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property, the accused has no reasonable explanation for that concealment or disguise.

(5) Nothing in *subsection (4)* limits the circumstances in which it is reasonable to conclude, for the purposes of *subsection (3)*, that property is the proceeds of criminal conduct.

(6) Nothing in this section prevents *subsections (2) and (3)* being applied in the same proceedings.

(7) *Subsections (2) to (6)* extend to proceedings for an offence under—

(a) *section 10*, or

(b) *section 7(1)* of the Criminal Law Act 1997 of aiding, abetting, counselling or procuring the commission of an offence under *section 7, 8 or 9*, and for that purpose any reference to an accused in *subsections (2) to (6)* is to be construed as a reference to a person who committed, or is alleged to have committed, the offence concerned.

(8) In proceedings for an offence under this Part, or an offence under *section 7(1)* of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not necessary, in order to prove that property is the proceeds of criminal conduct, to establish that—

(a) a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property, or

(b) a particular person committed an offence comprising criminal conduct in relation to the property.

(9) In proceedings for an offence under this Part, or an offence under *section 7(1)* of the Criminal Law Act 1997 referred to in *subsection (7)(b)*, it is not a defence for the accused to show that the accused believed the property concerned to be the proceeds of a particular offence comprising criminal conduct when in fact the property

was the proceeds of another offence.

**12.**—Proceedings for an offence under *section 8, 9 or 10* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place.

**13.**—If a person is charged with an offence under *section 8, 9 or 10*, no further proceedings in the matter (other than any remand in custody or on bail) may be taken except by, or with the consent of, the Director of Public Prosecutions.

**14.**—(1) In any proceedings for an offence under this Part in which it is alleged that property the subject of the offence is the proceeds of criminal conduct occurring in a place outside the State, a certificate—

(a) purporting to be signed by a lawyer practising in the place, and

(b) stating that such conduct is an offence in that place, is evidence of the matters referred to in that certificate, unless the contrary is shown.

(2) A certificate referred to in *subsection (1)* is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(3) In a case where a certificate referred to in *subsection (1)* is written in a language other than the Irish language or the English language, unless the contrary is shown—

(a) a document purporting to be a translation of that certificate into the Irish language or the English language, as the case may be, and that is certified as correct by a person

appearing to be competent to so certify, is taken—

(i) to be a correct translation of the certificate, and

(ii) to have been certified by the person purporting to have certified it, and

(b) the person is taken to be competent to so certify.

(4) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(c)*, a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

(a) a passport was issued by that Department to a person on a specified date, and

(b) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(5) In any proceedings for an offence under *section 8* committed in the circumstances referred to in *section 8(1)(d) or (e)*, a certificate purporting to be signed by the Minister and stating any of the matters referred to in that paragraph is evidence of those matters, and is taken to have been signed by the Minister, unless the contrary is shown.

**15.**—A person who has been acquitted or convicted of an offence in a place outside the State shall not be proceeded against for an offence under *section 8, 9 or 10* consisting of the conduct, or substantially the same conduct, that constituted the offence of which the person has been acquitted or convicted.

16.—For the avoidance of doubt, a reference in this Part to an offence under the law of a place outside the State includes a reference to an offence in connection with taxes, duties, customs or exchange regulation. ‘

**(b) Observations on the implementation of the article**

127. It was concluded that Irish law is in compliance with Art. 23(1)(a) UNCAC.

**Subparagraph 1 (b) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

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

128. Ireland confirmed that it has adopted and implemented this provision of the Convention.

129. The common law criminalises an attempt to commit any offence. In addition, section 7 (2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 specifically criminalises attempts to commit a money laundering offence.

***Section 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010***

(1) ...

(2) A person who attempts to commit an offence under subsection (1) commits an offence.

130. Furthermore, Section 7 of the Criminal Law Act 1997 provides that any person who commits an inchoate offence, e.g. aiding, abetting, counselling or procuring the commission of an indictable offence is liable to be indicted, tried and punished as a principal offender

***Section 7 of the Criminal Law Act 1997***

‘ 7—(1) Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender.

131. In addition sections 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 criminalize the attempting and aiding, abetting, counselling or procuring from outside Ireland of offences in Ireland.
132. With regard to conspiracy, it is an offence at Common Law for two or more parties to agree to commit an unlawful action. There is also acceptance in Irish law of the common law offence of conspiracy to defraud (see *Attorney General v Oldridge* [2004] 4 IR 593). In addition, there is a specific statutory offence contained in section 71 of the Criminal Justice Act 2006, It relates to unlawful conduct and carries an offence of imprisonment of four years or more.

***Section 71 of the Criminal Justice Act 2006***

(1) Subject to subsections (2) and (3), a person who conspires, whether in the State or elsewhere, with one or more persons to do an act—

(a) in the State that constitutes a serious offence, or

(b) in a place outside the State that constitutes a serious offence under the law of that place and which would, if done in the State, constitute a serious offence,

is guilty of an offence irrespective of whether such act actually takes place or not.

(2) Subsection (1) applies to a conspiracy committed outside the State if—

(a) the offence, the subject of the conspiracy, was committed, or was intended to be committed, in the State or against a citizen of Ireland,

(b) the conspiracy is committed on board an Irish ship,

(c) the conspiracy is committed on an aircraft registered in the State, or

(d) the conspiracy is committed by an Irish citizen or a stateless person habitually resident in the State.

(3) Subsection (1) shall also apply to a conspiracy committed outside the State in circumstances other than those referred to in subsection (2), but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings for an offence under subsection (1) except in accordance with section 74 (3).

(4) A person charged with an offence under this section is liable to be indicted, tried and punished as a principal offender.

(5) A stateless person who has his or her principal residence in the State for the 12 months immediately preceding the commission of a conspiracy is, for the purposes of subsection (2), considered to be habitually resident in the State on the date of the commission of the conspiracy

**(b) Observations on the implementation of the article**

133. It was concluded that Irish law is in compliance with Art. 23(1)(b) UNCAC.

**Subparagraphs 2 (a) and 2 (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

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

134. Ireland confirmed that it has adopted and implemented this provision of the Convention.

135. Criminal conduct is defined in section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to include any conduct that constitutes an offence without a *de minimis* threshold.

6.-In this Part-

“criminal conduct” means-

(a) conduct that constitutes an offence, or

...

**(b) Observations on the implementation of the article**

136. During the country visit, Ireland confirmed that it has adopted an all-crimes approach without a *de minimis* threshold.

**Subparagraph 2 (c) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

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

137. Ireland has confirmed that it is in compliance with this provision.

138. Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 defines “criminal conduct”, i.e. the predicate for money laundering to include conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State.

139. In addition sections 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 criminalize the attempting and aiding, abetting, counselling or procuring from outside Ireland of offences in Ireland.

6.—In this Part—

“criminal conduct” means—

(a) conduct that constitutes an offence, or

(b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State;

...

8.—(1) A person who, in a place outside the State, engages in conduct that would, if the conduct occurred in the State, constitute an offence under *section 7* commits an offence if any of the following circumstances apply:

(a) the conduct takes place on board an Irish ship, within the meaning of section 9 of the Mercantile Marine Act 1955,

(b) the conduct takes place on an aircraft registered in the State,

(c) the conduct constitutes an offence under the law of that place and the person is—

(i) an individual who is a citizen of Ireland or ordinarily resident in the State, or

(ii) a body corporate established under the law of the State or a company registered under the Companies Acts,

(d) a request for the person’s surrender, for the purpose of trying him or her for an offence in respect of the conduct, has been made under Part II of the Extradition Act 1965 by any country and the request has been finally refused (whether or not as a result of a decision of a court), or

(e) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct, and a final determination has been made that—

(i) the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003, or

(ii) the person should not be surrendered to the issuing state.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under this section is, in a case where *subsection (1)(c)* applies, taken to be ordinarily resident in the State on the date of the commission of the offence.

(4) In this section, “European arrest warrant” and “issuing state” have the same meanings as they have in the European Arrest Warrant Act 2003.

9.—(1) A person who attempts, in a place outside the State, to commit an offence under *section 7(1)* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

10.—(1) A person who, in a place outside the State, aids, abets, counsels or procures the commission of an offence under *section 7* is guilty of an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).

(3) This section is without prejudice to section 7(1) of the Criminal Law Act 1997.

**(b) Observations on the implementation of the article**

140. During the country visit, Ireland elaborated on the question to what extent the existence of the predicate offence must be proven before the Court in order to convict a person of money laundering.

141. To consider issues relating to the predicate offence it is first necessary to consider the definitions of “criminal conduct” and “proceeds of criminal conduct” in section 6. Criminal conduct as defined in section 6 is conduct that constitutes an offence or conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State, therefore this includes extra territorial conduct.

142. The definition of “criminal conduct” does not set a threshold for the conduct in question, i.e. there is no *de minimis* threshold. These definitions are relevant to a clear reading and interpretation of the other sections in this Part of the Act, in particular sections 7 and 11 in relation to these queries. For example section 7 which sets out the key components of the principal offence of money laundering refers in section 7(1)(b) to the fact that the person must know or believe (or is reckless as to whether or not) the property is the proceeds of criminal conduct. Section 11 which deals with presumptions and other matters refers in section 11(2) to the circumstances where it is reasonable to conclude that the accused knew or believed or was reckless as to whether the property was the proceeds of crime and the accused is presumed to

have so known or believed, or been so reckless, unless the court or jury is satisfied that there is a reasonable doubt that the accused knew, believed or was reckless.

143. In Ireland it is generally the case that it is for the prosecutor to bear the burden of proving a criminal offence beyond a reasonable doubt. However, while the burden of proof concerning the existence of the predicate offence rests with the Prosecution, it benefits from the presumption in Sec. 11.
144. In proceedings for a money laundering offence, where an accused has engaged in, or attempted to engage in, specified conduct in relation to property in circumstances in which it is reasonable to conclude that the property is the proceeds of criminal conduct, those circumstances are evidence that the property is the proceeds of criminal conduct (Sec. 11(3)). Section 11, Subsection (8) provides that it is not necessary in order to prove that property is the proceeds of criminal conduct to establish that a particular offence or a particular class of offence comprising criminal conduct was committed in relation to the property or that a particular person committed an offence comprising criminal conduct in relation to the property. In addition, Section 11(9) provides that it is not a defence for an accused to show that he or she believed the property concerned to be the proceeds of a particular offence comprising criminal conduct when in fact the property was the proceeds of another offence.
145. Moreover, the defendant need not first be convicted of the predicate offence – in Ireland or in another country – before he can be convicted of laundering of the proceeds of crime. However, if the predicate offence is no offence under the laws of the other country, the presumption would be rebutted.

### **Subparagraph 2 (d) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

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

146. Ireland has furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

#### **(b) Observations on the implementation of the article**

22. It was concluded that Ireland has fulfilled its obligation to furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations.

### **Subparagraph 2 (e) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

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

147. Ireland indicated that the country's domestic system does not contain fundamental principles as referred to in Article 23 subparagraph 2 (e) UNCAC.

### **Article 24. Concealment**

#### **Article 24**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

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

148. Ireland confirmed that it has fully adopted and implemented this provision of the Convention.

149. Ireland referred to its response to subparagraph 1 (a)(i) of article 23 above.

150. The offences in part 2 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 do not distinguish between concealment and continued concealment or possession and continued possession.

#### **(b) Observations on the implementation of the article**

151. It was concluded that Irish law is in compliance with this Article of the Convention.

### **Article 25. Obstruction of justice**

#### **Subparagraph (a) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

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

152. Ireland confirmed that it has adopted and implemented this provision of the Convention through the common law crime of subornation of perjury, i.e. the encouraging of a witness to perjure themselves.

153. Subornation of perjury consists of actively encouraging another witness to perjure themselves. The Perjury Act 1729 provides a penalty of 7 years imprisonment for perjury and subornation of perjury. In *People (DPP) v Murtagh* [1990] 1 IR 339, the accused was charged with subornation of perjury contrary to Common Law and section 2 of the Perjury Act 1729. Subornation of perjury offence could be carried out on the basis of the granting of an improper benefit rather than on threats of intimidation.

154. Perverting the course of justice is also an offence at common law. In the case of *The Minister for Justice, Equality and Law Reform v Marek Marciszewski* [2011] IEHC 12, the High Court confirmed the position regarding the offence and any attempt or incitement or conspiracy to pervert the course of justice. Mr Justice Peart stated -

“I refer to Archbold, 8th ed. At page 2561 where it is stated:

*“It is a common law misdemeanour to pervert the course of justice. The offence is committed where a person or persons:*

- (a) acts or embarks upon a course of conduct,*
- (b) which has a tendency to, and*
- (c) is intended to pervert,*
- (d) the course of public justice....*

*A positive act, whether of concealment or distortion, is required. Inaction is insufficient ... . An attempt or incitement or conspiracy to pervert the course of justice is likewise indictable.”*

155. Section 41 of the Criminal Justice Act 1999 makes it an offence for a person to harm or threaten, menace or intimidate another person who is assisting in the investigation by the Garda Síochána of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, or a member of his or her family, with the intention of causing the investigation or the course of justice to be obstructed, perverted or interfered with.

***Section 41 of the Criminal Justice Act 1999***

' 41.-(1) Without prejudice to any provision made by any other enactment or rule of law, a person-

(a) who harms or threatens, menaces or in any other way intimidates or puts in fear another person who is assisting in the investigation by the Garda Síochána of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, or a member of his or her family,

(b) with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with, shall be guilty of an offence.

(2) In this section, “potential juror” means a person who, at the time an offence under this section is alleged to have been committed, has been summoned for jury service but has not been empanelled as a juror to serve on a particular jury.

(3) In proceedings for an offence under this section, proof to the satisfaction of the court or jury, as the case may be, that the accused did an act referred to in subsection (1)(a) shall be evidence that the act was done with the intention required by subsection (1)(b).

(4) In subsection (1) the reference to a member of a person’s family includes a reference to-

(a) the person’s spouse,

(b) a parent, grandparent, step-parent, child (including a stepchild or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the person or his or her spouse, or

(c) any person who is cohabiting or residing with him or her.

(5) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years or both.'

156. Section 9 of the Non Fatal Offences against the Person Act 1997 criminalises coercion.

***Section 9 of the Non Fatal Offences against the Person Act 1997***

' 9.-(1) A person who, with a view to compel another to abstain from doing or to do any act which that other has a lawful right to do or to abstain from doing, wrongfully and without lawful authority-

(a) uses violence to or intimidates that other person or a member of the family of the other, or

(b) injures or damages the property of that other, or

(c) persistently follows that other about from place to place, or

(d) watches or besets the premises or other place where that other resides, works or carries on business, or happens to be, or the approach to such premises or place, or

(e) follows that other with one or more other persons in a disorderly manner in or through any public place,

shall be guilty of an offence.

(2) For the purpose of this section attending at or near the premises or place where a person resides, works, carries on business or happens to be, or the approach to such premises or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of subsection (1)(d).

(3) A person guilty of an offence under this section shall be liable-

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.'

157. The active corruption offence (see response to subparagraph (a) of article 15) would also be applicable to inducing false testimony.

**(b) Observations on the implementation of the article**

158. During the country visit, Ireland clarified that the use of a promise, offering or granting of an improper benefit to induce false testimony or to interfere in the giving of testimony, would constitute an attempt to pervert the course of justice and the common law offence of embracery.

159. It was concluded that Irish law is in compliance with this Article of the Convention.

**Subparagraph (b) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

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

160. Ireland confirmed that it has adopted and implemented this provision of the Convention

161. Ireland referred to its response to subparagraph (a) of article 25 above.

162. In addition, the obstruction of public officials is criminalised by section 7 of the Offences Against the State Act 1939 (as amended).

### ***Section 7 of the Offences Against the State Act 1939***

' 7.-(1) Every person who prevents or obstructs, or attempts or is concerned in an attempt to prevent or obstruct, by force of arms or other violent means or by any form of intimidation the carrying on of the government of the State or any branch (whether legislative, judicial, or executive) of the government of the State or the exercise or performance by any member of the legislature, the judiciary, or the executive or by any officer or employee (whether civil (including police) or military) of the State of any of his functions, powers, or duties shall be guilty of felony and shall be liable on conviction thereof to suffer penal servitude for a term not exceeding seven years or to imprisonment for a term not exceeding two years.

(2) Every person who aids or abets or conspires with another person to do anything the doing of which is a felony under the foregoing sub-section of this section or advocates or encourages the doing of any such thing shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment for a term not exceeding two years. '

#### **(b) Observations on the implementation of the article**

163. It was concluded that Irish law is in compliance with this Article of the Convention.

### **Article 26. Liability of legal persons**

#### **Paragraphs 1 and 2 of article 26**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

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

164. Ireland indicated that it has established one or more of the forms of liability referred to in the provision above.

165. The common law doctrine of identification provides for the liability of legal persons whereby the acts of the controlling officers of a legal person are viewed as constituting the acts of the legal person itself.

166. The “identification doctrine” was outlined by the UK House of Lords in *Tesco supermarket Ltd. -v- Nattrass* [1972] AC 153, and recognised in Irish law in *Taylor -v- Smith* [1991] IR 142, and *Superwood Holdings Plc – v- Sun Alliance and London Insurance Plc* [1995] 3 IR 30. According to the identification doctrine, the crimes of a legal body’s “controlling mind and will”, i.e. the controlling officers of the legal entity, are identified as one with the corporation. The doctrine encompasses both civil and criminal liability.

167. Also in reaction to criticism from the OECD, the General Scheme of the Criminal Justice (Corruption) Bill makes specific provision for the liability of legal persons where an offence is committed by a director, manager, secretary, officer, employee, subsidiary or agent of a legal person with the intention of obtaining or retaining business for the legal person or to obtain or retain an advantage in the conduct of business. The Scheme provides in Head 13 (1):

“Where an offence under this Act has been committed by a director, manager, secretary, officer, employee, subsidiary or agent of a body corporate with the intention of obtaining or retaining business for the body corporate or to obtain or retain an advantage in the conduct of business for the body corporate, that body corporate shall also be guilty of an offence.”

168. It is intended that this provision would capture paying a bribe in order to get a contract which otherwise would have been awarded to another company. It would cover offences committed by any employee. However, it would be a defence if the company took all reasonable steps and exercised due diligence to avoid the commission of the offence.

**(b) Observations on the implementation of the article**

169. During the country visit, it was stated that to date there has been only one case of corruption-related criminal corporate liability. This could raise doubts about the effectiveness of the current regime of liability.

170. With regard to state-owned companies, it was clarified that if the director was an Irish official, then forfeiture of office would be available as a sanction.

**(c) Challenges**

171. It was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to establish an effective and comprehensive system of corporate criminal liability.

**Paragraph 3 of article 26**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

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

172. Ireland has indicated that it has established one or more of the forms of liability referred to in the provision above.

173. Ireland referred to its response to paragraphs 1 and 2 of article 26.

**(b) Observations on the implementation of the article**

174. During the country visit, Ireland confirmed that under the current common law system of liability, the liability of a natural person or persons with sufficient control over the legal entity must be established first in order to hold the legal person liable for an offence established by the UNCAC. While it is possible to proceed solely against a legal person, proof of a criminal offence of an individual is a constituent element of corporate liability.
175. Conversely, however, the liability of the legal person is without prejudice to the criminal liability of the natural persons who have committed the offences.
176. Therefore, it was concluded that Irish law is in compliance with this provision of the Convention.

**(c) Challenges**

177. It was recommended to swiftly adopt the Criminal Justice (Corruption) Bill in order to establish an effective and comprehensive system of liability that is not dependent on the prior establishment of liability of a natural person or persons with sufficient control over the legal entity.

**Paragraph 4 of article 26**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*

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

178. Ireland indicated that it has adopted and implemented the measures described above.
179. All relevant indictable offences carry unlimited fines to which legal persons would be liable. There are no sentencing guidelines.
180. The dissolution of a company is possible under corporate law.
181. Under sections 7 or 8 of the Companies Act 1990, the High Court may appoint an Inspector to investigate the affairs of a company. On receiving a report from an Inspector that it has appointed, and following consideration of that report, the High Court may, under section 12, make any orders it sees fit in relation to the company including an order for the winding up of the company.
182. Under section 12 of the Companies Act 1990, the High Court (the High Court is the lower of the two Superior courts in Ireland), may wind up a company in certain circumstances.

183. Under section 12 also, the Director of Corporate Enforcement, (a statutory post, established under the Company Law Enforcement Act 2001 the primary function of which is the enforcement of the Companies Act 1963-2013), may present a petition to the High Court seeking the winding up of a company, if the High Court decides that it would be just and equitable to do so. The Director may present such a petition on the basis of: information from a report of an Inspector, if that Inspector was appointed by the High Court on the application of the Director; information from an Inspector's report if that Inspector was appointed by the Director or any information or document obtained by the Director under Part II of the Companies Act 1990.

‘ 12.—(1) Having considered a report made under *section 11* , the court may make such order as it deems fit in relation to matters arising from that report including—

(a) an order of its own motion for the winding up of a body corporate, or

(b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company, provided that, in making any such order, the court shall have regard to the interests of any other person who may be adversely affected by the order.

(2) If, in the case of any body corporate liable to be wound up under the Companies Acts, it appears to the Minister from—

(a) any report made under *section 11* as a result of an application by the Minister under *section 8* , or

(b) any report made by inspectors appointed by the Minister under this Act, or

(c) any information or document obtained by the Minister under this Part,

that a petition should be presented for the winding up of the body, the Minister may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.

184. The Companies Act 2014 ( No. 38 of 2014), which is intended to be commenced on 1 June 2015, will provide, additionally, that the Director of Corporate Enforcement may, under current section 761 of that Bill, present a petition to the High Court for the winding up of a company. The Director may present such a petition if he or she thinks that it is just and equitable to do so, on the basis of a report of an Inspector or any information or document obtained by the Director by virtue of the performance of his/her functions (cf. section 12 where the High Court must determine that it is just and equitable to do so and the Director may use information or documents obtained only under the relevant part of the 1990 Act).

185.

186. Ireland also referred to its response in paragraph 1 of article 30.

**(b) Observations on the implementation of the article**

187. During the country visit, it was added that while fines were unlimited in theory, in practice the highest fine imposed so far were 2 million euros.

188. It was concluded that Irish law is in compliance with this Article of the Convention.

## **Article 27. Participation and attempt**

### **Paragraph 1 of article 27**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

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

189. Ireland indicated that it has adopted and implemented the measures described above.

190. Ireland referred to its response to subparagraph 1(b) (ii) of article 23 above.

**(b) Observations on the implementation of the article**

191. It was concluded that, having regard to Section 7 of the Criminal Law Act 1997, Sections 7, 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, and Section 71 of the Criminal Justice Act 2006, Irish law is in compliance with this provision of the Convention.

### **Paragraph 2 of article 27**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

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

192. Ireland indicated that it has adopted and implemented the measures described above.

193. Ireland referred to its response to subparagraph 1(b)(ii) of article 23 above.

**(b) Observations on the implementation of the article**

194. It was concluded that, having regard to Section 7 of the Criminal Law Act 1997, Sections 7, 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, and Section 71 of the Criminal Justice Act 2006, Irish law is in compliance with this provision of the Convention.

**Paragraph 3 of article 27**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

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

195. Ireland indicated that it has adopted and implemented the measures described above.

196. Ireland referred to its response to subparagraph 1(b)(ii) of article 23 above.

**(b) Observations on the implementation of the article**

197. It was concluded that, having regard to Section 7 of the Criminal Law Act 1997, Sections 7, 9 and 10 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, and Section 71 of the Criminal Justice Act 2006, Irish law is in compliance with this provision of the Convention.

**Article 28. Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

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

198. In providing for offences Irish legislation will expressly set out the offending acts which form the *actus reus*, but the necessary mental state – *mens rea* - which must accompany such acts in order for the behaviour to contravene our criminal law will often be implied. While the law is clear that a *mens rea* will always be implied unless the contrary is very clear, the precise *mens rea* may depend on all the circumstances of the legislation. However, as a general (but not absolute) rule, where a *mens rea* is not stated, it can be assumed to be intent and thus accord with such requirements of UNCAC. This requires proof that the person acted with the purpose of causing the circumstance which is outlawed. Ordinarily the entire legal and evidential burden is on the prosecution, but in certain circumstances the evidential burden can be transferred to

the accused. This is to ensure that certain offences may be successfully prosecuted and not to allow entirely artificial defences. Intention is to be contrasted with other degrees of mental guilt, principally recklessness. It is open to the legislature to use these gradations of *mens rea*.

199. Proof of intent is very much a matter for the jury in a criminal trial. Where presumptions as to intent can apply from certain facts, the proof of these facts can become very contentious. The burden of proof on the prosecution in a criminal trial is always 'beyond a reasonable doubt'. One is presumed to intend the natural and probable consequences of one's actions.

**(b) Observations on the implementation of the article**

200. It was concluded that Irish law is in compliance with this provision of the Convention.

## **Article 29. Statute of limitations**

### **Article 29**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

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

201. Ireland indicated that there is no statute of limitations applicable in Ireland in respect of indictable offences.

202. With regard to the term "indictable offences", Ireland's constitution distinguishes between minor and non-minor offences. Minor offences may be tried in courts of summary jurisdiction without a jury. In the case of non-minor offences, the constitution generally guarantees a right to trial by jury (there are exceptions for terrorist type trials and military tribunals). A trial by jury is grounded on an indictment which is a formal written statement of the charges. Aside from the mode of trial (i.e. with a jury to determine questions of fact), the other main difference for indictable offences is that higher penalties can be imposed. Summary courts trying minor offences are limited to imposing sentences of imprisonment no longer than 12 months or imposing fines no greater than €5,000. Jury trial courts, depending on the particular limits for various offences, can impose unlimited fines and sentences of imprisonment for life. In most modern statutes, an offence is defined and then penalty limits are set depending on whether the offence is prosecuted summarily or on indictment (see example below of the Assault Causing Harm offence in section 3 of the Non-Fatal Offences Against the Person Act) Usually it is a matter for the Director of Public Prosecutions to determine whether an offence is prosecuted summarily or on indictment.

*Section 3 of the Non-Fatal Offences Against the Person Act*

3.—(1) A person who assaults another causing him or her harm shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1,500 or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

203. A non-indictable offence is one which can only be tried summarily and is, therefore, a minor offence. See example below of the assault offence in section 2 of the Non-Fatal Offences Against the Person Act. Note that subsection (4) makes no provision for trial on indictment.

***Section 2 of the Non-Fatal Offences Against the Person Act***

2.—(1) A person shall be guilty of the offence of assault who, without lawful excuse, intentionally or recklessly—

(a) directly or indirectly applies force to or causes an impact on the body of another, or

(b) causes another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force or impact,

without the consent of the other.

(2) In subsection (1) (a), “force” includes—

(a) application of heat, light, electric current, noise or any other form of energy, and

(b) application of matter in solid liquid or gaseous form.

(3) No such offence is committed if the force or impact, not being intended or likely to cause injury, is in the circumstances such as is generally acceptable in the ordinary conduct of daily life and the defendant does not know or believe that it is in fact unacceptable to the other person.

(4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 6 months or to both.

204. The Petty Sessions (Ireland) Act 1851 requires the prosecution of minor offences before summary courts within 6 months of the offence happening. This period has been extended to two years for some offences. While there is no statute of limitations specifying a prescription period for indictable offences, the Supreme Court has clarified that the “due course of law” requirements of Article 38.1 of the Constitution include a right to trial with reasonable expedition. Where a delay in prosecuting an offence amounts to an abuse of process or would affect the fairness of a trial or prejudice the accused person in the preparation or conduct of his defence, he can apply to the High Court to have the prosecution prohibited.

205. Ireland presented the following example from case law.

## Statute of Limitations – Judgment

S.H. v. Director of Public Prosecutions [2006] 3 I.R. 575

The applicant was a primary school teacher who was charged in 2001 with 50 counts of indecent assault. The complaints against him were made to the gardaí by four complainants from 1999 onwards between 1999 and 2001 and alleged that the applicant had committed the acts of indecent assault against them in the mid to late 1960s. While the mother of one of the complainants' mothers had visited a garda station in respect of the matter at the time, no steps were taken until formal complaints were made in 1999.

The applicant brought judicial review proceedings in which he sought to prevent his further prosecution on those charges on grounds of delay, and further alleged that the delay had created the risk of an unfair trial. The respondent denied that there was any risk of an unfair trial and claimed that it was the conduct of the applicant and its effect on the complainants that had caused the delay. The High Court (Ó Caoimh J.) refused his application. The applicant appealed to the Supreme Court.

*Held* by the Supreme Court (Murray C.J., Denham, Hardiman, Geoghegan and Fennelly JJ.), in dismissing the appeal, 1, that the test to be applied in applications to prohibit criminal trials on grounds of complainant delay was whether the delay had resulted in prejudice to an accused so as to give rise to a real or serious risk of an unfair trial. It was no longer necessary for the court to inquire into the reasons for the delay or whether the accused had exercised dominion over the complainant or make assumptions as to the truth of the complaints.

1. [\*D. v. Director of Public Prosecutions\* \[1994\] 2 I.R. 465](#) and [\*B. v. Director of Public Prosecutions\* \[1997\] 3 I.R. 140](#) followed. [\*G. v. Director of Public Prosecutions\* \[1994\] 1 I.R. 374](#) ; [\*Hogan v. President of the Circuit Court\* \[1994\] 2 I.R. 513](#) ; [\*P.C. v. Director of Public Prosecutions\* \[1999\] 2 I.R. 25](#) ; [\*P.O'C. v. Director of Public Prosecution\* \[2000\] 3 I.R. 87](#) ; [\*P.L. v. Buttimer\* \[2004\] 4 I.R. 494](#) and [\*D.D. v. Director of Public Prosecutions\* \[2004\] 3 I.R. 172](#) considered.

2. That, once the State was made aware that a serious crime has been committed and there was sufficient evidence to charge somebody with it, the State had a duty, in principle, to prosecute. The fact that the complainant had delayed in bringing the alleged crime to the notice of the authorities was not of itself a ground upon which the State should refuse to prosecute or the courts refuse to entertain a prosecution.

3. That there was no reason why the prosecution of serious offences involving sexual abuse of minors should be treated differently from other serious offences in this regard.

4. That, in the same way as one complaint was a relevant factor, so too was a multiplicity of complaints a relevant factor for consideration by the courts in determining whether to grant an injunction restraining prosecution of an accused on charges of indecent assault.

5. That exceptional circumstances, where it would be unfair or unjust to put an accused on trial, were not wholly excluded.

### (b) Observations on the implementation of the article

206. It was noted that Ireland has no statute of limitations in respect of indictable offences.
207. It was concluded that Irish law is in compliance with this provision of the Convention.

## **Article 30. Prosecution, adjudication and sanctions**

### **Paragraph 1 of article 30**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

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

208. Ireland has indicated that it is in compliance with this provision.

209. In relation to the legislation set out below, all of the indictable offences carry a maximum penalty of an unlimited fine, along with a substantial period of imprisonment (there are also lesser offences covered within the Acts listed below).

Prevention of Corruption (Amendment) Act 2001 contains various penalties including an unlimited fine and 10 years imprisonment or both for convictions on indictment (section 2 -Principal Offence and section 8 Corruption in Office).

Note that the General Scheme of the Corruption Bill 2012 empowers courts to remove from office public officials who breach the public's trust through corruption and to bar the officials from holding office in the future.

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 section 8 (2) indictable offences subject to an unlimited fine and 14 years imprisonment maximum.

Criminal Justice (Theft and Fraud Offences) Act 2001 The key offence under section 4 attracts a penalty on conviction on indictment to a fine (no upper limit) and imprisonment for a term not exceeding 10 years, or both.

210. Ireland cited DPP v Roseberry Ltd [C.C.A. No. 245 of 2001] and DPP v South East Recycling Ltd as examples of a fine being reduced by the Court of Criminal Appeal.

#### **(b) Observations on the implementation of the article**

211. The Secretariat noted the penalties provided for in the acts cited above. Moreover, it was noted again that the penalty has no influence on the length of the statute of limitations because there is none for indictable offences. All corruption offences are arrestable offences.

212. It was concluded that Irish law is in compliance with this provision of the Convention.

### **Paragraph 2 of article 30**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in*

*accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

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

213. Ireland indicated that there is no immunity from criminal prosecution or investigation for any person in Irish law, other than the President (provisions for impeachment as set out in Article 12 of the Irish Constitution).

214. There are no immunities or jurisdictional privileges in Irish law that would prevent the investigation, prosecution or adjudicating of offences established under the Convention (other than those conferred on the President by the Constitution)

***Article 12 (10)***

10.

1° The President may be impeached for stated misbehaviour.

2° The charge shall be preferred by either of the Houses of the Oireachtas, subject to and in accordance with the provisions of this section.

3° A proposal to either House of the Oireachtas to prefer a charge against the President under this section shall not be entertained unless upon a notice of motion in writing signed by not less than thirty members of that House.

4° No such proposal shall be adopted by either of the Houses of the Oireachtas save upon a resolution of that House supported by not less than two-thirds of the total membership thereof.

5° When a charge has been preferred by either House of the Oireachtas, the other House shall investigate the charge, or cause the charge to be investigated.

6° The President shall have the right to appear and to be represented at the investigation of the charge.

7° If, as a result of the investigation, a resolution be passed supported by not less than two-thirds of the total membership of the House of the Oireachtas by which the charge was investigated, or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall operate to remove the President from his office.

215. Ireland has indicated that there have not been concrete instances where the issue of immunities and/or jurisdictional or other privileges accorded to public officials has arisen and addressed in official documents.

**(b) Observations on the implementation of the article**

216. It was concluded that Irish law is in compliance with this provision of the Convention.

**(c) Successes and good practices**

217. The absence of any immunities (except for the President, as set out in Art. 12 of the Constitution) was recognised as a good practice.

**Paragraph 3 of article 30**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

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

218. Ireland has indicated that it is in compliance with this provision.

219. The Prosecution of Offences Act 1974 gives powers to the Director of Public Prosecutions, whose functions are as set out in that Act.

220. The discretion relating to the prosecution of persons for serious corruption offences vests in the Director of Public Prosecutions ( Section 3 of the Prosecution of Offences Act 1974, article 30(I) (3) of the Constitution and Section 9 of the Criminal Justice (Administration) Act 1924). Ireland subscribes to the principle of opportunity as opposed to legality so, even where there is sufficient evidence, a prosecution will not be instigated unless the Director of Public Prosecutions is satisfied that to do so is in the public interest.

221. As a clear public interest is acknowledged in ensuring that crime is prosecuted and the wrongdoer convicted and punished (Guidelines for Prosecutors, chapter 4.6.), the discretion to prosecute will generally be exercised in a manner designed to maximise the effectiveness of law enforcement measures with due regard to the need to deter the commission of corruption offences.

222. Any element of corruption or abuse of a position of authority or trust is recognised as an aggravating factor (Guidelines for Prosecutors, chapter 4.20(j)). However, regard will also be had to those factors outlined in chapter 4.22 of the Guidelines for Prosecutors, such as the availability and efficacy of alternatives to prosecution, whether the consequences would be disproportionately harsh or oppressive, the attitude of or the likely effect on the victim, the likely length and expense of a trial, whether the offender is willing to co-operate in the

investigation or prosecution of other offenders, or has already done so, whether an offender has admitted the offence, shown genuine remorse and a willingness to make amends, etc.

223. Ireland added that the question of cost constitutes only one of many potential reasons, outlined in these guidelines, where due to the unusual circumstances of the case the balance would be in favour of not prosecuting. The question was “whether the likely length and expenses of a trial would be disproportionate having regard to the seriousness of the alleged offence and the strength of the evidence”.
224. The key is not so much a question of the cost as its disproportionate nature when seen within the context of the seriousness of the specific case. The same chapter identifies aggravating factors, such as whether the accused is in a position of authority or trust and the offence is an abuse of that position or where there is any element of corruption, which tend to increase to seriousness of the offence and likelihood that the public interest requires a prosecution.
225. The length and expense of the investigation taken by the police would not be taken into account as, by the time the decision to prosecute or not is being considered, this will be an expense already generated. Such expense could only be estimated. In fact, the Office is not aware of any serious case (such as corruption of any type) where the expense of the trial was taken into consideration in deciding not to prosecute.
226. The limited value of a bribe would not deter a prosecution (in one case each individual bribe was only €100). The manner by which the media might address an offence is not a consideration when determining whether or not to prosecute.
227. The “need to deter” is a factor that would weigh with the decision maker. There is a clear public interest in ensuring that crime is prosecuted and that the wrongdoer is convicted and punished. It follows from this that it will generally be in the public interest to prosecute crime where there is sufficient evidence to justify doing so, unless there is some countervailing public interest not to prosecute.
228. The Director has given an undertaking to examine any request from a victim of crime for a review of a decision not to prosecute and, in appropriate cases, to have an internal review of the decision carried out by an officer, other than the one who first made the decision. In general, the Director's decision not to prosecute is not subject to judicial review by the Courts, unless a lack of bona fides or improper policy can be shown in coming to that decision.

**(b) Observations on the implementation of the article**

229. During the country visit, Ireland confirmed that it was very rare that the DPP decides not to prosecute. As far as corruption offences are concerned, even a 10 euro bribe was prosecuted.. In theory, judicial review of the decision not to prosecute was possible.
230. Ireland also referred to point 3.6 f of the Prosecution Guidelines, according to which prosecutors shall “give due attention to the prosecution of crimes of corruption, abuse of power, violations of human rights and other crimes recognised by international law, in particular offences which may have been committed by public officials”.

231. It was concluded that Irish law is in compliance with Art. 30 (3) UNCAC.

#### **Paragraph 4 of article 30**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

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

232. Ireland indicated that it has adopted and implemented the measures described above.

233. The decision to grant bail in a particular case is a matter for the court, which is, subject only to the Constitution and the law, independent in the exercise of its judicial functions. There is a constitutional presumption in favour of bail, since, in the eyes of the law, a person is innocent until proven guilty. The provisions of the European Convention on Human Rights also restrict the extent to which the right to bail can be limited.

234. Prior to the Sixteenth Amendment of the Constitution, bail could be refused essentially only on the grounds that a person would be likely to abscond or interfere with witnesses (see the People (A.G.) v Roger O’Callaghan Supreme Court 1966.1.IR). Section 2 of the Bail Act 1997, which gave effect to the terms of the Sixteenth Amendment of the Constitution, provides for the refusal of bail to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person. “Serious offence” is defined for the purposes of the Act as “an offence specified in the Schedule for which a person of full capacity and not previously convicted may be punished by a term of imprisonment for a term of 5 years or by a more severe penalty.” The scheme of the Criminal Justice (Corruption) Bill provides for corruption offences to be added to the schedule of the Bail Act.

235. Section 2(2)(d) provides that in exercising its jurisdiction under that section, a court shall take into account and may receive evidence or submissions concerning any conviction of the accused person for an offence committed while he or she was on bail.

236. In addition, section 6 of that Act, as amended by section 9 of the Criminal Justice Act 2007, provides that every bail recognisance is subject to the condition that the accused person shall not commit an offence while on bail.

237. Section 11 of the Criminal Justice Act 1984 provides that any sentence of imprisonment passed on a person for an offence committed while on bail must be consecutive on any sentence passed on him or her for a previous offence, or on the sentence last due to expire, if more than one is being served. It also provides that the fact that an offence was committed while on bail must be treated as an aggravating factor at sentencing and that the court shall impose a sentence

that is greater than that which would have been imposed otherwise, unless there are exceptional circumstances.

238. The judge before whom a person is charged with a serious corruption offence can remand that person either in custody or on conditional bail (Section 22 of the Criminal Procedure Act 1967 (as amendment)) Subject to the defendant's right to be presumed innocent, the judge may refuse, or place strict conditions on, the grant of bail where there is evidence an accused might not attend at his trial, otherwise seek to evade justice by interfering with evidence or witnesses or where such refusal is reasonably considered necessary to prevent commission of a serious offence. Compliance with conditions upon which bail may be granted is monitored and where there is evidence that a person either has, or is about to, contravene such conditions application can be made to have bail revoked (Section 6(5) and 9(4) of the Bail Act 1997 (as amended)).

**(b) Observations on the implementation of the article**

239. It was concluded that while Ireland has largely implemented this provision of the Convention, it was recommended that corruption offences be added to the schedule of the Bail Act, as envisaged in the scheme of the Criminal Justice (Corruption) Bill.

**Paragraph 5 of article 30**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

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

240. Ireland has indicated that it is in compliance with this provision.

241. The power bestowed on the Minister for Justice and Equality to grant remission and temporary release is clearly set out in existing legislative instruments.

242. Rule 59 of the 2007 prison rules provides that a prisoner is eligible by good conduct to earn a remission of sentence not exceeding one quarter. The Prison Rules 2007 provided, in addition to the standard rate of remission of one quarter of sentence, for the possibility of enhanced remission of up to one third of sentence where a prisoner engages in authorised structured activity intended to increase the likelihood that the prisoner, when released from prison, will be less likely to re-offend or better able to re-integrate into the community. The Prison Rules were amended in August 2014 to clarify the factors which may be taken in account when considering whether or not to grant a prisoner an enhanced rate of remission. These include the gravity of the offence, the period of the sentence served, the potential threat to public safety, the views, where relevant, of An Garda Síochána, and of course the prisoner's conduct as well as his or her engagement with authorised structured activities.

243. The legislative basis for making decisions on temporary release is set out in the Criminal Justice Act 1960, as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003.

244. The legislation sets out clearly the purpose of temporary release, the situations in which it may be granted and the criteria to apply to decisions to grant temporary release. Candidates for temporary release are identified by a number of different means but primarily on the recommendation of the Prison Governor or the therapeutic services in the prisons. The prisoner, their family or their legal representative can also apply for consideration of such a concession. Recommendations are also made to the Minister in relation to long term sentence prisoners by the Parole Board. Each application is considered on its individual merits and evaluated using the following criteria as outlined in the Criminal Justice (Temporary Release of Prisoners) Act 2003:

- the nature and gravity of the offence to which the sentence being served by the person relates;
- the sentence concerned and any recommendation made by the Court in relation to the sentence imposed;
- the period of the sentence served by the person;
- the potential threat to the safety and security of the public should the person be released;
- the person's previous criminal record;
- the risk of the person failing to return to prison at the expiration of the period of temporary release;
- the conduct of the person while in custody or while previously on temporary release;
- any report or recommendation made by the Governor, the Garda Síochána, a Probation Officer, or any other person whom the Minister considers may be of assistance in coming to a decision as to whether to grant temporary release;
- the risk that the person might commit an offence during any period of temporary release;
- the risk of the person failing to comply with any of the conditions of temporary release;
- the likelihood that a period of temporary release might accelerate the person's reintegration into society or improve his prospects of obtaining employment.

**(b) Observations on the implementation of the article**

245. It was concluded that Irish law is in compliance with Art. 30 (5) UNCAC.

**Paragraph 6 of article 30**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended*

*or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

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

246. Ireland has indicated that it has established the procedures described above.

247. Such procedures are in place within the existing systems. For instance, disciplinary codes within the various sectors such as for civil servants, ([www.per.gov.ie](http://www.per.gov.ie)), members of An Garda Síochána ([www.garda.ie](http://www.garda.ie)) prison officers ([www.irishprisons.ie](http://www.irishprisons.ie)), etc., would provide for suspension or re-assignment etc. pending criminal charges.

**(b) Observations on the implementation of the article**

248. It was concluded that Irish law is in compliance with Art. 30 (6) UNCAC.

**Subparagraph 7 (a) of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office;*

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

249. Ireland has indicated that it has established the procedures described above.

250. Section 41 of the Electoral Act 1992 provides for disqualification from membership of parliament, inter alia for those undergoing a sentence of imprisonment for any term exceeding 6 months, as provided therein.

' 41.-A person who-

(a) is not a citizen of Ireland, or

(b) has not reached the age of 21 years, or

(c) is a member of the Commission of the European Communities, or

(d) is a Judge, Advocate General or Registrar of the Court of Justice of the European Communities, or

(e) is a member of the Court of Auditors of the European Communities, or

(f) is a member of the Garda Síochána, or

(g) is a wholetime member of the Defence Forces as defined in section 11(4), or

(h) is a civil servant who is not by the terms of his employment expressly permitted to be a member of the Dáil, or

(i) is a person of unsound mind, or

(j) is undergoing a sentence of imprisonment for any term exceeding six months, whether with or without hard labour, or of penal servitude for any period imposed by a court of competent jurisdiction in the State, or

(k) is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the State, shall not be eligible for election as a member, or, subject to Section 43 (3), for membership, of the Dáil.'

251. Also, other disciplinary procedures follow conviction.

252. Note also there is an offence of “Corruption in Office” in the Prevention of Corruption Acts 1889 to 2010, and see at subparagraph 7(b) of article 30, details of proposed penalties including forfeiture of office, as set out therein under the General Scheme of the Criminal Justice (Corruption) Bill 2012.

**(b) Observations on the implementation of the article**

253. It was observed that while Ireland indicated the possibility for disqualification from membership of Parliament, it seemed that there were no other laws providing for disqualification for other public officials/civil servants.

254. Ireland confirmed this understanding. However, there could be disciplinary proceedings and a prison sentence would in any case lead to disqualification. The 2012 Bill envisages the possibility of disqualification (see also answer to subpara. 7(b)).

255. With regard to members of Parliament, Ireland clarified that the Electoral Act 1992 provides for disqualifications in respect of parliamentary elections. There are also disqualification provisions applying in respect of European Parliament and local elections. There has been one change of note recently. The Electoral (Amendment) Act 2014, signed into law by the President on 16 April 2014, provides for the repeal of the bankruptcy disqualifications for election to and membership of the Dáil (and Seanad) and the European Parliament. Bankruptcy had previously been removed as a disqualification provision for local elections. The amendment addressed anomalies whereby people declared bankrupt in Ireland were treated differently from those declared bankrupt in other jurisdiction. The majority of EU Member States do not have an equivalent disqualification provision.

256. On a separate point, at local elections a candidate or elected member can be disqualified from membership of a local authority for failing to make an election spending or donations return, for submitting a false or misleading statement or for exceeding the election spending limit. These provisions are contained in section 20 of the Local Elections (Disclosure of Donations and Election Expenditure) Act 1999.

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

**(c) Challenges**

258. It was recommended that Ireland take measures to allow for the disqualification of persons other than MPs convicted of corruption offences from holding public office.

**Subparagraph 7 (b) of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

...

*(b) Holding office in an enterprise owned in whole or in part by the State.*

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

259. Ireland has indicated that it has established the procedures described above.

260. If a person receives a term of imprisonment from the court, then they will be unable to carry out their public functions, and will not be in a position to carry out their duties for instance disqualification from membership of Parliament, from acting as a Company Director, and so on. See response to paragraph 6 of article 30 and subparagraph 7(a) of article 30.

261. An important provision in the General Scheme of the Criminal Justice (Corruption) Bill 2012, is at Head 18 whereby - in respect of persons convicted on indictment of corruption offences while in office - the court may make an order excluding such persons from seeking or holding office for a specified period not exceeding 10 years.

262. These penalties may only be applied by the court where it is in the interest of maintaining or restoring public confidence in the public administration of the State and where it is in the interest of justice to do so. Obviously, issues regarding denying a person access to their livelihood as well as matters concerning democracy where citizens might be precluded from electing persons into official positions would have to be weighed up carefully in these cases.

**(b) Observations on the implementation of the article**

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

**(c) Challenges**

264. It was recommended that Ireland adopt the measures envisaged in the Criminal Justice (Corruption) Bill to fully implement this provision of the Convention.

### **Paragraph 8 of article 30**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

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

265. Ireland has indicated that it is in compliance with this provision.
266. Nothing in the law prevents the exercise of disciplinary measures when a criminal sanction has been applied.

#### **(b) Observations on the implementation of the article**

267. During the country visit, it was confirmed that disciplinary measures can also be applied if no criminal sanction has been imposed. The principle *ne bis in idem* does not prevent the simultaneous application of criminal and disciplinary sanctions.
268. It was concluded that Ireland has implemented this provision of the Convention.

### **Paragraph 10 of article 30**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

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

269. Ireland has indicated that it is in compliance with this provision.
270. While not specific to the offences established in accordance with this convention, the Irish Prison Service provides reintegration programmes to all those in custody, subject to certain qualifying periods.
271. Ireland provided the following example of implementation:

##### **Integrated Sentence Management (ISM)**

The Irish Prison Service has introduced an Integrated Sentence Management (ISM) system. ISM involves a orientation in the delivery of services to prisoners and an emphasis on prisoners taking greater personal responsibility for their own development through active engagement with both specialist and non-specialist services in the prisons. The end result is a prisoner-centred, multidisciplinary approach to working with prisoners with provision for initial assessment, goal setting and periodic review to measure progress. The ISM process has played a key role in the success of the Community Return Scheme.

Following committal the ISM Coordinator conducts a First Contact Assessment. This First Contact Assessment identifies the needs of the prisoner in several areas such as accommodation,

education and offending behaviour. Referrals are made on foot of this assessment to services within the prison such as Education, Work/Training and outside agencies providing an in-reach service. The various actions recommended by these services are compiled into a Personal Integration Plan (PIP). This is a plan of actions for the prisoner to complete during his/her time in prison. The PIP will be reviewed regularly depending on the length of the sentence. Approximately 9 months prior to the release of the prisoner, a Community Integration Plan (CIP) will be developed. This sets out a plan for the prisoner to prepare for his/her release. Important issues such as accommodation, employment or education are addressed to help the prisoner resettle into the community on release and reduce the risk of re-offending.

Dedicated ISM Coordinators are now operational in all prisons and open centres. The allocation of dedicated staff in each establishment greatly enhances the effectiveness of the sentence management system and facilitates the growing numbers of prisoners participating in the process. To enhance consistency of delivery across the prison estate a dedicated ISM Coordinator training course was delivered in the IPS College in 2014. ISM staff now engage with prisoners serving sentences of between 3 months and 12 months in order to identify suitable candidates for the Community Support Scheme and interagency case management is ongoing between ISM coordinators and probation staff. To further support the effective implementation of the Integrated Sentence Management programme an enhancement of the ISM database is required and is currently under consideration

As of 23 January 2015, 2,953 prisoners in custody were engaged in ISM. Over 5,180 prisoners have been offered participation in ISM since it began in mid-2008.

#### Work/Training/Employability

The Irish Prison Service places a strong emphasis on the provision of vocational training and educational activities for prisoners. Training activities are chosen to give as much employment as possible in prison and to give opportunities to acquire skills which help secure employment on release. A wide range of training workshops operate within the institutions, e.g. printing, computers, braille, woodwork, metalwork, construction, industrial contract cleaning, craft, horticulture and electronics. In addition, the work and training function comprehends such essential services as catering and laundry services.

In regard to employability and placement programmes, the Irish Association for the Social Integration of Offenders (IASIO), is the main provider of support in this area. Since its inception in 2000, the IASIO Linkage Programme has been providing a professional guidance and placement service, in partnership with the Probation Service, to persons on probation and to prisoners and ex-prisoners.

Since 2007, another IASIO programme, the GATE Service, has been operating in Mountjoy, Dóchas, St Patrick's Institution, the Training Unit, Midlands and Portlaoise Prisons. The service was introduced to Wheatfield Prison in 2011. Funded by the Irish Prison Service, five GATE Service Training and Employment Officers work on a full-time basis in the prisons concerned and provide a training, education and employment placement service. The specific number of employment placements over the years 2008-2012 were: 66 in 2008; 83 in 2009, 90 in 2010, 77 in 2011, 73 in 2012, 100 in 2013 and 120 in 2014. In 2014, 292 prisoners were assisted with access to further training/education by the GATE service.

Introduced in 2009, the Resettlement Service is a further joint initiative between IASIO and the Irish Prison Service, which offers 'through-the-gate' resettlement support to prisoners. This service offers release and resettlement planning and stabilisation support through one-to-one meetings with the offender and inter-agency collaboration on behalf of the offender. In 2014, the Resettlement Service received 353 referrals from prison agencies. There are currently 3 IASIO

Resettlement Workers who provide a service to Cork Prison, Castlerea Prison, the Training Unit Mountjoy West and Loughan House.

IASIO personnel interact with all national services to maximise the opportunities for prisoners on release from prison. They also interact with any local services that similarly can support the reintegration of prisoners. These include accessing training programmes, support, funding and advice about services in the county, as well as participating on committees and projects.

The Probation Service provides probation supervision, community service, community return, offending behaviour programmes and specialist support services, to both adult and young offenders. They also work in prisons and places of detention to rehabilitate offenders and facilitate re-integration.

### Community Return

The Community Return Scheme is a joint Probation and Prison Service initiative whereby carefully selected prisoners are granted reviewable temporary release conditional on them performing unpaid supervised community work. The participants must be serving sentences of at least one year and are eligible for consideration once they have completed half their sentence. A total of 1,268 offenders have been released on to the scheme since its commencement in October 2011. To date a total of 984 persons have completed their allocated work with approximately 13% (7163 participants) being returned to custody for non-compliance.

### Community Based Organisations

The Department of Justice and Equality and the Irish Youth Justice Service, through the Probation Service, provide funding to 46 adult and 16 young persons' Community Based Organisations (CBOs) whose objectives are strategically aligned to support the Probation Service in enhancing public safety and breaking the cycle of crime.

## 272. Ireland provided the following statistical information:

The first joint Probation Service & Central Statistics Office Recidivism Study 2007-2011 was published in November 2012. This was the first time there had been such an assessment of the impact of non custodial measures on rates of re-offending. The study showed that almost 63% of offenders who were given an alternative sanction by the Courts in 2007 had not re-offended after two years.

The study's findings showed that the recidivism or re-offending rate was 37.2% for the particular cohort of offenders who were under probation supervision in the two years after their supervision ended. Males made up 86% of the total population and had a higher recidivism rate than females. Public order offences were the most common original offence and these offenders had the highest recidivism rate. Recidivism rates were seen to decrease as the offender's age increased, and re-offending was twice as likely to occur in the first rather than the second twelve months of the two year period.

The study established reliable recidivism data on offenders under probation supervision and on community service orders and considers variations in recidivism as they relate to the type of original order, gender and age of offenders, category of offence and subsequent offence.

The second Central Statistics Office/Irish Prison Service Recidivism Study was published in December 2013. That study reported on recidivism among all prisoners released by the Irish Prison Service on completion of a sentence in 2008, based on reoffending and reconviction data up to the end of 2011 and is a follow up to the report published in May this year which reported on the 2007 cohort. These studies focus on recidivism where the new offence does not necessarily lead to a period of imprisonment and give a clearer picture of the offending behaviour of ex-prisoners. Previously, the only information available to the Service related to re-imprisonment rates.

This research was undertaken in partnership with the Central Statistics Office, specifically the Crime Statistics Section, who facilitated the linking of Irish Prison Service data, Garda Síochána records and Courts Service records. This type of cross-agency analysis of released prisoners has not been possible in the past and these are the first studies of this kind in the Republic of Ireland. The findings mark an important contribution to criminological research in Ireland and highlight the need for a greater emphasis on a structured multi-agency approach to preparing prisoners for their release. It will also enable yearly monitoring of recidivism trends and the evaluation of rehabilitation interventions.

The study's findings indicate that the recidivism or re-offending rate was 51% for the particular cohort of offenders released in 2008. When compared with the equivalent cohort from the 2007 study there is a fall in recidivism of 4.3%.

The report is available on the Central Statistics Office website at [www.cso.ie](http://www.cso.ie)

#### Main Findings

- A recidivism rate of 51% within three years.
- 32.9% of those released re-offended within 6 months of release.
- 40.4% of those released re-offended within 12 months of release.
- The recidivism rate decreased as the offender age increased.
- Male offenders represented 90.8% of the total population studied and had a higher recidivism rate of than female offenders (51.5% for males and 46.2% among females).
- The most common offences for which offenders were reconvicted was Group 15 Offences against Government, Justice Procedures and Organisation of Crime and Group 13 Public Order and other Social Code Offences.
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#### **(b) Observations on the implementation of the article**

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

### **Article 31. Freezing, seizure and confiscation**

## **Subparagraph 1 (a) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

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

274. Ireland indicated that it has adopted and implemented the measures described above.

#### Conviction-Based Confiscation

275. For conviction-based provisions, section 9 of the Criminal Justice Act 1994 (as amended) provides that - in respect of offences for which a person has been convicted on indictment - the DPP may make an application to the court for a confiscation order, requiring the person concerned to pay such sum as the court sees fit.

276. The application can be made if it appears that the person concerned has benefited from the offence of which they are convicted or from the offence taken together with some other offence of which they are convicted in the same proceedings or which the court has taken into consideration in determining sentencing. Section 9(4) as amended provides that a person benefits from an offence (other than drug trafficking or financing terrorism) if he obtains property as a result of or in connection with the commission of that offence and his benefit is the value of the property so obtained.

Section 3(5) of the Criminal Justice Act 1994 provides for property, which, in whole or in part directly or indirectly represents property obtained by a person, as a result of, or in connection with drug trafficking or offences other than drug trafficking may be included in calculating the value to a person of the proceeds of crime as provided in the subsection. .

Sections 38 (1)(b) and 38(1A)(b) of the Criminal Justice Act 1994, as amended by section 20(a) of the Proceeds of Crime (Amendment) Act 2005 provide for the seizure by the Gardaí or Revenue Commissioners of cash that directly or indirectly is suspected of representing the proceeds of crime or is intended by anyone for use in any criminal conduct. This cash can be ultimately forfeited under the provisions of section 39 of the Act. Cash in these sections includes notes and coins in any currency, cheques of any kind, bank drafts, bearer binds and bearer shares.

Section 39 of the Criminal Justice Act 1994 enables a Circuit Court judge to order forfeiture of cash seized under sec. 38 if satisfied that the cash directly/indirectly represents the proceeds of crime or is intended for use in connection with criminal conduct.

277. Note also section 13 of the Criminal Justice Act 1994, which applies “where a person has been convicted on indictment of one or more offences”. In such cases the High Court can make a confiscation order where a defendant has died or absconded (subject to the DPP taking reasonable steps to make contact in the latter case).

278. See also Part 4 of the Criminal Justice (Mutual Assistance) Act 2008, which contains provisions relating to freezing and confiscation co-operation orders, as well as provisions relating to forfeiture orders. Note the definition of “property” in this part, which includes (inter alia) that which the competent judicial authority in a designated state considers to be the proceeds of an offence and also includes “instrumentalities” of an offence. Note also section 105 of the Mutual Assistance Act which contains several amendments to the Criminal Justice Act 1994.

279. In order to enhance effective compliance with these provisions, the Office of the Director of Public Prosecutions has established a specialist unit, with specialist training, retaining responsibility, insofar as it is the function of that office, to enforce the relevant statutory provisions (See chapter 3.6 of the Strategy statement and 4.3 of the Annual report of the office).

#### Non Conviction-Based Confiscation.

280. There are important provisions in Ireland in relation to non conviction-based (NCB) confiscation, carried out by the Criminal Assets Bureau. See the Proceeds of Crime Acts 1996 and 2005. This is a civil process which does not require that the person in possession or control of the asset be convicted of a criminal offence. The objective is to deprive or deny the perpetrators of the benefits of their acts. The Criminal Assets Bureau has 71 staff who have police powers. The Bureau has a proactive mode of operation, it can act ex officio and without a victim and its focus is on the asset rather than the perpetrator.

#### *Section 2: Short term freezing of proceeds of crime*

' 2.-(1) Where it is shown to the satisfaction of the Court on application to it ex parte in that behalf by a member or an authorised officer-

(a) that a person is in possession or control of-

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

(b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii), of paragraph (a) is not less than £10,000,

the Court may make an order (“an interim order”) prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of 21 days from the date of the making of the order.

(2) An interim order-

(a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that-

(a) the property concerned or a part of it is not property to which subparagraph (i) or (ii) of subsection (1)(a) applies, or

(b) the value of the property to which those subparagraphs apply is less than £10,000, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interim order.

(5) Subject to subsections (3) and (4), an interim order shall continue in force until the expiration of the period of 21 days from the date of its making and shall then lapse unless an application for the making of an interlocutory order in respect of any of the property concerned is brought during that period and, if such an application is brought, the interim order shall lapse upon-

(a) the determination of the application,

(b) the expiration of the ordinary time for bringing an appeal from the determination,

(c) if such an appeal is brought, the determination or abandonment of it or of any further appeal or the expiration of the ordinary time for bringing any further appeal, whichever is the latest.

(6) Notice of an application under this section shall be given-

(a) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,

(b) in case the application is under subsection (4), by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her. '

### Section 3 : Long term freezing of proceeds of crime

' 3.-(1) Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of section 8.

(a) that a person is in possession or control of-

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, and

(b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii) of paragraph (a) is not less than £10,000,

the Court shall make an order ("an interlocutory order") prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise

dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person-

(I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or

(II) that the value of all the property to which the order would relate is less than £10,000:

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.

(2) An interlocutory order-

(a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which paragraph (I) of subsection (1) applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interlocutory order.

(5) Subject to subsections (3) and (4), an interlocutory order shall continue in force until-

(a) the determination of an application for a disposal order in relation to the property concerned,

(b) the expiration of the ordinary time for bringing an appeal from that determination,

(c) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired, whichever is the latest, and shall then lapse.

(6) Notice of an application under this section shall be given-

(a) in case the application is under subsection (1) or (4), by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts,

(b) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

(7) Where a forfeiture order, or a confiscation order, under the Criminal Justice Act, 1994, or a forfeiture order under the Misuse of Drugs Act 1977, relates to any property that is the subject of an interim order, or an interlocutory order, that is in force, ("the specified property"), the interim order or, as the case may be, the interlocutory order shall-

(a) if it relates only to the specified property, stand discharged, and

(b) if it relates also to other property, stand varied by the exclusion from it of the specified property.'

#### Section 4 -Forfeiture of proceeds of crime.

' 4.-(1) Subject to subsection (2), where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order ("a disposal order") directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.

(2) Subject to subsections (6) and (8), the Court shall make a disposal order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.

(4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.

(5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.

(6) In proceedings under subsection (1), before deciding whether to make a disposal order, the Court shall give an opportunity to be heard by the Court and to show cause why the order should not be made to any person claiming ownership of any of the property concerned.

(7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.'

#### **(b) Observations on the implementation of the article**

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

#### **(c) Successes and good practices**

282. Ireland's non conviction-based (NCB) confiscation legislation and its enforcement through the Criminal Assets Bureau were identified as good practices.

#### **Subparagraph 1 (b) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

...

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

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

283. Ireland indicated that it has adopted and implemented the measures described above and cited Sections 38 and 61 of the Criminal Justice Act 1994.

284. In addition, under section 3 of the Criminal Justice Act 1994, “realisable property” is defined as any property held by the defendant and any person to whom the defendant has directly or indirectly made a gift, where the gift is caught by the Criminal Justice Act 1994 (section 3).

285. In connection with the money laundering offence, note section 17 of the relevant Act whereby the Gardaí can issue a direction not to carry out transactions for up to 7 days, where this is likely to be relevant for money laundering or terrorist financing offences. In this regard, the definition of “proceeds of criminal conduct” means property derived from or obtained through criminal conduct, directly or indirectly as provided in Part 2 of the Act.

Section 2A of the Prevention of Corruption (Amendment) Act 2001, as inserted by section 23 of the Proceeds of Crime (Amendment) Act 2005, makes provision for the seizure of a suspected bribe and section 2B outlines the process for the forfeiture of that suspected bribe.

Section 16B of the Proceeds of Crime (Amendment) Act 2005 - Corrupt enrichment orders - where a person benefits from the enhancement of value of property legally acquired arising from a corrupt act. Procedures available for Criminal Assets Bureau to obtain an order directing an individual to pay an amount equivalent to the amount by which a court determines the person was corruptly enriched. The relevant circumstances are where a person derives a pecuniary or other benefit as a result of corrupt conduct. Corrupt conduct defined as conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2010, or Official Secrets Act 1963; there is a presumption of “corrupt conduct” where (a) the defendant is in a position to benefit others in the exercise of his/her official functions (b) another person has benefited from the exercise and (c) defendant does not account satisfactorily for his/her property or for the resources, income or source of income from which it was acquired.

286. Section 61 of the Criminal Justice Act 1994 provides - in relation to persons convicted of offences- for the forfeiture of instrumentalities of crime in circumstances where they were seized at the point of apprehending the defendant for the offence for which he/she was subsequently convicted.

**61.—(1)** Subject to the following provisions of this section, where a person is convicted of an offence, and—

(a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

(i) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(ii) was intended by him to be used for that purpose,

or

(b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—

(i) has been lawfully seized from him, or

(ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this section (referred to in this Act as a “*forfeiture order*”) in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way.

(2) In considering whether to make a forfeiture order in respect of any property a court shall have regard—

(a) to the value of the property, and

(b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which the offence relates or of avoiding, or enabling any other person to avoid, apprehension or detection.

(4) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the Garda Síochána.

(5) A court shall not order property to be forfeited under this section if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(6) An order under this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.

(7) The Police Property Act, 1897, shall apply, with the following modifications, to property which is in the possession of the Garda Síochána by virtue of this section, that is to say:

(a) no application shall be made under section 1 (1) of that Act by any claimant of the property after the expiration of 6 months from the date on which the order in respect of the property was made under this section, and

(b) no such application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in *subsection (1)* of this section.

(8) In relation to property which is in the possession of the Garda Síochána by virtue of this section, the power to make regulations under section 2 (1) of the Police Property Act, 1897 (disposal of property in cases where the owner of the property has not been ascertained etc.), shall include power to make regulations for disposal in cases where no application by a claimant of the property has been made within the period specified in *subsection (7) (a)* of this section or no such application has succeeded.

(9) Nothing in this section shall affect the provisions of any enactment whereby property is, or may be ordered to be, forfeited as a result of a conviction for an offence. ‘

**(b) Observations on the implementation of the article**

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

**Paragraph 2 of article 31**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

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

288. Ireland indicated that it has adopted and implemented the measures described above.

289. Freezing orders may be made pending a criminal trial (so property will be available, if required following conviction to meet a confiscation order.) “Realisable property” defined (inter alia) as” property held by a person to who the defendant has directly/indirectly made a gift caught by this Act . Gifts include transferring for well below market value (sec 3(12) Criminal Justice Act 1994).

Section 23 of the Criminal Justice Act 1994 Act lists 4 cases where freezing orders can be made under Section 24, as amended by section 105 Criminal Justice (Mutual Assistance) Act 2008.

(1) Where proceedings instituted and not yet concluded

(2) Section 13 enables freezing order to be made where a defendant has been convicted and has died or absconded before conclusion of the application

(3) Section 18 applications by the DPP for substitution of an amount where property’s value has increased before proceedings are concluded

(4) Orders can be made where court is satisfied that proceedings are to be instituted against a person for an offence which might attract a confiscation order under section 9 (offences excluding drug-trafficking). Note section 23(3) - order to be discharged if proceedings not instituted etc within a reasonable time.

Section 24(9) provides that where the High Court has made a freezing order, a Garda or Customs Officer may, for the purpose of preventing any realisable property being removed from the State, seize the property.

Sections 38 (1)(b) and 38(1A)(b) of the Criminal Justice Act 1994, as amended by section 20(a) of the Proceeds of Crime (Amendment) Act 2005 provide for the seizure by the Gardaí or Revenue Commissioners of cash that directly or indirectly is suspected of representing the proceeds of crime or is intended by anyone for use in any criminal conduct. This cash can be ultimately forfeited under the provisions of section 39 of the Act. Cash in these sections includes notes and coins in any currency, cheques of any kind, bank drafts, bearer binds and bearer shares.

See also section 32 Criminal Justice (Mutual Assistance) Act 2008 allowing freezing in relation to evidence where a criminal investigation is taking place in the State. A Judge can make an order if satisfied that a criminal investigation is taking place. High Court can vary the order on application by a senior Garda or “any person affected by it”.

In addition, section 17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the issue of directions not to carry out a service or transaction.

**(b) Observations on the implementation of the article**

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

**Paragraph 3 of article 31**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

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

291. Ireland indicated that it has adopted and implemented the measures described above.

292. In order to enhance effective compliance with these provisions, the Office of the Director of Public Prosecutions has established a specialist unit, with specialist training, retaining responsibility, insofar as it is the function of that office, to enforce the relevant statutory provisions.

293. The Criminal Assets Bureau also has responsibilities with regard to asset management.

294. Section 24(7) of the Criminal Justice Act 1994 provides for the appointment of a receiver to manage or otherwise deal with property.

295. Section 61 of the Criminal Justice Act 1994 provides for forfeiture orders which can be made in circumstances where property is used or intended to be used in the commission of an offence where the property was seized from a convicted person who had possession or control of the property or when a summons in respect of the offence has been issued.

296. Note also section 39 of the Criminal Justice Act 1994 in respect of cash which has been forfeited, going to the Exchequer, and also the requirement for cash seized to be held in an interest bearing account.

**(b) Observations on the implementation of the article**

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

**Paragraph 4 of article 31**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

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

298. Ireland has indicated that it is in compliance with this provision and referred to the responses to subparagraph 1(a), subparagraph 1(b), paragraph 2 and paragraph 3 of article 31 above.

299. As explained under subparagraph 1(a) of article 31, the criminal confiscation system set out in the Criminal Justice Act 1994 is value-based i.e. the benefit to the person is the value of the property obtained (see Section 5 for drug trafficking offences and Sec. 9 for other offences, incl. corruption offences, in particular Sec. 9(4), (5)).

**(b) Observations on the implementation of the article**

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

**Paragraph 5 of article 31**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

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

301. Ireland has indicated that it is in compliance with this provision.

302. The criminal confiscation system set out in the Criminal Justice Act 1994 is value-based i.e. the benefit to the person is the value of the property obtained. The confiscation order requires the person concerned to pay such sum as the court sees fit.

303. In order to enhance effective compliance with these provisions the Office of the Director of Public Prosecutions has established a specialist unit, with specialist training, retaining responsibility, insofar as it is the function of that office, to enforce the relevant statutory provisions.

**(b) Observations on the implementation of the article**

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

**Paragraph 6 of article 31**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

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

305. Ireland has indicated that it is in compliance with this provision.

306. See section 3 of the Criminal Justice Act 1994 - definition of property, along with the responses to Article 31 provided above.

**(b) Observations on the implementation of the article**

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

**Paragraph 7 of article 31**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

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

308. Ireland indicated that it has adopted and implemented the measures described above.

309. Disclosures can be required by law, for example court orders, subpoenas, exercise of powers of inspection requiring production of documents in connection with investigations under the Income Tax Acts, orders in civil and criminal proceedings made under Bankers Books Evidence Acts and in relation to discovery of documents.

310. Note section 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001, where it is an offence to conceal etc documents relevant to an investigation. For instance, auditors carrying out their duties would be subject to this provision.

311. See also sections 63 and 64 of the Criminal Justice Act 1994, as amended, regarding the production of documents and other materials, as needed.

312. Note also relevant provisions of the Criminal Justice Act 2011 - this measure applies to serious offences punishable by imprisonment for 5 years or more, including theft, fraud and corruption offences, as well as company law, banking and other financial offences. Under section 15 of the Criminal Justice Act 2011 obligations can be imposed on witnesses (companies as well as individuals) to provide information and make statements in relation to investigations into relevant offences. On application by the Gardaí, a Judge can (inter alia) require a Garda to be allowed to enter a specific place to obtain access to documents, as well as requiring access to passwords to be provided for electronic documents. Note also section 17 of the Act, whereby it is an offence to conceal etc documents relevant to a court investigation.
313. Section 56 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, requires a financial institution, as provided therein, to have systems in place to respond efficiently and appropriately to Garda enquiries in relation to its business relationships, with unlimited fines for non-compliance in respect of convictions on indictment.

**(b) Observations on the implementation of the article**

314. During the country visit, it was added that Ireland does not have a central register of bank accounts. Moreover, it is not sufficient to claim that proceeds of crime are in a bank in Ireland in order to obtain a court order allowing to request all banks in Ireland to provide information. Only individual banks can be targeted. The applicable test is one of reasonable suspicion.
315. 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.
316. 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
317. 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.
318. When it comes to tax offences, the legal basis is Section 908 and 908A of the Taxes Consolidation Act 1997.

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

**(c) Challenges**

320. Ireland was encouraged to consider the introduction of a central register of bank accounts.

**Paragraph 8 of article 31**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

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

321. Ireland indicated that it has partially adopted and implemented the measures described above and referred to the response to subparagraph 1(a) of article 31 in relation to conviction based confiscation and non conviction-based confiscation.

322. In relation to Non Conviction Based Confiscation, Section 9 of the Proceeds of Crime Acts 1996 and 2005 applies. This 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 Proceeds of Crime Act does not contain a full reversal of the burden of proof. It remains for the State to establish to the satisfaction of the court on the balance of probabilities that the respondent is in possession or control of assets which comprise proceeds of crime. Under this procedure the High Court may 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 role of the Criminal Assets Bureau in this regard is to identify the assets of persons suspected to derive their assets either directly or indirectly, from criminal conduct, and to take appropriate action to deprive those persons of such assets, through cases taken in the High Court.

***Proceeds of Crime Act 1996, Section 9***

9.—At any time during proceedings under section 2 or 3 or while an interim order or an interlocutory order is in force, the Court or, as appropriate, in the case of an appeal in such proceedings, the Supreme Court may by order direct the respondent to file an affidavit in the Central Office of the High Court specifying—

(a) the property of which the respondent is in possession or control, or

(b) the income, and the sources of the income, of the respondent during such period (not exceeding 10 years) ending on the date of the application for the order as the court concerned may specify,

or both.

323. 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. Sometimes the freezing process may be extended where there are further legal challenges and procedures.
324. 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.
325. 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.
326. 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.
327. It is also of note that under the Proceeds of Crime legislation the respondent may be required to file an affidavit specifying his or her property. In this regard, provision is also made that disclosures resulting from such an order will not be used in the course of a criminal trial.

**(b) Observations on the implementation of the article**

328. It was concluded that Irish law is in compliance with this provision of the Convention.

**Paragraph 9 of article 31**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

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

329. Ireland has indicated that it is in compliance with this provision.
330. It is important to note that freezing etc. is an interim measure, enabling relevant persons to pursue their claims to ownership prior to confiscation. For instance, section 38 and 39 of the Criminal Justice Act 1994, as amended, provides for seizure and forfeiture of cash, where there are reasonable grounds for suspecting that the monies are directly or indirectly proceeds of crime or connected to criminal conduct, However, there are provisions for an appeal by way of a rehearing under section 40 of the Act. Also relevant is Part 4 of the Criminal Justice (Mutual Assistance) Act 2008, which contains provisions relating to freezing and confiscation co-operation orders, as well as provisions relating to forfeiture orders
331. In relation to non conviction-based confiscation, the civil procedure under the Proceeds of Crime Acts 1996 and 2005 enables the High Court to freeze assets for a period of 7 years.

However, during that time persons can apply to overturn that freezing order, pending forfeiture of the assets to the State. The role of the Criminal Assets Bureau in this regard is to identify the assets of persons suspected to derive their assets either directly or indirectly, from criminal conduct, and to take appropriate action to deprive those persons of such assets, through cases taken in the High Court. At the end of the 7 year period the Criminal Assets Bureau applies for a forfeiture order. However, the freezing process may be extended where there are further legal challenges and procedures. It is important to note that the Proceeds of Crime legislation provides for a number of very important safeguards such as notice provisions, the opportunity for a respondent to seek to vary an order and the opportunity for any persons claiming ownership to be heard. In general terms, a variation order may be made in respect of the freezing order in circumstances where it is shown to the satisfaction of the Court that the property does not constitute, or was not acquired through, the proceeds of crime and or where the Court is satisfied that the order causes any injustice.’

332. Third parties are informed about the freezing according to Sec. 2(2) of the Proceeds of Crime Act. Exceptions are contained in Sec. 18 of the AML Act.

**(c) Observations on the implementation of the article**

333. It was concluded that Irish law is in compliance with this provision of the Convention.

## **Article 32. Protection of witnesses, experts and victims**

### **Paragraph 1 of article 32**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

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

334. Ireland indicated that it has adopted and implemented the measures described above.

335. In the context of national legislation, the Criminal Justice Act 1999 provides a number of protections to witnesses, jurors and others in the context of criminal prosecutions.

### ***Section 39 - Witness in fear or subject to intimidation***

' 39.-(1) Subject to subsection (2), in any proceedings on indictment for an offence (including proceedings under Part IA of the Act of 1967) a person other than the accused may, with the leave of the court, give evidence through a live television link.

(2) A court shall not grant leave under subsection (1) unless it is satisfied that the person is likely to be in fear or subject to intimidation in giving evidence otherwise.

(3) Evidence given under subsection (1) shall be videorecorded.

(4) In any proceedings referred to in subsection (1) in any circuit or district court district

where the court is satisfied that leave should be granted for evidence to be given through a live television link pursuant to subsection (1) but the necessary facilities for doing so are not available in that circuit or district, the court may by order transfer the proceedings to a circuit or district court district where such facilities are available and, where such an order is made, the jurisdiction of the court to which the proceedings have been transferred

may be exercised-

(a) in the case of the Circuit Court, by the judge of the circuit concerned, and (b) in the case of the District Court, by the judge of that court for the time being assigned to the district court district concerned.

(5) Where evidence is given by a person (“the witness”) through a live television link pursuant to subsection (1)-

(a) in case evidence is given that the accused was known to the witness before the date on which the offence in question is alleged to have been committed, the witness shall not be required to identify the accused, unless the court in the interests of justice directs otherwise, and

(b) in any other case, evidence by a person other than the witness that the witness identified the accused as being the

offender at an identification parade or by other means shall be admissible as evidence that the accused was so

identified.

(6) This section is without prejudice to any other enactment providing for the giving of evidence through a live television link. '

#### Section 40 - Protection of relocated witnesses

' 40.-(1) A person who without lawful authority makes enquiries or takes any other steps whatever, whether within or outside the State, for the purpose of discovering-

(a) the whereabouts of a person whom he or she knows, or reasonably suspects, to be a relocated witness, or

(b) any new name or other particulars related to any new identity provided for such a witness, shall be guilty of an offence.

(2) A person who without lawful authority discloses, whether within or outside the State, to any other person any information (including information lawfully obtained pursuant to subsection (1))

concerning-

(a) the whereabouts of a person whom he or she knows, or reasonably suspects, to be a relocated witness, or

(b) any new name or other particulars related to any new identity provided for such a person, shall be guilty of an offence.

(3) In this section “relocated witness” means any person who intends to give or has given evidence in proceedings for an offence and who as a consequence has moved residence, under any programme operated by the Garda Síochána for the protection of witnesses, to any place, whether within or outside the State.

(4) In this section “lawful authority” means the authority of-

(a) a court in any proceedings involving the relocated witness, or

(b) a member of the Garda Síochána not below the rank of chief superintendent.

(5) A court shall give authority pursuant to subsection (1) or (2) only if it is satisfied-

(a) that to do so would be in the interests of justice, and

(b) that another way of proceeding which would not prejudice the continued participation of the relocated witness in the programme aforesaid, including, without prejudice to the generality of the foregoing, the transmission of any documents required to be served on the witness to the Commissioner of the Garda Síochána for the purpose of effecting such service, is not available.

(6) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, and

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding five years or both. '

#### Section 41 - Intimidation of witnesses, jurors and others

' 41.-(1) Without prejudice to any provision made by any other enactment or rule of law, a person-

(a) who harms or threatens, menaces or in any other way intimidates or puts in fear another person who is assisting in the investigation by the Garda Síochána of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, or a member of his or her family,

(b) with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with, shall be guilty of an offence.

(2) In this section, “potential juror” means a person who, at the time an offence under this section is alleged to have been committed, has been summoned for jury service but has not been empanelled as a juror to serve on a particular jury.

(3) In proceedings for an offence under this section, proof to the satisfaction of the court or jury, as the case may be, that the accused did an act referred to in subsection (1)(a) shall be evidence that the act was done with the intention required by subsection (1)(b).

(4) In subsection (1) the reference to a member of a person’s family includes a reference to-

- (a) the person's spouse,
- (b) a parent, grandparent, step-parent, child (including a stepchild or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the person or his or her spouse, or
- (c) any person who is cohabiting or residing with him or her.

(5) A person guilty of an offence under this section shall be liable-

- (a) on summary conviction, to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both, and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 10 years or both. '

336. Also, the prosecution authorities may make arrangements for protection of persons giving evidence in court.

337. As each case is unique, it is not possible to provide an estimated cost per person

**Recent budgets allocated to the Witness Security Programme**

<b>Year</b>	<b>Provision</b>
2010	€0.700 million
2011	€0.700 million
2012	€0
2013	€1.150 million
2014	€1.198 million

338. Ireland indicated that information pertaining to its witness protection programme, in terms of how many witnesses or experts as well as their relatives or persons close to them have entered it, is not available due to its sensitive nature.

339. The Garda Síochána rigorously enforces the provisions in the law relating to witness intimidation and protection. In circumstances where the Senior Investigation Officer in a case has identified a witness who is crucial to the case and the evidence to be preferred is not available elsewhere, and there is a serious threat to the life of the witness or his/her family an application can be made, with the consent of the witness, to have him/her included in the Witness Security Programme. Where a threat to or intimidation of a witness or a potential witness arises during the course of criminal proceedings, the matter may be addressed through the trial judge, who has discretion to revoke bail or place other sanctions on the accused/suspect.

340. The following table shows the number of proceedings commenced and convictions for offences under Section 41 of the Criminal Justice Act 1999 for the years 2008 to 19 September 2013.

<b>Year</b>	<b>Proceedings</b>	<b>Convictions</b>
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2013	10	1
2012	16	1
2011	58	12
2010	43	13
2009	31	13
2008	18	4

**(b) Observations on the implementation of the article**

341. During the country visit, Ireland elaborated further on its witness protection programme. The programme was conceived after the 1996 murder of a journalist who had investigated organised crime and drug gangs and was due to give evidence in court. After this event, the Crime and Security section of the Garda was tasked with witness protection. It collected best practices from abroad and Europol and designed a witness protection programme for Ireland. The programme is not limited to specific categories of crime. However, so far no witnesses in corruption cases have come under the programme.
342. There are two categories of witnesses under the programme: the first group comprises witnesses who are due to give evidence in court. In this case, a three person panel decides about their inclusion in the witness protection programme. There is no formal appeal against that decision but the panel can be asked to reconsider. The application to be included in the programme is made by the investigation team, not the person himself. A threat review is carried out regularly, e.g. every 6 months by a different panel.
343. The second group consists of persons under threat because they have been in contact with law enforcement. Eligibility for the programme is not limited to witnesses alone but includes experts, cooperating offenders and family members.
344. The full range of protective measures is available for as long as it is necessary. Video links are used for witnesses abroad and for children. The Irish authorities stated that they have sufficient resources at their disposal to run the programme effectively.
345. As a result of the programme, a number of persons have come forward and have given evidence in return for protection. These numbers have doubled in four years.
346. Ireland as a member of the European Union has agreement to co-operate with other European Member States in relation to the relocation of witnesses participating in a Witness Protection Programme. Outside of the European Union, Ireland has entered into a number of formal reciprocal agreements in relation to the relocation of witnesses participating in a Witness Protection Programme. Information pertaining to such agreements is not available due to its sensitive nature.
347. It was concluded that Ireland has fully implemented Art. 32(1) UNCAC.

**(c) Successes and good practices**

348. The Irish witness protection programme was identified as a good practice.

**Subparagraph 2 (a) of article 32**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

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

349. Ireland indicated that it has adopted and implemented the measures described above.

350. Ireland runs a Witness Security Programme which has been established on an administrative basis.

Section 40 of the Criminal Justice Act 1999 makes it a criminal offence to seek to locate or identify the location of a relocated witness.

351. Ireland indicated that examples of implementation were not available due to its sensitive nature.

**(b) Observations on the implementation of the article**

352. Further to the explanations given under Art. 32(1), Ireland stated that in general it is not possible to give anonymous testimony. Protection is given to certain witnesses, in particular child witnesses, to allow evidence to be given by video link. However in those cases the witness is known and open to cross examination.

353. A court of trial may make an order protecting the identity (name and address) of a bureau officer of the Criminal Assets Bureau. Courts tend away from making such an order and are likely to avoid doing so unless satisfied the evidence can only be given by the bureau officer. In the past the courts have allowed police evidence to be given by means of a pseudonym or letter, without revealing the identity of the police officer (usually an undercover officer).

354. It was concluded that Ireland has fully implemented Art. 32(2)(a) UNCAC.

**Subparagraph 2 (b) of article 32**

2. The measures envisaged in paragraph 1 of this article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

...

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

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

355. Ireland indicated that it has adopted and implemented the measures described above.

356. Ireland cited the following relevant text:

***Section 13(1) of the Criminal Evidence Act 1992***

' 13.-(1) In any proceedings for an offence to which this Part applies a person other than the accused may give evidence, whether from within or outside the State, through a live television link-

(a) if the person is under 17 years of age, unless the court sees good reason to the contrary,

(b) in any other case, with the leave of the court. '

357. A live video or television link may be employed in criminal proceedings involving vulnerable persons appearing before the courts in a number of circumstances, as follows.

1. Sexual offences and offences involving violence or threat of violence

A person other than the accused may, under the above, give evidence by way of a live television link in the following types of proceedings, viz. -

(a) a sexual offence,

(b) an offence involving violence or the threat of violence to a person or

(c) an offence consisting of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of either of the offence types mentioned at (a) or (b).

358. "Proceedings" in this context includes an application to the trial court to dismiss a charge against the accused (section 4E, Criminal Procedure Act 1967) and the taking of evidence before a judge of the District Court after proceedings have been sent forward for trial ( section 4F, Criminal Procedure Act 1967).

359. Evidence may be given in this manner in the case of persons under 18 years "unless the court sees good reason to the contrary", ( Section 13(1)(a), Criminal Evidence Act 1992, as amended by section 257, Children Act 2001) and in any other case with the court's permission (Section 13(1)(b), Criminal Evidence Act 1992)

360. Challenges to the constitutionality of section 13 of the 1992 Act - on the grounds that it interfered with an accused's right to a fair trial, and in particular with an accused's alleged entitlement to confront physically the accuser in open court - have been rejected (*White v. Ireland* [1995] 2 I.R. 268; *Donnelly v. Ireland* [1998] 1 IR 321).

361. In *Donnelly v. Ireland*, the Supreme Court held that the assessment of the credibility of prosecution evidence:

“does not require that the witness should be required to give evidence in the physical presence of the accused person and ... the requirements of fair procedures are adequately fulfilled by requiring that the witness give evidence on oath and be subjected to cross-examination and that the judge and jury have ample opportunity to observe the demeanour of the witness while giving evidence and being subjected to cross-examination. In this way, an accused person's right to a fair trial is adequately protected and vindicated. Such right does not include the right in all circumstances to require that the evidence be given in his physical presence and consequently there is no such constitutional right.”(Ibid., at page 357 (per Hamilton CJ).)

The Supreme Court further stated:

“Once it is established that an accused person has no constitutional right to have a witness give evidence in his presence and in effect “confront” him, then the circumstances in which evidence is given other than in his presence is a matter for the Oireachtas.” (At page 358.)

362. Where the proceedings are being conducted in a court in which video-recording facilities are not in operation under the Act, an order may be made transferring the proceedings to a district or circuit (as the case may be) in which such facilities are in operation under the legislation and jurisdiction is then exercisable by the District Court judge assigned to the district, or judge of the Circuit Court for the circuit, concerned (Section 17, Criminal Evidence Act 1992).

#### 2. Witnesses in fear or subject to intimidation

In any proceedings on indictment for an offence - including an application to the trial court to dismiss a charge against the accused and the taking of evidence before a judge of the District Court after proceedings have been sent forward for trial - a person other than the accused may, with the court's leave, give evidence through a live television link. Such leave shall not be granted unless the court is satisfied that the person is likely to be in fear or subject to intimidation in giving evidence otherwise (Section 39, Criminal Justice Act, 1999).

Provision is likewise made in such cases for the transfer of proceedings to another suitably equipped district or circuit, where the facilities are not available in the district circuit to which the proceedings have been returned.(Section 39(4), Criminal Justice Act 1999).

#### 3. Evidence from witnesses outside the State

A person other than the accused who is outside the State may, with the leave of the court, give evidence through a live television link (Section 29, Criminal Evidence Act 1992).

Where criminal proceedings have been instituted in the State against a person, a witness in the proceedings is in a designated state (Viz.: (a) a member state of the European Union (other than the State), for the purposes of mutual assistance under the provisions of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>2</sup>,

done at Brussels on 29 May 2000 and its 2001 Protocol, Articles 49 and 51 of the Schengen Convention, Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence or Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences;

(b) Iceland and Norway and any other designated state for the purposes of mutual assistance under any of those provisions; and

(c) any other state designated by the Minister for Foreign Affairs after consultation with the Minister for Justice and Equality for the purposes of mutual assistance between the State and that state under the Criminal Justice (Mutual Assistance) Act 2008 or specified Parts or provisions of it in accordance with the relevant international instrument. (Section 4, Criminal Justice (Mutual Assistance) Act 2008))

and it is not desirable or possible for the witness to give evidence in person, an application may be made by the Director of Public Prosecutions or an accused to a judge of the court of trial at a sitting of the court to issue a letter requesting the provision of facilities in the designated state concerned to enable the witness to give evidence in the proceedings through a live television link (Section 67, Criminal Justice (Mutual Assistance) Act 2008).

Evidence given in any of the circumstances referred to at 1 to 3 above is required to be videorecorded (Sections 13(2) and 29(2), Criminal Evidence Act 1992; Section 39(3), Criminal Justice Act, 1999; Section 67, Criminal Justice (Mutual Assistance) Act 2008).

#### 4. Evidence of prisoners in certain applications in criminal proceedings

Section 33 of the Prisons Act 2007 authorises certain applications involving a prisoner to be heard, by direction of the court, without the prisoner being present in court, as follows:

(a) an application for bail or free legal aid;

(b) in relation to proceedings on indictment, any other application except-(i) an application made at the commencement of the trial,

(ii) an application relating to the arraignment or sentence of the prisoner, or (iii) any other application that appears to the court to require the presence of the prisoner at the hearing, including-

(I) an application relating to the capacity of the prisoner to stand trial, or

(II) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put him or her on trial;

(c) in relation to proceedings in the District Court, any other application to the Court before the date on which-

(i) a trial before it begins or the court accepts a plea of guilty, or

(ii) the accused is sent forward for trial or sentence; and

(d) any application in appeal proceedings or any subsequent proceedings.

Section 33 applies in cases where the accused or person convicted of the offence is a prisoner, the application is made or to be made by the Director of Public Prosecutions or by the prisoner, and the prisoner is legally represented or has obtained legal advice or been given the opportunity

of obtaining or being provided with such advice (Section 33(1), Prisons Act 2007). The application for such a direction may be made ex parte to the judge, or a judge, of the court concerned by or on behalf of the Director of Public Prosecutions or the prisoner (Section 33(3) Prisons Act 2007) and the judge, if he or she considers it desirable in the interests of justice to do so, may require notice of the application to be given (Section 33(4) Prisons Act 2007).

The provision also applies to an application to a court in criminal proceedings where the accused or person convicted of the offence concerned is in a remand centre, or a children detention school, within the meaning of the Children Act 2001 or, where the Minister for Health and Children, after consultation with the Minister, by order so directs, a designated centre within the meaning of the Criminal Law (Insanity) Act 2006 (Section 34, Prisons Act 2007).

Before permitting a hearing by live television link, the court must be satisfied that: (a) to do so would not be prejudicial to the prisoner;

(b) the interests of justice do not require his or her presence at the hearing;

(c) the facilities provided by a live television link between the court and the prison concerned are such as to enable-

(i) the prisoner to participate in, and to view and hear, the proceedings before the court,

(ii) those present in the court to see and hear the prisoner, and

(iii) the prisoner and his or her legal representative to communicate in confidence during the hearing;

(d) to do so is otherwise appropriate having regard to-(i) the nature of the application,

(ii) the complexity of the hearing, (iii) the age of the prisoner, and

(iv) his or her mental and physical capacity; and

(e) no other circumstances exist that warrant the prisoner's presence in court for the hearing (Section 33(2), Prisons Act 2007)

#### 5. Evidence for use outside the State

The Criminal Justice (Mutual Assistance) Act 2008 contains provisions facilitating the giving of evidence by persons within the State for the purpose of criminal investigations or proceedings outside the State.

The Minister for Justice and Equality, on receipt of a request for assistance in taking evidence in the State from a person for the purpose of criminal proceedings or a criminal investigation in a designated state, may request the President of the District Court to nominate a judge to receive the evidence to which the request relates (Section 63, Criminal Justice (Mutual Assistance) Act 2008). In such a case, the evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment (Section 63(5), Criminal Justice (Mutual Assistance) Act 2008).

A request may also be made of the Minister specifically for the giving evidence through a television link by a witness present in the State, in criminal proceedings before a court or tribunal in a designated state, in which event the Minister, if of opinion that it is not desirable or possible for the witness to give evidence in person in the state concerned, may request the President of the District Court to nominate a judge to summon the witness to give effect to the request (Section 63(5), Criminal Justice (Mutual Assistance) Act 2008). The judge so nominated is required to summon the witness to give evidence through a live television link at a suitable

venue within the district to which the judge is assigned (Section 70(1), Criminal Justice (Mutual Assistance) Act 2008).

**(b) Observations on the implementation of the article**

363. It was concluded that Ireland has fully implemented Art. 32(2)(b) UNCAC.

**Paragraph 3 of article 32**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

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

364. Ireland indicated that it has adopted and implemented the measures described above.

365. Ireland has such arrangements in place by virtue of its Witness Security Programme which is managed by An Garda Síochána.

366. Ireland is not in a position to discuss the circumstances of any relocations under witness protection programmes.

**(b) Observations on the implementation of the article**

367. It was concluded that Ireland has fully implemented Art. 32(3) UNCAC.

**Paragraph 4 of article 32**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

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

368. Ireland indicated that, in its domestic legal system, the provisions of this article also apply to victims insofar as they are witnesses and referred to the answer to subparagraph 2(b) of article 32.

**(b) Observations on the implementation of the article**

369. It was concluded that Ireland has fully implemented Art. 32(4) UNCAC.

**Paragraph 5 of article 32**

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

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

370. Ireland has indicated that it is in compliance with this provision.

371. Ireland has established a **Victims of Crime Office** and a Victims of Crime Charter. Protections afforded to witnesses in the courts are dealt with in Chapter 3 of the Charter and the legal protections afforded to victims are outlined in Chapter 10 of the Charter. Irish Courts facilitate the making of Victim Impact Statements (see Chapter 3 of the Victims of Crime Charter).

372. See also the links below:

<http://www.victimsofcrimeoffice.ie>

<http://www.victimsofcrimeoffice.ie/en/vco/Entire%20Charter.pdf/Files/Entire%20Charter.pdf>

***Section 5 of the Criminal Justice Act 1993 as amended by section 10 of the Criminal Procedure Act, 2010.***

' 5.-(1) This section applies to-

(a) a sexual offence within the meaning of the Criminal Evidence Act 1992,

(b) an offence involving violence or the threat of violence to a person,

(c) an offence under the Non-Fatal Offences Against the Person Act 1997, and

(d) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in paragraph (a), (b) or (c).

(2) (a) When imposing sentence on a person for an offence to which this section applies, a court shall take into account, and may, where necessary, receive evidence or submissions concerning, any effect (whether long-term or otherwise) of the offence on the person in respect of whom the offence was committed.

(b) For the purposes of paragraph (a), a 'person in respect of whom the offence was committed' includes, where, as a result of the offence, that person has died, is ill or is otherwise incapacitated, a family member of that person.

(3) (a) When imposing sentence on a person for an offence to which this section applies, a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person.

(b) For the purpose of paragraph (a), where the person in respect of whom the offence was committed-

(i) is a child under the age of 14 years, the child, or his or her parent or guardian, may give evidence as to

the effect of the offence concerned on that child,

(ii) is-

(I) a person with a mental disorder (not resulting from the offence concerned), the person or a family member,

(II) a person with a mental disorder (not resulting from the offence concerned), who is a child, the person or his or her parent or guardian,

may give evidence as to the effect of the offence concerned on that person,

(iii) is a person who is ill or is otherwise incapacitated as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned on that person and on his or her family members,

(iv) has died as a result of the offence, a family member of the person may give evidence as to the effect of the offence concerned-

(I) on the person between the commission of the offence and his or her death (where relevant), and

(II) on the family members of the person who has died.

(c) A person who has been convicted of an offence to which this section applies may not give evidence pursuant to

paragraph (b) in respect of that offence.

(d) Where more than one family member seeks to avail of paragraph (b), the court may direct the family members to nominate one or more family members for the purpose of that paragraph.

(e) Where the court directs the family members to nominate one or more family members pursuant to paragraph (d) and the family members are unable to reach agreement, the court may, having regard to the degree of relationship between the family members and the person in respect of whom the offence was committed, nominate one or more family members as it considers appropriate.

(4) Where no evidence is given pursuant to subsection (3), the court shall not draw an inference that the offence had little or no effect (whether long-term or otherwise) on the person in respect of whom the offence was committed or, where appropriate, on his or her family members.

(5) (a) The court may, in the interests of justice, order that information relating to the evidence given under subsection (3) or a part of it shall not be published or broadcast.

(b) If any matter is published or broadcast in contravention of paragraph (a), the following persons, namely-

(i) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or

periodical,

(ii) in the case of any other publication, the person who publishes it, and

(iii) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper, shall be guilty of an offence.

(c) A person guilty of an offence under paragraph (b) shall be liable-

(i) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or

(ii) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

(d) Where an offence under paragraph (b) is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(e) Where the affairs of a body corporate are managed by its members, paragraph (d) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(6) In this section and in sections 5A and 5B, unless the context otherwise requires-

‘broadcast’ has the meaning it has in section 2 of the Broadcasting Act 2009;

‘child’ means a person under the age of 18;

‘family member’ means-

(a) a spouse or partner of the person,

(b) a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the person,

(c) a person who is acting in loco parentis to the person,

(d) a dependant of the person, or

(e) any other person whom the court considers to have had a close connection with the person;

‘guardian’, in relation to a child, has the meaning it has in the Children Act 2001;

‘mental disorder’ includes a mental illness, mental disability, dementia or any disease of the mind;

‘publish’ means publish, other than by way of broadcast, to the public or a portion of the public.”.

373. The law and administrative provisions in Ireland are due to be revised to give effect to Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, which established minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The purpose of the Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings in accordance with their role in the relevant criminal

justice system. The Directive is due to be transposed by laws, regulations and administrative provisions by 16 November 2015 and Ireland is currently working on the necessary arrangements to transpose the Directive, including legislation.

374. Article 10 of the Directive states that Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence and that where a child victim is to be heard, due account shall be taken of the child's age and maturity. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence are to be determined by national law and will be included in the Irish legislation.

375. The Directive also provides at Article 9 that victims will be able to receive free help from a victim support organisation on what their role in criminal proceedings is as well as preparation for attendance at the trial. The Directive is also proactive in meeting the concerns of victims. Article 22 provides for individual assessment of victims to identify specific protection needs. Article 23 provides a detailed list of the protection of victims with specific protection needs during criminal proceedings which are without prejudice to the rights of the defence. This will operate in accordance with the rules of judicial discretion and operational or practical constraints.

**(b) Observations on the implementation of the article**

376. It was concluded that Ireland has fully implemented Art. 32(5) UNCAC.

**Article 33. Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

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

377. Ireland indicated that it has adopted and implemented the measures described above.

378. Specific protection for whistleblowers is contained in the Prevention of Corruption (Amendment) Act 2010, in respect of corruption offences. One of the key provisions of the Prevention of Corruption (Amendment) Act 2010, is in relation to the provision of whistleblowers' protection, in order to encourage and facilitate persons reporting suspected corruption offences. Thus, it is an offence for an employer to penalise or threaten to penalise employees who have communicated an opinion - reasonably and in good faith - that a corruption offence has been committed. The maximum penalty on conviction for this offence, is £250,000 or 3 years imprisonment.

379. The legislation also provides for reports of whistleblowing to be made on a confidential basis to the Gardaí. And in respect of whistleblowing abroad, there is provision where appropriate, for reports to be made to Irish diplomats, as well as foreign police forces.

380. In addition, further comprehensive whistleblower protection arrangements are contained in the Protected Disclosures Act 2014, which incorporates many of the recommendations in relation to whistleblower protection legislation made by international bodies such as G20, the OECD, the Council of Europe and Transparency International and meets the highest international standards.

381. The Protected Disclosures Act 2014 will, for the first time, offer legal protections for workers who report concerns about wrongdoing in the public, private and non-profit sectors. The law will cover all employees, contractors, agency workers, members of An Garda Síochána and the Defence Forces. It includes measures to safeguard the identity of whistleblowers. The legislation meets the commitment included in the Programme for Government to introduce comprehensive whistleblower protection legislation.

Main Objective:

382. The Bill has as its main objective the protection of workers in all sectors of the economy against reprisals in circumstances where they make a disclosure of information relating to wrongdoing in the workplace. It provides for a “stepped” disclosure regime in which a number of distinct disclosure channels are available – internal, “regulatory” and external – which the worker can access to acquire important employment protections but which require different evidential thresholds.

Main Provisions:

383. The Bill seeks to safeguard the broadest possible range of workers from being subject to occupational detriment for having made a protected disclosure and will provide for immunity against civil liability. Disclosures made under existing sectoral legislation will be given “protected disclosure” status to ensure a uniform standard of protection.

Scope of the wrongdoing covered:

384. In order to avail of the protections a worker must have a reasonable belief that the information to be disclosed shows or tends to show one or more of the following that:

- a criminal offence has been, is being or is likely to be committed;
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject;
- a miscarriage of justice has occurred, is occurring or is likely to occur;
- the health and safety of any individual has been, is being or is likely to be endangered;
- the environment has been, is being or is likely to be damaged;
- an unlawful, corrupt, or irregular use of funds or resources of a public sector body has occurred, is occurring or is likely to occur;
- an unlawful, corrupt or irregular use of public monies has occurred, is occurring or is likely to occur;

- an act, omission, or course of conduct by a public official is oppressive, improperly discriminatory, or grossly negligent, or constitutes gross mismanagement;
- information tending to show that any matter falling within any one of the preceding paragraphs, whether alone or in combination has been, is being or is likely to be deliberately concealed.

The channel through which the information is reported:

385. Depending on the channel chosen to disclose the information the level of belief demonstrated by the worker ranges from “reasonable belief” to “substantially true”. Disclosure to an employer is expected to be availed of most frequently. Where a worker reports externally to a “Relevant Body” the worker must meet a higher evidential burden.

386. Workers in State bodies will also be in a position to claim the protections if they report their concerns to the sponsoring Department. In certain circumstances a protected disclosure may be made externally to other recipients such as the media or Members of the Houses of the Oireachtas. In such a case the worker will need to meet stronger qualifying criteria. Disclosure of exceptionally serious failure to external recipients will also be allowed.

The protections that will be available:

387. Three forms of protection will be available –

- - Protection from the retributive actions of an employer
- - Protection from civil liability
- - Protection from victimisation by a third party

388. The legislative proposals provide an impetus for employers to mitigate against the risk of whistleblowing in the first instance through the introduction of risk management strategies which allow workers to report perceived wrongdoing so that corrective action is taken before significant threats to the business arise. The encouragement of workers to report perceived wrongdoing on a no fault basis will mitigate against the potential for external whistleblowing and consequent reputational damage.

Redress available:

389. In the event that a worker is penalised for having made a protected disclosure a claim for redress through the normal industrial dispute resolution mechanisms may be made. Redress is available for penalisation (which is widely defined in the bill) falling short of dismissal and, in the case of a dismissal, under the Unfair Dismissal Act regardless of the length of service. In the case of a dismissal a provision is included in the Bill which will allow a worker to make a claim for interim relief to the Circuit Court.

Key points:

390. The act is extraordinarily broad in its personal scope of application. It covers all employees, whether in the public or private sector. Only volunteers are not included.

391. Further, it should be noted that, in order not to deter potential whistleblowers, the Act does not include a public interest or good faith requirement. What is required, however, is reasonable belief in what is reported. The burden of proof rests with the employer.

**(b) Observations on the implementation of the article**

392. The new whistleblower protection legislation was praised by the reviewers. The only thing that seems to be missing is a one stop hotline or website for reporting corruption offences. However, such services are offered by the private sector and TI.

393. It was concluded that Ireland has fully implemented Art. 33 UNCAC.

**(c) Successes and good practices**

394. The new whistleblower protection legislation enacted in the Protected Disclosures Act 2014 was identified as a good practice.

**Article 34. Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

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

395. Ireland indicated that it has adopted and implemented the measures described above.

396. The principles of contract law as well as the Common Law position are relevant. The Courts will not enforce illegal contracts. Thus corruption would be a relevant factor in a legal action to annul or rescind a contract.

*I (a) Who declares the annulment*

In relation to Public Procurement Art 9 of SI 130/2010 sets out that it is the High Court which has the power to "set aside, vary or affirm" an award or "declare a reviewable public contract ineffective".

In relation to ordinary contract law the relevant declaration will (subject to below comments) be of non-enforceability and will be made by the court – either the Circuit Court or High Court depending on the value of the claim.

*I(b) Who may claim it*

In relation to Public Procurement Art 9 of SI 130/2010 sets out that relief under its provisions is

available to a person who" has, or has had, an interest in obtaining the ... contract" and alleges harm by an infringement of EU law (including transposition)

In ordinary course a defence of non-enforceability is likely to be made by a defendant to claim for enforcement of a illegal contract. However the court may also refuse to enforce for illegality even where no claim is made.

2

*Temporal effects - retroactive*

In relation to Public Procurement Art 9 of SI 130/2010 sets out that the Court may make any consequential order. The court may make interlocutory orders with the aim of correcting an infringement or preventing damage to the interests concerned and may take into account the consequences to those interests (and the public interest) of interim measures. The Court may also impose penalties or award damages.

In relation to ordinary contract law the order is likely to be one of mere non-enforceability – under the doctrine *Ex turpi causa non oritur actio* a person who is implicated in illegality cannot invoke the aid of the court – *Scott v Brown Doering* [1892] 2 QB 724. Similarly the doctrine in *pari delicto potior est conditio possidentis* is applied with the effect that where both parties are equally at fault the person in possession is allowed to maintain possession.

There are cases where, when there is no social or moral reprehension, which have allowed restitution and / or damages – *Bowmaker v Barnett's Instruments* [1945] KB 65 – however such cases are exceptions to the general law. This position is softened by exceptions to the *in pari delicto* rule – for example where both parties are not equally culpable, where a party repents his illegality, where a party is a member of the class which was to be protected by the statute the breach of which gave rise to the illegality.

In the context of corruption the most significant exception relates to independent causes of action – actions in tort which could be independent of the contractual doctrine. However *Marlwood v Kozeny* [2006] EWHC 1826 para 178 et seq., a case which involved bribery of public officials, makes it clear that the doctrine of *ex turpi causa* remains of considerable force with the Queens Bench refusing perform "an adjudication on the division of the swag".

Therefore, save for the specific provisions of SI 130/2010 (which having regard to the limitation periods will only apply in the immediate aftermath of an invalid award and are limited to public procurement) the availability of rescission appears limited.

Of course the position is very different if an injured party was not in *pari delicto* – an injured 3rd party would have a range of remedies available notwithstanding the limitations on rescission.

A party who, for example, was not awarded a state contract owing to corruption in favour of another party would have an action for damages arising from the abuse of the powers in question.

There would be an action against the State and (depending on the legal strategy selected) against the party whose unlawful actions had a part in corrupting the process. Whether this action would be brought in tort for simple negligence, misfeasance of public office or some other tort, or as a judicial review seeking to reverse the decision made, or perhaps as a legitimate expectations claim, would depend on when the knowledge accrued, when the proceedings were taken and what remedies would reasonably be available to the plaintiff. However in all of these circumstances the Court would have a jurisdiction to grant interim relief of an injunctive nature

and also to award damages.

3 *Who determines the financial compensation?*

Insofar as any such would be available it would be the court.

4 *Which courts have jurisdiction*

Under SI 130/2010, the High Court and under ordinary contract law, the Circuit and High Courts.

5 *Time periods*

The statute of limitations for claims in contract and in tort (excluding injury claims) is 6 years.

The limitation under SI 130/2010 varies according to circumstance – under Article 7 it is 30 days from notification, or where notification is not made in accordance with that Article, 6 months from the conclusion of the contract sought to be declared ineffective.

6 *Acts discovered after the limitation period has expired*

The 6 year period as regards contractual claims, but perhaps more importantly the 6 year period as regards claims in tort (excluding injury claims), is available, but could not be extended.

8 *Exclusion of convicted bidders*

Save for mandatory convictions set out under EU law and noted at paragraph 278 (fraud, corruption etc.) it is suggested that there would be legal risks for any public body to exclude on this basis.

397. Note also the General Scheme of the Criminal Justice (Corruption) Bill 2012, providing for court orders for public officials such as Ministers, and Members of Parliament or civil servants who are convicted of corruption offences. Head 18 therein, provides that such persons could be the subject of a court order to forfeit their office and be excluded from seeking such office for up to 10 years. This measure is currently being drafted and will, of course, be subject to debate in the usual way in both Houses of Parliament.

398. The EU public procurement directives, covering both public sector and utilities contracts, include regulations relating to suppliers who have been convicted of a range of corruption offences including bribery and fraud. Such convicted suppliers are mandatorily excluded from the tendering procedures.

399. The provisions of European Union Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have been transposed into Irish law by the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument No. 329 of 2006) which is

available at [www.irishstatutebook.ie/2006/en/si/0329.html](http://www.irishstatutebook.ie/2006/en/si/0329.html). Specifically, Article 45 of the Directive is transposed by Regulation 53 of the Irish Regulations.

***Statutory Declaration for potential public procurement tenderers and contractors***

(i) General Supplies and Services:

The model Request for Tenders (RFT) is available at:

1 Goods -

[http://www.procurement.ie/sites/default/files/tinymce/Template\\_Docs\\_Current\\_09.08.12/Go ods\\_RFT\\_22.03.12\\_Web.doc](http://www.procurement.ie/sites/default/files/tinymce/Template_Docs_Current_09.08.12/Go%20ods_RFT_22.03.12_Web.doc); and

2 Services -

[http://www.procurement.ie/sites/default/files/tinymce/Template\\_Docs\\_Current\\_09.08.12/Ser vices\\_RFT\\_22.03.12\\_Web.doc](http://www.procurement.ie/sites/default/files/tinymce/Template_Docs_Current_09.08.12/Ser vices_RFT_22.03.12_Web.doc).

The RFTs include (at Appendix 5) a Statutory Declaration that none of the provisions for mandatory exclusion as set out in Article 45.1 of the Directive and none of the provisions which permit exclusion under Article 45.1 of the Directive apply to the Tenderer. For each tender competition, the Contracting Authority must choose whether the Statutory Declaration is required (Clause 2.2.3(b) of the RFT), but the published User Guides to the RFT make clear that the requirements apply to all contracts with a value exceeding the EU threshold.

The model contracts include (at Clause 6.A.6 of the supplies contract and Clause 5.A.6 of the services contract) a warranty that the status of the Supplier, as declared in the Statutory Declaration, remains unchanged. The subject of termination is covered by Clause 10 of both contracts - Clause 10C provides that the Customer has the right to terminate the contract immediately if it becomes aware that any of the circumstances listed in Article 45 apply to the Supplier, and Clause 10A gives a right to terminate the contract without cause on giving a period of written notice.

(ii) Public Works and Construction-related Services:

The Capital Works Management Framework (CWMF) provides a suite of best practice guidance, standard contracts and generic template documents, which are available to download for all contracting authorities at: [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie) to provide a consistent approach to the management of public works projects. Circular 6/10: Construction procurement Reform - the new Capital Works Management Framework (5 May 2010) - made it mandatory to comply with all aspects of the Capital Works Management Framework (CWMF) as they apply to public works projects.

<http://constructionprocurement.gov.ie/wp-content/uploads/circ0610.pdf>

The CWMF includes a standard declaration of Personal Situation in relation to the grounds specified in Article 45 of Directive 2004/18/EC (and Regulation 53 of SI 329 of 2006). The declaration (Appendix A) is required at pre-qualification stage as part of the standard pre-qualification questionnaire and must be properly executed by the relevant contractor in the presence of a practising solicitor or Commissioner for Oaths or, where there is no provision for a declaration on oath in the country of origin for applicants from other EU jurisdictions, one of the alternatives referred to in the Directive appropriate to the jurisdiction concerned can be provided.

[http://constructionprocurement.gov.ie/wp-content/uploads/QW1\\_Appendix\\_A2.doc](http://constructionprocurement.gov.ie/wp-content/uploads/QW1_Appendix_A2.doc)

Also a Letter of Confirmation should accompany the completed declaration (Appendix A1), signed by the contractor or on behalf of the contractor, stating that since the making of the declaration the legal situation of the contractor regarding the circumstances stated in the declaration has not changed in any way that would prohibit the contractor from making a new declaration on oath (or using one of the alternatives mentioned above) on the same basis.

[http://constructionprocurement.gov.ie/wp-content/uploads/QW1\\_Appendix\\_A1.doc](http://constructionprocurement.gov.ie/wp-content/uploads/QW1_Appendix_A1.doc)

Reference is also made in the standard Instructions to Tenderers (e.g. ITTW1 - Section 3.4 Mandatory Exclusion) that although invited to tender, a Candidate shall be excluded if, to the Employer's knowledge at the time of the award decision, it has been convicted of an offence involving participation in a proscribed criminal organisation; corruption; fraud; or money laundering.

[http://constructionprocurement.gov.ie/wp-content/uploads/ITTW1\\_Instruction\\_to\\_Tender.doc](http://constructionprocurement.gov.ie/wp-content/uploads/ITTW1_Instruction_to_Tender.doc)

The model contracts include (at Clause 2.6) as regards compliance with the Ethics in Public Office Acts, 1995 and 2001, and the Prevention of Corruption Acts 1889 to 2001, requires the Contractor to warrant that:

- Neither he, nor any of his associates or representatives, has or will offer a gift of any kind in relation to the Contract;
- Neither he, nor anyone acting on his behalf, has or will commit an offence under the Acts in relation to this specific contract;
- No public servant or Minister shall have a material interest in any aspect of the Contract;
- Persons, except for novated specialists, who worked for the Employer in the previous 12 months; or former officers or employees of the Employer or of a consultant to the Employer whose duties related to the Works will, for 12 months after leaving the employment or office, will not be engaged by the Contractor, unless the Employer agrees otherwise.

[http://constructionprocurement.gov.ie/wp-content/uploads/PW-CF1\\_Contract.pdf](http://constructionprocurement.gov.ie/wp-content/uploads/PW-CF1_Contract.pdf)

**(b) Observations on the implementation of the article**

400. It was concluded that Ireland has fully implemented Art. 34 UNCAC.

**Article 35. Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that*

*damage in order to obtain compensation.*

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

401. Ireland indicated that it has adopted and implemented the measures described above.
402. It would be open to persons suffering damage or loss to take civil claims, for instance in torts. Persons can also pursue claims for contractual and non-contractual damages through the civil courts.
403. In general a criminal conviction is not a precondition to the commencement of civil proceedings by a victim seeking compensation from an alleged wrongdoer.

**(b) Observations on the implementation of the article**

404. It was concluded that Ireland has implemented Art. 35 UNCAC.

### **Article 36. Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

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

405. Ireland indicated that it has adopted and implemented the measures described above.
406. There is no specialised anti-corruption commission in Ireland. Instead, the national police, *An Garda Síochána*, and the other law enforcement bodies also deal with corruption offences.
407. Ireland provided the following overview of its law enforcement institutions:

**Office of the Director of Public Prosecutions (DPP)**

The Authority vested with the responsibility for the prosecution of persons for serious corruption offences is the Director of Public Prosecutions. She is, by statute, independent in the exercise of her functions (Section 2(5) of the Prosecution of offences act 1974). The discretion as to whether or not to prosecute will not be reviewed by the courts without evidence of mala fides, improper motive (*The State (McCormack) v Curran*, 1987; I LRM. 2250) or absence of fair procedures (*Eviston v Director of Public Prosecutions*; 2002, IR 260). A specialist unit has been established, with appropriate training, retaining responsibility for the prosecution of serious corruption offences to which appropriate resources have been assigned.

## **The Standards in Public Office Commission (SIPO) ([www.sipo.gov.ie](http://www.sipo.gov.ie) )**

The Standards in Public Office Commission is an independent body established by the Standards in Public Office Act 2001. It has six members and is chaired by a former Judge of the High Court. It has supervisory roles under three separate pieces of legislation. Its functions include supervising the disclosure of interests and compliance with tax clearance requirements, the disclosure of donations and election expenditure and the expenditure of state funding received by political parties.

## **Criminal Assets Bureau**

The Criminal Assets Bureau (CAB) is a statutory body whose remit is to carry out investigations into the suspected proceeds of criminal conduct. CAB identifies assets of persons which derive, (or are suspected to derive), directly or indirectly from criminal conduct. It then takes appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct.

## **An Garda Síochána**

An Garda Síochána is 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 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. She is responsible to the Minister for Justice and Equality who in turn is accountable to the Dáil (the Irish Legislature). The Garda Commissioner is Noirín O'Sullivan.

## **Garda rank structure in descending order**

- Commissioner
- Deputy Commissioner
- Assistant Commissioner
- Chief Superintendent
- Superintendent
- Inspector
- Sergeant
- Garda
- Reserve Garda

## **The Garda Bureau of Fraud Investigation and the Money Laundering Investigation Unit ([www.garda.ie](http://www.garda.ie) )**

The Garda Bureau of Fraud Investigation (GBFI) is a specialist bureau within An Garda Síochána that investigates fraud-related crime involving complex issues of criminal law or procedure. It also investigates corruption offences. The GBFI includes the Financial Intelligence Unit (FIU).

The Bureau investigates serious and complex cases of commercial fraud, cheque and payment card fraud, counterfeit currency, money laundering, computer crime and breaches of the Companies Acts and the Competition Act.

**The Garda Ombudsman** ([www.gardaombudsman.ie](http://www.gardaombudsman.ie))

The Garda Ombudsman is responsible for receiving and dealing with all complaints made by members of the public concerning the conduct of members of the Garda Síochána.

408. All these bodies are independent and are funded to enable them to carry out their roles.

409. In response to questions from the reviewers, Ireland added the following explanations:

***Do the law enforcement agencies take themselves the decision to investigate a specific criminal offence?***

In the majority of cases, the law enforcement agencies take the decision to investigate a specific criminal offence. Occasionally a civil court judge might refer a case to the Director of Public Prosecutions where criminality is identified in the course of a civil suit. The Director of Public Prosecutions forwards the case to An Garda Síochána for investigation. However, this is the exception to the rule.

There are a number of phases in the assessment process which are outlined in the following paragraphs. Stages 1 to 5 occur in all cases and where evidence is supplied in support of an allegation. Stages 6 to 10 will occur depending on the complexity of the matters involved which may require senior decision makers to become involved. All complainants are communicated with and all pertinent actions that the complainant is required to undertake to support his/her complaint are confirmed in writing as they occur. As a result there can be a number of pieces of correspondence attached with each complaint.

**Stage 1:** Initial receipt of the complaint by the Detective Superintendent who makes a decision based on the contents as to which unit in the Bureau will receive it.

**Stage 2:** Initial receipt of the complaint by Detective Inspector from Detective Superintendent who will carry out a brief review before allocation to an Assessment Unit.

**Stage 3:** Initial receipt of the complaint by the Detective Sergeant who decides which Detective Garda in the Assessment Unit will conduct the assessment. An overview assessment is conducted prior to the allocation of the file to a Detective Garda. Certain complex cases are completed by the Detective Sergeant and not assigned to a Detective Garda. For these cases the subsequent review stages will involve a Detective Inspector and a Detective Superintendent, where necessary.

**Stage 4:** Receipt of the complaint by a Detective Garda who will be the lead investigator and who will be responsible for progressing the case. This stage will include the following: establishing the facts, the evaluation of evidence to support the facts, the application of facts and evidence to criminal law to ascertain any breaches that have occurred.

This stage will also involve ongoing input from the Detective Sergeant. The Detective Inspector may also be involved in this stage in more complex cases. The complainant will be interviewed appropriately at this stage to establish the issues and evidence associated with the complaint. The complainant may also involve legal representatives to present his/her case.

**Stage 5:** Review of the case by a Detective Garda and a Detective Sergeant in order to determine whether a crime has been committed and if there is evidence to support same. This review process may take place several times until a final decision is reached.

**Stage 6:** Submission of the file to the Detective Inspector who decides whether previous assessors have been correct in their process and conclusions. The case may be returned to stage 4 for further work to be completed, if necessary.

**Stage 7:** Depending on the final assessment, the case may be allocated for full investigation by another investigation unit or it may be closed if requirements of law and evidence are not met.

**Stage 8:** Review of the case by the Detective Superintendent depending on the type of case.

**Stage 9:** Review of the case by the Detective Chief Superintendent depending on the type of case.

**Stage 10:** Review of the case by the Assistant Commissioner depending on the type of case involved.

***Could this decision be overruled by the Prosecution or another body or authority?***

Generally this decision cannot be overruled by the Prosecution. The prosecution do not overrule the decision as they only become aware of cases when the results of a completed investigation are forwarded to them for directions. As can be seen from the assessment process a decision not to investigate is not taken lightly. The assessment process is thorough and the only reason a case would not be investigated would be because no evidence has been detected or produced to substantiate the complaint.

Certain elements of the investigative process, in particular the use of coercive investigative tools, are subject to judicial supervision. Any investigative agency failing in its statutory duty to investigate could find themselves subject to an order of Mandamus.

***Who takes the decision to inform the Prosecution and on the basis of which criteria?***

Complaints do not generally originate with the prosecutor so they are not informed if an investigation does not commence. The conduct of an investigation, including its closing is a matter for An Garda Síochána and each investigative agency.

Where a complaint has originated with the prosecutor in the circumstances described above, it is generally the case that the court has identified a bona fide case and an investigation commences as a matter of course.

410. The relationship between the Director of Public Prosecutions and various investigating agencies is defined in Guidelines for Prosecutors<sup>1</sup>, in particular chapter 7, which is summarised below.

411. The investigation and prosecution of offences are separate and distinct functions within the criminal Irish justice system. The Director of Public Prosecutions has no investigative function, which is primarily the responsibility of An Garda Síochána. In addition there are specialised investigating authorities relating to certain categories of crime, including the Competition Authority, the investigation branch of the Revenue Commissioners, the Health and Safety Authority and the Office of Director of Corporate Enforcement. Complaints of criminal conduct made to the Director cannot be investigated by her but are transmitted to the Garda Commissioner or to one of the other investigation authorities to take the appropriate decisions and action.

412. While the DPP, as a general rule, has no power to direct An Garda Síochána or other agencies in their investigations, she and her Office cooperate regularly with such investigating agencies during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice. Advice can be sought from the Director's office on such issues as what criminal charges can be considered by the investigators, the admissibility of evidence and the present state of the law,.

413. However, the following matters must be referred by An Garda Síochána to the Director's Office for directions in accordance with detailed instructions which have been issued to members of the force:

- any case in which it is proposed to seek the accused's extradition;
- whether or not an accomplice should be granted immunity;
- whether a judge of the District or Circuit Court should be asked to state a case;
- whether a judicial review should be sought or defended;
- any case in which the Director's sanction or approval is required for the commencement of proceedings;
- matters of particular sensitivity or unusual public interest.

414. Many investigative agencies, including An Garda Síochána, have the power to prosecute summarily without reference to the Director. Where members of An Garda Síochána do so in the course of their official duties they are required under section 8 of the Garda Síochána Act

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<sup>1</sup> A copy of these guidelines can be found at [www.dppireland.ie/publications/category/14/guidelines-for-prosecutors/](http://www.dppireland.ie/publications/category/14/guidelines-for-prosecutors/)

2005 to do so in the name of the Director of Public Prosecutions and must comply with any directions given by the Director, whether of a general or specific nature. The Director may take over the conduct of a prosecution instituted by a Garda at any time.

415. The sole power to prosecute on indictment rests with the Director (apart from cases still dealt with by the Attorney General). The decision whether to initiate or continue a criminal prosecution on indictment is made by the Director or one of her professional officers who decide independently of those who were responsible for the investigation what, if any, charges to bring. In some cases a summary prosecution may be directed.

416. A charge should not be preferred in the following cases without the prior directions of the Office of the Director of Public Prosecutions:

- An offence arising from an unlawful killing (including any case of murder, manslaughter, fatal road accident or other fatal accident). Where the victim is deceased no other charge arising from the same incident should be preferred without prior directions. Likewise, where the victim is seriously injured and in danger of dying no charge should be preferred without prior directions.
- An offence of causing serious harm contrary to section 4 of the Non-Fatal Offences Against the Person Act, 1997.
- An offence under sections 53, 52 or 51A, 52 or 53 of the Road Traffic Act, 1961, as amended, which has resulted in serious injury being suffered by another road user.
- An offence of a sexual nature.
- An offence of assaulting a member of An Garda Síochána, unless the charge is sanctioned by a member of An Garda Síochána of the rank of Inspector or higher.
- Cases involving allegations against members of An Garda Síochána other than minor road traffic cases. Directions should be sought from the Director of Public Prosecutions in any case raising a serious issue as to whether the driving of a Garda amounted either to dangerous driving or careless driving.
- Harassment contrary to section 10 of the Non-Fatal Offences Against the Person Act, 1997.
- Endangerment contrary to section 13 of the Non-Fatal Offences Against the Person Act, 1997.
- False imprisonment.
- A terrorist offence and any offence related to terrorism including any offence under the Offences Against the State Acts, 1939 to 1998.
- Any case in which it is proposed to seek a trial in the Special Criminal Court.
- An offence of possession of a firearm or ammunition other than possession without a certificate.
- An offence under the Explosive Substances Act, 1883.
- Any allegation of assault arising from a sporting encounter.
- An offence under the Official Secrets Act, 1963.
- Bribery and corruption.
- An offence by an elected official or a public official alleged to have been committed in an official capacity.
- Genocide, war crimes, crimes against humanity, piracy and hijacking.
- Cases in which it is provided by statute that proceedings may not be commenced without the consent of the Director of Public Prosecutions.

417. Where An Garda Síochána have investigated a complaint in relation to any such offences, if An Garda Síochána identify a suspect and there is evidence to support a prosecution, a file should be sent to the Director for a decision whether to prosecute even where An Garda Síochána are not recommending a prosecution. However, where there is no evidence to support a prosecution, a file need not be sent. In urgent cases the decision can be made by the Office following consultation with An Garda Síochána without the submission of a file.
418. Arrangements are in place to ensure that a member of the DPP's staff is contactable by telephone outside office hours to deal with urgent cases.

**(b) Observations on the implementation of the article**

419. During the country visit, representatives of An Garda Síochána added that investigations involving officials would be dealt with by the Garda Bureau of Fraud Investigation (GBFI). Specialist knowledge is available in the form of in-house forensic accountants; moreover, specialists can be seconded to work on cases. GBFI is not the only section which deals with corruption. Many high profile domestic corruption investigations have been conducted by local Garda units. However, GBFI is the section that exclusively deals with foreign bribery allegations as opposed to domestic bribery and corruption allegations.
420. The Garda cooperates closely with the DPP and has regular cooperation meetings with DPP staff. If Garda advice is not followed by the DPP, reasons will be given and the Garda can try to provide more evidence to substantiate a case. There is also close cooperation with Customs and Revenue, the Environmental Protection Agency, the Competition Agency and other departments.
421. Currently, four corruption cases are being investigated by the Garda. Since 2003, there were about 30 investigations in corruption cases, often involving foreign nationals looking for Irish visas or driving licences. One former judge was sentenced to prison in a fraud case.
422. GBFI runs a training course for fraud investigators within An Garda Síochána which specifically includes training on the Prevention of Bribery and Corruption legislation and the investigation of same. 90 Gradai have received training in this regard since October 2014. The members trained are located throughout various units/sections within An Garda Síochána. The Garda Knowledge Management Portal is a database containing all relevant legislation and case law; information on assets, proceeds of crime, and DNA; templates. Every member of the Garda has access to the Portal. While it is not specifically focussed on corruption offences, a lot of policy and materials which are relevant to corruption cases.
423. Spontaneous information sharing with other police forces is possible. An Garda Síochána has liaison officers with Europol and Interpol as well as in the UK and other European States. While no formal Joint Investigation Teams have been used yet, there are informal joint investigations with the Northern Ireland Police. An Garda Síochána is not yet part of the data exchange under the Prüm Treaty. Special investigative techniques can be used like in any other

criminal investigation and were indeed used in a corruption matter involving Garda members. Controlled delivery is not possible in corruption cases.

424. The Gardai operates a confidential telephone number and can act on anonymous reports.
425. The Irish FIU is part of the Garda Bureau of Fraud Investigation. It receives about 15,000 STRs per year. It is a member of the Egmont Group and uses FIU Net within the EU. It has in-house investigation units and has the power to impose a freezing order for 7 days. The FIU closely cooperates with the Criminal Assets Bureau if there is insufficient evidence for a criminal case.
426. It was concluded that Ireland has implemented Art. 36 UNCAC.

**(c) Successes and good practices**

427. The Garda Knowledge Management Portal was identified as a good practice.

## **Article 37. Cooperation with law enforcement authorities**

### **Paragraph 1 of article 37**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

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

428. Ireland indicated that it has, in part, adopted and implemented the measures described above.
429. Irish law does not know plea bargaining in the American sense. However, cooperating offenders/accomplices have been granted immunity from prosecution in some cases. In corruption cases, no immunity has been granted yet.
430. A factor to be considered by the Office of the Director of Public Prosecutions in determining whether the public interest requires a prosecution is whether the offender is willing to cooperate in the investigation or prosecution of other offenders, or has already done so (Guidelines for Prosecutors; Para. 4.22 (h)).
431. The Director of Public Prosecutions has detailed the limited circumstances where she is prepared to grant immunity or other favourable treatment to an accomplice. The approach acknowledges the balance required between effecting a prosecution yet appreciating potential infirmities where evidence is being presented by a person who has participated in the same

offence. Concessions may include an indemnity against prosecution or acceptance of a plea of guilty to fewer or lesser charges. The specific terms are set out in paragraph 14 of the Guidelines for Prosecutors.

**(b) Observations on the implementation of the article**

432. It was concluded that Ireland has implemented Art. 37(1) UNCAC.

**Paragraph 2 of article 37**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

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

433. Ireland indicated that it has adopted and implemented the measures described above.

434. In relation to sentencing, the courts are the final arbitrator and there is no plea bargaining system in relation to sentences. While Ireland does not have formal sentencing guidelines for judges, general principles have however been developed arising out of case law. In Irish law, the overarching principle in sentencing is that the gravity of the offending behaviour is considered and is balanced against the personal circumstances of the convicted person and any sentence must be proportionate to both. See *People (DPP) V M* [1994] 2 ILRM 54 and see also *People (DPP) v Kelly* [2005] 1 ILRM 19.

435. It is a well-established principal of Irish Law that cooperation with the investigation and indeed the prosecution itself are matters that a court must take into account.

436. While co-operation in the investigation and prosecution is one factor to be considered in determining whether the public interest requires a prosecution, mitigation of punishment on any charge once preferred is a matter purely for the criminal courts. In principle mitigation of sentence is granted for cooperation with law enforcement authorities (*People (DPP) v Warren*, unreported, CCA, 5th of July 1999. *People (DPP) v Birmingham extempore*, CCA, January 14, 2002).

437. Courts have discretion to take all relevant factors into account when making decisions as to the appropriate sentence. Judges are independent in the matter of sentencing, as in other matters concerning the exercise of judicial functions, subject only to the Constitution and the law. In accordance with this principle, the role of the Oireachtas has been to specify in law a maximum penalty and a court, having considered all the circumstances of the case, to impose an appropriate penalty up to that maximum. The court is required to impose a sentence which is proportionate not only to the crime but to the individual offender, in that process identifying where on the sentencing range the particular case should lie and then applying any mitigating

factors which may be present. An important safeguard rests in the power of the Director of Public Prosecutions to apply to the Court of Criminal Appeal to review a sentence she regards as unduly lenient.

438. The Superior Courts in Ireland have developed a substantial body of case law setting out general principles of sentencing.
439. Generally concepts such as confiscation, forfeiture or compensation orders are not seen as a part of the sanction, as they address benefits from, or items used to assist, criminality or civil liability to an individual rather than the State. Yet they can often be considered within the concept of “totality of harm” and a sentence may reflect such orders.
440. Civil remedies sought by individuals are generally seen as independent of the criminal process. Accordingly evidence which might support a conviction may also support a remedy for breach of contract, damages, unjust enrichment assault etc. and the level of sanction will not undermine the civil remedy. There is a statutory power for a criminal court to make a compensation order to a victim, which order cannot exceed that which the victim would have achieved in a civil court. While it is not seen as part of the sanction it is generally acknowledged as evidence of remorse by the accused and will often reduce overall sanction.

**(b) Observations on the implementation of the article**

441. It was concluded that Ireland has implemented Art. 37(2) UNCAC.

**Paragraph 3 of article 37**

*3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

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

442. Ireland indicated that it has adopted and implemented the measures described above.
443. Ireland has a discretionary prosecution system and assuming that there is sufficient evidence to prosecute in a particular case, the prosecutor has a duty to decide whether it is in the public interest to do so, though in the vast majority of cases, the public interest in prosecuting will be clear.
444. The question of granting immunity would be a matter for decision by the Director of Public Prosecutions. Only the Director can grant immunity and she has not delegated this to her professional officers. The matters which would be taken into account are set out in Chapter 14 of the Guidelines for Prosecutors and substantial cooperation by the person would of course be relevant to a number of the factors set out in 14.6.

445. The Director of Public Prosecutions has detailed the limited circumstances where she is prepared to grant an indemnity against prosecution or accept a plea of guilty to fewer or lesser charges to a person who provides substantial cooperation in the investigation of offences. These specific terms are set out in paragraph 14 of the Guidelines for Prosecutors and include consideration of such issues as the extent to which the evidence is likely to be strengthened if the accomplice testifies the significance and reliability of that testimony, the character, credit and criminal record over the accomplice (Guidelines for prosecutors: Para 14. 6 (J)).
446. In considering the public interest, one factor might well be that the suspect is in a position to give evidence against others who are more seriously involved and if that person is willing to do so and if the Director considers that the interests of justice are best served by doing so she will grant immunity. The Director has granted immunity in the past, for example most notably in relation to the investigation into the activities of the former Anglo Irish Bank Corporation plc, in cartel cases and in relation to gangland activity. The Office of the DPP believes that with the exception of cartel cases, justice is best served by considering immunity on a case by case basis.
447. In relation to cartel offences, as pointed out in the Director's Guidelines, because of the particular nature of the offence, special arrangements are in force concerning applications for immunity on behalf of offenders who have reported the activities of unlawful cartels in which they have participated. The Director has outlined her policy in relation to Competition Law offences in the Cartel Immunity Programme.
448. Details are available on the website of the Director of Public Prosecutions
449. <https://www.dppireland.ie/publications/category/21/cartel-immunity-programme/>
450. and that of the Competition Authority
451. <http://www.tca.ie/EN/Enforcing-Competition-Law/Cartel-Immunity-Programme.aspx>

**(b) Observations on the implementation of the article**

452. It was concluded that Ireland has implemented Art. 37(3) UNCAC.

**Paragraph 4 of article 37**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

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

453. Ireland has indicated that it is in compliance with this provision.

454. As outlined in the response to Article 32, An Garda Síochána operates a Witness Security Programme. The Programme was established in 1997 and operates on an administrative, non-statutory basis, but with certain legislative underpinning.

455. All potential candidates for this programme are only accepted on the basis of an assessment for suitability carried out by An Garda Síochána.

456. The mere fact that a witness had been granted immunity would not affect his/her level of protection from potential retaliation or intimidation.

457. For obvious reasons it is not policy to comment on specific matters relating to the programme.

**(b) Observations on the implementation of the article**

458. It was concluded that Ireland has implemented Art. 37(4) UNCAC.

**Paragraph 5 of article 37**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

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

459. Ireland has indicated that it is in compliance with this provision.

460. To date the particular circumstances have not arisen. This would be dealt with on a case by case basis in accordance with the principles referred to above.

461. The Director could give immunity from prosecution in Ireland if required to enable a witness to give evidence in another State Party in relation to a convention offence. This would be based on the discretionary nature of the prosecutorial function in Ireland. The prosecution authority in the other State Party could request that the Director consider granting immunity and explain the basis for the request

**(b) Observations on the implementation of the article**

462. It was concluded that Ireland has implemented Art. 37(5) UNCAC.

**Article 38. Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

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

463. Ireland has indicated that it is in compliance with this provision.
464. There are a number of different bodies engaged in (inter alia) combating corruption, including
- the Standards in Public Office Commission (SIPO);
  - the Criminal Assets Bureau;
  - the Garda Ombudsman (responsibility for the Police);
  - the Garda Bureau of Fraud Investigation; and
  - the Money Laundering Investigation Unit of An Garda Síochána.
465. All these bodies are independent and are, of course, funded by the State to enable them to carry out their roles. The agencies listed would be in contact with a wide variety of organisations in fulfilling their remit. Where relevant, carrying out their statutory functions would involve communication and cooperation with other relevant agencies - for instance the Standards in Public Office Commission is required to conduct whatever enquiries are necessary to enable it to carry out its statutory functions and, of course, the Garda bodies would be in touch with a wide variety of groups in order to fulfil their role.
466. An Garda Síochána is the sole police force in Ireland and all allegations would be dealt with by them. Furthermore, Section 19 of the Criminal Justice Act, 2011 makes it an offence to withhold information which could assist in the prevention of an offence and/or securing the apprehension, prosecution or conviction of a person for a relevant offence.
467. There is on-going cooperation between all mentioned bodies; for example, members of An Garda Síochána are seconded to the Office of the Director of Corporate Enforcement.
468. The FIU is operating within An Garda Síochána and is cooperating with the Garda Bureau of Fraud Investigation without the need for an MOU.

469. Civil servants in Ireland operate in line with the standards set out in the Civil Service Code of Standards and Behaviour drawn up pursuant to Section 10(3) of the Standards in Public Office Act 2001.
470. In relation to Article 38 and Cooperation between national authorities, in most cases it would be the investigating authorities who would inform the other jurisdiction that there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed.
471. The DPP has a role in the enforcement of confiscation cooperation orders. This office has received four cases referred to it by the Chief State Solicitors' Office on instruction from the Central Authority (after they had frozen the relevant property using freezing cooperation orders)
472. All of the confiscation cooperation orders received by this office originated from the UK. Two have been enforced. In one case the Defendant has made an application for inability to pay to the UK authorities, and in one other case the value of the properties were worth less than the outstanding charges owing on them and were therefore not realisable (these properties are still frozen by way of confiscation cooperation order, and if there is a sustained recovery in the property market- which there is not at present in the country where these properties are situated,- it may be possible to apply to dispose of the equity that may be generated from the properties).

**(b) Observations on the implementation of the article**

473. It was concluded that Ireland has implemented Art. 38 UNCAC.

**Article 39. Cooperation between national authorities and the private sector**

**Paragraph 1 of article 39**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

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

474. Ireland indicated that it has adopted and implemented the measures described above.
475. The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 places an obligation on financial services designated persons in relation to customer identification, verification and monitoring as well as suspicious transaction reporting.

476. The Irish FIU is part of the Garda Bureau of Fraud Investigation. It receives about 15,000 STRs per year. It is a member of the Egmont Group and uses FIU Net within the EU. It has in-house investigation units and has the power to impose a freezing order for 7 days. The FIU closely cooperates with the Criminal Assets Bureau if there is insufficient evidence for a criminal case.
477. Protections exist for whistleblowers under the Prevention of Corruption (Amendment) Act 2010 in respect of the corruption offence. Also there are similar protections under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
478. Broad protections also exist under the Protected Disclosures Act 2014.
479. The Irish Banking Federation Hi-Tech Crime Forum contains representatives from the banking and financial services sector in Ireland along with representatives from law enforcement.

**(b) Observations on the implementation of the article**

480. It was concluded that Ireland has implemented Art. 39(1) UNCAC.

**Paragraph 2 of article 39**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

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

481. Ireland indicated that it has, in part, adopted and implemented the measures described above.
482. Protections for whistleblowers under the Prevention of Corruption (Amendment) Act 2010 in respect of the corruption offence. Similar protections under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.
483. Section 19 of the Criminal Justice Act, 2011 makes it an offence to withhold information which could assist in the prevention of an offence and/or securing the apprehension, prosecution or conviction of a person for a relevant offence
484. Broad protections also exist under the Protected Disclosures Act 2014.

**(b) Observations on the implementation of the article**

485. It was concluded that Ireland has implemented Art. 39(2) UNCAC.

## **Article 40. Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

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

486. Ireland indicated that it has adopted the measures described above.
487. It is considered that bank confidentiality does not apply as an obstacle to the obtaining of evidence in a criminal prosecution.
488. Disclosures can be required by law e.g. court orders, subpoenas, exercise of powers of inspection requiring production of documents in connection with investigations under the Income Tax Acts, orders in civil and criminal proceedings made under Bankers Books Evidence Acts and in relation to discovery of documents.
489. Note section 51 of the Criminal Justice (Theft and Fraud Offences) Act 2001, where it is an offence to conceal etc. documents relevant to an investigation.
490. See also sections 63 and 64 of the Criminal Justice Act 1994, as amended, regarding the production of documents and other materials, as needed.
491. Note also relevant provisions of the Criminal Justice Act 2011 - this measure applies to serious offences punishable by imprisonment for 5 years or more, including theft, fraud and corruption offences, as well as company law, banking and other financial offences. Under section 15 of the Criminal Justice Act 2011 obligations can be imposed on witnesses (companies as well as individuals) to provide information and make statements in relation to investigations into relevant offences. On application by the Gardaí, a Judge can (inter alia) require a Garda to be allowed to enter a specific place to obtain access to documents, as well as requiring access to passwords to be provided for electronic documents. Note also section 17 of the Act, whereby it is an offence to conceal etc. documents relevant to a court investigation.
492. Section 56 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, requires a financial institution, as provided therein, to have systems in place to respond efficiently and appropriately to Garda enquiries in relation to its business relationships, with unlimited fines for non-compliance in respect of convictions on indictment.

### **(b) Observations on the implementation of the article**

493. During the country visit, Ireland provided further information on the operation of bank secrecy (see answers under Art. 31(7) UNCAC above).

494. It was concluded that Ireland has implemented Art. 40 UNCAC.

## **Article 41. Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

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

495. Ireland indicated that it has not adopted and implemented the measures described above.

496. However, there is a Bill in preparation in order to transpose EU Framework Decision 2009/315/JHA of 26 February 2009 into Irish law. The Decision will be implemented in 2015. This will provide for a more systematic exchange of criminal records information in regard to persons who are resident in an EU State which is not their state of nationality. It will also provide for exchange of information concerning offences committed by persons while outside their state of nationality. The legislation implementing this Framework Decision is likely to be enacted within twelve months

497. Previous convictions of another State can be taken into account at sentencing, even in the absence of the proposed legislation. This is done on an administrative basis under common law at present.

### **(b) Observations on the implementation of the article**

498. It was noted that Ireland has not yet fully implemented this non-mandatory provision of the Convention, although previous convictions of another State can be taken into account at sentencing.

### **(c) Challenges**

499. Ireland was encouraged to fully implement this non-mandatory provision of the Convention.

## **Article 42. Jurisdiction**

### **Subparagraph 1 (a) of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

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

500. Ireland has indicated that it is in compliance with this provision.

501. The State has territorial jurisdiction over these offences. Note also the provision in the Prevention of Corruption (Amendment) Act 2001, at section 6, clarifying that a person may be tried in Ireland for the corruption offence if any element of the offence occurred in the State.

502. Part 2 (sections 6 - 16) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 provides for the offence of money laundering occurring within the State and also specifies the circumstances which apply to establishing jurisdiction outside of the State. Section 7 sets out the elements of the offence (by reference to the definitions in section 6).

**(b) Observations on the implementation of the article**

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

**Subparagraph 1 (b) of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

...

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

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

504. Ireland has indicated that it is in compliance with this provision.

***Jurisdiction provisions of Prevention of Corruption Acts 1889 to 2010.***

***Section 8(1)(a) & (b) Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.***

***Section 2 of the Air Navigation and Transport Act 1973***

'2.-(1) Any act or omission which, if taking place in the State, would constitute an offence under the law of the State, shall, if it takes place on board an Irish controlled aircraft while in flight elsewhere than in or over the State, constitute that offence.

(2) Proceedings for an offence under this Act or an offence referred to in subsection (1) of this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State.'

505. As set out in the Air Navigation and Transport Act, 1973, an Irish controlled aircraft means an aircraft -

- (a) which is for the time being registered in the State, or
- (b) which is not for the time being registered in the State but which satisfies for the time being the requirements for such registration specified in Article 7 of the Air Navigation (Nationality and Registration of Aircraft) Order, 1963 , or
- (c) which—
  - (i) is registered in another state,
  - (ii) is for the time being chartered by demise, let or on hire, and
  - (iii) could but for paragraph (2) of the said Article 7 be registered in the State under paragraph (3) of that Article;

***Section 686(1) of the Merchant Shipping Act 1894.***

' (1)Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed. '

506. Section 7(1)(a) of the Criminal Law Amendment Act 1997 provides for the offence of aiding, abetting, counselling or procuring while outside of the State the commission of an indictable offence in the State.

507. In addition, please note the provisions contained in section 7 of the Prevention of Corruption (Amendment) Act which provides for jurisdiction over the main corruption offences when committed outside Ireland by Irish citizens or residents.

508. It is also intended that provision will be made for a consolidated jurisdiction provision in Head 9 of the General Scheme of the Criminal Justice (Corruption ) Bill 2012.

**(b) Observations on the implementation of the article**

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

**Subparagraph 2 (a) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

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

510. Ireland indicated that it has not adopted measures to establish its jurisdiction as described above.

511. In general, Ireland does not assert jurisdiction over offences where its citizens are victims of offences committed in another state. An exception has been made in relation to the implementation of the protocol to the Convention protecting the financial interests of the EU drawn up on the basis of Article K.3 of the Treaty on European Union. Section 45 (2) of the Criminal Justice (theft and Fraud Offences) Act 2001 provides that active corruption (under section 43 of the Act) committed by a person outside the State is an offence if it is directed against an official, or a member the EU Commission, European Parliament, Court of Justice, or the EU Court of Auditors who is an Irish citizen.

**(b) Observations on the implementation of the article**

512. It was noted that Ireland has not implemented the passive personality principle for jurisdiction.

**Subparagraph 2 (b) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

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

513. Ireland indicated that it has adopted measures to establish its jurisdiction as described above.

*Section 8(c)(i) Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.*

*Section 7 of the Prevention of Corruption (Amendment) Act 2001, as amended by section 3 of the Prevention of Corruption (Amendment) Act 2010.*

**(b) Observations on the implementation of the article**

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

**Subparagraph 2 (c) of article 42**

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

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

515. Ireland indicated that it has adopted measures to establish its jurisdiction as described above.

516. Under the Prevention of Corruption (Amendment) Act 2001, extra-territorial jurisdiction applied essentially only to public officials, as provided therein. There is also a specific provision in the Act of 2001 (section 6) clarifying that a person may be tried in Ireland for the corruption offence if any element of the offence occurred in the State.

517. The Prevention of Corruption (Amendment) Act of 2010 substantially broadened jurisdiction for the corruption offence by extending the categories of persons subject to extra-territorial jurisdiction to include (a) Irish citizens (b) persons ordinarily resident in the State (c) companies registered under the Companies Acts (d) any other body corporate established under a law of the State. Also relevant are the additional categories within the list of agents, including persons under indirect control of foreign governments and those working for international organisations, who are all subject to jurisdiction, where applicable.

518. The key elements of the money laundering offence are contained in section 7, and is in line with Article 23. Section 7 (2) specifically refers to ‘attempts’ to commit an offence under subsection (1) . Section 7 Criminal Law Act 1997 provides that any person who commits an inchoate offence, e.g. aiding, abetting, counselling or procuring the commission of an indictable offence is liable to be indicted, tried and punished as a principal offender. Section 9 provides for an attempt in a place outside the State to commit an offence under section 7(1) and Section 10 provides for aiding, abetting, counselling or procuring in a place outside the State the commission of an offence under section 7.

**(b) Observations on the implementation of the article**

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

**Subparagraph 2 (d) of article 42**

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(d) The offence is committed against the State Party.*

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

520. Ireland indicated that it has not adopted measures to establish its jurisdiction as described above.

**(b) Observations on the implementation of the article**

521. It was noted that Ireland has not implemented this non-mandatory provision of the Convention.

**Paragraph 3 of article 42**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

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

522. Ireland has indicated that it is in compliance with this provision.

523. This is provided for under Section 38 of the Extradition Act 1965

38.—(1) Where any citizen of Ireland does any act outside the State which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of Ireland he shall be guilty of the like offence and be liable on conviction to the like punishment as if the act were done within the State.

(2) No proceedings for an offence under subsection (1) shall be taken except by direction of the Attorney General, given following a request to that effect made in the manner provided for in section 23 by the country within whose territory the act is alleged to have been committed.

(3) This section shall apply only to acts committed after the commencement of this Act.

(4) For the purpose of the exercise of jurisdiction, in relation to an offence to which subsection (1) applies, by any court of competent jurisdiction the act constituting the offence shall be deemed to have been committed within the area of the Dublin Metropolitan District.

**(b) Observations on the implementation of the article**

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

**Paragraph 4 of article 42**

*4. Each State Party may also take such measures as may be necessary to establish its*

*jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

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

525. Ireland indicated that it has adopted and implemented the measures described above and referred to its response at paragraph 3 of article 42

*Section 8(1)(d) Criminal Justice (Money Laundering and Terrorist Financing) Act 2010*

*See also proposals contained in Head 9 of the General Scheme of the Criminal Justice (Corruption) Bill 2012.*

**(b) Observations on the implementation of the article**

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

**Paragraph 5 of article 42**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

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

527. Ireland has indicated that it is in compliance with this provision.

**(b) Observations on the implementation of the article**

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

**Paragraph 6 of article 42**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

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

529. Ireland indicated that it has not adopted grounds of criminal jurisdiction other than those described above.

**(b) Observations on the implementation of the article**

530. It was noted that Ireland has not adopted grounds of criminal jurisdiction other than those described above.

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## IV. International cooperation

### **Article 44. Extradition**

#### **Paragraph 1 of article 44**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

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

531. Extradition in Ireland is governed by the Extradition Act 1965, the Extradition (European Convention on the Suppression of Terrorism) Act 1987, the Extradition (Amendment) Act 1987, the Extradition (Amendment) Act 1994, the Extradition (European Union Conventions) Act 2001, the European Arrest Warrant Act 2003, and the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012.
532. Ireland does not make extradition conditional on the existence of a treaty, it can extradite on the basis of reciprocity. Ireland may also use the Convention as the legal basis for extradition.
533. Dual criminality is a fundamental requirement under the Irish constitution. Ireland extradites its nationals unless the requesting State refuses a corresponding facility.
534. With regard to process, the extradition system in Ireland is a judicial system in which the decision to extradite lies with the High Court, and the general rules applicable to criminal trials also apply in extradition procedures.
535. Passive extradition procedure: The request is submitted to the Minister for Justice and Equality, who refers it to the High Court. Once all requirements have been met, the High Court issues a ruling. The ruling is transmitted to the requesting country via the same channel through which the request was received (diplomatic channels or INTERPOL), and the surrender of the person organized. Ireland receives about 200-400 requests for surrender under the European Arrest warrant per year, as well as 5 – 10 extradition requests outside the framework of the European Arrest warrant. The Irish authorities confirmed that 99 per cent of incoming requests are fulfilled. However, they indicated that a request for surrender under the European Arrest Warrant had been refused due to concerns about prison conditions in the requesting state.
536. With regard to the possibility of judicial review of the decision by the High Court, Ireland cited two case examples, the cases of Ali Charaf Damache and Eric Eoin Marques, which were pending before the courts.
537. Active Extradition Procedure: Following an investigation by An Garda Síochána, if the Office of the Director of Public Prosecutions decides to prosecute, it compiles a request for extradition and forwards it to the Minister for Justice and Equality, which then forwards the request to the requested country either through diplomatic channels or via INTERPOL. In 2013, Ireland has sent 60 requests for surrender using the European Arrest warrant, two of which have been refused for a lack of dual criminality or because no plea was possible due to the mental

health of the requested person, and eleven requests for extradition. Statistics are compiled centrally by the Department of Justice and Equality.

538. The decision to refuse or grant extradition can be appealed in the Supreme Court.

539. No information was provided by the Irish authorities on the average length of extradition proceedings.

**(b) Observations on the implementation of the article**

540. Ireland is in compliance with the provision under review.

**Paragraph 2 of article 44**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

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

541. Dual Criminality is a fundamental requirement under Irish law Therefore, extradition cannot be granted in the absence of dual criminality.

542. While no article of the Constitution expressly declares dual or double criminality to be a fundamental requirement, it nonetheless has been a fundamental norm at Irish law for an extended period since the Extradition Act 1965.

543. It is at least arguable that the dual criminality requirement has constitutional status. It is based on the maxim nulla poena sine lege – no penalty without a law and as stated by Shearer, it 'serves the most important role of ensuring that a person's liberty is not restricted as a consequence of offences not recognised as criminal'. In this context, the provisions of article 40.4.1 of the Constitution:- "No citizen shall be deprived of his personal liberty save in accordance with law" echoe the nulla poena maxim to a degree which commands attention. Further, article 29.3 requires Ireland to use generally recognised principles of international law as its rule of conduct in external relations and article 29.8 specifically imposes the same requirement in respect of the exercise of extra-territorial jurisdiction.

544. Accepting that the issue is not set absolutely in stone, these constitutional provisions have heretofore been respected in Ireland through a requirement of dual criminality. It is often difficult to state the precise extent to which other states require dual criminality in all fields and thus the extent to which it remains a generally recognised principle. It has been the experience of Ireland that, in at least some fields and states, dual criminality will not be expressly mentioned in the relevant statute, but will nonetheless be a requirement under fundamental rules. Ireland indicated that their analysis suggested that the rule was still widely applied and as such, in accordance with the above, there was a tendency to view it as a constitutional requirement.

545. Ireland stated that there would be considerable legal risk in taking any other approach, except in relation to Mutual Legal Assistance between Member States of the European Union

as a requirement of EU law. Article 29.4.6 of the Constitution provides that laws or acts necessitated by membership of the European Union shall not be unconstitutional. Ireland noted that, but for this provision, it would likely be the case that Ireland would not have made this exception in relation to dual criminality. It was also the case that the 'check list' offences in respect of which dual criminality is not required were assumed to be criminal in all EU states (and there was no demurral from this assumption during the negotiation of the relevant EU instrument).

546. In this respect, with regard to the European arrest warrant, the Council Framework Decision of 13 June 2002, in its article 2.2, establishes a list of offences which, provided that they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall give rise to surrender pursuant to a European arrest warrant without verification of double criminality.

***Article 2.2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States***

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,

- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

547. Section 32 (1) of the European Arrest Warrant Act 2003 states that the Minister may, by order, specify the offences under the law of the State to which paragraph 2 of Article 2 of the Framework Decision applies.

***Section 32 (1) of the European Arrest Warrant Act 2003***

32.—(1) For the purposes of paragraph 2 of Article 2 of the Framework Decision, the Minister may, by order, specify the offences under the law of the State to which that paragraph applies.

548. To date, no such order has been issued.

**(b) Observations on the implementation of the article**

549. The requirement for dual criminality in extradition is noted.

**Paragraph 3 of article 44**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

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

550. The terms of the Extradition Act, as amended, have been applied to State parties to the Convention for the purpose of extradition for offences contained in the Convention. However, the minimum sentence tariff required by the legislation applies to all extradition offences without exception. However, Ireland considered it unlikely that offences established in accordance with the Convention or related offences would not meet the minimum sentence tariff.

**(b) Observations on the implementation of the article**

551. The Irish legislation does not allow for extradition for offences which do not meet the requirements for the period of imprisonment, but are related to offences established in accordance with the Convention.

552. Ireland could apply article 44 also in relation to offences which do not meet the requirements for the period of imprisonment, but are related to offences established in accordance with the Convention.

**Paragraph 4 of article 44**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

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

553. The Extradition Act 1965 (as amended) has been applied to State parties to UNCAC for the purpose of extradition for offences contained therein. However, Ireland indicated that it does not deem offences established in accordance with the Convention to be included as extraditable offences in any extradition treaty between State parties.

554. At the time of the country visit, Ireland was not drafting any further extradition treaties.

555. In the absence of a bilateral treaty, Ireland may use the Convention as legal basis for extradition, in accordance with section 8 of the Extradition Act 1965 (as amended).

***Section 8 of the Extradition Act 1965 (as amended)***

8. -- (1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part—

(a) in relation to that country, or

(b) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible.

556. While the Extradition Act 1965 (as amended) does not set forth that offences established in accordance with the Convention offences are not to be considered political offences, the jurisprudence of the Irish courts provides a very narrow interpretation of what constitutes a political offence and it was considered unlikely that any of the offences established in accordance with the Convention would be regarded as such.

**(b) Observations on the implementation of the article**

557. It is recommended that, in a future revision of its extradition treaties concluded with other States parties, Ireland include the offences established in accordance with the Convention as extraditable offences.

**Paragraphs 5 and 6 of article 44**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may*

*consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

6. A State Party that makes extradition conditional on the existence of a treaty shall:

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

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

558. In accordance with section 8 of the Extradition Act 1965 (as amended), Ireland does not make extradition conditional on the existence of a treaty.

***Section 8 of the Extradition Act 1965 (as amended)***

8. -- (1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part—

*(c) in relation to that country, or*

*(d) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible.*

**(b) Observations on the implementation of the article**

559. As Ireland does not make extradition conditional on the existence of a treaty, these provisions do not apply.

**Paragraph 7 of article 44**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

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

560. Ireland does not make extradition conditional on the existence of a treaty (see above). With regard to extraditable offences, section 10 of the Extradition Act, 1965 (as amended), sets forth that offences are extraditable if they are punishable under the laws of both the requesting country and Ireland by imprisonment for a maximum period of at least one year or by a more severe penalty. If there has been a conviction and sentence in the requesting country, it is required that imprisonment for a period of at least four months or a more severe penalty has been imposed.

***Section 10 Extradition Act 1965 (as amended)***

***Extraditable offences.***

10. — (1) Subject to subsection (2), extradition shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the State by imprisonment for a maximum period of at least one year or by a more severe penalty and for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of at least four months or a more severe penalty has been imposed.

**(b) Observations on the implementation of the article**

561. Ireland is in compliance with the provision under review.

**Paragraph 8 of article 44**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

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

562. The Extradition Act 1965 (as amended) sets forth the minimum penalty requirement in section 10 (see above), while grounds for refusal are established in sections 11 to 19.

***Extradition Act 1965 (as amended). Political offences.***

‘ 11. — (1) Extradition shall not be granted for an offence which is a political offence or an offence connected with a political offence.

(2) The same rule shall apply if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of

prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

(2A) The same rule shall apply if there are substantial grounds for believing that if the request for extradition is granted the person claimed may be subjected to torture.

(3) (a) This subsection applies to an offence of which a person is accused or has been convicted outside the State and the act constituting which would, if done within the State, constitute an offence under—

(i) section 3 (grave breaches of Scheduled Conventions) of the Geneva Conventions Act 1962 , as amended by section 3 of the Geneva Conventions (Amendment) Act 1998 , and

(ii) *section 7* (genocide, crimes against humanity and war crimes) or *8* (ancillary offences) of the *International Criminal Court Act 2006*.

(e) For the purposes of this Part and without prejudice to section 3 (certain offences not to be regarded as political offences) of the Extradition (European Convention on the Suppression of Terrorism) Act 1987 , an offence to which this subsection applies shall not be regarded as a political offence or an offence connected with a political offence.

***Military offences.***

12.— Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law.

***Revenue offences.***

13.— Extradition shall not be granted for revenue offences unless the relevant extradition provisions otherwise provide.

***Irish citizens.***

14.— Extradition shall not be granted where a person claimed is a citizen of Ireland, unless the relevant extradition provisions or this Act otherwise provide.

***Proceedings in State for same offence.***

15.— (1) Extradition shall not be granted for an offence which is also an offence under the law of the State if

- (a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings for the offence against the person claimed, or
- (b) proceedings for the offence are pending in the State against the person claimed.

(2) Extradition may be refused by the Minister for an offence which is also an offence under the law of the State if the Director of Public Prosecutions or the Attorney General has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence.

***Persons convicted in absentia.***

16.— Extradition shall not be granted where the person claimed is being requested for the carrying out of a sentence and he or she did not appear in person at the trial resulting in the sentence, unless the requesting country has given an undertaking in writing to the Minister that the person claimed may have his or her conviction set aside and will, upon being surrendered, be given the opportunity of a retrial in respect of that offence.

***Non bis in idem.***

17.— Extradition shall not be granted if final judgment has been passed in the State or, in accordance with the law of a third country, in that third country, upon the person claimed in respect of the offence for which extradition is requested.

***Lapse of time.***

18. — Extradition shall not be granted when the person claimed has, according to the law of either the requesting country or the State, become immune by reason of lapse of time from prosecution or punishment.

***Pardon or amnesty***

18A.—(1) Extradition shall not be granted where the person claimed has been granted a pardon under Article 13.6 of the Constitution in respect of an offence consisting of an act that constitutes in whole or in part the offence under the law of the requesting country in respect of which extradition is sought.

(2) Extradition shall not be granted where the person claimed has, in accordance with the law of the requesting country, become immune, by virtue of any amnesty or pardon, from prosecution or punishment for the offence concerned.

(3) Extradition shall not be granted where the person claimed has, by virtue of any Act of the Oireachtas, whole or in part the offence under the law of the requesting country in respect of which extradition is sought.

***Capital punishment.***

19. — Extradition shall not be granted for an offence which is punishable by death under the law of the requesting country but is of a category for which the death penalty is not provided for by the law of the State or is not generally carried out unless the requesting country gives such assurance as the Minister considers sufficient that the death penalty will not be carried out. ‘

**(b) Observations on the implementation of the article**

563. Ireland is in compliance with the provision under review.

**Paragraph 9 of article 44**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

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

564. As part of a review of Irish Extradition law, a number of amendments have been made by the European Arrest Warrant Act 2003 (Application to Third Countries and Amendment) and the Extradition (Amendment) Act 2012, which significantly simplify and expedite the extradition process. These changes include the repeal of provisions which required that evidence in extradition proceedings be provided by sworn affidavit, and allowing for providing accompanying legislation of the requesting state as reproduction instead of as a copy of the law. The means by which requests for provisional arrest may be transmitted have been amended to include any means capable of producing a written record, subject to establishing its authenticity.

565. Furthermore, the requesting state is now permitted to send photos, fingerprints or palmprints to facilitate the identification of the person sought; and courts can order the surrender of a person even if there are minor or technical errors in the request. In addition, the conditions for admissibility of documents into evidence, which had been relatively high, were altered.

**(b) Observations on the implementation of the article**

566. Through the amendments introduced through the European Arrest Warrant Act 2003 (Application to Third Countries and Amendment) and the Extradition (Amendment) Act 2012, Ireland has removed procedural requirements which could have led to delays in proceedings, such as the requirement for evidence to be given by sworn affidavit. In addition, Ireland has substantially simplified its evidentiary requirements through these amendments.

**(c) Successes and good practices**

567. The amendments made to simplify and expedite the extradition process were acknowledged and welcomed as facilitating cooperation.

#### **Paragraph 10 of article 44**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

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

568. In accordance with section 27 of the Extradition Act 1965 (as amended), Ireland can take a person whose extradition is sought into custody. Section 8 of the Extradition Act 1965 (as amended) establishes that section 27 may be applied to all States parties to the Convention.

#### ***Extradition Act 1965 (As Amended)***

##### ***Section 8***

8. -- (1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part—

(f) in relation to that country, or

(g) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible.

##### ***Section 27 Provisional Arrest***

‘ 27.—(1)A judge of the District Court may, without a certificate of the Minister under section 26 (1) (a), issue a warrant for the arrest of any person on the sworn information of a member of the Garda Síochána not below the rank of inspector that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a country in relation to which this Part applies and on being satisfied that the request complies with the requirements of this section.

(2) A request for the provisional arrest of any person shall—

(a) state that one of the documents mentioned in paragraph (a) of section 25 exists in respect of that person and that it is intended to send a request for his extradition,

(b) specify the nature of the offence and the time at which and the place where the offence is alleged to have been committed

give a description of the person whose arrest is sought and

include a statement setting out the ground of urgency concerned.

(2A) A request for the provisional arrest of a person made on behalf of a requesting country that is a Convention country shall

(a) state that one of the documents mentioned in paragraph (a) of section 25(1) exists in respect of that person,

(b) be accompanied by a statement of the offences to which the request relates specifying the nature and description under the law of the requesting country of the offences concerned,

(c) specify the circumstances in which the offences were committed or alleged to have been committed including the time and place of their commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person to whom the request relates in their commission or alleged commission, and

(d) specify the penalties to which that person would be liable if convicted of the offences concerned or, where he has been convicted of those offences, the penalties that have been imposed or, where he has been convicted of those offences but not yet sentenced, the penalties to which he is liable,

hereafter in this section referred to as ‘information furnished under subsection (2A)’.

(2B) A member of the Garda Síochána not below the rank of inspector shall provide a person, who is provisionally arrested pursuant to a warrant issued on foot of a request to which subsection (2A) applies, with the information furnished under subsection (2A) and shall inform him of his right to consent to his surrender under section 29A(1) (inserted by section 6 (b) of the Extradition (European Union Conventions) Act, 2001) and inquire of him whether he wishes to so consent.

(3) A request for provisional arrest may be transmitted in writing, or by any means capable of producing a written record under conditions allowing its authenticity to be established”

(3A) For the purposes of this section an alert shall be deemed to constitute a request for provisional arrest of the person named therein and the provisions of subsection (2) of this section shall not apply.

(3B) (a) The Director of Public Prosecutions shall be a judicial authority for the purposes of requesting the entry of an alert in the SIS for the arrest and extradition of the person named therein.

(b) The issue of a request for extradition by the Director of Public Prosecutions shall be deemed to constitute a request by the Director of Public Prosecutions for entry of an alert in the SIS for the arrest and extradition of the person named therein.”,

4) A warrant issued under this section may be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member at the time; and the warrant shall be shown to, and a copy of same given to, the person arrested at the time of such arrest or, if the warrant is not then in the possession of the member, within 24 hours thereafter

(5) Where a justice issues a warrant under subsection (1) he shall forthwith inform the Minister of the issue of the warrant and the Minister may, if he thinks fit, order the warrant to be cancelled and the person arrested thereunder released.

(6) A person arrested under a warrant issued under this section shall, unless the warrant is cancelled under subsection (5), be brought as soon as may be before a judge of the High Court and the judge shall remand the said person in custody or on bail pending—

(a) the receipt by him of a certificate of the Minister under section 26(1)(a) (inserted by section 7(a) of the Act of 1994) stating that the request for extradition has been duly made, or

(b) (in circumstances where the person is remanded in custody) the release of that person under section 35,

and for those purposes the judge shall have the same powers of remand as if that person were brought before him charged with an indictable offence.

(7) If, within the period of 18 days after such person's arrest, no such certificate is produced, he shall be released.

(8) The release of any person under subsection (5) or (7) shall not prejudice his re-arrest and extradition if a request for his extradition is afterwards made.

(9) A warrant for the arrest of a person may be issued under subsection (1) notwithstanding that, previously—

(a) a warrant for the arrest of that person has been issued, or

(b) the issue of such a warrant has been refused.

(10) Where an information is sworn by a member of the Garda Síochána not below the rank of inspector before a judge of the District Court stating that a request for the provisional arrest of a person has been made, on the ground of urgency, on behalf of a country in relation to which this Part applies, then, in any proceedings it shall be presumed, unless the contrary is proved, that a request for the provisional arrest of the person has been made on the ground of urgency on behalf of a country in relation to which this Part applies.

(11) Where a person has been arrested under a warrant issued under this section and a certificate of the Minister under section 26 (1) (a) stating that a request for the extradition of the person has been duly made, has been produced to a judge of the District Court assigned to the Dublin Metropolitan District, then, in any proceedings it shall be presumed, unless the contrary is proved, that a request in accordance with this Part for the extradition of the person has been duly made and has been duly received by the Minister.”.

(12) In this section—

‘ alert ’ means an alert entered in the SIS for the arrest and extradition, on foot of an extradition warrant, of the person named therein;

‘ Council Decision ’ means Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System;

‘ Schengen Convention ’ means the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders done at Schengen on 19 June 1990 and includes any amendment to or modification of that Convention whether before or after the passing of this Act but does not include the Council Decision;

‘ SIS ’ means the system referred to in Title IV of the Schengen Convention or, as appropriate, the system established under Chapter 1 of the Council Decision.”.

569. The bilateral extradition treaties to which Ireland is a party also foresee the provisional arrest of a person sought for purposes of extradition.

**(b) Observations on the implementation of the article**

570. Ireland can take a person whose extradition is sought and who is present in Irish territory into custody to ensure his or her presence at extradition proceedings.

**Paragraph 11 of article 44**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

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

571. Section 14 of the Extradition Act, 1965 (as amended), states that extradition of Irish citizens shall not be granted unless the relevant extradition provisions or the Extradition Act provide otherwise.

***Extradition Act 1965 (as amended)***

### ***Irish Citizens***

14. — Extradition shall not be granted where a person claimed is a citizen of Ireland, unless the relevant extradition provisions or this Act provide otherwise.

572. Despite section 14 of the Extradition Act (as amended), Irish authorities confirmed that Ireland did not have a principled objection to the extradition of its nationals, and would refuse to extradite its nationals only if the requesting State denied a corresponding facility within its bilateral extradition treaty. However, no bilateral or multilateral treaty that Ireland is party to prohibits the extradition of nationals. Some agreements (such as the agreement with Australia) explicitly foresee the extradition of nationals, while in others, the right to extradite nationals is reserved.

573. The authorities further informed that the majority of cases occurred within the European Union and was therefore governed by the framework decision on the European arrest warrant, which foresees the surrender of nationals to other Member States.

574. Nevertheless, should extradition be refused because of the Irish citizenship of the requested person, section 38 of the Extradition Act 1965 (as amended), together with sections 7 and 8 of the Criminal Law Act 1997 (as amended), provides the legal basis for trying the offence in Ireland.

### ***Extradition Act 1965 (as amended)***

#### ***Offences committed abroad by Irish citizens.***

‘38. —(1) Where any citizen of Ireland does any act outside the State which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of Ireland he shall be guilty of the like offence and be liable on conviction to the like punishment as if the act were done within the State.

(2) No proceedings for an offence under subsection (1) shall be taken except by direction of the Attorney General, given following a request to that effect made in the manner provided for in section 23 by the country within whose territory the act is alleged to have been committed.

(3) This section shall apply only to acts committed after the commencement of this Act.

(4) For the purpose of the exercise of jurisdiction, in relation to an offence to which subsection (1) applies, by any court of competent jurisdiction the act constituting the offence shall be deemed to have been committed within the area of the Dublin Metropolitan District.’

### ***Prevention of Corruption (Amendment) Act, 2001 (as amended)***

6.—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

7.—(1) Subject to subsection (2) of this section, where a person, whether or not the person is an agent, does outside the State an act that, if done in the State, would constitute an offence under the relevant section, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

(2) Subsection (1) shall apply only where the person concerned is—

(a) an Irish citizen,

(b) an individual who is ordinarily resident in the State,

(c) a company registered under the Companies Acts,

(d) any other body corporate established under a law of the State, or

(e) a relevant agent in any case where the relevant agent does not fall within any of paragraphs (a) to (d).

(3) In this section—

‘agent’ has the meaning assigned to it by subsection (5) of the relevant section;

‘ordinarily resident in the State’, in relation to an individual, means the individual has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned under subsection (1);

‘relevant agent’ means a person who falls within paragraph (b) of the definition of ‘agent’ in subsection (5) of the relevant section;

‘relevant section’ means section 1 (inserted by section 2 of this Act and as amended by section 2 of the Prevention of Corruption (Amendment) Act 2010) of the Act of 1906.”

***Criminal Law Act 1997 (as amended)***

7.—(1) Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender.

“(1A) Any person who, outside the State, aids, abets, counsels or procures the commission of an indictable offence in the State shall be liable to be indicted, tried and punished as a principal offender if—

the person does so on board an Irish ship,

(b) the person does so on an aircraft registered in the State,

(c) the person is an Irish citizen, or

(d) the person is ordinarily resident in the State.”

(2) Where a person has committed an arrestable offence, any other person who, knowing or believing him or her to be guilty of the offence or of some other arrestable offence, does without reasonable excuse any act, whether in or outside the State, with intent to impede his or her apprehension or prosecution shall be guilty of an offence.

(2A) A person shall be guilty of an offence under subsection (2) for doing an act outside the State only if—

(a) the person does so on board an Irish ship,

(b) the person does so on an aircraft registered in the State,

(c) the person is an Irish citizen, or

(d) the person is ordinarily resident in the State.

(3) If, upon the trial on indictment of an arrestable offence, it is proved that the offence charged, or some other offence of which the accused might on that charge be found guilty, was committed but it is not proved that the accused was guilty of it, the accused may be found guilty of an offence under subsection (2) of which it is proved that he or she is guilty in relation to the offence charged, or that other offence.

(4) A person committing an offence under subsection (2) with intent to impede another person’s apprehension or prosecution shall be liable on conviction on indictment to

imprisonment according to the gravity of the offence that the other person has committed or attempted to commit, as follows:

(a) if that offence is one for which the sentence is fixed by law, or for which the maximum sentence is imprisonment for life, he or she shall be liable to imprisonment for a term not exceeding ten years;

(b) if it is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of fourteen years, he or she shall be liable to imprisonment for a term not exceeding seven years;

(c) if it is not one included in paragraph (a) or (b) but is one for which a person of full capacity and not previously convicted may be sentenced to imprisonment for a term of ten years, he or she shall be liable to imprisonment for a term not exceeding five years;

(d) in any other case, he or she shall be liable to imprisonment for a term not exceeding three years.

(5) Where a person is charged with an offence under subsection (2), no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

(6) The references in the following provisions, namely subsection (1) of section 13 (which relates to a plea of guilty in the District Court of an indictable offence) and subsection (1) (f) of section 29 (which relates to bail in the case of certain offences) of the Criminal Procedure Act, 1967, to an accessory before or after the fact shall be construed as references to aiding, abetting, counselling or procuring the commission of an offence, and to an offence under subsection (2).

(7) The First Schedule to the Criminal Justice Act, 1951 (which specifies the indictable offences which may be tried summarily with the consent of the accused) is hereby amended by the insertion of the following reference: “24. An offence under section 7 (2) of the Criminal Law Act, 1997.”.

(8) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence referred to in subsection (1A) or an offence under subsection (2) is, for the purposes of subsection (1A)(d) or (in the case of

an offence under subsection (2)) subsection (2A)(d), taken to be ordinarily resident in the State on the date of the commission of the offence.

(9) In this section ‘ Irish ship’ has the meaning it has in section 9 of the Mercantile Marine Act 1955 .

8.—(1) Where a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed and that he or she has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding three years. “(1A) A person shall be guilty of an offence under subsection (1) for conduct that the person engages in outside the State only if—

- (a) the conduct takes place on board an Irish ship,
- (b) the conduct takes place on an aircraft registered in the State,
- (c) the person is an Irish citizen, or
- (d) the person is ordinarily resident in the State

(2) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

(3) The compounding of an offence shall not be an offence otherwise than under this section.

(4) The First Schedule to the Criminal Justice Act, 1951 (which specifies the indictable offences which may be tried summarily with the consent of the accused) is hereby amended by the insertion of the following reference: “25. An offence under section 8 of the Criminal Law Act, 1997.”.

(5) A person who has his or her principal residence in the State for the 12 months immediately preceding the commission of an offence under subsection (1) is, for the

purposes of subsection (1A)(d), ordinarily resident in the State on the date of the commission of the offence.

(6) In this section ‘ Irish ship’ has the same meaning as it has in section 7.

**(b) Observations on the implementation of the article**

575. Ireland is in compliance with the provision under review.

**Paragraph 12 of article 44**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

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

576. There are no conditions imposed on the extradition of nationals if they can be extradited in accordance with the Extradition Act, 1965 (as amended).

**(b) Observations on the implementation of the article**

577. Ireland does not impose conditions on the extradition of nationals in accordance with the Extradition Act, 1965 (as amended).

**Paragraph 13 of article 44**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

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

578. If the extradition of nationals for the purposes of enforcing a sentence is refused, Ireland can enforce foreign sentences on the basis of the Transfer of Execution of Sentences Act, 2005.

***Section 7, Transfer of Execution of Sentences Act 2005***

7.—(1) Subject to subsection (2), the Minister may, upon receipt of a request in writing from a sentencing country to consent to the execution in the State of a sentence imposed in the sentencing country, or part of a sentence so imposed, on a person who fled to the State before he or she—

(a) commenced serving that sentence, or

(b) completed serving that sentence,

give such consent.

(2) The Minister shall not give his or her consent under subsection (1) unless—

(a) the person is an Irish citizen or, where the person is not an Irish citizen, the person has, in the opinion of the Minister, close ties with the State,

(b) the order imposing the sentence in the sentencing country is final,

(c) subject to subsection (3), the term of the sentence concerned is not less than 6 months, or where the person has already served part of the sentence concerned, at the time of his or her fleeing to the State there was not less than 6 months of the sentence remaining to be served,

(d) under the law of the sentencing country, the offence in respect of which the sentence was imposed corresponds to an offence under the law of the State, and

(e) the Minister is of the opinion that, having regard to all the circumstances, it would be appropriate for him or her to give such consent.

(3) The Minister may, in relation to a person—

(a) sentenced to less than 6 months imprisonment, in the sentencing country, or

(b) who has less than 6 months remaining to serve of a sentence imposed in the sentencing country,

give his or her consent under subsection (1), if he or she considers that exceptional circumstances exist that warrant the person serving the sentence or remainder of the sentence, as the case may be, in the State.

579. Section 1 of the Act defines the term “sentencing country” by referring to designated countries, which are defined in section 5 of the Act.

1.—(1) In this Act, except where the context otherwise requires—

“Additional Protocol” means the Additional Protocol to the Convention on the Transfer of Sentenced Persons done at Strasbourg on 18 December 1997;

“designated country” has the meaning assigned to it by section 5;

...

“sentencing country” means, in relation to a person on whom a sentence has been imposed, the designated country in which that sentence was imposed.

5.—(1) The Minister for Foreign Affairs may by order designate for the purposes of this Act—

(a) a country that has ratified, accepted, approved or acceded to the Additional Protocol (including a country that has ratified, accepted, approved or acceded to the Additional Protocol (other than Article 3)),

(b) a country that has ratified or acceded to the Schengen Convention, or

(c) a country other than a country to which paragraph (a) or

(b) applies that has given effect under its laws to the provisions of Chapter 5 of Title III of the Schengen Convention or Article 2 of the Additional Protocol, and a country that for the time being stands so designated is hereafter in this Act referred to as “a designated country”.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.

(3) An order under this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

580. In the Schedule to Statutory Instrument No. 659 of 2007, Transfer of Execution of Sentences Act 2005 (designated countries) Order 2007, the Minister for Foreign Affairs designated the following countries for the purpose of the Transfer of Execution of Sentences Act, 2005:

Austria	Belgium	Bulgaria
Cyprus	Czech Republic	Denmark
Estonia	Finland	France
Georgia	Germany	Greece
Hungary	Iceland	Italy
Latvia	Liechtenstein	Lithuania
Luxembourg	Malta	Moldova
Montenegro	Netherlands	Norway
Poland	Portugal	Romania
San Marino	Serbia	Spain
Sweden	Switzerland	The Former Yugoslav Republic of Macedonia
Ukraine	United Kingdom	

581. Should the extradition of a national for the purposes of enforcing a sentence be refused, Ireland can only be executed in respect of the countries listed above.

**(b) Observations on the implementation of the article**

582. It is noted that Ireland can extradite its nationals if permitted by the Extradition Act, 1965 (as amended) or the relevant extradition provisions (section 14 of the Extradition Act, 1965 (as amended)).

583. It is recommended that Ireland consider extending its legal framework to also allow for the execution of sentences imposed by other States parties to the Convention.

**Paragraph 14 of article 44**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

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

584. The Constitution of Ireland provides for the equal treatment of all persons in the trial of offences in article 38. In addition to the Constitution, the Supreme Court has, in a series of judgments over the years which are binding on all lower courts (including *State (Healy) v Donoghue* [1976] IR 325, 335), interpreted this as including certain rights which, although extradition proceedings are not entirely criminal, are applicable.

585. In *State (Healy) v Donoghue* [1976] IR 325,335 Gannon J in the High Court set out an oft quoted text which is frequently reproduced by way of showing an early and important example of the constitutional guarantee of fair procedures:

The phrase "in due course of law" in Article 38, s. 1, carries with it a sufficient guide and direction for the Courts. It is a phrase of very wide import which includes in its scope not merely matters of constitutional and statutory jurisdiction, the range of legislation with respect to criminal offences, and matters of practice and procedure, but also the application of basic principles of justice which are inherent in the proper course of the exercise of the judicial function.

The sense of justice is fundamental in human nature and from it derive essential rights which do not require any positive law for their enunciation. In the course of his judgment in [McGee v. The Attorney General](#) <sup>27</sup> Mr. Justice Walsh says at p. 318 of the report:— "In this country it falls finally upon the judges to interpret the Constitution and in doing so to determine, where necessary, the rights which are superior or antecedent to positive law or which are imprescriptible or inalienable. In the performance of this difficult duty there are certain guidelines laid down in the Constitution for the judge. The very structure and content of the Articles dealing with fundamental rights clearly indicate that justice is not subordinate to the law. In particular, the terms of s. 3 of Article 40 expressly subordinate the law to justice." The Articles of the Constitution to which he was referring are Articles 40, 41, 42 and 43. At p. 310 of the report, in reference to these Articles, he said:— "Articles 41, 42 and 43 emphatically reject the theory that there are no rights without laws, no rights contrary to the law and no rights anterior to the law. They indicate that justice is placed above the law and acknowledge that natural rights, or human rights, are not created by law but that the Constitution confirms their existence and gives them protection."

Among the natural rights of an individual whose conduct is impugned and whose freedom is put in jeopardy are the rights to be adequately informed of the nature and substance of the accusation, to have the matter tried in his presence by an impartial and independent court or arbitrator, to hear and test by examination the evidence offered by or on behalf of his accuser, to be allowed to give or call evidence in his defence, and to be heard in argument or submission before judgment be given. By mentioning these I am not to be taken as giving a complete summary, or as excluding other rights such as the right to reasonable expedition and the right to have an opportunity for preparation of the defence. The rights I have mentioned are such as would necessarily have a bearing on the result of a trial. In my view, they are rights which are anterior to and do not merely derive from the Constitution, but the duty to protect them is cast upon the Courts by the Constitution.

586. This is settled law in Ireland and the leading text book cites a number of cases along similar lines e.g. - *Heaney v Ireland* [1994] 3 IR 593 and *Curtis v AG* [1990] 1 IR 36. In fact, it has been cited at least 190 times in reported judgments of superior courts since that time – the majority of which are in Ireland, but also the courts of Australia, New Zealand and Barbados as well as the ECJ and the ECHR. It has been applied and followed in 25 of those cases and or referred in all the rest but 4 – each of those 4 cases distinguished *State (Healy)* on the facts alone (although one from 1977 might be decided differently today and has never subsequently been approved). *State (Healy)* was cited or referred to 7 times in 2014 by the Superior Courts of Ireland.

587. Furthermore, article 40 of the Constitution states that all citizens shall be equal before the law.

## ***CONSTITUTION OF IRELAND***

### ***ARTICLE 38***

1 No person shall be tried on any criminal charge save in due course of law.

2 Minor offences may be tried by courts of summary jurisdiction.

3 1° Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order.

2° The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law.

4 1° Military tribunals may be established for the trial of offences against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion.

2° A member of the Defence Forces not on active service shall not be tried by any courtmartial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any courtmartial or other military tribunal under any law for the enforcement of military discipline.

5 Save in the case of the trial of offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury.

6 The provisions of Articles 34 and 35 of this Constitution shall not apply to any court or tribunal set up under section 3 or section 4 of this Article.

### ***ARTICLE 40***

1 All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

588. Through case-law (*State (McFadden) v Governor of Mountjoy Prison* [1981] ILRM 113),

the right to equality has been interpreted to apply to all persons in Ireland regardless of whether they hold Irish citizenship or not.

**State (McFadden) v Governor of Mountjoy Prison**

As regards the position of non-citizens, it will be noted that the passage refers to individuals and Article 38.1 refers to 'persons' rather than citizens and thus the rights are conferred on all affected persons. While the constitution does not guarantee equal rights in all matters to citizens and non-citizens, in *State (McFadden) v Governor of Mountjoy Prison* [1981] ILRM 113 it was held that there could be no differentiation where the Constitution stipulated basic fairness of procedure as such was not merely granted to citizens, but also is imposed upon the courts – (117) "Once the courts have seisin of a dispute, it is difficult to see how the standards they should apply in investigating it should, in fairness, be any different in the case of an alien than those to be applied in the case of a citizen."

**(b) Observations on the implementation of the article**

589. Ireland is in compliance with the provision under review.

**Paragraph 15 of article 44**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

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

590. Section 11 of the Extradition Act 1965 (as amended) sets forth that extradition shall not be granted if there are substantial grounds for believing that an extradition request for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that the requested person's position may be prejudiced for any of these reasons. Furthermore, section 11 foresees that extradition shall not be granted if there are substantial grounds for believing that the person claimed may be subjected to torture if the request is granted.

591. While the Extradition Act 1965 (as amended) does not include the threat of prosecution or punishment on account of the requested person's sex or ethnic origin as reasons for denial of extradition, Irish courts are obliged to interpret any legislation in accordance with the European Convention on Human Rights, which establishes the prohibition of discrimination, inter alia on the grounds of sex and national or social origin or association with a national minority.

***Extradition Act 1965 (as amended)***

***Section 11 Political offences***

11. — (1) Extradition shall not be granted for an offence which is a political offence or an offence connected with a political offence.

(2) The same rule shall apply if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

(2A) The same rule shall apply if there are substantial grounds for believing that if the request for extradition is granted the person claimed may be subjected to torture.

(3) (a) This subsection applies to an offence of which a person is accused or has been convicted outside the State and the act constituting which would, if done within the State, constitute an offence under—

(i) section 3 (grave breaches of Scheduled Conventions) of the Geneva Conventions Act 1962 , as amended by section 3 of the Geneva Conventions (Amendment) Act 1998 , and

(ii) section 7 (genocide, crimes against humanity and war crimes) or 8 (ancillary offences) of the International Criminal Court Act 2006.

(b) For the purposes of this Part and without prejudice to section 3 (certain offences not to be regarded as political offences) of the Extradition (European Convention on the Suppression of Terrorism) Act 1987 , an offence to which this subsection applies shall not be regarded as a political offence or an offence connected with a political offence.

### *European Convention on Human Rights*

#### *ARTICLE 14 Prohibition of discrimination*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### **(b) Observations on the implementation of the article**

592. Ireland is in compliance with the provision under review.

## Paragraph 16 of article 44

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

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

593. Section 13 of the Extradition Act 1965 (as amended) establishes that extradition shall not be granted for revenue offences unless the relevant extradition provisions provide otherwise. Section 3 of the Act defines revenue offences.

#### *Section 13 Extradition Act 1965 (as amended).*

##### *Revenue offences.*

13.— Extradition shall not be granted for revenue offences unless the relevant extradition provisions otherwise provide.

3. ...

‘revenue offence’, in relation to any country or place outside the State, means an offence in connection with taxes, duties, customs or exchange control but does not include an offence involving the use or threat of force or perjury or the forging of a document issued under statutory authority or an offence alleged to have been committed by an officer of the revenue of that country or place in his capacity as such officer or an offence within the scope of Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances done at Vienna on the 20<sup>th</sup> day of December, 1988;

...

594. The Convention, being the relevant extradition provision, provides that States parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. Therefore, extradition cannot be refused solely on the ground that the offence concerns fiscal matters.

595. Furthermore, the Agreement between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China concerning Surrender of Fugitive Offenders establishes expressly that revenue offences are extraditable offences.

### (b) Observations on the implementation of the article

596. Ireland does not refuse extradition for corruption offences solely on the ground that the offence is also considered to involve fiscal matters.

#### **Paragraph 17 of article 44**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

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

597. While there is no legal requirement to do so, Ireland consults with requesting states as a matter of practice through its Central Authority for Extradition. This consultation aims at ensuring that all information necessary is available to the court deciding on the request in Ireland.

598. Such consultations are taking place primarily between the United Kingdom or the United States and Ireland. The Irish authorities also accept draft requests to ensure that they comply with the requirements for extradition requests. Such draft requests are examined by the Department of Justice with input from other relevant stakeholders.

599. In addition, the Director of Public Prosecutions can provide affidavits.

##### **(b) Observations on the implementation of the article**

600. Ireland consults with the requesting State party before refusing extradition. Therefore, it is in compliance with the provision under review.

##### **(c) Successes and good practices**

601. The acceptance of draft requests in order to ensure their compliance with the requirements for extradition requests can significantly improve the quality of the cooperation and accelerate the extradition process. Therefore, it is considered a good practice.

#### **Paragraph 18 of article 44**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

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

602. Ireland is party to the following bi- or multilateral extradition agreements:

1) European Convention on Extradition, 1957 (available from <http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>)

2) European Union: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (available from <http://eur-lex.europa.eu/en/index.htm>)

3) [Agreement on extradition between the European Union and the United States of America](#) (available from <http://eur-lex.europa.eu/en/index.htm>)

4) Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (available from <http://eur-lex.europa.eu/en/index.htm>)

5) Treaty on Extradition between the United States of America and Ireland (available from <http://www.dfa.ie/home/index.aspx?id=42915>)

6) Treaty on Extradition between Australia and Ireland (available from <http://www.dfa.ie/home/index.aspx?id=42915>)

7) Agreement between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the People's Republic of China concerning Surrender of Fugitive Offenders (available from <http://www.dfa.ie/home/index.aspx?id=42915>)

603. At the time of the country visit, Ireland was not negotiating any further extradition treaties or agreements.

**(b) Observations on the implementation of the article**

604. Ireland is in compliance with the provision under review. Ireland could conclude further bi- and multilateral treaties in order to enhance the effectiveness of extradition.

## **Article 45. Transfer of sentenced persons**

### **Article 45**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

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

605. Ireland is party to the Council of Europe Convention on the Transfer of Sentenced Persons and has passed the Transfer of Sentenced Persons Acts 1995 and 1997, which provide the legislative basis for the operation of the Convention between Ireland and other parties to the Council of Europe Convention.

606. The Council of Europe Convention sets out six conditions which must be fulfilled if a transfer is to be affected and these conditions are also set out in the Transfer of Sentenced Persons Acts, 1995 and 1997. It should be noted, however, that, even where all of the conditions are satisfied, there is no obligation on a State to comply with a transfer request.
607. The conditions which must be met are that:
- 1) The offender seeking a transfer is regarded as a national of the State to which the transfer is sought (the administering State),
  - 2) The order or judgement under which the sentenced person was sentenced is final,
  - 3) There is, at the time of the receipt of the request for transfer, at least six months of the sentence remaining to be served,
  - 4) The sentenced person consents to the transfer,
  - 5) The act or omission constituting the offence would also constitute an offence in the administering State, and
  - 6) Both States consent to the transfer.
608. Where a sentenced person is seeking to transfer into Ireland, legal confirmation is obtained from the State's legal officers that the offence for which the sentence is being served would also constitute an offence under Irish law. When all parties have consented to a transfer, an application is made to the High Court for the necessary warrant authorising the person's transfer from the sentencing State and his or her subsequent imprisonment in Ireland. In addition, checks are carried out to determine whether the offence would have constituted an offence in Ireland had it been committed under Irish jurisdiction and to ascertain family ties. An Garda Síochána and the prison service in the sentencing State are consulted on the potential transfer and the prison service. The decision on whether or not to accept an incoming prisoner is taken by the local government, and the offender must be informed in writing in his or her own language of the legal consequences of the transfer. Ireland does not convert sentences in dealing with transfers of sentenced persons.
609. The costs associated with incoming transfers are paid for by the prisoners themselves, if the country from which they are transferred charges for the transfer. Ireland does not impose charges on incoming or outgoing prisoners. Due to the complexity of the documentation required to affect a transfer between other States and Ireland, the process of information exchange can be time consuming, and the average time required to process a transfer is between six months to one year.
610. Ireland cited a case example of a sentenced person transferring into Ireland from the United Kingdom and provided the following statistics:

Statistics as published in the Irish Prison Service Annual Report 2013:

<b>2013</b>	<b>Inward Transfers</b>	<b>Outward Transfers</b>
Number of applications received in 2013	14	18
Number of applications from previous years active at start of 2013	24	33
Number transferred in 2013	4	10
Number refused	4	11
Number withdrawn / deemed closed	6	6
Number released	0	2
Number of applications active at end of 2013	24	22

611. Ireland does not transfer sentenced persons outside of the framework provided for by the Council of Europe Convention.

612. With regard to upcoming developments concerning the transfer of sentenced persons, Ireland referred to EU Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. The Framework Decision seeks to extend the circumstances in which a person may serve a custodial sentence, imposed in another EU state, in their home state.

**(b) Observations on the implementation of the article**

613. It is noted that Ireland transfers convicted persons within the framework of the Council of Europe Convention on the Transfer of Sentenced Persons. While the Council of Europe Convention does not require that the requested state give reasons for a refusal to agree to a transfer, the Irish legislation establishes in section 10, subsection 2 of the Transfer of Sentenced Persons Act 1995, that, where practicable and where the interests of justice do not so preclude, a statement specifying the grounds for the refusal will be provided to the applicant or requesting state as appropriate.

614. Ireland could consider concluding agreements for the transfer of convicted persons outside the framework of the Council of Europe Convention.

## Article 46. Mutual legal assistance

### Paragraph 1 of article 46

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

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

615. The Minister for Justice and Equality is the Irish Central Authority for Mutual Legal Assistance in Criminal Matters, and has the function of receiving, transmitting and otherwise dealing with and co-operating with requests in accordance with relevant international instruments.
616. The Criminal Justice (Mutual Assistance) Act 2008 governs the provision of mutual legal assistance in Ireland. The Act has been challenged once because of its ex parte nature as the subject of the order is not informed; however, the Supreme Court ruled that this did not render the Act unconstitutional (see *Brady -v- Judge Haughton & Ors*, [2005] IESC 54).
617. However, the Act is only applicable to member States of the European Union, Iceland and Norway, as well as other states designated as per S.I. No. 222/2012 - Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012. Not all States parties to the Convention have been designated, or are members of the European Union. Nevertheless, the Act allows for effect to be given to certain international agreements, or provisions of such agreements, between Ireland and other states relating to mutual assistance in criminal matters, including articles 46, 49, 50 and 54 to 57 of the Convention. The text of these articles is set out in Schedule 12 to the Act.
618. Ireland can also use the Convention as legal basis for mutual legal assistance (MLA). However, no request on the basis of the Convention had been received at the time of the country visit.
619. The Criminal Justice (Mutual Assistance) Act 2008 foresees a wide range of MLA measures, including, inter alia, the sharing of information and monitoring of financial transactions for criminal investigation purposes, the interception of telecommunications, the freezing and confiscation of property that could be evidence or the proceeds of crime, the taking of evidence, the transfer of a prisoner to give evidence or assist a criminal investigation and the service of court documents.
620. Ireland has concluded two bilateral agreements on mutual legal assistance, one with the Hong Kong Special Administrative Region of the People's Republic of China, and another one with the United States of America. In addition, Ireland is party to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Council of Europe European Convention on Mutual Assistance in Criminal Matters.
621. For incoming requests for assistance, the Minister receives such requests and makes an assessment on their lawfulness. Within the Department of Justice and Equality a specialized division has been set up to assess how the request can best be fulfilled. If the request meets all requirements, the Minister can direct the Commissioner of An Garda Síochána to make an

application to the competent Irish court for an order on the handing over of evidence by natural and legal persons. Once the judge issues the order, An Garda Síochána obtains the evidence and sends it back to the requesting state directly, or the evidence is sent back through the Ministry of Justice and Equality... When supplying evidence, the Irish authorities require assurances from the requesting state that the evidence provided can be challenged in trial in the requesting state (Brady assurance).

622. With regard to outgoing requests for assistance, the Director of Public Prosecutions can either send them directly to the requested state, or they can be sent through the Minister of Justice and Equality as central authority.
623. The Office of the Revenue Commissioners has its own system of mutual assistance regarding requests related purely to fiscal matters.
624. In 2013, Ireland received 584 and issued 200 requests for mutual legal assistance. No separate records are kept of requests relating to the Convention.

**(b) Observations on the implementation of the article**

625. Ireland can provide a wide range of assistance on the basis of the Criminal Justice (Mutual Assistance) Act 2008 and through using the Convention as a legal basis for mutual legal assistance.
626. It is recommended that Ireland clarify its ability to provide assistance to all States parties to the Convention, including those that are not designated States or member states of the European Union.
627. Ireland could consider whether the collection of separate statistics on requests related to offences established in accordance with the Convention would be beneficial.

**(c) Successes and good practices**

628. Ireland has prepared and disseminated a guide on its mutual legal assistance system, entitled “Mutual Legal Assistance in Criminal Matters - A Guide to Irish Law and Procedures”, which is available online and can help requesting States in the formulation of their MLA requests.

**Paragraph 2 of article 46**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

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

629. With regard to providing mutual legal assistance, Ireland does not distinguish between offences alleged to be committed by natural or by legal persons, and can also provide assistance

in relation to offences for which a legal person may be held liable.

**(b) Observations on the implementation of the article**

630. Ireland is in compliance with the provision under review.

**Subparagraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons;*

*(b) Effecting service of judicial documents;*

*(c) Executing searches and seizures, and freezing;*

*(d) Examining objects and sites;*

*(e) Providing information, evidentiary items and expert evaluations;*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

*(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

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

631. Sections 62 to 64 of the Criminal Justice (Mutual Assistance) Act 2008 provide for the taking of evidence or statements from persons in general. Sections 65 to 66 deal with the taking of evidence from prisoners, while sections 67 to 70 address evidence provided through television links. Sections 71 and 72 deal with evidence provided by telephone link for use outside of Ireland.

***Criminal Justice (Mutual Assistance) Act 2008***

**62** .—(1) Where it appears to a judge at a sitting of any court that criminal proceedings have been instituted or a criminal investigation is taking place in the State, the judge may issue a letter (a “letter of request”) requesting assistance in obtaining from a person

in a designated state such evidence as is specified in the letter for use in the proceedings or investigation.

(2) Application for a letter of request may be made by the Director of Public Prosecutions or a person charged in any such proceedings that have been instituted.

(3) The letter of request shall be sent to the Central Authority for transmission to the appropriate authority.

(4) Notwithstanding subsections (1) to (3), where proceedings in respect of an offence have been instituted or a criminal investigation is taking place, the Director of Public Prosecutions may issue and transmit a letter of request directly to the appropriate authority.

(5) The letter of request shall include—

(a) a statement that the evidence is required for the purpose of criminal proceedings or a criminal investigation,

(b) a brief description of the conduct constituting the offence concerned, and

(c) any other available information that may assist the appropriate authority in complying with the request.

(6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(7) When any such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to the appropriate authority unless the authority indicates that it need not be returned.

(8) A statement of the evidence of a witness—

(a) taken in accordance with a letter of request, and

(b) certified by or on behalf of the court, tribunal or authority by which it was taken to be an accurate statement of the evidence, is admissible, without further proof, in proceedings relating to the offence concerned as evidence of any fact stated therein of which oral evidence would be so admissible.

(9) A court, when considering whether any evidence taken from a person pursuant to a letter of request should be excluded in the exercise of its discretion to exclude evidence otherwise admissible, shall, where appropriate, have regard to—

(a) whether the law of the state concerned allowed the person and any other party concerned, when the evidence was being taken, to be legally represented and cross-examined, and

(b) any other respects in which the taking of the evidence may have differed from the taking of comparable evidence in the State.

(10) Nothing in this section prevents the Director of Public Prosecutions from issuing a letter of request for assistance in obtaining a statement of evidence or taking possession of material evidence in a designated state for the purposes of criminal proceedings or a criminal investigation where the witness or witnesses concerned will give evidence in those proceedings or any proceedings that may be instituted after the investigation.

(11) In this section, “appropriate authority”, in relation to the place where the evidence is to be obtained, means—

(a) a court or tribunal specified in the letter of request and exercising jurisdiction in that place, or

(b) any other authority recognised by the government of the state concerned as the appropriate authority for receiving the letter.

**63.**—(1) This section applies, subject to section 64, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a “witness”) for the purpose of criminal proceedings, or a criminal investigation, in a designated state.

(2) On receipt of such a request the Minister, if of opinion that this section applies in relation to it, may, subject to subsection (3)—

(a) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(b) send the judge a copy of the request and of any accompanying or related documents.

(3) The Minister shall not exercise the power conferred by subsection (2) unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the witness, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(4) For the purposes of this section the nominated judge—

(a) has the powers of the District Court in criminal proceedings, including its powers—

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, taking evidence on oath, compelling witnesses to give evidence or to produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

(b) may direct that the evidence, or any part of it, be received otherwise than in public if of opinion that such a direction is necessary to protect—

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(c) shall inform the witness of his or her rights under section 64.

(5) The evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment.

(6) Any person who is summoned to give evidence and who, without reasonable excuse, does not answer any question or comply with a requirement to produce any document or other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(7) The Bankers' Books Evidence Act 1879 applies to proceedings under this section as it applies to other proceedings before a court.

(8) No order for costs may be made in the proceedings.

**64.**—(1) A person is not compelled to give any evidence in proceedings under section 63 which he or she could not be compelled to give—

(a) in criminal proceedings in the State, or

(b) subject to subsection (2), in criminal proceedings in the state concerned.

(2) Subsection (1)(b) does not apply unless the claim of the person to be exempt from giving the evidence is conceded by the requesting authority.

(3) Where the claim is not conceded, the person may (subject to the other provisions of this section) be required to give the evidence to which the claim relates, but the evidence shall not be transmitted to the requesting authority if a court in the state concerned, on the matter being referred to it, upholds the claim.

(4) Without prejudice to subsection (1), a person may not be compelled under this section to give any evidence—

(a) in his or her capacity as an officer or servant of the State, or

(b) if to do so would be prejudicial to the security of the State.

(5) In any proceedings referred to in subsection (1) a certificate purporting to be signed by or on behalf of the Minister to the effect that it would be prejudicial to the security of the State for a person to give any evidence is admissible, without further proof, as evidence of that fact.

(6) In this section references to giving evidence include references to answering any question and to producing any document or other thing, and the reference in subsection (3) to the transmission of evidence given by a person is to be construed accordingly.

632. Sections 80 to 82 of the Criminal Justice (Mutual Assistance) Act 2008 provide for the service of judicial documents.

***Criminal Justice (Mutual Assistance) Act 2008***

**80.**—(1) A document may be issued by a court in the State for the purposes of or in connection with criminal proceedings notwithstanding that the person on whom it is to be served is in another state.

(2) Where the document is not in the official language or one of the official languages of that state, the person at whose request it was issued shall provide the court with a

translation of the document, or the material parts of it, into that language or one of those languages, unless subsection (3) applies.

(3) Where such a person believes that the person on whom it is to be served does not understand Irish, English or another language which is the official language or one of the official languages of that state, he or she shall—

(a) inform the court of that belief, and

(b) provide it with a translation of the document, or of the material parts of it, into a language that he or she believes that the person understands.

(4) The document—

(a) if it requires the recipient to appear in proceedings, shall not refer to a penalty for non-appearance, and

(b) shall be accompanied by—

(i) a notice stating that—

(I) no measure of restraint or punishment may be enforced directly by the court in the territory of the other state, and

(II) the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court or a specified person or authority,

(ii) a notice giving any other information required to be given by rules of court, and

(iii) where necessary, a translation of the document, or of the material parts of it, into an appropriate language.

(5) Subject to subsection (6), non-compliance by a person with a requirement specified in the document is not contempt of court or a ground for issuing a warrant to compel the person to attend the proceedings concerned.

(6) Subsection (5) does not apply if the document is subsequently served on the person in the State.

(7) Subject to subsection (9), a person who is in the State in compliance with a requirement in the document to appear as a defendant in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State other than an offence or offences specified in the document.

(8) Subject to subsection (9) , a person who is in the State in compliance with a requirement in the document to appear as a witness in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State.

(9) The immunity provided for in subsections (7) and(8) ceases when—

(a) a period of 15 days has elapsed from the date when the person's presence in the State is no longer required by the court concerned and the person, having had an opportunity to leave the State during that period, has not done so, or

(b) the person, having left the State during that period, returns to it.

81.—(1) A document referred to in section 80 may be served in a designated state by post.

(2) Subject to subsection (3), it may be transmitted to a designated state with a request for service otherwise than by post in accordance with the relevant international instrument.

(3) Where the person to be served is in a member state, service otherwise than by post may be requested only if—

(a) the address of the person is unknown or uncertain,

(b) it has not been possible to serve the document by post, or

(c) the person at whose request the document was issued has good reason for believing that service by post would not be effective or is inappropriate.

(4) Such a document may be served in a state other than a designated state in accordance with arrangements made by the Minister.

82.—(1) This section applies to a request for service on a person in the State of—

- (a) a document requiring the person to appear as a defendant or attend as a witness in criminal proceedings in a designated state, and
  - (b) any other document issued by a court or authority (including a prosecuting authority) in that state in criminal proceedings, including a document relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs of proceedings.
- (2) Unless the request is for personal service, the Minister may cause the document, together with the notice referred to in subsection (11), to be served by post on the person concerned.
- (3) Where the request is for personal service, the document, if not in Irish or English, shall be accompanied—
- (a) by a translation of the document, or of the material parts of it, into either of those languages, and
  - (b) if it is known that the person understands only another language or languages and the document is not in that language or one of those languages, by such a translation into that other language or one of those other languages.
- (4) Where the request is for personal service, the Minister shall, subject to subsection (5), direct the Commissioner of the Garda Síochána to cause the document to be served personally on the person concerned.
- (5) Subsection (4) does not apply to a request for personal service from a member state unless—
- (a) the address of the person concerned is unknown or uncertain,
  - (b) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,
  - (c) it has not been possible to serve the document by post, or
  - (d) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.
- (6) The Commissioner shall—

(a) cause the document, together with the notice referred to in subsection (11) , to be served by a member of the Garda Síochána in accordance with the request and send proof of the service to the Minister for transmission to the requesting authority concerned, or

(b) if it is not possible to effect service, cause the Minister to be notified accordingly, stating the reason for the non-service.

(7) A person served under this section with a document is not under any obligation under the law of the State to comply with any requirement in it.

(8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears, he or she will not, subject to subsection (10) , be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document.

(9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to subsection (10), be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State.

(10) The immunity provided for in subsections (8) and (9) ceases when—

(a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or

(b) the person, having left the state during that period, returns to it.

(11) The notice to accompany a document served under this section shall—

(a) state the content of subsection (7), (8) or (9), as appropriate, and subsection (10),

(b) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and

(c) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges as he or she would have in that capacity in criminal proceedings in the State.

(12) If there is reason to believe that the person understands only a language or languages other than Irish or English, the notice shall be translated into that other language or one of those other languages.

633. Section 74 of the Criminal Justice (Mutual Assistance) Act 2008 provides for the execution of searches and seizures, while Part 4 of the Act addresses the freezing of property in chapter 2.

**74.—**(1) Subject to subsections (2) and (3), this section applies to a request for assistance in obtaining evidence for the purposes of criminal proceedings, or a criminal investigation, in a designated state, where there is power under any enactment to issue a warrant for the search of a place in respect of an offence constituted by the conduct giving rise to the request.

(2) This section does not apply to such a request from a member state unless the act is punishable—

(a) under the law of the State and the member state by imprisonment for a maximum period of at least 6 months, or

(b) under the law of the State by such imprisonment and under the law of the member state by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

(3) This section does not apply to such a request from a designated state (other than a member state) unless the conduct giving rise to the request is punishable under both the law of the State and the law of that state.

(4) The Minister, if of opinion that this section applies to the request, may, subject to subsection (5), send the request and any accompanying and related documents to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(5) In the case of a request from a designated state, the Minister may not proceed in accordance with subsection (4) unless an assurance is given by the requesting authority—

(a) that any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

(b) that the evidence will be returned when no longer required for the purpose so specified (or any other purpose for which such consent has been obtained), unless the Minister indicates that its return is not required.

(6) A member of the Garda Síochána shall not enter any place in furtherance of the request without the consent of the occupier or the entry being authorised by a warrant under this section.

(7) Unless the evidence sought is already in the possession of the Garda Síochána, a member of the Garda Síochána not below the rank of inspector shall, on production of a copy of the request and of any accompanying or related documents, apply to the judge of the District Court for the district where the place concerned is situated for a warrant under subsection (8).

(8) If, on the application, the judge is satisfied that this section applies to the request and it appears to him or her that there are reasonable grounds for believing that entry to any place is necessary for the purposes of complying with it, the judge may issue a warrant for the search of the place and any persons found there.

(9) The warrant shall be expressed and operate to authorise a named member of the Garda Síochána, accompanied by such other members or persons or both as the member thinks necessary—

(a) to enter the place named in the warrant at any time or times within one week of the date of its issue, on production, if so requested, of the warrant and, if necessary, by the use of reasonable force,

(b) to search it and any person found there,

(c) to access, examine, seize, take away and retain any material found there, or in the possession of a person present there at the time of the search—

(i) which the member reasonably believes to be evidence of, or relating to, the commission of the offence concerned or assets or proceeds deriving from criminal conduct in the designated state or their identity or whereabouts, or

(ii) whose retention is necessary to comply with the request,

(d) to make a copy of any document so seized and to take the copy away, and

(e) to take such other steps as appear to the member to be necessary for preserving any such material and preventing interference with it.

(10) Where material referred to in subsection (9) consists of or includes information in non-legible form, the warrant has effect as an order to produce the material, or to give access to it, in a form which is legible and in which it can be taken away.

(11) The warrant—

(a) does not confer any right to examine, seize, take away or retain documents which are subject to legal privilege or to have them produced or to be given access to them, and

(b) subject to paragraph (a) and subsection (14), has effect notwithstanding any other obligation as to secrecy or other restriction on the disclosure of information under any enactment or rule of law.

(12) A member acting under the warrant may—

(a) require any person present at the place where the search is being carried out to give his or her name and address to the member, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct the member in carrying out his or her duties,

(ii) does not comply with a requirement under paragraph (a), or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(13) A person who—

(a) obstructs or attempts to obstruct a member acting under the authority of a warrant under this section,

(b) does not comply with a requirement under subsection (12)(a), or

(c) gives a false or misleading name or address to a member, is guilty of an offence and liable on summary conviction to a fine not exceeding € 2,500 or imprisonment for a term not exceeding 6 months or both.

(14) Where—

(a) material has been supplied to a Government department or other authority by or on behalf of the government of another state, and

(b) an undertaking was given that the material would be used only for a particular purpose or purposes, an order under this section does not have the effect of requiring or permitting the production of, or the giving of access to, the material for any other purpose without the consent of that government.

(15) The power to issue a warrant under this section is without prejudice to any other power conferred by statute to issue a warrant for the search of any place or person.

(16) In this section—

“evidence” includes evidence of or relating to assets or proceeds deriving from criminal conduct in the designated state concerned or their identity or whereabouts;

“member state” includes the Swiss Confederation.

634. Section 83 of the Act covers the examination of objects and sites.

**83** .—(1) A request for the examination of an object or site in a designated state for the purposes of a criminal investigation or criminal proceedings may be sent by the Director

of Public Prosecutions either to the Central Authority for transmission to the appropriate authority in the designated state or directly to that authority.

(2) A request from a designated state for the examination of an object or site for such purposes may be sent by the Minister to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(3) A request under this section shall include a description of the object or site that is sufficient to enable it to be clearly identified.

(4) Section 74 shall apply and have effect in relation to such a request from a designated state with the modification that, where necessary, a warrant may be issued under subsection (8) of that section requiring the owner or occupier of the object or site to allow access to it by a member of the Garda Síochána and such other persons as may accompany the member for the purposes of the examination and with any other necessary modifications.

(5) Subsection (4) is without prejudice to section 97.

635. Part 5 of the Criminal Justice (Mutual Assistance) Act 2008 covers the provision of evidence, including from expert witnesses, in accordance with section 61. Part 2 of the Act covers information on financial transactions for the purpose of criminal investigations. Section 7 (2) addresses the provision of certificates for evidence, while section 7 (3) stipulates that either the original or a copy of requested documents shall be transmitted.

61.—In this Part—

“evidence” does not include information provided under Part 2 in relation to financial transactions;

“place” includes premises;

“witness” includes an expert witness and a person suspected of the offence which has given rise to the request concerned.

7.—(1) Evidence obtained in the State in compliance with a request shall be transmitted to the designated state concerned in accordance with the directions of the Minister.

(2) If any such evidence is to be accompanied by a certificate, affidavit or other verifying document, the judge concerned or, as the case may be, the appropriate member of the Garda Síochána or officer of the Revenue Commissioners, shall supply the required document for transmission to the designated state.

636. Where the evidence consists of a document, the original or a copy shall be transmitted and, where it consists of any other item, the item itself or a description, photograph or other representation of it shall be transmitted, as may be necessary to comply with the request. The Criminal Justice (Mutual Assistance) Act 2008 does not regulate the identification or tracing of proceeds of crime, property, instrumentalities or other things for evidentiary purposes.

637. Sections 65 and 66 provide for the transfer of prisoner to the requesting State to give evidence or assist in an investigation. However, there is no provision for the facilitation of the voluntary appearance of persons other than prisoners in the requesting State party.

**(b) Observations on the implementation of the article**

638. Ireland is in compliance with the provision under review.

**Subparagraphs 3 (j) and 3 (k) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

...

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

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

639. The Criminal Justice (Mutual Assistance) Act 2008 provides for the execution of freezing order in sections 34 and 35. However, it does not address the identification and tracing of proceeds of crime in accordance with the provisions of chapter V of the Convention.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 34***

34.—(1) An external freezing order from a member state and a certificate duly completed and certified as accurate by the issuing judicial authority together with a request or instruction relating to the subsequent treatment of the evidence or property concerned shall, unless otherwise provided by a declaration by the State under Article

4.2 of the Framework Decision, be transmitted to the Central Authority in connection with a request for enforcement of the order.

(2) A request from any other designated state for the enforcement of an external freezing order shall be accompanied by—

(a) a duly certified copy of the order,

(b) a statement of the grounds—

(i) for making the order, and

(ii) for believing that the evidence or property concerned will be subject to an order of confiscation, and any other information required by the relevant international instrument.

(3) Transmission of the documents mentioned in subsection (1) or (2) shall be by any means capable of producing a written record under conditions which allow the Central Authority or the High Court to establish the documents' authenticity.

(4) An issuing judicial authority is deemed to have complied with subsection (3) if facsimile copies of the external freezing order, the certificate (where appropriate) and any translation thereof are transmitted in compliance with any regulations that may be made under subsection (6).

(5) If the Central Authority or the High Court is not satisfied that a facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be such a copy, the Central Authority or the Court shall—

(a) request the issuing judicial authority to cause the original or a copy of the document to be transmitted to the Central Authority, and

(b) agree with that judicial authority on the manner in which the original or copy is to be so transmitted.

(6) The Minister may, if he or she considers it necessary for the purposes of ensuring the accuracy of documents transmitted in accordance with this section, make regulations—

(a) prescribing procedures to be followed in connection with the transmission of documents in accordance with this section, and

(b) specifying features to be present in any equipment being used in that connection.

### **Section 35**

35.—(1) The Central Authority shall, on receipt of an external freezing order, certificate (where appropriate), any other supporting or related documents and any translation, forthwith cause an application to be made to the High Court for an order (in this Part referred to as a “freezing co-operation order”) recognising the external freezing order and prohibiting any person from dealing with the property specified in the external freezing order.

(2) The application may be made *ex parte* and otherwise than in public and shall be accompanied by the documents mentioned in subsection (1) or copies thereof and, in the case of a designated state (other than a member state), shall be made with the consent of the Minister.

(3) An application from a member state for the enforcement of an external freezing order shall be dealt with as soon as possible and, whenever practicable, within 24 hours of receipt of the order and a duly completed certificate.

(4) On an application under this section the Court may, subject to subsection (5), make a freezing co-operation order, subject to any conditions that may be specified in the order.

(5) The Court may—

(a) refuse to make a freezing co-operation order on a ground mentioned in section 3 or 46, or

(b) postpone its making on a ground mentioned in section 47.

(6) Where a request from a member state concerns an offence referred to in Article 3(2) of the Framework Decision which is punishable in that state by a maximum term of imprisonment of not less than 3 years, the Court may not refuse to make a freezing co-operation order solely on the ground that the conduct constituting the offence concerned does not constitute an offence under the law of the State.

(7) Where—

(a) an external freezing order is for the protection of evidence,

(b) it is necessary to ensure that the evidence is admissible in the proceedings concerned, and

(c) for that purpose certain formalities and procedures in the enforcement of the external freezing order are expressly indicated by the issuing judicial authority, the freezing co-operation order shall make provision for observing those formalities and procedures, unless their observance would be contrary to the fundamental principles of the law of the State.

(8) The Court shall cause notice of the freezing co-operation order to be given to any person who appears to be or is affected by it, unless the Court is satisfied that it is not reasonably possible to ascertain the person's whereabouts.

640. Chapter 3 of Part 6 of the Criminal Justice (Mutual Assistance) Act 2008 regulates the restitution of property.

***Section 85***

85.—(1) This section applies to a request for property obtained by criminal means to be placed at the disposal of the requesting authority with a view to the return of the property to its owner.

(2) The request shall be in writing and shall include or be accompanied by—

(a) a statement that—

(i) a specified person has obtained the property by committing an offence under the law of the requesting state, and

(ii) the return of the property to its owner does not prejudice the rights of any bona fide third parties in relation to it, and

(b) the following information:

(i) a description of the property;

(ii) its location;

(iii) the name and address of its owner; and

(iv) any other information likely to facilitate compliance with the request.

**(b) Observations on the implementation of the article**

641. Ireland is in compliance with the provision under review.

**Paragraphs 4 and 5 of article 46**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.*

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

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

642. While section 9 of the Criminal Justice (Mutual Assistance) Act 2008 foresees the spontaneous transmission of information to a competent authority of a designated state, the Irish authorities confirmed that section 9 was not used in practice. However, the spontaneous transmission of information was carried out frequently through police-to-police cooperation and on an informal basis through INTERPOL, Europol or cooperation among Financial Intelligence Units.

643. Subsection 2 of section 9 sets forth that the providing authority may impose conditions on the use by the competent authority of the information spontaneously transmitted, while subsection 4 of section 9 establishes the requirement for competent authorities receiving information to comply with any conditions imposed on its use by the providing authority. However, the Criminal Justice (Mutual Assistance) Act 2008 does not foresee an exception for the disclosure of exculpatory information.

*Criminal Justice (Mutual Assistance) Act 2008*

**Section 9**

9.-(1) Without prejudice to section 100, the Director of Public Prosecutions, Commissioner of the Garda Síochána or Revenue Commissioners (in this section referred to as the “providing authority”) may, in accordance with the relevant international instrument and without receiving a request to that effect, communicate information to a competent authority in a designated state either relating to matters which might give rise to such a request or for the purpose of current criminal investigations or criminal proceedings or of initiating either of them.

(2) The providing authority may impose conditions on the use by the competent authority of the information so communicated.

(3) Subsection (2) does not apply in relation to the competent authority of a designated state which has made a declaration under paragraph 4 of Article 11 of the Second Additional Protocol unless, as required by such a declaration, the authority has received prior notice of the nature of the information to be communicated and has agreed to its being communicated.

(4) Any conditions imposed by a competent authority in a designated state on the use of information communicated by it to the providing authority shall be complied with pursuant to the relevant international instrument.

(5) In this section references to a competent authority in a designated state are references to the authority in such a state appearing to the providing authority to be the appropriate authority for receiving or communicating the information concerned.

**(b) Observations on the implementation of the article**

644. Ireland can spontaneously transmit information to the competent authorities of another State party.

**Paragraph 8 of article 46**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

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

645. The grounds for refusal of mutual legal assistance are set forth in section 3 of the Criminal Justice (Mutual Assistance) Act 2008. Bank secrecy is not included among the grounds for refusal, and Irish authorities regularly obtain evidence held by banks in mutual legal assistance cases.

*Criminal Justice (Mutual Assistance) Act 2008*

*Section 3*

3.-(1) Assistance shall be refused-

(a) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (ordre public),

(b) if there are reasonable grounds for believing-

(i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,

(ii) that providing assistance-

(I) may prejudice a person's position for any of those reasons, or

(II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,

(c) if the request is not in accordance with the relevant international instrument, or

(d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

(2) In this section, "torture" has the meaning given to it by the Criminal Justice (United Nations Convention against Torture) Act 2000.

**(b) Observations on the implementation of the article**

646. Ireland is in compliance with the provision under review.

**(c) Successes and good practices**

647. The lifting of bank secrecy in order to respond to requests for mutual legal assistance is frequently carried out in practice and the Garda Síochána can request such information from banks and financial institutions.

**Paragraph 9 of article 46**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

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

648. The Criminal Justice (Mutual Assistance) Act 2008 facilitates the provision of assistance in criminal matters. Section 63 of the Act sets forth that that section applies to requests for assistance in obtaining evidence in Ireland from a person for the purpose of criminal proceedings, or a criminal investigation, in a designated state. Section 2 of the Act defines criminal proceedings and criminal investigation:

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 63***

63.—(1) This section applies, subject to section 64, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a “witness”) for the purpose of criminal proceedings, or a criminal investigation, in a designated state.

(2) On receipt of such a request the Minister, if of opinion that this section applies in relation to it, may, subject to subsection (3)—

(a) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(b) send the judge a copy of the request and of any accompanying or related documents.

(3) The Minister shall not exercise the power conferred by subsection (2) unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the witness, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(4) For the purposes of this section the nominated judge—

(a) has the powers of the District Court in criminal proceedings, including its powers—

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, taking evidence on oath, compelling witnesses to give evidence or to produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

(b) may direct that the evidence, or any part of it, be received otherwise than in public if of opinion that such a direction is necessary to protect—

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(c) shall inform the witness of his or her rights under section 64.

(5) The evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment.

(6) Any person who is summoned to give evidence and who, without reasonable excuse, does not answer any question or comply with a requirement to produce any document or

other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding € 2,500 or imprisonment for a term not exceeding 6 months or both.

(7) The Bankers' Books Evidence Act 1879 applies to proceedings under this section as it applies to other proceedings before a court.

(8) No order for costs may be made in the proceedings.

## **Section 2**

“criminal conduct” means any conduct –

- (a) which constitutes an offence, or
- (b) which occurs in a designated state and would, if it occurred in the State, constitute an offence”.

“criminal investigation”—

- (a) means an investigation into whether a person has committed an offence (within the meaning of the relevant Part) under the law of the State or a designated state in respect of which, where appropriate, a request for assistance may be made under the relevant international instrument, and
- (b) includes an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds;

“criminal proceedings” means proceedings, whether in the State or a designated state, against a person for an offence and includes—

- (a) proceedings to determine whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds,
- (b) proceedings concerning measures relating to—
  - (i) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,
  - (ii) conditional release, or

(iii) a stay or interruption of enforcement of a sentence or preventive measure,

(c) in relation to requests for assistance by a requesting authority in a member state—

(i) without prejudice to subsection (2)(b) of sections 74 and 75 (requests for evidence or evidential material), proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters,

(ii) proceedings in claims for damages arising from wrongful prosecution or conviction,

(iii) clemency proceedings,

(iv) civil actions joined to criminal proceedings, as long as the criminal court concerned has not taken a final decision in the criminal proceedings, and

(v) proceedings in respect of measures relating to—

(I) the deferral of delivery or suspension of enforcement of a sentence or preventive measure,

(II) conditional release, or

(III) a stay or interruption of enforcement of a sentence or preventive measure, and

(d) in relation to requests for assistance by a requesting authority in a designated state (other than a member state), without prejudice to subsection (3) of sections 74 and 75 proceedings brought by an administrative authority in respect of conduct which is punishable under the law of the State or that state or of both of them, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

“offence”—

- (a) means an offence in respect of which a request for mutual assistance may be made under the relevant international instrument,
- (b) includes a revenue offence, if or to the extent that the relevant international instrument or the law of the designated state concerned provides for mutual assistance in respect of such an offence, but
- (c) does not include a political offence;

**Section 6**

6.-(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to-

- (a) the form of the requests and the information they are to provide,
- (b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,
- (c) any restrictions in the instrument in relation to the refusal of particular requests,
- (d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,
- (e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and
- (f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

(2) This Act applies only to requests made after the relevant international instrument has entered into force, or, as the case may be, has been applied, between the State and the designated state concerned.

(3) Requests received and not executed before the date on which they would fall to be dealt with under this Act shall be dealt with, or continue to be dealt with, as if this Act had not been passed.

(4) Requests shall-

(a) be addressed to the Central Authority, unless the relevant international instrument provides otherwise,

(b) where appropriate, indicate the relevant international instrument under which the request is being made, and

(c) be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

(5) Requests to a designated state and any supporting or related documents shall be accompanied, where appropriate, by a translation of the requests and of any such documents, or of the material parts of them, into the official language or one of the official languages of that state, unless it is known that such a translation is not required by the appropriate authority in the designated state concerned.

(6) Requests from a designated state and any supporting or related documents, if not in Irish or English, shall be accompanied by a translation into either of those languages of the requests and of any such documents or the material parts of them.

(7) The Central Authority may-

(a) accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary, and

(b) seek such additional information from the requesting authority concerned as may be necessary to enable a decision to be taken on a request.

(8) Action on a request may be postponed by the Minister if the action would prejudice criminal proceedings or a criminal investigation.

(9) Before refusing a request or postponing action on it the Minister shall, where appropriate and having consulted the requesting authority, consider whether the request may be granted partially or subject to such conditions as he or she considers necessary.

(10) Reasons shall be given for any such refusal or postponement.

(11) The Minister shall also inform a requesting authority of any circumstances that make it impossible to comply with the request or are likely to delay compliance significantly. '

649. As such, Ireland can provide assistance in the absence of dual criminality only with regard to non-coercive measures. The Irish authorities confirmed that any measures involving the exercise of statutory powers under the Criminal Justice (Mutual Assistance) Act 2008 are regarded as 'coercive', such as the taking of evidence from a witness and the execution of search warrants.

650. Ireland has refused requests on the ground of absence of dual criminality, such as requests for searches in relation to failure to pay child maintenance, which is not criminalized in Ireland.

651. The Criminal Justice (Mutual Assistance) Act 2008 does not allow or foresee the refusal of a request because it involves matters of a de minimis nature.

**(b) Observations on the implementation of the article**

652. In the absence of dual criminality, Ireland renders assistance involving non-coercive action, but not involving coercive measures.

653. Ireland could consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to article 46 in the absence of dual criminality.

**Paragraphs 10 to 12 of article 46**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

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

654. Section 65 of the Criminal Justice (Mutual Assistance) Act 2008 addresses the transfer of persons detained or serving a sentence to Ireland, while section 66 regulates the transfer of such persons from Ireland to another State.

655. Sections 65 and 66 require the consent of the person to the transfer and establish that the warrant is the authority for detaining the person in the state to which he or she was transferred, as well as for returning the person to the State from which he or she was transferred from, and stipulate that the prisoner cannot be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence committed before arriving in the State to which he or she was transferred. For prisoners transferred from Ireland to another State, section 66 also provides for the prisoner to receive credit for the sentence being served while in custody of the State to which he or she was transferred.

656. The legislation does not regulate the obligation to, without delay, return the person to the custody of the State from which the person was transferred. It also does not stipulate that Ireland should not require the State party from which the person was transferred to initiate extradition proceedings for the return of the person. However, in practice, these obligations are complied with.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 65***

65.-(1) In this section, “prisoner” means a person who is detained in custody in a designated state-

(a) under a sentence or order of a court exercising criminal jurisdiction in that state,  
or

(b) having been transferred there from the State under section 5 (issue of warrants for the transfer of sentenced prisoners outside State) of the Transfer of Sentenced Prisoners Act 1995.

(2) Where-

(a) a witness order has been made or a witness summons issued in criminal proceedings in respect of a prisoner, or

(b) it appears to the Minister that it is desirable for a prisoner to be identified in, or otherwise to assist by his or her presence, such proceedings or a criminal investigation, the Minister, at the request of the Director of Public Prosecutions or a person charged in any such proceedings, may issue a warrant providing for the prisoner to be transferred to the State.

(3) A warrant shall not be issued unless the appropriate authority in the designated state concerned provides a written statement by the prisoner consenting to be transferred for that purpose.

(4) A warrant issued under this section shall be transmitted by the Central Authority to the authority in the designated state that appears to the Central Authority to be the appropriate authority for receiving it, together with a request for the transfer of the prisoner to the State.

(5) The warrant is authority for-

(a) bringing the prisoner to the State,

(b) taking the prisoner to, and detaining him or her in, a prison,

(c) taking the prisoner to and from the place where the prisoner's evidence is to be heard, and

(d) returning the prisoner in custody to the designated state.

(6) A prisoner is deemed to be in lawful custody while in the State.

(7) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(8) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of a warrant under this section is deemed to be such a member for the purposes of this section.

(9) The law relating to-

(a) the control of entry into the State of non-nationals (within the meaning of the Immigration Act 1999),

(b) the duration and conditions of their stay in the State,

(c) their obligations while in the State, and

(d) their removal from the State, does not apply in relation to a prisoner who is a non-national while he or she is present in the State in pursuance of a warrant under this section but, if the warrant ceases to have effect while the prisoner is so present, that law shall thereupon apply, with any necessary modifications, in relation to him or her.

(10) A prisoner while in the State pursuant to the warrant may not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence committed before arriving in the State.

### **Section 66**

66.-(1) The Minister may, on receipt of a request in that behalf, issue a warrant for the transfer of a person serving a sentence of imprisonment in a prison (a “prisoner”) to a designated state for the purpose of-

(a) giving evidence in criminal proceedings, or assisting in a criminal investigation, in that state, or

(b) being identified in, or otherwise assisting by his or her presence, such proceedings or investigation.

(2) A warrant may be issued only if the prisoner has made a written statement consenting to his or her being transferred for that purpose.

(3) Where, by reason of the prisoner's youth or physical or mental condition, it appears to the Minister inappropriate for the prisoner to act for himself or herself, the consent shall be given by a person appearing to the Minister to be an appropriate person to act on the prisoner's behalf.

(4) A warrant is authority for-

(a) taking the prisoner from the prison and delivering him or her into the custody of a person representing the requesting authority concerned at a place of departure from the State,

(b) detaining the prisoner in the designated state, and

(c) bringing the prisoner back to the State and returning him or her to the prison.

(5) A warrant may not be issued unless an assurance is given by the requesting authority that the prisoner will not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence under the law of the designated state committed before the prisoner's departure from the State.

(6) The period spent in custody under the warrant is included in the period of imprisonment or detention to be served by the prisoner in the State.

(7) A prisoner is deemed to be in lawful custody when being taken from or to a prison under the warrant.

(8) A prisoner who escapes from custody or is unlawfully at large may be arrested without warrant by a member of the Garda Síochána and taken in custody to a prison.

(9) A person (other than a member of the Garda Síochána) who is authorised to have custody of a prisoner by or for the purposes of a warrant under this section is deemed to be such a member for the purposes of this section.

**(b) Observations on the implementation of the article**

657. While the legislation does not specifically foresee the return of persons without delay to the transferring State party and their return without the need for extradition proceedings to initiate their return, Ireland complies with these obligations in practice.

## **Paragraph 13 of article 46**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

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

658. The Minister for Justice and Equality has been designated as the Irish central authority in section 8 of the Criminal Justice (Mutual Assistance) Act 2008. Ireland has notified the Secretary-General of the United Nations of the central authority.

#### ***Criminal Justice (Mutual Assistance) Act 2008***

##### ***Section 8***

In accordance with notification under article 46 (13) of the Convention the central authority in Ireland competent to receive requests for mutual legal assistance is:

The Minister for Justice and Equality

Central Authority for Mutual Assistance

Department of Justice and Equality

51 St. Stephen's Green

Dublin 2

### **(b) Observations on the implementation of the article**

659. Ireland is in compliance with the provision under review.

#### **Paragraph 14 of article 46**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

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

660. Ireland accepts requests for mutual legal assistance in English or Irish, and has notified the Secretary-General of the United Nations to this effect.

661. In accordance with section 6 (1) of the Criminal Justice (Mutual Assistance) Act 2008, the relevant international instruments have effect in Ireland in relation to the form of the requests and the information they are to provide, subject to the provisions of the Criminal Justice (Mutual Assistance) Act 2008. In addition, subsection 4 of section 6 establishes that requests shall be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

662. Ireland accepts requests made by email if they are confirmed through the provision of hard copy documentation. However, Ireland does not accept oral requests.

#### ***Criminal Justice (Mutual Assistance) Act 2008***

6.—(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to—

(a) the form of the requests and the information they are to provide,

(b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,

(c) any restrictions in the instrument in relation to the refusal of particular requests,

(d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,

(e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and

(f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

...

(4) Requests shall—

(a) be addressed to the Central Authority, unless the relevant international instrument provides otherwise,

(b) where appropriate, indicate the relevant international instrument under which the request is being made, and

(c) be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

**(b) Observations on the implementation of the article**

663. Ireland could consider accepting oral requests made in urgent circumstances if they are confirmed in writing afterwards.

**Paragraphs 15 and 16 of article 46**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

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

664. In accordance with section 6 (1) of the Criminal Justice (Mutual Assistance) Act 2008, the relevant international instruments, such as the Convention, have effect in Ireland in relation to the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with, subject to the provisions of the Criminal Justice (Mutual Assistance) Act 2008. Subsection 7 of section 6 stipulates that the Central authority may seek additional information as may be necessary to enable a decision to be taken on a request.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 6***

6.—(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to—

- (a) the form of the requests and the information they are to provide,
- (b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,
- (c) any restrictions in the instrument in relation to the refusal of particular requests,
- (d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,
- (e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and
- (f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

...

(7) The Central Authority may—

(a) accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary, and

(b) seek such additional information from the requesting authority concerned as may be necessary to enable a decision to be taken on a request.

**(b) Observations on the implementation of the article**

665. Ireland is in compliance with the provision under review.

**Paragraph 17 of article 46**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

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

666. In accordance with subsection 6 (1) (e) of the Criminal Justice (Mutual Assistance) Act 2008, the relevant international instruments have effect in Ireland in relation to the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, subject to the provisions of the Criminal Justice (Mutual Assistance) Act 2008.

***Criminal Justice (Mutual Assistance) Act 2008***

6.—(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to—

(a) the form of the requests and the information they are to provide,

(b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,

(c) any restrictions in the instrument in relation to the refusal of particular requests,

(d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,

(e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and

(f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

...

**(b) Observations on the implementation of the article**

667. Subsection 6 (1) (e) allows for the execution of the request in accordance with Irish legislation, and, to the extent not contrary to Irish domestic law and where possible, with the procedures specified in the request. Ireland is in compliance with the provision under review.

**Paragraph 18 of article 46**

*18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

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

668. The Criminal Justice (Mutual Assistance) Act 2008 provides for the hearing of witnesses through video conferencing in sections 67 to 70. However, the hearing of experts through video conferencing is not regulated.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 67***

67.-(1) This section applies where-

- (a) criminal proceedings have been instituted in the State against a person,
- (b) a witness in the proceedings is in a designated state, and
- (c) it is not desirable or possible for the witness to give evidence in person.

(2) Where this section applies, an application may be made by or on behalf of the Director of Public Prosecutions or the accused to a judge of the court of trial at a sitting of the court to issue a letter (a “letter of request”) requesting the provision of facilities in the designated state concerned to enable the witness to give evidence in the proceedings through a live television link.

(3) The judge may grant the application if satisfied that it is not desirable or possible for the witness to give evidence in person.

(4) The letter of request shall be accompanied by a document signed by the judge and stating-

- (a) the name, address and, if known, the nationality of the witness,
- (b) the court which is to hear the evidence,
- (c) the name of the judge conducting the hearing,
- (d) why it is not desirable or possible for the witness to give evidence in person, and
- (e) the likely date of the hearing.

(5) The request shall be sent to the Central Authority for transmission-

- (a) in urgent cases, to the court or tribunal specified in the request, or
- (b) in any other case, to any authority recognised by the state concerned as the appropriate authority for receiving such requests.

(6) If the name of the judge conducting the hearing is not available at the time the letter of request is issued, it shall be sent to the Central Authority for such transmission as soon as it becomes available.

(7) The accused shall be given an opportunity to cross-examine and re-examine the witness at the hearing.

(8) Evidence given through the live television link at the hearing shall be videorecorded.

(9) The videorecording of the evidence or, if the accused consents, an edited version of it, is admissible at the trial of the offence as evidence of any fact of which direct oral evidence would be admissible, unless the trial judge is of the opinion that to do so would not be in the interests of justice.

(10) The provisions of the relevant international instrument concerning a hearing through a live television link, in so far as they relate to a requesting state and are not incorporated in this section, have effect in the State, with the necessary modifications, in relation to a hearing under this section.

(11) A witness who makes a statement which is material in the proceedings and which he or she knows to be false or does not believe to be true is guilty of an offence and liable-

(a) on summary conviction, to a fine not exceeding \2,500 or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to a fine not exceeding \10,000 or imprisonment for a term not exceeding 5 years or both.

(12) Proceedings for an offence under subsection (11) may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the State.

(13) In this section “videorecording” means any recording, on any medium, from which a moving image may be produced and includes the accompanying soundtrack, and cognate words shall be construed accordingly.

### ***Section 68***

68.-(1) This section applies to a request for a witness who is present in the State to give evidence through a television link in criminal proceedings before a court or tribunal in a designated state.

(2) The request shall include the following information:

(a) the name, address and, if known, the nationality of the witness;

- (b) the court or authority making the request;
- (c) the name of the person or persons who will conduct the hearing;
- (d) a statement as to why it is not desirable or possible for the witness to give evidence in person;
- (e) the likely date of the hearing.

**Section 69**

69.-The Minister, if of opinion-

- (a) that it is not desirable or possible for the witness to give evidence in person in the state concerned, and
- (b) that the request complies with section 68,

may request the President of the District Court to nominate a judge of that Court to summon the witness to attend at a suitable venue within the judge's district for the purpose of giving effect to the request.

**Section 70**

70.-(1) The nominated judge of the District Court shall summon the witness concerned to give evidence through a live television link at a suitable venue within the district to which the judge is assigned.

(2) For the purpose of ensuring compliance with the request the nominated judge has the powers

of the District Court in criminal proceedings, including its powers-

- (a) in relation to securing the attendance of the witness, taking evidence on oath and compelling the witness to give evidence or to produce documents or other things, and
- (b) under any enactment or rule of law relating to the protection of witnesses against intimidation.

(3) The evidence shall be given in accordance with the laws and procedures of the requesting state to the extent that they do not contravene the fundamental principles of the law of the State.

(4) In particular, the witness may not be compelled to give any evidence which he or she could not be compelled to give in criminal proceedings in the State or the designated state.

(5) Where necessary for the protection of the witness and in agreement with the requesting authority, the evidence may be taken otherwise than in public.

(6) Subject to subsection (7), the proceedings shall be conducted directly by, or under the direction of, a judge of the designated state in accordance with its own laws.

(7) Where the nominated judge is of opinion that the taking of evidence is not in accordance with the fundamental principles of the law of the State, he or she shall take immediate action to ensure that those principles are complied with.

(8) The nominated judge and the witness shall be assisted by an interpreter, where necessary.

(9) When the evidence has been taken, the nominated judge shall send a record of the evidence given by the witness to the Minister for transmission to the requesting authority, indicating-

(a) the date and place of the taking of the evidence,

(b) the name of the witness,

(c) the name and function of any other person present and participating in the proceedings,

(d) whether an oath was administered to the witness, and

(e) the technical conditions under which the proceedings took place.

(10) A witness who-

(a) makes a statement material in the proceedings which he or she knows to be false or does not believe to be true, or

(b) does not testify when under an obligation to do so, is guilty of an offence and liable-

(i) on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both, or

(ii) on conviction on indictment, to a fine not exceeding €10,000 or imprisonment for a term not exceeding 5 years or both.

**(b) Observations on the implementation of the article**

669. While the legislation only foresees the hearing of witnesses through video conference, but not the hearing of experts through such media, Ireland can allow for their hearing through videoconference in practice.

**Paragraph 19 of article 46**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

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

670. The Criminal Justice (Mutual Assistance) Act 2008 stipulates that the relevant international instrument concerned has effect in Ireland in relation to any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it (see subsection 1 (d) of section 6).

671. In addition, for active requests, subsection 6 of section 73 establishes that evidence obtained shall not be used for any purpose other than that permitted by the relevant instrument or specified in the request without the consent of the appropriate authority. For passive requests, the Minister shall not nominate a judge and provide him or her with the evidence unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the witness, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 6(1)(d)***

6.-(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to-

(d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,

***Section 73 (6)***

73 (6) Evidence obtained by virtue of this section shall not, without the consent of the appropriate authority, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

***Section 74 (5) (a)***

74 (5) In the case of a request from a designated state, the Minister may not proceed in accordance with subsection (4) unless an assurance is given by the requesting authority-

(a) that any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request, and

***Section 63***

63.-(1) This section applies, subject to section 64, in relation to a request for assistance in obtaining evidence in the State from a person (in this section referred to as a "witness") for the purpose of criminal proceedings, or a criminal investigation, in a designated state.

(2) On receipt of such a request the Minister, if of opinion that this section applies in relation to it, may, subject to subsection (3)-

(a) request the President of the District Court to nominate a judge of that Court to receive the evidence to which the request relates, and

(b) send the judge a copy of the request and of any accompanying or related documents.

(3) The Minister shall not exercise the power conferred by subsection (2) unless an assurance is given by the requesting authority that any evidence that may be supplied in response to the request will not, without the consent of the nominated judge or the

witness, be used for any purpose other than that permitted by the relevant international instrument or specified in the letter of request.

(4) For the purposes of this section the nominated judge-

(a) has the powers of the District Court in criminal proceedings, including its powers-

(i) in relation to securing the attendance of witnesses, the production of documents or other articles, taking evidence on oath, compelling witnesses to give evidence or to produce documents or other things and the conduct generally of the proceedings for the taking of evidence, and

(ii) under any enactment or rule of law relating to the protection of witnesses against intimidation,

(b) may direct that the evidence, or any part of it, be received otherwise than in public if of opinion that such a direction is necessary to protect-

(i) the witness or other person, or

(ii) confidential or sensitive information, and

(c) shall inform the witness of his or her rights under section 64.

(5) The evidence may be given through a live television link in any case where it may be so given in proceedings under any enactment.

(6) Any person who is summoned to give evidence and who, without reasonable excuse, does not answer any question or comply with a requirement to produce any document or other thing is guilty of an offence and liable, on summary conviction, to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(7) The Bankers' Books Evidence Act 1879 applies to proceedings under this section as it applies to other proceedings before a court.

(8) No order for costs may be made in the proceedings.

**(b) Observations on the implementation of the article**

672. Ireland is in compliance with the provision under review.

**Paragraph 20 of article 46**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

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

673. Sections 6 (1) (d) of the Criminal Justice (Mutual Assistance) Act 2008 foresees that the Convention has effect in Ireland in relation to any requirements relating to the protection, disclosure, use or transmission of information or evidence received under the Convention. In addition, section 100 of the Act criminalizes disclosures likely to prejudice investigations in relation to which a request has been made.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 100***100.-(1) Where a request is made in connection with a criminal investigation in the State or a designated state, any person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(2) A person guilty of an offence under this section is liable-

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(3) In proceedings for an offence under this section it is a defence to prove that the defendant-

(a) did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the investigation concerned, or

(b) had lawful authority or reasonable excuse for making the disclosure.

***Section 6(1)(d), Criminal Justice (Mutual Assistance) Act 2008***

' 6.-(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to-

(d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it, '

**(b) Observations on the implementation of the article**

674. Ireland criminalized disclosures likely to prejudice investigations in relation to which a request has been made even when it has not been required to keep the facts and substance of the request confidential. Concerning requests made on the basis of the Convention, the Criminal Justice (Mutual Assistance) Act 2008 foresees that the Convention has effect in Ireland in relation to any requirements relating to the protection, disclosure, use or transmission of information or evidence received under it.

**Paragraph 21 of article 46**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

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

675. The Criminal Justice (Mutual Assistance) Act 2008 recognizes grounds for refusal in section 3.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 3***

3.-(1) Assistance shall be refused-

(a) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (ordre public),

(b) if there are reasonable grounds for believing-

(i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,

(ii) that providing assistance-

(I) may prejudice a person's position for any of those reasons, or

(II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,

(c) if the request is not in accordance with the relevant international instrument, or

(d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

(2) In this section, "torture" has the meaning given to it by the Criminal Justice (United Nations Convention against Torture) Act 2000.

676. Ireland regularly refuses requests for mutual legal assistance (approximately 10 to 20 requests per year), in particular due to absence of dual criminality in requests for coercive action.

**(b) Observations on the implementation of the article**

677. Ireland is in compliance with the provision under review.

**Paragraph 22 of article 46**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

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

678. The grounds for refusal of mutual legal assistance are set forth in section 3 of the Criminal Justice (Mutual Assistance) Act 2008. The consideration that the request also involves fiscal matters is not included among the grounds for refusal.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 3***

3.-(1) Assistance shall be refused-

(a) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (ordre public),

(b) if there are reasonable grounds for believing-

(i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,

(ii) that providing assistance-

(I) may prejudice a person's position for any of those reasons, or

(II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,

(c) if the request is not in accordance with the relevant international instrument, or

(d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

(2) In this section, "torture" has the meaning given to it by the Criminal Justice (United Nations Convention against Torture) Act 2000.

**(b) Observations on the implementation of the article**

679. Ireland is in compliance with the provision under review.

#### **Paragraph 23 of article 46**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

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

680. The Criminal Justice (Mutual Assistance) Act 2008 foresees that reasons shall be given for any refusal or postponement of mutual legal assistance.

*Criminal Justice (Mutual Assistance) Act 2008*

*Section 6(10),*

'6.-

(10) Reasons shall be given for any such refusal or postponement. '

##### **(b) Observations on the implementation of the article**

681. Ireland gives reasons for any refusals or postponements of mutual legal assistance.

#### **Paragraph 24 of article 46**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

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

682. In accordance with subsection 1 (e) of section 6, the relevant international instrument concerned (such as the Convention) has effect in Ireland in relation to the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of Ireland, subject to the provisions of the Criminal Justice (Mutual Assistance) Act 2008.

*Criminal Justice (Mutual Assistance) Act 2008*

*Section 6*

' 6.-(1) Subject to the provisions of this Act concerning particular requests, the relevant international instrument concerned has effect in the State in relation to-

- (a) the form of the requests and the information they are to provide,
- (b) the action that may be taken where a request does not comply with the provisions of the instrument or where the information provided is not sufficient to enable the request to be dealt with,
- (c) any restrictions in the instrument in relation to the refusal of particular requests,
- (d) any requirements in the instrument relating to the protection, disclosure, use or transmission of information or evidence received under it,
- (e) the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of the State, and
- (f) the transmission and mode of transmission of requests, including, where so provided for in the instrument, transmissions via the International Criminal Police Organisation (Interpol) in urgent cases.

(2) This Act applies only to requests made after the relevant international instrument has entered into force, or, as the case may be, has been applied, between the State and the designated state concerned.

(3) Requests received and not executed before the date on which they would fall to be dealt with under this Act shall be dealt with, or continue to be dealt with, as if this Act had not been passed.

(4) Requests shall-

- (a) be addressed to the Central Authority, unless the relevant international instrument provides otherwise,
- (b) where appropriate, indicate the relevant international instrument under which the request is being made, and
- (c) be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

(5) Requests to a designated state and any supporting or related documents shall be accompanied, where appropriate, by a translation of the requests and of any such documents, or of the material parts of them, into the official language or one of the official languages of that state, unless it is known that such a translation is not required by the appropriate authority in the designated state concerned.

(6) Requests from a designated state and any supporting or related documents, if not in Irish or English, shall be accompanied by a translation into either of those languages of the requests and of any such documents or the material parts of them.

(7) The Central Authority may-

(a) accept requests and any supporting or related documents as evidence of the matters mentioned in them unless it has information to the contrary, and

(b) seek such additional information from the requesting authority concerned as may be necessary to enable a decision to be taken on a request.

(8) Action on a request may be postponed by the Minister if the action would prejudice criminal proceedings or a criminal investigation.

(9) Before refusing a request or postponing action on it the Minister shall, where appropriate and having consulted the requesting authority, consider whether the request may be granted partially or subject to such conditions as he or she considers necessary.

(10) Reasons shall be given for any such refusal or postponement.

(11) The Minister shall also inform a requesting authority of any circumstances that make it impossible to comply with the request or are likely to delay compliance significantly. '

**(b) Observations on the implementation of the article**

683. In accordance with subsection 1 (e) of section 6, the Convention has effect in Ireland with regard to the formalities and procedures in dealing with requests, unless those formalities and procedures are contrary to the fundamental principles of the law of Ireland. As such, requests are to be executed as soon as possible, and the requesting State may make reasonable requests for information on the status and progress of measures taken by Ireland to satisfy its request, to which Ireland shall respond. Ireland is in compliance with the provision under review.

## Paragraph 25 of article 46

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

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

684. The Irish legislation allows for the postponement of mutual legal assistance in sections 3 (1) (d) and 6 (8) of the Criminal Justice (Mutual Assistance) Act 2008.

#### *Criminal Justice (Mutual Assistance) Act 2008*

##### *Section 3(1)(d)*

3.-(1) Assistance shall be refused-

(d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State, and may be refused on any other ground of refusal of assistance specified in the relevant international instrument. '

*Section 6(8)* 6 (8) Action on a request may be postponed by the Minister if the action would prejudice criminal proceedings or a criminal investigation. '

685. The Irish authorities indicated that requests have been postponed on some occasions if there were ongoing investigations. Once the investigation in Ireland was concluded, the foreign requests were activated.

### (b) Observations on the implementation of the article

686. Ireland is in compliance with the provision under review.

## Paragraph 26 of article 46

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

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

687. Subsection 9 of section 6 of the Criminal Justice (Mutual Assistance) Act 2008 sets forth the obligation to consider whether the request may be granted partially or subject to such conditions

as the Minister considers necessary.

688. The Irish authorities confirmed that partial execution of requests had been carried out e.g. where it was not possible to hand over the evidence requested through the provision of samples of evidence for forensic analysis.

***Criminal Justice (Mutual Assistance) Act 2008***

***Section 6(9)***

6 (9) Before refusing a request or postponing action on it the Minister shall, where appropriate and having consulted the requesting authority, consider whether the request may be granted partially or subject to such conditions as he or she considers necessary.

**(b) Observations on the implementation of the article**

689. Ireland is in compliance with the provision under review.

**Paragraph 27 of article 46**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

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

690. Subsections 7 and 8 of section 80 of the Criminal Justice (Mutual Assistance) Act 2008 establish the safe conduct for defendants and witnesses respectively, while subsections 8 and 9 of section 82 stipulate that documents may not be served to defendants and witnesses unless the requesting authority provides an assurance of the safe conduct of defendants and witnesses.

691. In practice, Irish authorities explained that they served documents approximately 100 times per year, either through postal service or through An Garda Síochána. In addition, requesting States can also send their summons directly by mail.

692. Ireland has no legislative regulation of the safe conduct of experts or other persons who, at the request of the requesting State party, consent to give evidence in a proceeding or to assist in an investigation prosecution or judicial proceeding in the territory of the requesting State party.

***Criminal Justice (Mutual Assistance) Act 2008***

**Section 80**

80.-(1) A document may be issued by a court in the State for the purposes of or in connection with criminal proceedings notwithstanding that the person on whom it is to be served is in another state.

(2) Where the document is not in the official language or one of the official languages of that state, the person at whose request it was issued shall provide the court with a translation of the document, or the material parts of it, into that language or one of those languages, unless subsection (3) applies.

(3) Where such a person believes that the person on whom it is to be served does not understand Irish, English or another language which is the official language or one of the official languages of that state, he or she shall-

(a) inform the court of that belief, and

(b) provide it with a translation of the document, or of the material parts of it, into a language that he or she believes that the person understands.

(4) The document-

(a) if it requires the recipient to appear in proceedings, shall not refer to a penalty for non-appearance, and

(b) shall be accompanied by-

(i) a notice stating that-

(I) no measure of restraint or punishment may be enforced directly by the court in the territory of the other state, and

(II) the person to be served may obtain information regarding his or her rights or obligations concerning the document from the court or a specified person or authority,

(ii) a notice giving any other information required to be given by rules of court,

and

(iii) where necessary, a translation of the document, or of the material parts of it, into an appropriate language.

(5) Subject to subsection (6), non-compliance by a person with a requirement specified in the document is not contempt of court or a ground for issuing a warrant to compel the person to attend the proceedings concerned.

(6) Subsection (5) does not apply if the document is subsequently served on the person in the State.

(7) Subject to subsection (9), a person who is in the State in compliance with a requirement in the document to appear as a defendant in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State other than an offence or offences specified in the document.

(8) Subject to subsection (9), a person who is in the State in compliance with a requirement in the document to appear as a witness in criminal proceedings may not be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in respect of any offence committed before arriving in the State.

(9) The immunity provided for in subsections (7) and (8) ceases when-

(a) a period of 15 days has elapsed from the date when the person's presence in the State is no longer required by the court concerned and the person, having had an opportunity to leave the State during that period, has not done so, or

(b) the person, having left the State during that period, returns to it.

## ***Section 82***

82.-(1) This section applies to a request for service on a person in the State of-

(a) a document requiring the person to appear as a defendant or attend as a witness in criminal proceedings in a designated state, and

(b) any other document issued by a court or authority (including a prosecuting authority) in that state in criminal proceedings, including a document relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs of proceedings.

(2) Unless the request is for personal service, the Minister may cause the document, together with the notice referred to in subsection (11), to be served by post on the person concerned.

(3) Where the request is for personal service, the document, if not in Irish or English, shall be accompanied-

(a) by a translation of the document, or of the material parts of it, into either of those languages, and

(b) if it is known that the person understands only another language or languages and the document is not in that language or one of those languages, by such a translation into that other language or one of those other languages.

(4) Where the request is for personal service, the Minister shall, subject to subsection (5), direct the Commissioner of the Garda Síochána to cause the document to be served personally on the person concerned.

(5) Subsection (4) does not apply to a request for personal service from a member state unless-

(a) the address of the person concerned is unknown or uncertain,

(b) under the law of the member state proof of service on the person is required, other than proof that can be obtained by post,

(c) it has not been possible to serve the document by post, or

(d) the applicant for the issue of the document or the issuing authority has good reason for believing that service by post would not be effective or is inappropriate.

(6) The Commissioner shall-

(a) cause the document, together with the notice referred to in subsection (11), to be served by a member of the Garda Síochána in accordance with the request and send proof of the service to the Minister for transmission to the requesting authority concerned, or

(b) if it is not possible to effect service, cause the Minister to be notified accordingly, stating the reason for the nonservice.

(7) A person served under this section with a document is not under any obligation under the law of the State to comply with any requirement in it.

(8) A document requiring a person to appear as a defendant in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so appears, he or she will not, subject to subsection (10), be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any conduct taking place before his or her departure from the State, other than conduct constituting the offence or offences specified in the document..

(9) A document requiring a person to attend as a witness in criminal proceedings in a designated state may not be served under this section unless an assurance is given by the requesting authority concerned that, if the person so attends, he or she will not, subject to subsection (10), be proceeded against, sentenced, detained or otherwise restricted in his or her personal freedom in that state in respect of any offence committed before his or her departure from the State.

(10) The immunity provided for in subsections (8) and (9) ceases when-

(a) a period of at least 15 days has elapsed from the date when the person's presence in the designated state is no longer required by the judicial authorities concerned and the person, having had an opportunity to leave the designated state during that period, has not done so, or

(b) the person, having left the state during that period, returns to it.

(11) The notice to accompany a document served under this section shall-

(a) state the content of subsection (7), (8) or (9), as appropriate, and subsection (10),

(b) indicate that the person on whom the document is served may wish to seek advice as to the possible consequences of failure to comply with it under the law of the state where it was issued, and

(c) indicate that under that law the person may not, as a defendant or witness, have the same rights and privileges as he or she would have in that capacity in criminal proceedings in the State.

(12) If there is reason to believe that the person understands only a language or languages other than Irish or English, the notice shall be translated into that other language or one of those other languages.

**(b) Observations on the implementation of the article**

693. While the legislation does not specify the safe conduct of experts or other persons who, at the request of the requesting State party, consent to give evidence in a proceeding or to assist in an investigation prosecution or judicial proceeding in the territory of the requesting State party, the Irish authorities confirmed that, in practice, Ireland guarantees their safe conduct.

**Paragraph 28 of article 46**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

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

694. In accordance with the Criminal Justice (Mutual Assistance) Act 2008, Ireland bears the costs of executing requests for mutual legal assistance.

*Criminal Justice (Mutual Assistance) Act 2008*

*Section 110*

110.-The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

**(b) Observations on the implementation of the article**

695. Ireland is in compliance with the provision under review.

**Subparagraph 29 (a) of article 46**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

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

696. While there is no specific legislative provision addressing the provision of publicly available documents, the Irish authorities confirmed that such documents could be provided either through police to police cooperation or through mutual legal assistance. However, at the time of the country visit, no such request had been received.

**(b) Observations on the implementation of the article**

697. Ireland is in compliance with the provision under review.

**Subparagraph 29 (b) of article 46**

*29. The requested State Party: ...*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

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

698. Ireland has not adopted any legislative measures in respect of this provision and cannot provide such documents or information that are not available to the general public.

**(b) Observations on the implementation of the article**

699. Ireland could consider providing to a requesting State party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

**Paragraph 30 of article 46**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.*

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

700. Ireland has concluded the following bilateral agreements in accordance with the provision under review:

1. Agreement between the Government of Ireland and the Government of the Hong Kong Special Administrative Region of the Peoples Republic of China concerning Mutual Legal Assistance in Criminal Matters

2. Treaty between the Government of Ireland and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters (applied in accordance with the Agreement on Mutual Legal Assistance between the United States of America and the European Union)

701. In addition, Ireland is party to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Council of Europe European Convention on Mutual Assistance in Criminal Matters.

**(b) Observations on the implementation of the article**

702. Ireland could continue to explore opportunities to actively engage in bilateral and multilateral agreements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of mutual legal assistance.

**Article 47. Transfer of criminal proceedings**

**Article 47**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

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

703. Section 14 of the Criminal Jurisdiction Act 1976 foresees that for certain offences connected to Northern Ireland, a person charged with such offences can opt to go in custody to Northern Ireland for trial there instead of being tried in Ireland for that offence. However, according to the Schedule to that Act, this is not applicable for corruption offences.

704. While Ireland has not transferred proceedings to another State, it has transferred investigation files in the framework of an investigation into a case not related to corruption and agreed with the other State concerned that that State would exercise its jurisdiction instead of Ireland.

**(b) Observations on the implementation of the article**

705. With regard to corruption offences, Ireland has not adopted measures to facilitate the transfer of criminal proceedings.

706. Therefore, it is recommended that Ireland consider the development of legal framework to regulate the transfer of criminal proceedings for the prosecution of offences established in accordance with the Convention and the adjudication of related criminal cases.

## Article 48. Law enforcement cooperation

### Paragraph 1 of article 48

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

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

707. An Garda Síochána (the Irish National Police Service) is a member of the European Police Office (Europol) and the International Criminal Police Organization (INTERPOL). The Criminal Assets Bureau (CAB) is a member of the Camden Asset Recovery Inter-Agency Network. In addition, information in relation to money-laundering is exchanged through FIN.Net and the Egmont Group. Ireland also cooperates through the Consultative Forum of Prosecutors General and Directors of Public Prosecution of the member states of the European Union. Ireland also participates in the European Union Agency Eurojust, which deals with judicial cooperation in criminal matters.

708. An Garda Síochána has a computer database, called “Pulse”, which captures and stores information. An Garda Síochána also has access to the Interpol and Europol databases which can also provide relevant data and are a means of supplying it to other countries in a secure manner. An Garda Síochána also accepts police to police requests for assistance, which are addressed either through INTERPOL or directly to the Garda Síochána.

709. Section 55 of the Criminal Justice Act 1994 allows for a warrant to be obtained to search for material relevant to an investigation outside of Ireland if the offence under the law of the country outside of Ireland would constitute drug trafficking or an offence in respect of which a confiscation order might be made under Section 9 of the Criminal Justice Act 1994 as if it had occurred with the State of Ireland.

710. Through S.I. No. 341/1996 - Criminal Justice Act, 1994 (Section 55(1)) Order, 1996, Ireland designated countries in relation to which section 55 of the Criminal Justice Act 1994 should apply. However, as not all States parties to the Convention have been included as designated states, Ireland's ability to cooperation with them on the basis of section 55 is limited.

***Criminal Justice Act 1994***

55.—(1) The Government may by order designate countries in relation to which this section shall apply.

(2) Section 63 of this Act shall have effect as if references in that section to drug trafficking or an offence in respect of which a confiscation order might be made under section 9 of this Act included any conduct which is an offence under the law of a country or territory outside the State and would constitute drug trafficking or an offence in respect of which a confiscation order might be made under section 9 of this Act if it had occurred in the State.

(3) If, on an application made by the Director of Public Prosecutions or by a member of the Garda Síochána not below the rank of superintendent, a judge of the District Court is satisfied that—

(a) there are reasonable grounds for believing that an offence under the law of a country in relation to which this section applies has been committed, and

(b) the conduct constituting that offence would, if it had occurred in the State, constitute an offence in respect of which the judge would have power under any enactment to issue a search warrant in relation to any place,

then, subject to subsection (4) of this section, the judge shall have the same power to issue a search warrant authorising entry, search and seizure in relation to that place as he would have under the enactment in question in respect of an offence committed in the State.

(4) No application for a warrant shall be made under this section except in pursuance of a direction given by the Minister in response to a request received by him from the government of a country in relation to which this section applies and made—

(a) on behalf of a court or tribunal exercising criminal jurisdiction in the country in question or a prosecuting authority in that country, or

(b) on behalf of any other authority in that country which appears to the Minister to be an appropriate authority for the purpose of this section,

and any evidence seized by a member of the Garda Síochána by virtue of this section shall be furnished by him to the Minister for transmission to the government of the country concerned or, if that government so requests, to the court, tribunal or authority for which it has been obtained.

(5) If in order to comply with the request it is necessary for any evidence to which this section applies to be accompanied by any certificate, affidavit or other verifying document, the member of the Garda Síochána shall also furnish for transmission such document of that nature as may be specified in the direction given by the Minister.

(6) Where the evidence consists of a document, the original or copy shall be transmitted, and, where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

(7) Section 9 of the Criminal Law Act, 1976, (including, in particular, the restriction in subsection (2) of that section relating to the seizure or retention of any document that was or may have been made for the purpose of legal advice) shall apply in relation to a search carried out under this section as it applies to a search such as is mentioned in that section save that for the reference in subsection (1) of the said section 9 to the retention of a thing for use as evidence in any criminal proceedings there shall be substituted a reference to its retention for transmission in accordance with this section.

(8) The Government may amend or revoke an order made under this section including an order made under this subsection.

(9) An order under subsection (1) or (8) of this section shall, as soon as may be after it is made, be laid before each House of the Oireachtas.

(10) The Minister shall not give a direction under subsection (4) of this section unless provision is made by the law of the country or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request and that when such evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it will be returned to him by the court, tribunal or authority that made the request under subsection (4) of this section unless he indicates that the evidence need not be returned.

(11) In this section “evidence” includes documents and other articles.

711. Section 51 of the Criminal Justice Act 1994 allows for requests to be made to the Minister for Justice and Equality from a court or other authority requesting assistance in obtaining evidence in the State of Ireland in connection with criminal proceedings that have been instituted or a criminal investigation that is being carried out in that country.

51.—(1) This section shall have effect where the Minister receives—

(a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the State or a prosecuting authority in such a country or territory, or

(b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the State in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory.

(2) If the Minister is satisfied—

(a) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and

(b) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there,

he may, if he thinks fit, by a notice in writing nominate a judge of the District Court to receive such of the evidence to which the request relates as may appear to the judge to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in subsection (2) (a) and (b) of this section the Minister may regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(4) In this section “evidence” includes documents and other articles.

(5) The Minister shall not exercise the power conferred on him by subsection (2) of this section unless provision is made by the law of the country or territory or by arrangement with the appropriate authority thereof that any evidence that may be furnished in response to the request will not, without his consent, be used for any purpose other than that specified in the request.

(6) The Second Schedule to this Act shall have effect with respect to the proceedings before the nominated judge in pursuance of a notice under subsection (2) of this section.

(7) The following enactments are hereby repealed, that is to say—

(a) section 24 of the Extradition Act, 1870,

(b) section 5 of the Extradition Act, 1873,

(c) sections 3 (1) (b) and (2) (c) and 4 (1) (b) of the Extradition (European Convention on the Suppression of Terrorism) Act, 1987 , and

(d) section 1 (3) (c) of the Extradition (Amendment) Act, 1994 .

(8) Section 3 of the Genocide Act, 1973 , is hereby amended by the substitution thereof of the following section:

“Extradition and evidence for foreign courts.

3.—(1) No offence which, if committed in the State, would be punishable as genocide or as an attempt, conspiracy or incitement to commit genocide shall be regarded as a political offence or an offence connected with a political offence for the purposes of the Extradition Act, 1965 .

(2) A person shall not be exempt from extradition under the Extradition Act, 1965 , for an offence referred to in subsection (1) of this section on the ground that, under the law in force at the time when, and in the place where, he is alleged to have committed the act of which he is accused or of which he was convicted, he could not have been punished therefor.”.

(9) Notwithstanding subsections (7) and (8) of this section, if before the coming into operation of this section any steps have been taken with a view to the taking of evidence under any of the enactments mentioned in those subsections or the taking of such evidence has begun, the taking of the evidence may be begun or continued as if those subsections had not been enacted.

712. The Criminal Justice (Mutual Assistance) Act 2008, in section 83, provides for the examination of an object or site in a designated State for the purposes of a criminal investigation or criminal proceedings in Ireland, and for a request from designated countries for the examination of an object or site in Ireland for such purposes to be complied with. However, this is only applicable to member States of the European Union, Iceland and Norway, as well as other states designated as per S.I. No. 222/2012 - Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012. Not all States parties to the Convention have been designated or are members of the European Union. Therefore, such proceedings involving non-designated states would not be covered by the Criminal Justice (Mutual Assistance) Act 2008.

***Criminal Justice (Mutual Assistance) Act 2008***

83.—(1) A request for the examination of an object or site in a designated state for the purposes of a criminal investigation or criminal proceedings may be sent by the Director of Public Prosecutions either to the Central Authority for transmission to the appropriate authority in the designated state or directly to that authority.

(2) A request from a designated state for the examination of an object or site for such purposes may be sent by the Minister to the Commissioner of the Garda Síochána to arrange for the request to be complied with.

(3) A request under this section shall include a description of the object or site that is sufficient to enable it to be clearly identified.

(4) Section 74 shall apply and have effect in relation to such a request from a designated state with the modification that, where necessary, a warrant may be issued under subsection (8) of that section requiring the owner or occupier of the object or site to allow access to it by a member of the Garda Síochána and such other persons as may

accompany the member for the purposes of the examination and with any other necessary modifications.

(5) Subsection (4) is without prejudice to section 97.

713. The Irish authorities confirmed that An Garda Síochána shares information concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities with Interpol and Europol.

714. An Garda Síochána also has a number of Garda Liaison Officers working in several Irish embassies around Europe, who serve as point of contact between An Garda Síochána and Law Enforcement Agencies in these and neighbouring jurisdictions in relation to criminal investigations being conducted, and officers work with INTERPOL and Europol in both Lyon and The Hague. In addition, An Garda Síochána also facilitates personnel from An Garda Síochána to work with the Police Service of Northern Ireland through the Garda Síochána (Police Co-operation) Act 2003.

715. Furthermore, An Garda Síochána provides training to other State Agencies concerning specific means and methods used to commit offences covered by this convention. Information is regularly compiled by several units within An Garda Síochána, such as the Garda Bureau of Fraud Investigation, the National Bureau of Criminal Investigations and National Criminal Intelligence Units which is exchanged to other State Parties.

**(c) Observations on the implementation of the article**

716. Ireland is in compliance with the provision under review.

**(c) Successes and good practices**

717. Ireland accepts request for police-to-police cooperation, which can be submitted either directly by other States' police services to An Garda Síochána, or through INTERPOL.

**Paragraph 2 of article 48**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

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

718. The Garda Síochána (Police Co-operation) Act 2003 provides for the bilateral exchange of

personnel with the Police Service of Northern Ireland. Furthermore, Ireland is party to the multilateral agreements or arrangements listed below, which address direct cooperation with law enforcement agencies of other States parties. Ireland can also take the Convention as legal basis for mutual law enforcement cooperation in respect of the offences established in accordance with it.

1. The Council of Europe Convention on Mutual Assistance in Criminal Matters (1959), its Additional Protocol (1978) and Second Additional Protocol (2001).
2. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
3. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).
4. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) and its Protocol (2001).
5. The Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol (2003).
6. Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985.
7. The Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
8. Title III of the Co-operation Agreement between the European Community and its member states and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests (2004).
9. Chapter IV of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).
10. Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime (2000).
11. Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption (2003).

12. The 2003 Agreement on Mutual Legal Assistance between the EU and the US and the related Treaty on Mutual Legal Assistance in Criminal Matters between Ireland and the US.

**(b) Observations on the implementation of the article**

719. Ireland is in compliance with the provision under review. It is noted that Ireland considers the Convention as the legal basis for mutual law enforcement cooperation in respect of the offences established in accordance with it.

**Paragraph 3 of article 48**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

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

720. Ireland has adopted into legislation the Criminal Justice (Surveillance) Act 2009 which allows An Garda Síochána, Revenue Commissioners or the Defence Forces to carry out surveillance in accordance with the appropriate authorisation. The relevant provisions of the Act are detailed below (art. 50 of the Convention).

721. An Garda Síochána utilises various techniques and technologies such as tracking devices, mobile phone cell site analysis, closed-circuit television (CCTV) examinations and digital media examinations. Furthermore, it has the appropriate software and technical expertise to conduct these examinations and present their findings suitable for both court proceedings and also for intelligence purposes only.

**(b) Observations on the implementation of the article**

722. Ireland is in compliance with the provision under review.

**Article 49. Joint investigations**

**Article 49**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take*

*place is fully respected.*

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

723. Joint investigations involving Ireland are governed by the Criminal Justice (Joint Investigation Teams) Act 2004, as amended by section 96 of the Criminal Justice (Mutual Assistance) Act 2008.

***Criminal Justice (Joint Investigation Teams) Act 2004***

3. —(1) Where the Competent Authority is satisfied that—

(a) either—

(i) an offence has been committed, or there are reasonable grounds for suspecting that an offence has been committed, in the State and the investigation of the offence or suspected offence has links with another Member State or States, or

(ii) conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, partly in the State and partly in another Member State or States, and

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation of the offence or suspected offence concerned or into the conduct concerned, to establish a joint investigation team with that other Member State or those other Member States because—

(i) part of the investigation is being, or it is anticipated that it will be, conducted in that other Member State or those other Member States, or

(ii) the investigation requires coordinated and concerted action by the Member States (including the State) concerned,

the Competent Authority may request the competent authority or authorities of that other Member State or those other Member States to establish a joint investigation team to investigate the offence, suspected offence or conduct concerned.

(2) A request under subsection (1) shall specify the following:

- (a) the competent authority making the request,
- (b) the purpose of the request,
- (c) the conduct to be investigated,
- (d) the identity and nationality (if known) of the person or persons whose conduct is to be investigated,
- (e) proposals in respect of the membership of a joint investigation team, and
- (f) the period for which a joint investigation team is required.

(3) The Competent Authority shall furnish to the other competent authority or authorities concerned such other information (if any) as is specified to the Competent Authority and is reasonably required by that authority or those authorities to decide whether or not to agree to establish a joint investigation team.

(4) Where any of the competent authorities concerned accedes to a request under subsection (1) , the Competent Authority may, subject to this Act, agree with that authority and any other competent authority concerned to establish a joint investigation team to investigate the offence, suspected offence or conduct concerned.

(5) The Competent Authority and the competent authority or authorities concerned may, pursuant to an agreement under subsection (4), establish a joint investigation team.

4.—(1) Where the Competent Authority receives a request specifying the matters mentioned in section 3(2) from one or more competent authorities of other Member States to establish a joint investigation team, the Competent Authority shall consider the request.

(2) The Competent Authority may seek from the competent authority or authorities concerned such other information (if any) as is specified to that authority or those authorities and is reasonably required by the Competent Authority to decide whether or not to agree to establish a joint investigation team.

(3) The Competent Authority may, subject to this Act, agree with the competent authority or authorities concerned to establish a joint investigation team to investigate certain conduct if the Competent Authority is satisfied that—

(a) either—

(i) the conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, partly in the State and partly in another Member State or States, or

(ii) the conduct which would constitute an offence if it occurred in the State has occurred, or there are reasonable grounds for suspecting that such conduct has occurred, in another Member State or States and the investigation of it has links with the State, and

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation into the conduct concerned, to agree to the establishment of a joint investigation team with the other Member State or States concerned because—

(i) part of the investigation is being, or it is anticipated that it will be, conducted in the State, or

(ii) the investigation requires coordinated and concerted action by the Member States (including the State) concerned.

(4) The Competent Authority and the competent authority or authorities concerned may, pursuant to an agreement under subsection (3), establish a joint investigation team.

***Criminal Justice (Mutual Assistance) Act 2008***

96.—(1) The Criminal Justice (Joint Investigation Teams) Act 2004 applies and has effect, with the necessary modifications, as if references in it to another Member State or other such States included references to a designated state or states (other than a member state or states).

724. The Criminal Justice (Joint Investigation Teams) Act 2004, as amended, defines ‘Member State’ as Member State of the European Communities. With regard to the Criminal Justice (Mutual Assistance) Act 2008, S.I. No. 222/2012 - Criminal Justice (Mutual Assistance) Act

2008 (Section 4) Order 2012 sets forth which States are considered designated states.

725. Not all States parties to the Convention are Member States in the sense of the Criminal Justice (Joint Investigation Teams) Act 2004, as amended. Therefore, joint investigations on the basis of the Act could not be established with all States parties to the Convention.

726. While Ireland had not participated in any formal joint investigation teams or EUROPOL-led joint investigation teams at the time of the country visit, the Irish authorities confirmed that An Garda Síochána and the Police Service of Northern Ireland regularly conducted joint investigations on different crimes. A protocol for the exchange of evidence and the sharing of forensics had been established to that end, and a manual of guidance for police and prosecution services from Ireland and Northern Ireland had been issued.

727. Furthermore, the authorities highlighted difficulties faced concerning the exchange of evidence among common law and civil law jurisdictions, and pointed out that, to avoid these difficulties, parallel investigations were often carried out and the evidence obtained through such investigations provided through MLA.

728. An Garda Síochána also participates in joint investigations through Interpol and Europol with regard to offences such as drug trafficking, money laundering, counterfeit currency, child trafficking and child pornography cases.

**(b) Observations on the implementation of the article**

729. Ireland could consider establishing joint investigations also with States parties to the Convention that are not covered by the Criminal Justice (Joint Investigation Teams) Act 2004, as amended.

**(c) Successes and good practices**

730. Ireland has established a protocol for the exchange of evidence and the sharing of forensics with Northern Ireland to facilitate cooperation. In addition, a guidance manual for police and prosecution services from Ireland and Northern Ireland has been issued to streamline cooperation.

## **Article 50. Special investigative techniques**

### **Paragraph 1 of article 50**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

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

731. Irish authorities confirmed that they regularly takes measures such as controlled deliveries and other special investigative techniques, such as undercover operations and electronic surveillance.
732. The Criminal Justice (Surveillance) Act 2009 allows for members of An Garda Síochána, the Defence Forces or officers of the Revenue Commission to use surveillance techniques in criminal investigations. In accordance with section 4, the use of such techniques has to be authorized by a judge. Under certain conditions set forth in section 7, such as a risk of the person absconding for the purpose of avoiding justice, information or evidence that is likely to be destroyed or the security of the State that would be likely to be compromised, surveillance may be used without the authorization of a judge, if it has been approved by a superior officer in accordance with section 7. Nevertheless, if the surveillance is to continue for more than 72 hours, the authorization of a judge has to be sought.
733. Section 8 of the Act sets forth that the monitoring of the movements of persons, vehicles or things using a tracking device if such use has been approved by a superior officer in accordance with section 8 can be carried out for a period of not more than four months. .

***Criminal Justice (Surveillance) Act 2009***

3.—A member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners shall carry out surveillance only in accordance with a valid authorisation or an approval granted in accordance with section 7 or 8.

4.—(1) A superior officer of the Garda Síochána may apply to a judge for an authorisation where he or she has reasonable grounds for believing that—

(a) as part of an operation or investigation being conducted by the Garda Síochána concerning an arrestable offence, the surveillance being sought to be authorised is necessary for the purposes of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purposes of proceedings in relation to the offence,

(b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of arrestable offences, or

(c) the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

(2) A superior officer of the Defence Forces may apply to a judge for an authorisation where he or she has reasonable grounds for believing that the surveillance being sought to be authorised is necessary for the purpose of maintaining the security of the State.

(3) A superior officer of the Revenue Commissioners may apply to a judge for an authorisation where he or she has reasonable grounds for believing that—

(a) as part of an operation or investigation being conducted by the Revenue Commissioners concerning a revenue offence, the surveillance being sought to be authorised is necessary for the purpose of obtaining information as to whether the offence has been committed or as to the circumstances relating to the commission of the offence, or obtaining evidence for the purpose of proceedings in relation to the offence, or

(b) the surveillance being sought to be authorised is necessary for the purpose of preventing the commission of revenue offences.

(4) In a case in which surveillance carried out under section 7 is sought under subsection (10) of that section to be continued by application under this section, the information on oath supporting the application shall include a copy of the written record of approval concerned, a summary of the results of the surveillance carried out and the reasons why continued surveillance is required.

(5) A superior officer who makes an application under subsection (1), (2), (3) or (4) shall also have reasonable grounds for believing that the surveillance being sought to be authorised is—

(a) the least intrusive means available, having regard to its objectives and other relevant considerations,

(b) proportionate to its objectives, having regard to all the circumstances including its likely impact on the rights of any person, and

(c) of a duration that is reasonably required to achieve its objectives.

7.—(1) A member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners may carry out surveillance without an authorisation if the surveillance has been approved by a superior officer in accordance with this section.

(2) A member or officer referred to in subsection (1) may apply to a superior officer for the grant of an approval to carry out surveillance if he or she believes on reasonable grounds that the requirements of subsection (1), (2) or (3), as the case may be, of section 4 are fulfilled and that the surveillance is justified having regard to the matters referred to in section 4(5), but that, before an authorisation could be issued—

(a) it is likely that a person would abscond for the purpose of avoiding justice, obstruct the course of justice or commit an arrestable offence or a revenue offence, as the case may be,

(b) information or evidence in relation to the commission of an arrestable offence or a revenue offence, as the case may be, is likely to be destroyed, lost or otherwise become unavailable, or

(c) the security of the State would be likely to be compromised.

(3) A superior officer to whom an application under subsection (2) is made shall approve the carrying out of such surveillance as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under section 5 but that one or more of the conditions of urgency specified in subsection (2) apply.

(4) An approval may be granted subject to conditions, including as to the duration of the surveillance.

(5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to enter, if necessary by the use of reasonable force, any place for the purposes of initiating or carrying out the approved surveillance, and withdrawing the approved surveillance device, without the consent of a person who owns or is in charge of the place.

(6) A superior officer who approves the carrying out of surveillance under this section shall, as soon as practicable and, in any case, not later than 8 hours after the surveillance has been approved, prepare a written record of approval of that surveillance.

(7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include—

- (a) particulars of the surveillance device that is approved to be used,
- (b) the person who, or the place or thing that, is to be the subject of the surveillance,
- (c) the name of the member of the Garda Síochána, member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted,
- (d) the conditions (if any) subject to which the approval is granted,
- (e) the time at which the approval is granted, and
- (f) the duration of the approved surveillance.

(8) The member or officer shall not carry out surveillance under this section for a period of more than 72 hours from the time at which the approval is granted.

(9) The superior officer who approved the carrying out of surveillance may vary that approval, or any condition attached to it, at any time before the expiry of the period of 72 hours.

(10) (a) If the superior officer who approved the carrying out of surveillance believes on reasonable grounds that surveillance beyond the period of 72 hours is warranted, he or she shall, as soon as possible but in any case before the expiry of that period, make an application under section 4(4) for an authorisation to continue the surveillance.

(b) Where an application under section 4(4) has been made and the period referred to in paragraph (a) would, but for this paragraph, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.

(11) A superior officer who approves the carrying out of surveillance under this section shall make a report as soon as possible and, in any case, not later than 7 days after the surveillance concerned has been completed, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the surveillance.

(12) A report under subsection (11) shall be made to—

(a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

(b) in the case of an officer of the Defence Forces, a general officer within the meaning of section 2 (as amended by section 2(b) of the Defence (Amendment) Act 1979) of the Defence Act 1954, and

(c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary.

8.—(1) Notwithstanding sections 4 to 7, a member of the Garda Síochána, a member of the Defence Forces or an officer of the Revenue Commissioners may, for a period of not more than 4 months or such shorter period as the Minister may prescribe by regulations, monitor the movements of persons, vehicles or things using a tracking device if that use has been approved by a superior officer in accordance with this section.

(2) A member or officer referred to in subsection (1) may apply to a superior officer for the grant of an approval to use a tracking device if he or she believes on reasonable grounds that—

(a) the requirements of subsection (1), (2) or (3), as the case may be, of section 4 are fulfilled and that surveillance is justified having regard to the matters referred to in paragraphs (b) and (c) of section 4(5), but that the use of a tracking device would be sufficient for obtaining the information or evidence in the circumstances concerned, and

(b) the information or evidence sought could reasonably be obtained by the use of a tracking device for a specified period that is as short as is practicable to allow the information or evidence to be obtained.

(3) A superior officer to whom an application under subsection (2) is made shall approve such use of a tracking device as he or she considers appropriate, having regard to the information in the application, if he or she is satisfied that there are reasonable grounds for believing that an authorisation would be issued under section 5 and that the conditions specified in subsection (2) apply.

(4) An approval may be granted subject to conditions, including as to the duration of the use of the tracking device.

(5) An approval under this section permits the member or officer concerned, accompanied by any other person whom he or she considers necessary, to place the tracking device and remove it at the end of its use, without the consent of a person who owns or is in charge of the vehicle or thing on which it is placed.

(6) A superior officer who approves the use of a tracking device under this section shall, as soon as practicable and, in any case, not later than 8 hours after the use has been approved, prepare a written record of approval of the use of the tracking device.

(7) A written record of approval shall be in such form as the relevant Minister may prescribe by regulations and shall include—

(a) particulars of the tracking device that is approved to be used,

(b) the person who, or the vehicle or thing that, is to be monitored,

(c) the name of the member of the Garda Síochána, member of the Defence Forces or officer of the Revenue Commissioners to whom the approval is granted,

(d) the conditions (if any) subject to which the approval is granted,

(e) the time at which the approval is granted, and

(f) the duration of the use approved.

(8) Without prejudice to the maximum period for which an approval granted under this section may have effect, the superior officer who approves the use of a tracking device under this section may vary that approval, or any condition attached to it, at any time before the expiry of that approval.

(9) A superior officer who approves the use of a tracking device under this section shall make a report as soon as possible and, in any case, not later than 7 days after its use has ended, specifying the grounds on which the approval was granted, and including a copy of the written record of approval and a summary of the results of the monitoring.

(10) A report under subsection (9) shall be made to—

(a) in the case of a member of the Garda Síochána, a member of the Garda Síochána of the rank of Assistant Commissioner,

(b) in the case of an officer of the Defence Forces, a general officer within the meaning of section 2 (as amended by section 2(b) of the Defence (Amendment) Act 1979) of the Defence Act 1954, and

(c) in the case of an officer of the Revenue Commissioners, an officer of the Revenue Commissioners of the rank of Assistant Secretary.

(11) The Minister may, in the interests of the protection of the privacy and other rights of persons, the security of the State, and the aims of preventing the commission of, and detecting, arrestable offences, make regulations prescribing a period of less than 4 months as the maximum period for which approvals granted under this section may have effect, and such regulations may prescribe different periods in respect of different purposes or circumstances.

734. Sections 88-90 of the Criminal Justice (Mutual Assistance) Act 2008 provide for the use of controlled delivery in mutual legal assistance. However, this is only applicable to member States of the European Union, Iceland and Norway, as well as other states designated as per S.I. No. 222/2012 - Criminal Justice (Mutual Assistance) Act 2008 (Section 4) Order 2012. Not all States parties to the Convention have been designated or are members of the European Union, therefore, controlled deliveries to non-designated states would not be covered by the Criminal Justice (Mutual Assistance) Act 2008.

***Criminal Justice (Mutual Assistance) Act 2008***

88.—(1) In this Chapter—

“competent authority in a designated state”, in relation to a request for a controlled delivery to or from a designated state, means a person or body in that state appearing to the Competent Authority in the State to have the function of receiving or making the request; “Competent Authority in the State”, in relation to a request for a controlled delivery to or from a designated state, means—

(a) the Commissioner of the Garda Síochána or a member of the Garda Síochána authorised by him or her for the time being to exercise his or her functions under this Chapter, or

(b) if the controlled delivery is concerned with a revenue offence, the Revenue Commissioners or a person authorised by them for the time being to exercise their functions under this Chapter;

“controlled delivery” means a delivery permitted in the State in accordance with this Chapter or in a designated state in accordance with the relevant international instrument for the purposes of an investigation into an offence;

“controlled drug” has the meaning given to it by section 2 of the Misuse of Drugs Act 1977;

“offence” includes an offence which is suspected, with reasonable cause, to have been or to be about to be committed.

(2) Where the competent authority of a designated state requires requests under this Chapter to be received or made by a judicial authority, the requests shall be addressed to or made by the Minister,

and for that purpose references in this Chapter to the Competent Authority in the State are to be construed as references to the Minister.

89.—(1) The Competent Authority in the State may request the competent authority in a designated state to permit—

(a) a controlled delivery to be made in that state, and

(b) specified persons or persons of a specified description, including members of the Garda Síochána and officers of customs and excise, to participate in the operations connected with the delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

90.—(1) This section applies to a request to the Competent Authority in the State from a competent authority in a designated state to permit—

- (a) a controlled delivery to be made in the State, and
  - (b) specified persons, or persons of a specified description, from the designated state to participate in the operations connected with the controlled delivery.
- (2) The request shall include particulars of the offence with which the controlled delivery is concerned.
- (3) The Competent Authority in the State may grant the request if satisfied that—
- (a) the controlled delivery is being made for the purposes of an investigation into an offence, or
  - (b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation, to permit the delivery to take place.
- (4) The operations related to a controlled delivery shall, if the delivery is concerned with the illegal importation of controlled drugs, be regulated in accordance with—
- (a) the Memorandum of Understanding of 12 January 1996 concerning the relationship between the Customs and Excise Service of the Revenue Commissioners and the Garda Síochána with respect to Drugs Law Enforcement and agreed between the Commissioner of the Garda Síochána and the chairman of the Revenue Commissioners, and
  - (b) the Operational Protocol for co-operation between An Garda Síochána, the Customs and Excise and the Naval Service in relation to Drugs Law Enforcement, including any modifications or extensions of the Memorandum or Protocol for the time being in force.
- (5) If the delivery is concerned with a revenue offence (other than an offence constituted by the illegal importation of controlled drugs), the operations shall be under the direction and control of the officers of customs and excise assigned to the delivery.
- (6) If the delivery is concerned with any other offence, the operations shall be under the direction and control of the members of the Garda Síochána so assigned.

735. Ireland indicated that two categories of controlled deliveries were known: firstly, delivery

of an illegal material to another by a person involved on a covert basis with the investigators, and secondly - a much more common situation in Ireland - the carrying out a surveillance operation tracking a detected consignment of illegal material to its intended recipient. Both may involve different principals of law, though if electronic surveillance is involved the Criminal Justice (Surveillance) Act 2009 has relevance.

736. The first type of controlled delivery might involve concerns of an entrapment nature, though the defence is not known to Irish law. The position is not clear-cut given developments in the ECHR see also *Syon v. Hewitt & Anor.* [2006] IEHC 376 (10 November 2006). This case is useful in that it gives a rundown of relevant authorities going back to *Dental Board v. O'Callaghan* [1969] IR 181. The Garda Síochána (Irish national police) has issued a protocol on the use of Covert Human Intelligence Sources (CHIS)

737. As regards the second type of controlled delivery, the general principal was enunciated by Murray CJ in *DPP v John Gallagher* [2006] IECCA 110:

738. “The fact that the Gardaí were involved in a close surveillance operation with a view to arresting those involved in the transportation and unloading of the drugs does not take away from these objective facts and does not in law mean that those involved did not at the time of their arrest have possession of the drugs in question. Neither at any stage did the drugs in question lose their illicit status. Surveillance operations based on information and intelligence are part and parcel of policing techniques and it would be ludicrous to suggest that such surveillance operations, which closely monitor illegal activity with a view to arresting the culprits, could in some way exculpate such culprits from responsibility for their actions and in particular mean that they did not have possession of that which was de facto in their possession.”

**(b) Observations on the implementation of the article**

739. It is recommended that Ireland ensure the use of controlled delivery and other special investigative techniques with regard to all States parties to the Convention.

**Paragraph 2 of article 50**

*2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

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

740. Ireland is party to the following multilateral instruments and can provide assistance in accordance with the relevant provisions of these instruments:

1. The Council of Europe Convention on Mutual Assistance in Criminal Matters (1959), its Additional Protocol (1978) and Second Additional Protocol (2001).
2. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).
3. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).
4. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) and its Protocol (2001).
5. The Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 EU Convention on Mutual Assistance in Criminal Matters and its 2001 Protocol (2003).
6. Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985.
7. The Council Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
8. Title III of the Co-operation Agreement between the European Community and its member states and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests (2004).
9. Chapter IV of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).
10. Articles 13, 14, 18, 19 and 20 of the United Nations Convention against Transnational Organised Crime (2000).
11. Articles 46, 49, 50 and 54 to 57 of the United Nations Convention against Corruption (2003).
12. The 2003 Agreement on Mutual Legal Assistance between the EU and the US and the related Treaty on Mutual Legal Assistance in Criminal Matters between Ireland and the US

**(b) Observations on the implementation of the article**

741. Ireland can take the above-mentioned legal instruments as the basis for cooperation and is in compliance with the provision under review.

**Paragraph 3 of article 50**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

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

742. In addition to the agreements containing provisions on special investigative techniques mentioned above, the law enabling Ireland to provide mutual legal assistance to, and seek mutual legal assistance from, other countries is contained in the Criminal Justice (Mutual Assistance) Act 2008.

**(b) Observations on the implementation of the article**

743. As indicated above, not all States parties to the Convention are covered by the Criminal Justice (Mutual Assistance) Act 2008. It is therefore recommended that Ireland, with regard to States Parties not covered by the Criminal Justice (Mutual Assistance) Act 2008, makes decisions to use special investigative techniques on a case-by-case basis.

**Paragraph 4 of article 50**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

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

744. Section 90 of the Criminal Justice (Mutual Assistance) Act 2008 allows for a controlled delivery to be made in Ireland and specified persons from the designated State to participate in the operations connected with the controlled delivery.

*Criminal Justice (Mutual Assistance) Act 2008*

90.—(1) This section applies to a request to the Competent Authority in the State from a competent authority in a designated state to permit—

(a) a controlled delivery to be made in the State, and

(b) specified persons, or persons of a specified description, from the designated state to participate in the operations connected with the controlled delivery.

(2) The request shall include particulars of the offence with which the controlled delivery is concerned.

(3) The Competent Authority in the State may grant the request if satisfied that—

(a) the controlled delivery is being made for the purposes of an investigation into an offence, or

(b) there are reasonable grounds for believing that it is in the public interest, having regard to the benefit likely to accrue to the investigation, to permit the delivery to take place.

(4) The operations related to a controlled delivery shall, if the delivery is concerned with the illegal importation of controlled drugs, be regulated in accordance with—

(a) the Memorandum of Understanding of 12 January 1996 concerning the relationship between the Customs and Excise Service of the Revenue Commissioners and the Garda Síochána with respect to Drugs Law Enforcement and agreed between the Commissioner of the Garda Síochána and the chairman of the Revenue Commissioners, and

(b) the Operational Protocol for co-operation between An Garda Síochána, the Customs and Excise and the Naval Service in relation to Drugs Law Enforcement, including any modifications or extensions of the Memorandum or Protocol for the time being in force.

(5) If the delivery is concerned with a revenue offence (other than an offence constituted by the illegal importation of controlled drugs), the operations shall be under the direction and control of the officers of customs and excise assigned to the delivery.

(6) If the delivery is concerned with any other offence, the operations shall be under the direction and control of the members of the Garda Síochána so assigned.

**(b) Observations on the implementation of the article**

745. As stated above, not all States parties to the Convention are covered by the Criminal Justice (Mutual Assistance) Act 2008. Furthermore, section 90 does not address specific methods of controlled delivery, such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

746. Therefore, it is recommended that Ireland consider that decisions to use controlled delivery may include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

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