

Submission to the Department of Justice and Equality Review  
Group consultation on anti-fraud and anti-corruption  
structures and procedures

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Contact - John Devitt, Chief Executive, Transparency International Ireland  
[info@transparency.ie](mailto:info@transparency.ie); 01 554 3938

## Background

This submission is made on behalf of Transparency International (TI) Ireland in response to a call from the Department of Justice and Equality (DJE) for comments on anti-fraud and anti-corruption structures and procedures in Ireland. Specifically, the Department's Review Group, led by former Director of Public Prosecutions and anti-corruption expert, Mr James Hamilton called for submissions on any of the matters encompassed in its Terms of Reference.<sup>1</sup>

This submission responds to the Review Group's invitation to share recommendations aimed at identifying:

- 'the scope and extent of the structures and strategies within An Garda Síochána and other relevant agencies to prevent, investigate and penalise fraud and corruption and identify what gaps exist, by reference to international standards'
- 'options or potential solutions to any gaps or deficits identified during the analysis (e.g. whether a stand-alone anti-fraud/anti-corruption agency should be established, or improved cross-agency working/secondments, or thematic time bound joint-agency task forces set up as required)'
- 'the levels of resourcing and expertise or experience in relevant bodies'.

## About Transparency International Ireland

Transparency International (TI) Ireland is a fully-accredited chapter of TI, a non-profit organisation dedicated to stopping corruption worldwide. It has its international Secretariat in Berlin. TI Ireland was established in 2004 to lead research and advocacy aimed at tackling corruption, defined by TI as the abuse of entrusted power, at home and overseas.

Since 2004, TI Ireland has led research aimed at mapping Ireland's institutional and legal landscape (National Integrity Systems Studies, 2009 and 2012)<sup>2</sup>; analysed levels of transparency and anti-corruption procedures in local authorities (2018 and forthcoming)<sup>3</sup>; raised public awareness of measures aimed at tackling bribery, state capture and other potential abuses in public office; undertaken legal research on whistleblower protections and lobbied and advised the Irish Government on the Protected Disclosures Act 2014 and forthcoming EU Directive on whistleblowing.<sup>4</sup>

In addition, it has developed guidance and provides training and advice to individuals and organisations on whistleblowing, lobbying, organisational ethics, and anti-corruption. In 2011, it launched Ireland's first advice line for people reporting wrongdoing. The Speak Up Helpline<sup>5</sup> has assisted some 1,200 clients since 2011 and uses anonymised data to analyse and advise on whistleblowing procedures as well as corruption-related risks and countermeasures.

In 2016, it launched the Transparency Legal Advice Centre (TLAC)<sup>6</sup> as an independent law centre, regulated by the Law Society. TLAC has since provided free legal advice valued at c.€600,000 to over 60 clients making or seeking to make protected disclosures. In 2016, TI Ireland also launched its

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<sup>1</sup> [http://justice.ie/en/JELR/Pages/Review\\_of\\_anti-fraud\\_and\\_anti-corruption\\_structures\\_and\\_procedures](http://justice.ie/en/JELR/Pages/Review_of_anti-fraud_and_anti-corruption_structures_and_procedures)

<sup>2</sup> <https://transparency.ie/resources/NIS>

<sup>3</sup> <https://transparency.ie/resources/national-integrity-index>

<sup>4</sup> <https://transparency.ie/resources/whistleblowing>

<sup>5</sup> <https://transparency.ie/helpline>

<sup>6</sup> <https://www.transparency.ie/helpline/TLAC>

Integrity at Work<sup>7</sup> programme aimed at promoting working environments in which people feel safe in speaking up and doing the right thing. The initiative has been supported by the Department of Public Expenditure and Reform (DPER) as well as the Department of Justice and Equality (DJE). Its 23 member organisations include the DJE, An Garda Síochána and the Criminal Assets Bureau.

## Summary and Key Recommendations

This submission explains that while Ireland is not perceived to be highly corrupt by international standards, corruption is still considered to be a significant enough problem to justify considerable increases in State funding for enhanced anti-corruption measures and renewed efforts to promote open government. It also highlights existing and emerging anti-corruption risks, touching on international good practice and summarising existing efforts in Ireland aimed at tackling corruption, with emphasis on addressing abuses of public office and public resources. The following ten measures are recommended with a short explanation for each provided further on in the submission:

1. A well-resourced anti-corruption policy unit at the DJE should develop a National Anti-Corruption Plan (NACP) or strategy aimed at implementing a long-term and holistic approach to preventing, detecting and prosecuting those responsible for abuses of public office for private gain. (p.10).
2. A multi-agency taskforce on corruption should be established to help inform an annual national corruption risk assessment (which inform the NACP) and to help share information and intelligence among appropriate agencies (p.15).
3. Such a taskforce would be complemented by a multi-stakeholder forum on fraud and corruption with representatives from government, An Garda Síochána and relevant regulatory bodies as well as representatives from the professions, industry and civil society (p.11).
4. New incentives need to be considered for those coming forward with information on corruption. For example, a Corruption Immunity Programme based on the Cartel Immunity Programme could encourage corrupt officials or those corrupting them to break ranks (p.15).
5. Intelligence-led policing of public-sector corruption is essential if red-flags and suspicious patterns are to be identified. However, the sharing of data among existing agencies is unlikely to be enough to expose the most complex and politically-sensitive cases (p.15).
6. For this reason, an independent National Anti-Corruption Bureau (NACB) may need to be established in addition to a Corporate Enforcement Authority. The NACB would have powers similar to the New South Wales Independent Commission Against Corruption (p.14).
7. Legal reforms are urgently required including the introduction of the Public Sector Standards Bill 2015; the removal of the dual criminality provision in the Criminal Justice (Corruption Offences Act) 2018; repeal of a recent amendment to the Protected Disclosures Act; (p.16) and the amendment of the Regulation of Lobbying Act 2015 (p.6).
8. The Director of Public Prosecutions (DPP) and An Garda Síochána should publish disaggregated data under a new category that allows for analysis of enforcement of corruption-related offences. Prosecutions are currently categorised under fraud offences (p.17).

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<sup>7</sup> <https://transparency.ie/integrity-work>

9. Deferred Prosecution Agreements (DPAs) are likely to be a useful means of holding corporations to account for corruption-related offences. However, DPAs should not be used to allow natural persons (i.e. management or employees) to avoid prosecution (p.17).
10. Guidelines should be published to help investigators better communicate with witnesses of fraud and corruption. These would also help potential witnesses understand their rights and responsibilities and help avoid public frustration arising from the conduct of investigations (p.17).

## Corruption Perceptions

Ireland is ranked in 18<sup>th</sup> position out of 180 countries on TI's Corruption Perceptions Index (CPI) 2018.<sup>8</sup> This means that Ireland is perceived to be the 18<sup>th</sup> least corrupt country out of the total sample of 180 countries. A cursory reading of the CPI suggests that Ireland is relatively unaffected by corruption. There are a number of reasons why this assumption<sup>9</sup> is mistaken.

Firstly, the CPI measures relative levels of corruption – defined for the purpose of this analysis as the abuse of public office for private gain.<sup>10</sup> Even those countries that appear at the top of the index have been the subject of recent corruption-related scandals. A €200 billion money-laundering scandal embarrassed Denmark in 2018.<sup>11</sup> The former head of Helsinki's anti-drug police was convicted of corruption in 2016.<sup>12</sup> More recently, Canada's Prime Minister has been embroiled in controversy surrounding alleged attempts to influence the prosecution of a company for corruption.<sup>13</sup>

Yet Ireland is considered to have a bigger corruption problem than Denmark, Finland or Canada. This is more easily observed by looking at Ireland's score on the CPI, rather than its ranking. Ireland has a score of 74 out of 100. On the surface, this suggests that Ireland is performing well on the index. It does well in comparison to countries such as Somalia and North Korea (with a score of 10 and 14 out of 100 respectively). However, these are not countries with which Ireland is competing for international investment. Instead, its direct competitors, including Denmark (88), Finland (85) and Canada (81) consistently feature higher on the CPI than Ireland. Indeed, the difference between Denmark and Ireland's scores (14 points) is greater than the difference between that of Ireland and Botswana (on 61 points).

It should also be borne in mind that the index aggregates data from numerous surveys (in Ireland's case, seven such surveys) and that these measure perceptions from country analysts and business people. The surveys assess different types of corruption. The Global Insights Survey for instance attempts to measure the 'risk that individuals/companies will face bribery or other corrupt practices to carry out business, from securing major contracts to being allowed to import/export a small product or obtain everyday paperwork'. Such risks are deemed to be comparatively low in Ireland and the country receives a score of 71/83.

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<sup>8</sup> [https://transparency.ie/sites/default/files/19.01\\_cpi2018\\_executivesummary.pdf](https://transparency.ie/sites/default/files/19.01_cpi2018_executivesummary.pdf)

<sup>9</sup> <https://www.oireachtas.ie/en/debates/question/2018-10-16/307/>

<sup>10</sup> Although TI defines corruption as the abuse of entrusted power for private gain, survey data aggregated for the purposes of the CPI, measures perceptions of abuses of public office and political corruption.

<sup>11</sup> <https://www.theguardian.com/business/2018/sep/20/danske-bank-money-laundering-is-biggest-scandal-in-europe-european-commission>

<sup>12</sup> <https://www.bbc.com/news/world-europe-38458583>

<sup>13</sup> <https://www.nytimes.com/2019/03/06/opinion/canada-scandal-justin-trudeau.html>

The Economist Intelligence Unit on the other hand asks a variety of questions to determine the level of corruption risk. These include whether there are ‘clear procedures and accountability governing the allocation and use of public funds’ and ‘Are there general abuses of public resources?’ Ireland fares relatively poorly with a score of 55/90, suggesting that although bribery and petty corruption are not commonly encountered, the country is not immune to different forms of corruption.

The relatively negative assessment appears to be shared by members of Ireland’s business community. For instance, EY’s Fraud Survey for 2017 found that 47% of Irish respondents believe bribery and corrupt practices are widespread in Ireland.<sup>14</sup> This was significantly higher than the EU average of 33%. In addition, 22% of respondents said they would act unethically to further career progression or gain a remuneration package.<sup>15</sup> In the 2018 EY survey of business leaders, 50% said they would act unethically to save a business in an economic downturn yet only 10% of them said that bribery and corruption happen widely in Ireland.<sup>16</sup>

According to the 2017 Eurobarometer, which measures public awareness and attitudes to a range of issues including corruption, 62% of Irish respondents believe that there is corruption in our public institutions.<sup>17</sup> This was slightly lower than the EU average of 68% but higher than most of our Northern European counterparts. Some 65% of respondents believed that corruption is part of Ireland’s business culture. This was higher than the EU average of 62%.<sup>18</sup>

## Costs of Corruption

Although the actual cost of corruption is impossible to determine, the European Commission has commissioned reports in recent years aimed at estimating the cost of corruption in the EU and the potential cost-savings arising from the introduction of whistleblowing procedures in public procurement.

A Rand Corporation study, published by the European Commission in 2016 concluded that corruption cost the EU economy between €817 and €990 billion per year.<sup>19</sup> Although the authors believe that the bulk of this is attributed to corruption in new EU Member States, they point to the risk of corruption in Ireland and calculate direct and indirect costs at between €6 billion and €18 billion per year.<sup>20</sup> Although Ireland is considered to be one of those EU Member States least affected by corruption in public procurement, Rand estimate the cost to be in the region of €3 million per year.<sup>21</sup>

A 2017 European Commission published study titled, ‘Estimating the economic benefits of whistleblower protection in public procurement’ firstly looked at the potential costs of corruption to EU public procurement and then explored the benefits of whistleblower protection.<sup>22</sup> Ireland was included in its research sample and its authors estimated that ‘comprehensive and well implemented whistleblower protection in Ireland would potentially allow to identify corrupted funds

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<sup>14</sup> <https://www.ey.com/ie/en/services/assurance/fraud-investigation---dispute-services/ey-fraud-survey>

<sup>15</sup> Ibid.

<sup>16</sup> <https://www.ey.com/ie/en/newsroom/news-releases/news-ey-50-percent-of-irish-senior-decision-makers>

<sup>17</sup> [https://ec.europa.eu/home-affairs/news/eurobarometer-country-factsheets-attitudes-corruption\\_en](https://ec.europa.eu/home-affairs/news/eurobarometer-country-factsheets-attitudes-corruption_en)

<sup>18</sup> Ibid.

<sup>19</sup> [https://www.rand.org/pubs/research\\_reports/RR1483.html](https://www.rand.org/pubs/research_reports/RR1483.html)

<sup>20</sup> Ibid, p.43.

<sup>21</sup> Ibid, p.59.

<sup>22</sup> <https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en>

in public procurement in the range of EUR 57.4 to 95.6 million annually'.<sup>23</sup> They added that as 'not all corruption and unlawful actions result in a loss of public funds, we estimated that the amount of public funds that could be potentially recovered in the area of public procurement amount to EUR 10.3 to 17.2 million annually'.<sup>24</sup> Although it is impossible to calculate the actual loss of public funds to corruption in procurement (and to the economy more generally), there appears to be consensus on the need to address the risk of corruption nonetheless.

It is also worth noting that TI Ireland's 2018 National Integrity Index study of anti-corruption and transparency in Irish local authorities, found a significant relationship between local authorities' scores and budget deficits.<sup>25</sup> Those local authorities with poorer systems and practices to promote integrity and prevent corruption were much more likely to have larger budget deficits. Statistical analysis suggested that each fewer point in the index is linked to an average of about €1 million more in a local authority's deficit.<sup>26</sup>

## Corruption Risks

In addition to calculating the potential financial and economic costs of corruption, Rand found a statistically significant relationship between corruption and organised crime in the EU. It also stated that 'corruption increases with inequality and found a positive relationship between the level of corruption and a larger Gini coefficient. For instance, a one-unit increase in the CPI index increases the Gini-index by 0.98'.<sup>27</sup> Numerous reports point to declining trust in democratic institutions<sup>28</sup> and greater political instability<sup>29</sup> corresponding with rising perceptions of corruption and inequality. Neither the risk of corruption or their relationship with political instability and organised crime should be ignored.

The Rand study also pointed to a negative relationship between corruption and the rule of law. In other words: the less the law is enforced, the higher the risk of corruption, and the higher the level of corruption, the higher the risk that the law will not be enforced. The lack of prosecutions in Ireland arising from well-publicised findings and allegations of hidden payments or donations to local authority members, Ministers as well as Taoisigh points to a worrying trend of neglect in Ireland's criminal justice system since the 1970's. While some visible effort has been made to address conflicts of interest arising from political donations, gifts and income over the past 20 years, there has been little progress made in holding public officials and business people to account based on clear evidence of malpractice. The lack of law enforcement can only embolden those that might be inclined to abuse their position and serve to increase the risk of corruption across public life.

Corruption, like any crime is the outcome of incentives, opportunities and personal inclination. If the risk of corruption is not addressed by reducing the opportunities for corruption where there is an incentive to do so and an official can self-justify their abuse, then it is inevitable that someone will engage in corrupt behaviour. It usually follows that the biggest risk of corruption lies where there are significant financial incentives and little chance of being detected. The risks are increased where institutions and laws are ill-equipped to prevent corruption or hold corrupt officials to account.

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<sup>23</sup> Ibid, p.68.

<sup>24</sup> Ibid, p.68.

<sup>25</sup> <http://www.transparency.ie/resources/national-integrity-index>

<sup>26</sup> Ibid, p.14.

<sup>27</sup> Rand, p.46.

<sup>28</sup> <https://www.edelman.com/post/fall-of-trust-rise-of-populist-action>

<sup>29</sup> <https://www.nber.org/papers/w4486>

## Determining the Risk of Corruption

The risk of corruption can be determined by a combination of factors. It can be calculated as a function of incentive, opportunity and inclination which is limited by external oversight (the possibility that a person will be held to account for his/her behaviour) and the individual's and society's own commitment to living by ethical values (integrity). In other words:

$$\text{Corruption} = \frac{\text{Incentive} + \text{Opportunity} + \text{Inclination}}{\text{Transparency} + \text{Accountability} + \text{Integrity}}$$

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From Speak Up Report 2017, Transparency International Ireland

In addition to reports from GRECO<sup>30</sup>, the UNODC<sup>31</sup>, and European Commission<sup>32</sup>, TI Ireland's research<sup>33</sup> has highlighted numerous gaps in Ireland's legal and institutional framework that may give rise to corruption risks. A number of these weaknesses have been addressed through legislation, however, significant gaps in legislation, institutional design and practice remain.

### Political Corruption Risks

Additional risks arise at a national and local government level, as well as in political and campaign finance, and lobbying. These risks have been partly addressed through the enactment of legislation including the Ethics Acts, the Electoral Acts and the Regulation of Lobbying Act 2015. However, this package of legislation leaves numerous risks unaddressed. For example, the Ethics Acts currently do not require office holders to make declarations of any loans and liabilities or the guarantee of such loans. This is in spite of the Moriarty Tribunal finding that c. €1 million in payments and support for a loan were made to former Minister Michael Lowry and that these benefits were 'demonstrably referable' to the conduct of Mr Lowry during the award of Ireland's second mobile phone licence in 1995.<sup>34</sup> While the Public Sector Standards Bill 2015 would require loans with a value of €50,000 to be declared, this threshold would still allow for loans (or guarantees thereof) of significant value to be made to public officials without adequate external scrutiny.

Likewise, while the Electoral Acts provide for strict limits on donations to political parties and candidates, they do not require political parties or candidates to disclose the identity of fundraisers and 'bundlers' such as lobbyists who will use their influence or connections to raise large sums from donations below the legal limit or declaration threshold. Moreover, while political parties are required to file audited accounts, the Standards in Public Office Commission does not appear to have

<sup>30</sup> <https://www.coe.int/en/web/greco/evaluations/ireland>

<sup>31</sup> <https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=IRL>

<sup>32</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en)

<sup>33</sup> <http://transparency.ie/resources>

<sup>34</sup> [https://moriarty-tribunal.ie/wp-content/uploads/2016/09/sitecontent\\_426.pdf](https://moriarty-tribunal.ie/wp-content/uploads/2016/09/sitecontent_426.pdf)

the capacity to audit the donation statements filed by election candidates. In addition, the absence of any requirement by lobbyists to disclose the sources of funding or income and amounts received from clients or donors will make it difficult to enforce the new trade in influence offence under the Criminal Justice (Corruption Offences) Act 2018.

## Local Authorities

Local authorities are responsible for public spending worth over €4 billion every year and despite the findings of the Mahon Tribunal and the 2015 RTÉ Investigates exposé on standards in public office<sup>35</sup>, it seems that still too little is being done to implement basic anti-corruption and transparency measures in our local authorities.

In many cases, anti-corruption procedures are either inadequate or completely absent. For example, the TI Ireland National Integrity Index study 2018 found that only 21 out of 31 local authorities reported that they have Fraud and Corruption Prevention and Contingency Plans that are in date.<sup>36</sup> Of the 31 councils reviewed by the Local Government Audit Service (LGAS) in 2015, the LGAS Auditors expressed concerns that the internal audit function in at least 15 local authorities was under-resourced. The RTÉ Investigates exposé also found that 'At council level, the under-declaration [of members' financial interests] was manifest with commercial interests and properties regularly going undeclared in annual declarations'.<sup>37</sup> Yet no local authority said that it proactively confirms or seeks to verify the content of the annual ethics declarations that councillors and senior staff are required to submit.<sup>38</sup> TI Ireland has highlighted numerous shortcomings and made recommendations to address them in the Index report.<sup>39</sup> A follow-up study will take place this year.

## Sale of State Assets

TI Ireland has also drawn attention to the potential impact on Ireland's standing on the CPI of well-publicised controversies including those surrounding the sale of National Asset Management Agency (NAMA) property portfolios.<sup>40</sup> In 2013, the Irish Independent reported that gardai were involved 'in a wide-ranging probe into claims of 'corrupt acts' at NAMA'.<sup>41</sup> It is not clear how many complaints have been made by NAMA to the GNECB with evidence of wrongdoing by its staff, but in 2016 a former NAMA official, Enda Farrell was convicted of unlawfully leaking confidential information about the NAMA valuation of hundreds of properties to two investment companies. Mr Farrell received a two-year suspended sentence for the leak.<sup>42</sup> Other GNECB investigations may be continuing although no information was available at the time of writing.

The most comprehensive investigation into the sale of NAMA portfolios currently underway is being led by the UK National Crime Agency (NCA). The NCA is investigating the disposal of NAMA's Northern Ireland property portfolio worth €1.37 billion to a US investment fund in 2014.<sup>43</sup> The portfolio, titled Project Eagle, was sold to the fund based on advice from a Northern Ireland

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<sup>35</sup> <https://www.rte.ie/news/investigations-unit/2015/1207/751922-the-councillors/>

<sup>36</sup> <http://www.transparency.ie/resources/national-integrity-index>

<sup>37</sup> <https://www.rte.ie/news/investigations-unit/2015/1207/751922-the-councillors/>

<sup>38</sup> <http://www.transparency.ie/resources/national-integrity-index/report>

<sup>39</sup> Ibid.

<sup>40</sup> [http://www.transparency.ie/news\\_events/corruption-perceptions-index-2016](http://www.transparency.ie/news_events/corruption-perceptions-index-2016)

<sup>41</sup> <https://www.independent.ie/irish-news/crisis-grows-for-nama-as-gardai-widen-inquiry-into-corrupt-acts-29847682.html>

<sup>42</sup> <https://www.irishtimes.com/business/financial-services/suspended-sentence-for-leaking-sensitive-nama-documents-1.2645457>

<sup>43</sup> <https://www.irishtimes.com/business/commercial-property/project-eagle-north-s-crime-agency-identifies-eight-further-potential-suspects-1.3769392>

consultant acting on behalf of NAMA, Frank Cushnahan. Mr Cushnahan and eight other individuals were alleged to have privately benefitted from the sale.<sup>44</sup> It was also alleged that Mr Cushnahan was acting as an adviser to many debtors who had loans in the agency.<sup>45</sup> Although Mr Cushnahan and others deny any wrongdoing, the risks of corruption and conflicts of interest arising from the case are self-evident.

In spite of this, NAMA denied it had any responsibility for the conduct of its agents or advisors. TI Ireland wrote to the Chair and Chief Executive of NAMA as well as the Minister for Finance in 2016 to draw their attention to these risks and called for a suspension of portfolio sales until 'contractual requirements were imposed on future institutional buyers of NAMA assets to implement anti-corruption controls'.<sup>46</sup> It also suggested that all pre-contractual due-diligence with potential buyers and acceptance procedures are conducted in a manner consistent with international standards such as the Good Practice Guidelines on Conducting Third Party Due Diligence<sup>47</sup> and the Business Principles for Countering Bribery published by TI.<sup>48</sup>

Despite numerous allegations of wrongdoing as well as GNECB and NCA criminal investigations, NAMA claimed that TI Ireland had failed to provide 'any supporting evidence of actual or suspected wrongdoing'.<sup>49</sup> It is not clear whether it introduced any enhanced anti-corruption procedures on foot of the GNECB and NCA inquiries.

### Proceeds of Foreign Corruption

Very little attention appears to have been paid to the risk that financial, legal and accounting services may be used to launder the proceeds of international corruption. Perhaps the largest known money-laundering case in Ireland's history, arose during the summer of 2015 when US authorities brought proceedings to freeze the proceeds of corruption from Uzbekistan.<sup>50</sup> Newspaper reports suggest that over \$100 million of corrupt payments were laundered through funds managed by Bank of New York Mellon in Dublin.<sup>51</sup> The funds were managed on behalf of companies owned by Gulnara Karimova, the daughter of former Uzbek president Islam Karimova. Karimova was convicted of receiving some \$1 billion in bribes from Russian and Dutch telecoms companies to influence the outcome of the award mobile telephone licences in 2017.<sup>52</sup>

The Karimova case followed CAB seizures of €250,000 held in investments in the name of a former Governor of the Tourism Authority of Thailand and her daughter in 2014<sup>53</sup>, as well as US\$6.5m worth

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<sup>44</sup> <http://www.irishnews.com/news/northernirelandnews/2017/06/21/news/former-nama-adviser-frank-cushnahan-drops-legal-claims-against-the-bbc--1063055/>

<sup>45</sup> <https://www.businesspost.ie/news/buried-evidence-cash-payments-emerge-police-probe-e1-6bn-nama-sale-419733>

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[https://transparency.ie/sites/default/files/16.03.09\\_nama\\_corruption\\_risk\\_concerns\\_correspondence\\_002.pdf](https://transparency.ie/sites/default/files/16.03.09_nama_corruption_risk_concerns_correspondence_002.pdf)

<sup>47</sup> [http://www3.weforum.org/docs/WEF\\_PACI\\_ConductingThirdPartyDueDiligence\\_Guidelines\\_2013.pdf](http://www3.weforum.org/docs/WEF_PACI_ConductingThirdPartyDueDiligence_Guidelines_2013.pdf)

<sup>48</sup> [https://www.transparency.org/whatwedo/tools/business\\_principles\\_for\\_countering\\_bribery/1](https://www.transparency.org/whatwedo/tools/business_principles_for_countering_bribery/1)

<sup>49</sup> [https://transparency.ie/sites/default/files/16.03.21\\_nama\\_response.pdf](https://transparency.ie/sites/default/files/16.03.21_nama_response.pdf)

<sup>50</sup> <https://www.irishtimes.com/business/retail-and-services/us-wants-to-seize-allegedly-corrupt-funds-in-irish-banks-1.2268660>.

<sup>51</sup> <https://www.independent.ie/business/world/irish-bank-used-to-funnel-cash-in-114m-global-bribes-scandal-34792137.html>

<sup>52</sup> <https://corruptionandhumanrights.org/publications/a-dance-with-the-cobra-confronting-grand-corruption-in-uzbekistan/>

<sup>53</sup> <https://www.independent.ie/irish-news/courts/cab-secures-order-to-freeze-250k-held-in-name-of-thai-woman-30842663.html>

of investments, held for the benefit of Mohammed Sani Abacha (son of former Nigerian President and dictator Sani Abacha). The funds in both cases were managed by HSBC Life (Europe) Ltd.<sup>54</sup>

It is impossible to say to what extent Ireland is considered to be an attractive destination for the world's dirty money but both the Gulnara and Abacha cases suggest that there is far more intelligence to be gathered and risk analysis needed to identify the proceeds of international corruption through the abuse of the funds and insurance industry in Ireland. Life insurance and assurance policies as well as funds have been used by Politically Exposed Persons and organised criminals to launder dirty money in the past.<sup>55</sup> The Financial Action Task Force (FATF) has also pointed out that some €212 billion was invested in life insurance policies and that the Irish domiciled funds industry had some €1.9 trillion in assets under administration in 2017.<sup>56</sup> The amounts under administration and the potential for their abuse warrant additional attention in any future anti-money laundering (AML) risk assessment.

FATF has also noted that while Ireland has a strong AML offence, 'this has not translated into results at the trial stage'. Although 22 convictions have been secured for money laundering offences upon a guilty plea, FATF is concerned that there have been no convictions after a trial. This, it suggests may 'reflect reluctance on behalf of prosecutors to test the AML laws or a conservative approach by the judiciary, which in turn acts as a disincentive to investigate complex ML cases'.<sup>57</sup> Moreover, it is noted that no legal person has been convicted of money laundering in Ireland.

## Foreign Bribery

The OECD and TI Ireland have highlighted the non-enforcement of the foreign corruption offence in Ireland since 2006. Although only a relatively small number of allegations against Irish companies operating overseas are publicly known, there is little doubt that there is a high risk of corruption involving those Irish or Irish-based companies operating in weak governance zones. The detection of any offences will therefore require the systemic gathering of criminal intelligence, mutual cooperation with law-enforcement overseas, as well as additional training and resources for investigators. Statistics will need to be published on the number of reports and detections as well as prosecutions of the foreign corruption offence. Irish businesses operating overseas will also need to be informed of the risks of operating in high-risk jurisdictions and steps they need to take to meet their responsibilities under the 2018 Act by the Department of Business, Enterprise and Innovation as well as Enterprise Ireland.

No amount of funding will assist in prosecuting corruption if the law is deficient. The dual criminality requirement under the 2018 Act means that convictions for offences overseas (such as trade in influence) will be impossible to secure if those same offences are not provided for in a jurisdiction in which an Irish person is accused of corruption. The provision should be repealed without undue delay.

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<sup>54</sup> <https://www.irishtimes.com/news/crime-and-law/bonds-held-in-frozen-dublin-account-linked-to-late-nigerian-dictator-s-family-court-told-1.2141932>.

<sup>55</sup> <https://www.nytimes.com/2002/12/06/world/new-hiding-place-for-drug-profits-insurance-policies.html>

<sup>56</sup> <https://www.fatf-gafi.org/countries/d-i/ireland/documents/mer-ireland-2017.html>

<sup>57</sup> Ibid.

## National Anti-Corruption Plan

Although corruption-related offences can be committed without a public-private dimension, it is rare that offences within the private sector are prosecuted using corruption-prevention legislation. The FCPA for example requires that a public official be bribed or offered a bribe for an offence to be committed. The full title of the OECD Bribery Convention, is the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>58</sup> Corruption, as it is legally defined, is generally considered to be an offence that involves an abuse of public resources or public office.

Likewise, anti-corruption strategies generally focus on tackling the abuse of public office for private gain. Aside from the enormous costs associated with such abuses, there is some utility in focussing efforts on corruption in public office, rather than viewing it as a corporate or white-collar crime. For one thing, the offence of active corruption does not require a corporation or any worker wearing a 'white collar'. For another, viewing it through the lens of an anti-fraud or white-collar-crime strategy, ignores the complexity of the social, economic, political and technological environment in which corruption thrives. A national anti-corruption strategy or plan will begin with an assessment of the strength and weaknesses of institutions, laws, culture and practices within a given jurisdiction and attempt to address it with a holistic response that addresses those weaknesses across the public and private sectors that give rise to the abuse or misallocation of public resources.

For example, the UK Government has published two National Anti-Corruption Plans (NACP) since 2014, with the most recent covering the period from 2017 to 2020.<sup>59</sup> The NACP addresses the threat from corruption and our response both in the UK and abroad. Its aim is to 'present a strong strategic narrative around our anti-corruption efforts'; 'to capture international activity from the Prime Minister's Anti-Corruption Summit [of 2016]'; and 'to maintain our ambition to develop new commitments in areas of concern'. In addition, it envisages that 'Enhanced engagement with civil society organisations and more accountability to Parliament will help demonstrate the government's openness to ensuring the principle of transparency is applied to all anti-corruption efforts'. The UK NACP is based on six key priorities:

1. Reduce the insider threat in high risk domestic sectors
2. Strengthen the integrity of the UK as an international financial centre
3. Promote integrity across the public and private sectors
4. Reduce corruption in public procurement and grants
5. Improve the business environment globally
6. Work with other countries to combat corruption

In addition to making commitments in a comprehensive NACP, the UK Government has also understood the importance of working with both the private sector and civil society in developing and implementing the plan as well as making public commitments to complementary initiatives. The government of former Prime Minister David Cameron openly championed the UK's membership of the Open Government Partnership<sup>60</sup> and made a commitment to be 'the most transparent government in the world'. The Cameron government went further than most of its peers in

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<sup>58</sup> <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

<sup>59</sup> <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>

<sup>60</sup> <https://www.opengovpartnership.org/>

unilaterally establishing a public register of beneficial owners of UK-based companies in 2016. Like most records managed by Companies House<sup>61</sup>, these details are available to the general public free of charge<sup>62</sup> meaning it is easier for journalists, civil society, investors and law enforcement to determine who are the real owners of UK-registered companies. Notwithstanding any shortcomings in the UK's anti-corruption and open government commitments, the fact that the UK NACP acknowledges the importance of making government more transparent is a welcome departure from the 'law and order' or corporate-crime approach to addressing the problem taken by many governments.

Resources are needed to enforce the Criminal Justice (Corruption Offences) Act 2018<sup>63</sup> but enforcement should begin with a National Anti-Corruption Plan or Strategy which is also informed by a national corruption risk-assessment. While this process should be led by a well-resourced anti-corruption policy unit at the Department of Justice and Equality, it needs to be championed by the Department of the Taoiseach; be co-sponsored by other bodies with responsibility for promoting public-sector transparency such as the Department of Public Expenditure and Reform; and be informed by a multi-stakeholder forum with representatives from government, business, the professions and civil society. It should also be understood that addressing corruption requires a multi-disciplinary and multi-agency approach and one that rests as much on the State's commitment to open government as it does on holding corrupt officials and corporates to account.

## Enforcing Anti-Corruption Law

In Ireland, most discussion and analysis on anti-fraud and corruption strategy has focussed primarily on the prosecution of corporate fraud offences. This is understandable given the attention paid to the collapse of the trial of Seán FitzPatrick and the time and expense associated with the Anglo Irish Bank investigation. However, it has meant that the two issues (fraud and corruption) have become conflated. This is apparent in both the Law Reform Commission's (LRC) report on Regulatory Powers and Corporate Offences<sup>64</sup> and the Government's discussion paper, titled 'Measures to Enhance Ireland's Corporate, Economic and Regulatory Framework'.<sup>65</sup> In both analyses, references to corruption are made in the context of corporate offences or the 2018 Act. There is little discussion of how the Act would be implemented and no mention of open government, nor reference to an anti-corruption plan or strategy. Instead, it is presumed that enforcement will rest with either a new Corporate Crime Agency (proposed by the LRC), a revamped and independent ODCE (or Corporate Enforcement Authority) or the Garda National Economic Crime Bureau (GNECB). In any of these three scenarios, the investigation of corruption will either be led by a corporate crime body or the GNECB.

Although, the establishment of an Anti-Corruption Unit within the GNECB is to be welcomed, the United Nations Convention against Corruption (UNCAC) Implementation Review Group (IRG) has been critical of both the unit's budget and human resources allocation.<sup>66</sup> Only three staff members have been allocated to the unit to tackle a problem estimated to cost the Irish economy between €6

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<sup>61</sup> <https://beta.companieshouse.gov.uk/>

<sup>62</sup> [http://download.companieshouse.gov.uk/en\\_pscdata.html](http://download.companieshouse.gov.uk/en_pscdata.html)

<sup>63</sup> <http://www.irishstatutebook.ie/eli/2018/act/9/enacted/en/html>

<sup>64</sup> <https://www.lawreform.ie/news/report-on-regulatory-powers-and-corporate-offences.839.html>

<sup>65</sup> <https://dbei.gov.ie/en/Publications/Measures-Enhance-Irelands-Corporate-Economic-Regulatory-Framework.html>

<sup>66</sup>

<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V1900570e.pdf>

billion and €18 billion per year. It is understood that additional resources and manpower can be sought from within the GNECB as required. However, this assumes that those resources will be available upon request. The GNECB already has to manage its existing workload in providing support to the ODCE, as well as investigating insurance fraud, cyber-fraud, credit card fraud, and money laundering offences arising from fraud and organised crime. With staffing levels at the GNECB considered to be insufficient, it is therefore a distinct possibility that GNECB resources will not be diverted to investigate concerns related to an abuse of public office. This is particularly so where the amount of funds abused or the size of the alleged transaction do not meet a ‘serious fraud’ threshold (usually with a value of over €1 million).

### International Comparisons

To illustrate the level of investment in anti-corruption law enforcement, it is worth looking at the budget and staffing levels of other specialist agencies or units in jurisdictions with a population comparable to Ireland (34% to 117%). Singapore, Hong Kong, and the Australian states of New South Wales, South Australia, Queensland and Western Australia have established independent anti-corruption agencies dedicated to investigating and prosecuting corruption in public office. It is noteworthy that Ireland has never ranked or scored more highly than any of these three countries on the Corruption Perceptions Index. As of 2018, Singapore was in 3<sup>rd</sup> position, Australia 13<sup>th</sup> position and Hong Kong 14<sup>th</sup> position. Yet, as can be seen from Table 1, all three governments (in Australia’s case at state and federal level) invest far more per head of population in intelligence gathering, investigating and prosecuting offenders for corruption-related offences. In addition, each agency has a role in promoting corruption prevention and education.

**Table 1: Specialist agencies dedicated to stopping public-sector corruption**  
(Listed by expenditure per head of population)

Agency	Resources	Cost per head of population
<u>Hong Kong Independent Commission Against Corruption</u>	Annual Budget: c.€128 million (HK\$1.1 billion) <u>1,480 staff</u>	€17 (7.2 million)
<u>Queensland Crime and Corruption Commission</u>	Annual Budget: €36 million (AUD \$57 million) <u>334 staff</u>	€7.20 (5 million)
<u>Western Australia Corruption and Crime Commission</u>	Annual Budget c. €18.6 million (AUD \$ 29.5 million) <u>130 staff</u>	€7 (2.6 million)
<u>Southern Australia Independent Commission Against Corruption</u>	Annual Budget c. €8 million (AUD \$13 million) <u>41 staff</u>	€4.7 (1.7 million)
<u>Singapore Corrupt Practices Investigation Bureau</u>	Annual Budget: c.€26 million (SGD \$39.61m) <u>190 staff</u>	€4 (6 million)
<u>Victoria Independent Broad-Based Anti-Corruption Commission</u>	Annual Budget: c €25 million (AUD \$40 million) <u>162 staff</u>	€3.84 (6.5 million)
<u>New South Wales Independent Commission Against Corruption</u>	Annual Budget c. €13 million (AUD \$21 million) <u>118 staff</u>	€1.60 (7.95 million)

<u>Ireland</u> <u>Standards in Public Office</u> <u>Commission</u>	<u>Annual Budget €2.073m</u> 19 staff	€0.42c (4.9 million)
<u>Garda National Economic</u> <u>Bureau Anti-Corruption Unit</u>	<u>Annual Budget c. €300,000</u> 3 staff	€0.06c (4.9 million)

The closest Ireland has to dedicated anti-corruption agencies are the Standards in Public Office Commission (SIPO) and the GNECB Anti-Corruption Unit. SIPO is responsible for enforcing the Electoral Acts, Ethics Acts and the Regulation of Lobbying Act 2015 but has very limited enforcement or investigative powers in comparison to an independent anti-corruption commission. The GNECB has a budget of c.€8 million with 87 staff but as stated earlier is responsible for a much wider range of offences than those covered by independent anti-corruption agencies. It is worth noting that Australian state anti-corruption commissions, with the exception of the New South Wales ICAC, also investigate police misconduct. The Garda Síochána Ombudsman Commission, with an annual budget of over €10 million deals with all complaints against police officers irrespective of whether a complaint amounts to serious misconduct.<sup>67</sup> Even so, its budget is almost half that of the Western Australia Corruption and Crime Commission (WACCC).

In addition to investing heavily in anti-corruption investigation and intelligence gathering at state level, the Australian Federal Government has set aside a budget of AUD\$127.6 million over four years in the Serious Financial Crime Taskforce.<sup>68</sup> This multi-agency taskforce that includes the Australian Federal Police (AFP), Australian Tax Office, and the Attorney-General's Department is responsible for sharing 'knowledge, resources and experiences of relevant law enforcement and regulatory agencies to identify and address serious and complex financial crimes'. The taskforce is part of the Fraud and Anti-Corruption Centre operated by the AFP.<sup>69</sup> This centre coordinates federal intelligence gathering and information exchange leading to prosecutions for foreign bribery and serious fraud.

Each of the Australian state anti-corruption commissions has the power to gather intelligence, conduct surveillance, lead investigations, prosecute alleged offenders (with the exception of the New South Wales ICAC) and undertake public hearings (with the exception of Southern Australia ICAC). They also have responsibility for undertaking corruption investigations into elected as well as appointed officials and members of the judiciary.

Although shortcomings in Australian anti-corruption commissions have been highlighted by observers including TI Australia<sup>70</sup>, the model appears to have won broad public support<sup>71</sup>, while both state and federal government investment generate a relatively high rate of investigations for corruption-related offences.

In New South Wales for example, 25 findings of serious corrupt conduct against 18 people were made during 2017. Since 2013, the Southern Australian ICAC has commenced 250 corruption investigations. Twelve people have been convicted of corruption offences and as of the middle of

<sup>67</sup> <http://www.justice.ie/en/JELR/Pages/PR18000317>

<sup>68</sup> <https://www.afp.gov.au/sites/default/files/PDF/serious-financial-crime-taskforce-factsheet.pdf>

<sup>69</sup> <https://www.afp.gov.au/sites/default/files/PDF/fac-centre-fact-sheet.pdf>

<sup>70</sup> <http://transparency.org.au/tia/wp-content/uploads/2016/10/PP3-Anti-Corruption-Agencies-Transparency-International-Australia-Jan-2016.pdf>

<sup>71</sup> <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/corporate/ccc-annual-report-2017-18/ccc-annual-report-2017-18>

2018, a further 17 people were charged with corruption offences. During the same year, the Victoria IBAC led 11 investigations which progressed to prosecutions, with 35 people charged with a total of 384 offences. Conviction and prosecution rates are much lower than in Hong Kong and Singapore, however. The Hong Kong ICAC secured 142 convictions for corruption in 2017 alone<sup>72</sup>, while the Singapore Corrupt Practices Investigation Bureau prosecuted 141 alleged offenders during the same year.<sup>73</sup>

In contrast, there is no official data available in Ireland for the prosecution of corruption-related offences committed by public officials. It is believed that the number of prosecutions in recent years are in the single digits. The first and only elected official to be convicted of corruption in the history of the State, Fred Forsey, was acquitted in 2018.<sup>74</sup>

### National Anti-Corruption Bureau

It should be clear that the economic and political price of corruption is too high to ignore and that both a national anti-corruption strategy and significant increases in State investment are needed to prevent, detect and act on cases of corruption in Ireland. The apparent lack of political consensus for a centralised independent anti-corruption agency in Ireland would appear to rule out the establishment of such a body in the short-term. Proposals for an Irish independent anti-corruption agency were tabled by the Social Democrats party in 2017.<sup>75</sup> The proposals suggested that the agency be partly modelled on the Victoria ICAC and that it incorporate the existing powers and functions of Commissions of Investigation, SIPO, the ODCE, and the Competition and Consumer Protection Commission.

Similarly, the LRC report on Regulatory Powers and Corporate Offences suggests merging the resources of existing agencies (including those of the GNECB and OECD) into a Corporate Crime Agency with powers to investigate indictable offences under the Companies Acts, money laundering and serious fraud.<sup>76</sup> It is not clear whether the proposed Corporate Enforcement Authority would be integrated into the CCA as well.

As has been noted earlier, most corruption-related offences have a public-sector dimension and many cases do not involve corporations. A CCA would therefore be ill-suited to the task of investigating alleged corruption in public office. Likewise, for the reasons already stated above, SIPO (as well as its proposed successor, the Public Sector Integrity Commission) is likely to be ill-equipped to undertake intelligence-led, politically-sensitive and resource-intensive investigations required to root out corruption in public life.

Although the Social Democrats' proposal for anti-corruption agency would likely fall prey to the same issues confronting other multi-functional bodies (such as internal competition for resources), the rationale for an independent agency dedicated to the investigation of is largely sound. Tribunals of Inquiry have proved to be a lengthy, expensive but unsatisfactory means of exposing corruption. At the same time, AGS does not have the independence or the political support to establish a well-resourced anti-corruption agency that could undertake surveillance and gather criminal intelligence on elected officials.

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<sup>72</sup> <https://www.gov.hk/en/about/abouthk/factsheets/docs/icac.pdf>

<sup>73</sup> <https://www.cpiib.gov.sg/>

<sup>74</sup> <https://www.irishtimes.com/news/crime-and-law/courts/supreme-court/fred-forsey-jnr-has-corruption-conviction-quashed-by-supreme-court-1.3690738>

<sup>75</sup> <https://www.socialdemocrats.ie/wp-content/uploads/2015/11/Corruption-document-Web-Friendly1.pdf>

<sup>76</sup> <https://www.lawreform.ie/fileupload/Completed%20Projects/LRC%20119-2018%20Regulatory%20Powers%20and%20Corporate%20Offences%20Volume%201.pdf>, Vol. 1, p.38

The fact that a specialised Anti-Corruption Unit has been established within the GNECB also suggests that the need to investigate cases of corruption has been recognised by Garda management and the Government. Although only 33 reports have been made to the unit over a three-month period, this would appear to represent a significant increase in complaints of this nature to the Gardaí. This is especially the case given the apparent lack of awareness of the Unit or the establishment of its anti-corruption hotline.<sup>77</sup>

Moreover, the number of calls to such a hotline is unlikely to be representative of the scale of the problem. In a jurisdiction such as Ireland, where predatory corruption is uncommon, corruption is more often a conspiratorial crime and those that engage in it are unlikely to report unless there is a strong incentive to do so. Rewards for information leading to prosecutions or convictions arising from significant losses to the Exchequer from corruption might be considered, as might a Corruption Immunity Programme based on the Cartel Immunity Programme that would encourage corrupt officials or those corrupting them to break ranks.<sup>78</sup>

Most of all, intelligence-led policing of public-sector corruption is essential if red-flags and suspicious patterns are to be identified. The sharing of data and intelligence between agencies including SIPO, the Comptroller and Auditor General, the Revenue Commissioners and An Garda Síochána is thus an essential means of uncovering collusive corruption. The establishment of a multi-agency taskforce would be a welcome step and could assist in the development of annual corruption risk-assessments, and facilitate better planning and information-sharing among existing authorities. However, any agency that undertakes intelligence gathering on political and public-sector corruption would also need significant ring-fenced resources as well as political and operational independence if it is to undertake its work without undue interference.

An independent agency would be best placed to collect and coordinate the sharing of intelligence as well as to act on it accordingly. Its remit could be limited to the enforcement of the Criminal Justice (Corruption Offences) Act 2018. However, it would be empowered to investigate or assist with the investigation of any alleged criminal offence committed by an elected or appointed official or public servant upon request by SIPO, GSOC, the Houses of the Oireachtas, local authority or any other public or semi-state body. It would work with the Criminal Assets Bureau, the CEA/CCA or GNECB in helping detect and seize the proceeds of corruption and lead in the investigation of any allegations of active corruption by a corporate body of a public official in Ireland or overseas. It would also investigate serious cases of Garda corruption upon request by GSOC.

Modelled partly on the Criminal Assets Bureau and the New South Wales ICAC, the National Anti-Corruption Bureau would be established by statute and led by an independent Chief Bureau Officer. They and their staff would be appointed after public-competition managed by the Public Appointments Service although the CBO would have discretion to seek the secondment or support from investigators or staff from other agencies as required. The Bureau would be answerable to the Oireachtas but subject to administrative oversight by a Bureau Inspector or a Criminal Justice Inspectorate. The Bureau would have powers of surveillance and investigation without a prior complaint. Any powers of surveillance would be subject to the provisions of the Criminal Justice (Surveillance) Act 2009. The Bureau would have powers of arrest, entry, search and seizure and non-compliance with the instructions of a Bureau officer in the conduct of their duties would be considered an offence. In addition, the Bureau would be entitled to propose a Commission of Investigation or Tribunal of Inquiry into any relevant matter that was not also subject or lead to criminal investigation.

International observers suggest that Ireland is affected by public sector corruption to a greater degree than Singapore, Hong Kong and Australia. Yet each of these three jurisdictions spend

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<sup>77</sup> TI Ireland, for example, was not informed of its existence until early 2019

<sup>78</sup> <https://www.ccpc.ie/business/contact/cartel-immunity-programme/>

significantly more than their Irish counterparts to prevent, detect and prosecute those engaged in corruption. It is calculated that Ireland is losing anywhere between €6 and €18 billion per year because of corruption. A budget like that allocated to the New South Wales ICAC for independent anti-corruption agency in Ireland would be a relatively modest one considering the enormous social and economic impact of corruption here.

## Additional Measures

Institutional reforms such as those proposed here are unlikely to be pursued for the foreseeable future. Nonetheless, the need for a National Anti-Corruption Plan and additional ring-fenced resources to investigate corruption are essential in the short-term if existing threats are to be adequately addressed. In addition, the following measures should be implemented without undue delay:

### Legal reform

The Public Sector Standards Bill 2015 has been delayed in Committee for three years.<sup>79</sup> The Bill when enacted would provide for, inter alia, a unified disclosure regime for public officials at both a national and local level and require the disclosure of liabilities as well as assets by certain categories of officials. Such information and a modernised disclosure system are essential if investigators are to be able to gather evidence or intelligence on potential corruption offences.<sup>80</sup>

A dual criminality requirement was introduced under s.12 (2) c of the 2018 Act which will pose significant obstacles to enforcement of the foreign bribery offence under the Act and likely means that Ireland is not in full compliance with the OECD Bribery Convention.<sup>81</sup> There was no such requirement provided for under the Prevention of Corruption Acts. In addition, the OECD has called for the removal of the dual criminality requirement for money laundering offences in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 so that foreign bribery will be a predicate offence for money laundering. These provisions should be amended without undue delay.

The UNCAC IRG complimented Ireland on the Protected Disclosures Act 2014 and praised the absence of any motivation test in the 2014 Act. Seemingly unbeknownst to the IRG, a motivation test was introduced last year after the 2014 Act was amended to provide for the criminal prosecution of workers who disclose evidence of corruption and other fraud offences unless they can show they were motivated to protect the general public interest when making their disclosure.<sup>82</sup> This amendment should be amended without delay.

Some consideration should be given to amending s.19 of the Criminal Justice Act 2011 which requires those with information that could be of material assistance in the investigation of fraud offences to report to An Garda Síochána. A person making such a report is not protected by the more generous legal provisions set out in the Protected Disclosures Act 2014 unless they can meet

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<sup>79</sup> <https://www.oireachtas.ie/en/bills/bill/2015/132/?tab=debates>

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[https://knowledgehub.transparency.org/assets/uploads/kproducts/Topic\\_Guide\\_Income\\_and\\_Asset\\_Disclosure.pdf](https://knowledgehub.transparency.org/assets/uploads/kproducts/Topic_Guide_Income_and_Asset_Disclosure.pdf)

<sup>81</sup> <https://www.irishtimes.com/news/crime-and-law/oecd-to-review-ireland-s-ineffective-anti-corruption-laws-1.3764421>

<sup>82</sup> [http://transparency.ie/news\\_events/irish-whistleblowers-could-face-criminal-prosecution-reporting-white-collar-crimes-and](http://transparency.ie/news_events/irish-whistleblowers-could-face-criminal-prosecution-reporting-white-collar-crimes-and)

the tests set out in section 10 of the Act.<sup>83</sup> These tests require workers to show that they reported to their employer before reporting to the Gardaí unless they can prove, inter alia, that they feared reprisal or an attempt to cover up or destroy evidence. Alternatively, An Garda Síochána should be listed as a prescribed body under the 2014 Act.

## Statistics

No statistics were publicly available at the time of writing that would allow for a reliable appraisal of Ireland's performance in enforcing anti-corruption law. The DPP and An Garda Síochána should publish disaggregated data that allows for such analysis in future. Corruption offences prosecuted under the Corruption Acts (1854 to 2010) and the 2018 Act are currently categorised under fraud offences. This information should be separated in future to allow for meaningful evaluation of anti-corruption enforcement measures.

## Deferred Prosecution Agreements

There appears to be some consensus on the value of Deferred Prosecution Agreements (DPAs) in exposing corporate crime. They might also be a useful means of corporations for corruption-related offences. Nonetheless, caution needs to be exercised in applying DPAs so that natural persons can still be prosecuted notwithstanding any DPA entered into with their employer.

## Investigations

Perceived failures in the conduct of criminal investigations was the most common concern raised by victims of alleged crimes raised with TI Ireland's Speak Up Helpline in 2016. In addition to increased resources and the need to retain specialist investigators in fraud and corruption offences, TI Ireland has called for better communication and a more customer service-based approach to both witnesses and victims of fraud and corruption offences.

There also needs to be clarity about the grounds for commencing an investigation into serious fraud or corruption. In one instance, a TI Ireland client noted that when reporting fraud to the Garda Bureau of Fraud Investigation (GBFI), they were advised that unless their employer reported the alleged fraud they would be unable to investigate. The rationale offered by the GBFI appeared to be that the victim of a fraud had to report the fraud or that the employer of a whistleblower should be given an opportunity to investigate the concern before it is dealt with by the Gardaí.

Section 19 of the Criminal Justice Act 2011 requires anyone with information on suspected fraud offences to share it with the Gardaí. That notwithstanding, guidelines for both witnesses and investigators in what constitutes information that might be of 'material assistance' in reporting fraud and the grounds for commencing criminal investigations would be helpful. In particular, guidelines would be helpful where there is some dispute between an employee and employer over the nature of a concern (and whether it ought to be reported under s.19) or over the length of time an employer should be allowed to undertake an internal investigation into alleged fraud or corruption before reporting it to the Gardaí.

## Conclusion

Although Ireland is not perceived to be as corrupt as most of its counterparts, it lags far behind many of its peers in terms of investment and planning to address the abuse of public office. If it is to get to

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<sup>83</sup> <http://www.irishstatutebook.ie/eli/2014/act/14/section/10/enacted/en/html#sec10>

grips with the problem, the Irish Government needs to commit itself to a far-reaching strategy that focusses its attention on the many forms of abuses that can plague our public services. This strategy will need to be developed independently of one aimed at addressing private-sector fraud and white-collar crime. It also needs to answer the following three questions: How do we prevent corruption? How do we detect corruption? How do we hold the corrupt to account?

In answering these questions, policy-makers need to understand the incentives and opportunities that give rise to corruption and work to reduce those opportunities by promoting more openness in public-sector decision-making. This involves more than a criminal justice response to the problem and one that recognises that corruption is ultimately a political challenge that requires political will and public resources to overcome it. TI Ireland is ready to offer whatever support and technical assistance is needed when delivering on a political commitment to confront that challenge.