Groupe d'Etats contre la corruption
Group of States against corruption

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Second Evaluation Round

Evaluation Report on Ireland

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I. INTRODUCTION

1. Ireland was the twenty-fifth GRECO member to be examined in the Second Evaluation Round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Ms Tania VAN DIJK, Senior policy officer, Ministry of Justice (The Netherlands), Mr Denis OSBORNE, Independent Adviser on Governance and Development (United Kingdom) and Ms Alexandra KAPIŠOVSKÁ, Adviser of the Department of International Affairs, Ministry of Justice (Slovak Republic). This GET, accompanied by a member of the Council of Europe Secretariat, visited Ireland from 21 to 24 March 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2004) 15E) as well as copies of relevant legislation.

2. The GET met with the Minister for Justice, Equality and Law Reform together with officials from the following governmental organisations: the Department of Justice, Equality and Law Reform, the Office of the Director of Public Prosecutions (DPP) and the Attorney General's Office, various branches of the Garda Síochána (the Police), the Criminal Assets Bureau (CAB), the Department of Finance, the Office of the Ombudsman, the Information Commissioner, the Standards in Public Office Commission, the Revenue Commissioners, the Company Registrar and the Director of Corporate Enforcement. Moreover, the GET met with representatives of the following non-governmental bodies: the Irish Chapter of Transparency International (under establishment), trade unions of the public sector, the Institute of Chartered Accountants in Ireland and the Irish Independent (newspaper).

3. The Second Evaluation Round, which runs from 1 January 2003 to 31 December 2005, deals with the following themes:

   - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption[1] (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
   - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Irish authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Ireland in order to improve its level of compliance with the provisions under consideration.

[1] Ireland ratified the Criminal Law Convention on Corruption on 3 October 2003. The Convention entered into force with regard to Ireland on 1 February 2004.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other deprivation of instrumentalities and proceeds of crime

5. Irish law provides for "criminal confiscation" of the proceeds of a crime following conviction on indictment and for "civil forfeiture" of the proceeds of crime in cases where there is no conviction (*in rem*). These two schemes are complementary to each other. Provision is also made for the forfeiture of the instrumentalities of crime following conviction for an offence. The GET was informed that the "criminal confiscation" (following conviction) should be used with priority in cases where it is considered possible to obtain a criminal conviction. Both schemes can be used with regard to instrumentalities and proceeds deriving from corruption. Although not technically confiscation, taxation is also a means by which to recover the proceeds of crime, which is widely used under the scheme of civil forfeiture. In cases where civil proceedings have been instituted as well as criminal proceedings, the criminal confiscation overrides the civil freezing order.

6. The Criminal Justice Act 1994 (CJA), as amended, contains provisions on confiscation of the proceeds of crime following conviction. Under Section 9 of the Act, where a person is convicted of any offence on indictment[2], other than an offence of drug trafficking or financing terrorism[3], the court can, on the application of the Director of Public Prosecutions (DPP), enquire into whether the person has benefited from the offence and, if it is satisfied that there has been such a benefit, the court may make a confiscation order. The burden of proof for determining whether and to what extent the person benefited from the offence is on *the balance of probabilities* (i.e. that applicable in civil proceedings) although the conviction itself must be obtained on the normal criminal standard (i.e. beyond reasonable doubt). If necessary, the property of the convicted person can be taken into possession and sold to satisfy the confiscation order. Section 61 of the CJA 1994, as amended, makes provision for forfeiture of the instrumentalities of crime e.g. of a bribe which was offered but not paid. Such forfeiture would involve not the proceeds of crime (as provided for under section 9) but property etc. used for the purpose of or to facilitate the commission of a crime, including corruption.

7. It is possible to confiscate direct or indirect (secondary) proceeds under the CJA. Property transferred to a third party for the purposes of avoiding a confiscation order may be considered as money laundering, which could be the basis for confiscation. "Realisable property" is defined in Section 3 of the CJA as any property held by the defendant or any property held by a person to whom the defendant has directly or indirectly made a gift etc. The court will determine the extent of the proceeds of crime which are to be confiscated (Sections 4, 5, 6, 8B & 9 of the CJA). Courts have in the past reduced the amounts confiscated in certain circumstances, such as where a property is co-owned by a partner who had no involvement in the crime. Expenditure by the criminal for the purpose of gaining the proceeds is not deducted in calculating the proceeds or benefit of the crime. The amount to be confiscated shall correspond with the benefit from the crime. Value confiscation is possible. The court determines the economic advantage by virtue of sections 5, 8B or 9 of the CJA, as appropriate. Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, s/he is to be treated for the purposes of this section as if s/he had obtained, as a result of or in connection with the commission of the offence, a sum of money equal to the value of the pecuniary advantage.

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[2] Indictable offences are crimes that are considered serious offences, generally tried before a judge and a jury, as opposed to summary offences which are offences of a minor nature and are tried before a judge without a jury.

[3] Confiscation of the proceeds of these crimes are provided for under sections 4 and 8B of the Act respectively.

8. The Proceeds of Crime Act 1996 (POCA), as amended, provides for civil forfeiture of property which derives or is suspected to derive, directly or indirectly, from the proceeds of crime. Similarly, the POCA provides for confiscation of property acquired by a third party (close relative, etc) if it is established that the source of the funds to acquire that property is in fact the proceeds of crime.

9. The Criminal Assets Bureau (CAB), set up in 1996, has responsibility for the identification, tracing and seizure of the proceeds of criminal activity. The Bureau is a multi-agency body (consisting of police, customs, tax administration and Department of Social and Family Affairs [welfare benefits]), tasked with applying a multi-agency law enforcement remit against proceeds of crime, including corruption. The Bureau works under the control and direction of the Chief Bureau Officer, who is a senior police officer. All action taken by the Bureau is subject to approval by or appeal to the Irish Courts. Applications under the Act may be made by a member of the Police not below the rank of Chief Superintendent, an authorised officer of the Revenue Commissioners or in the name of the CAB itself. Once the CAB shows the Court that the property is worth 13,000 Euros or more and derives, or is suspected to derive, directly or indirectly, from crime, the burden of proof shifts to the respondent. There is a general safeguard contained in the legislation whereby the Court must not make the order if there would be a serious risk of injustice. If the High Court is satisfied, on the *balance of probabilities*, that a person is in possession or control of property which is, or represents, the proceeds of crime, it may order the freezing of the property (This interim measure is described in more detail below). The initial court hearing is *ex parte*, but there is a provision for a full interlocutory hearing after twenty one days where the respondent has an opportunity to show the High Court, again on the balance of probabilities, that the property is not the proceeds of crime. If the seizure is maintained, the property may be made subject to a 'disposal order' - i.e. "confiscated" by the court - after seven years, or earlier if all parties consent to the reduction of the period of seven years (consent disposal order).

10. For the purposes of the POCA, "proceeds of crime" means any property (including money) obtained or received at any time by or as a result of or in connection with the commission of an offence. It refers to specified property that was acquired in whole or in part, with or in connection with property that directly or indirectly constitutes the proceeds of crime (secondary proceeds). Under the POCA, the civil recovery scheme can only be used with regard to property with a value exceeding 13 000 Euros. However, according to an amendment in 2005 to the Prevention of Corruption (Amendment) Act 2001, a suspected bribe, as an instrumentality of the corruption offence can be seized by any member of the Garda Síochána (police), regardless of its value (i.e. including those with a value of less than 13 000 Euros).

11. Moreover, according to Section 16B, POCA (amendment in 2005), a "corrupt enrichment order" - with the purpose of removing the advantage obtained through corruption - can be granted by the courts concerning an amount equivalent to the increase in value of a property as a result of a corrupt act, for example, planning (building) permission granted as a result of bribery, which has increased the value of the land.

Interim measures

12. As is the case with regard to confiscation, interim measures, such as seizure and freezing, can be taken under either criminal or civil law procedures. Both schemes are applicable to instrumentalities and proceeds from offences of corruption. Under the CJA, seizure/freezing is used to secure suspected proceeds of crime in cases where prosecution is taken or contemplated, the matter being finally decided post conviction. Also the civil forfeiture scheme provides for interim orders and interlocutory orders to freeze what is believed, on the civil law

balance of probabilities standard of proof, to be the proceeds of crime. A disposal order ("confiscation") can then be made after a period of 7 years (or earlier if all parties consent) to transfer the assets to the State if no proof is forthcoming that the assets were not the proceeds of crime.

13. The procedures providing for interim measures under the CJA are set out in Sections 23 and 24 of the Act. Under those procedures, an application may be made to the High Court for a restraint order to prohibit any person from dealing with any realisable property in certain circumstances. Section 23 of the Act sets out the circumstances in which the High Court powers are exercisable. In summary, this can arise where (a) prosecution proceedings have been instituted against a defendant, those proceeding have not been concluded and (i) a confiscation order has either already been made or (ii) it appears to the court that there are reasonable grounds to believe that a confiscation order may be made, or (b) the Court is satisfied that proceedings are to be instituted against a person and it appears to the Court that a confiscation order may be made. Through this mechanism, the State can seize/freeze funds which could be dissipated prior to conviction to ensure that such funds are available to meet a confiscation order. The procedures are used only for indictable offences.

14. Applications for interim measures under the civil forfeiture scheme may be made by the CAB on the basis of section 2 and further of the POCA, which provides for the following interim orders: *1) Interim order* (Section 2, POCA) - In ex-parte applications where the court is satisfied that the property constitutes the proceeds of crime, and where the value of the property is not less than €13,000, the Court may make an order (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[4] 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 making the order; *2) The interlocutory order* (Section 3, POCA) may be applied for within 21 days after the interim order is made (otherwise the interim order will lapse). The court may order an interlocutory order if it is satisfied by evidence tendered by the applicant that the property constitutes the proceeds of crime. 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. *3) The final disposal order* (Section 4, POCA) is made by the court where an interlocutory order has been in force in respect of the property for not less than 7 years. Such an order transfers the property to the Minister for Finance or to such other person as the court may determine. Finally, the POCA (as amended in 2005) provides for a *4) consent disposal order* which will allow for the period of seven years to be reduced if all parties give their consent.

15. According to Section 16B, POCA (amendment in 2005), a "corrupt enrichment order" (interim) can be granted by the courts concerning an amount equivalent to the value increase of property as a result of a corrupt act.

16. The management of the seized property, whether under the criminal or the civil scheme is dealt with through the appointment of a *receiver*, who would take the possession of, manage, realise or otherwise deal with the property as appropriate in accordance with the court's directive (Sections

[4] Definition of 'dealing' as per Proceeds of Crime Act 1996 – 'dealing' in relation to property in the possession or control of a person includes; (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, (b) removing the property from the State, and (c) in the case of money or other property held for the person by another person, paying or releasing or transferring it to the person or to any other person.

20 and 24, CJA and Section 7 , POCA). The GET was informed that this often would mean that property is sold, in order to avoid a decrease in value.

Statistics

17. There is no central agency responsible for recording the number of cases of confiscation and/or interim measures. However, the DPP maintains statistics in relation to post-conviction confiscation and the CAB provides information on interim measures in its annual report.

18. Within the last 3 years, 4 confiscation orders were made under the CJA, one of which was overturned on appeal. None of these were related to corruption. A further 11 cases were pending involving sums over €10,000 as of 30 September 2002. Together with these, for the three year period 2001-2003 (inclusive) a total of 26 POCA (Section 3) applications were made in the High Court to a total value of €4,298,100), none of which were related to corruption. These are in effect freezing orders of property determined under the act to be the proceeds of criminal activity. The POCA requires that seven years must elapse before a POCA (Section 4) Disposal Order can be applied for. In two corruption investigations assets amounting to €2 million were identified as the proceeds of corruption and ultimately seized using the CAB's revenue powers.

Mutual legal assistance: confiscation and provisional measures

19. Ireland is party to the European Convention on Mutual Assistance in Criminal Matters (ETS 030), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141) and the Criminal Law Convention on Corruption (ETS 173). At national level, the Criminal Justice Act (CJA), Part VII, provides the legal framework for mutual legal assistance regarding confiscation, forfeiture and interim measures in any criminal case, including cases of corruption. The GET was furthermore made aware of "*the Guide to Irish Law and Procedures in relation to Mutual Assistance in Criminal Matters*", a handbook to facilitate the use of these provisions. The Department of Justice, Equality and Law Reform is the designated Central Authority for international co-operation in criminal matters and is, accordingly acting as '"gatekeeper" - where necessary - for channelling international requests, including requests concerning confiscation and interim measures.

20. In relation to requests by Ireland for international legal assistance concerning confiscation or interim measures, this is dealt with in a Criminal Justice (Mutual Assistance) Bill which was expected to be published during the Parliamentary session in progress at the time of the evaluation visit[5]. Requests from those Irish authorities that have been designated to issue mutual legal assistance requests[6] will normally be sent to the Central Authority for transmission to the appropriate foreign authorities. However, where a state is not prepared to accept requests directly from the Central Authority, these will be sent through the diplomatic channel. In cases of urgency, direct transmission by the competent Irish authority to the competent foreign authority is possible. A judge is empowered to issue a letter of request, on application from the Director of Public Prosecution (DPP), for assistance where it appears to the judge that an offence has been committed.

21. Part VII of the CJA also deals with requests to Ireland by other countries. It enables the enforcement in Ireland of confiscation and forfeiture orders concerning proceeds and instrumentalities made in another jurisdiction (Sections 46 and 47) and governs the procedure

[5] This was published on 5 December 2005.

[6] The District Court, the Circuit Court, the High Court, the Special Criminal Court, the Court of Criminal Appeal, the Supreme Court, the Attorney General, the DPP and the Chief State Solicitor.

whereby the Irish courts can take evidence in connection with criminal investigations or proceedings abroad, including corruption. It also permits search for and seizure of material in Ireland on behalf of another country.

22. By virtue of Sections 46 (1) and 47 (1), the Government may designate[7] countries in respect of which a court in Ireland may make orders (confiscation and forfeiture co-operation orders) to give effect to confiscation orders made in those countries. For the enforcement in Ireland of a confiscation or forfeiture order made in another jurisdiction, an application may be made to the High Court, with the consent of the Minister of Justice, Equality and Law Reform, by or on behalf of the Government of a designated country. The High Court, before making a confiscation co-operation order, must be satisfied that the order made in the relevant country is in force and not subject to appeal; that the person against whom the order was made, if he or she did not appear in the proceedings, received notice of the proceedings in sufficient time and that the making of a confiscation co-operation order would not be contrary to the interests of justice. In accordance with Regulations made by the Government under section 46(6) of the CJA, the High Court may also impose a restraint order to prevent any person from dealing with property pending the decision of the Court. When a court in Ireland makes a confiscation co-operation order, the order may be enforced by the DPP as if it was a domestic confiscation order. Ireland does not allow for the possibility of asset sharing: confiscation or forfeiture co-operation order are satisfied for the benefit of the Irish Exchequer.

23. The Irish authorities may use confiscation and interim measures in the following situations involving foreign elements: where the respondent is situated outside Ireland but the property and the criminal conduct are in Ireland; where the conduct is carried out abroad but the property and the respondent are situated in Ireland, provided that the offence is criminalised in the other State; where the respondent is situated in Ireland and the criminal conduct occurred in Ireland but the property is located abroad; and where the property is in Ireland, the respondent abroad and the conduct occurred abroad.

24. Amendments in 2005 of the legislation governing the CAB has also made it possible for this institution to co-operate with other civil recovery agencies (for example in the United Kingdom), in addition to co-operation with traditional law enforcement authorities abroad.

25. The GET was informed that the number of cases of mutual legal assistance increases every year by the courts. In 2004 there were 443 incoming requests for legal assistance, none of which were refused. Ireland requested assistance in 85 cases the same year.

Money Laundering

26. The principal provisions relating to money laundering are set out in sections 31 and 32 of the CJA. These sections provide that a person is guilty of money laundering if, knowing or believing that property is or represents the proceeds of criminal conduct or being reckless as to whether it represents such proceeds, a) converts, transfers or handles the property or removes it from the State, b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it or c) acquires, possesses or uses the property. This offence carries – on conviction on indictment - a maximum sentence of 14 years' imprisonment, an unlimited fine or both and - on summary conviction - a maximum sentence of 12 months' imprisonment or a fine.

[7] The GET was informed that designation of a country usually follows from ratification by that country of the Conventions mentioned above. However, Ireland can provide assistance to a non-Convention country on a reciprocal basis.

27. All offences generating proceeds, including corruption, regardless of whether they are committed in Ireland or abroad, are predicate offences to money laundering. If an offence occurs outside the jurisdiction and the proceeds are deposited in Ireland, a possible money laundering offence may be considered to have been committed in Ireland. However, the criminal conduct in question must constitute an offence under the law of the country or territorial unit where it occurred.

28. In accordance with Council Directives, 2001/97/EC, 91/308/EEC and 89/646/EEC on money laundering a number of significant statutory instruments have come into effect under the Criminal Justice Act (No. 104/1995, No. 242 of 2003, No. 416 of 2003 and No. 3 of 2004). These regulations state the obligations concerning customer identification, record keeping and the reporting of suspicious transactions to a number of financial institutions, designated professions and their associated activities.

29. The GET was informed that during the period 2002-2005 four cases of money laundering, with corruption as predicate offence had been investigated. Two of them had been prosecuted.

b. Analysis

30. The GET was of the opinion that with the existing provisions for confiscation in criminal proceedings following conviction, the civil forfeiture scheme (*in rem*) and/or ultimately the possibility to collect taxes on income which may have been derived from crime, Ireland has a solid legislative framework with regard to the proceeds of crime and instrumentalities. The application of the legislation in practice allows the authorities to effectively tailor their approach to the criminal conduct involved: where a criminal conviction cannot be secured, civil forfeiture and/or taxation may be used. The provisions of both schemes (criminal confiscation and civil forfeiture) are applicable to corruption, to proceeds of a primary and secondary nature, allow for value confiscation and provide that property may be exacted from third parties.

31. As to confiscation in criminal proceedings, following a conviction on indictment a confiscation order may be granted regardless of the value of the proceeds or instrumentalities involved. It is not mandatory to seize proceeds of corruption under the CJA, but the GET was told that the general rule and practice was to systematically use confiscation in criminal proceedings as it takes priority over civil forfeiture. Nevertheless, the GET considered that there was a risk of seizure and confiscation in the criminal process being neglected in favour of the easier *in rem* civil forfeiture. The GET furthermore regarded that by limiting the possibility of confiscation to indictable offences[8] this measure was not available in minor corruption offences[9]. The amendments in 2005 to the Prevention of Corruption (Amendment) Act 2001 (sections 2A and 2B), which allow the seizure and forfeiture of bribes regardless of their value and without a prior conviction, seem to be an improvement, although it is too early to comment on the application of these amendments in practice.

32. The GET was impressed by the civil forfeiture scheme (*in rem*) which has provided the Criminal Assets Bureau (CAB) with effective tools to identify and seize proceeds of crime. The vast total amount of property seized each year by the CAB is an example of the commitment of the Irish

[8] Under Irish law, crimes are classified as either summary offences or indictable offences. Summary offences are generally offences of a minor nature, tried before a judge without a jury. Indictable offences are considered serious offences, brought by the DPP and where the defendant is entitled to a trial by jury. There is however no clear definition in the law what are to be considered summary or indictable offences.

[9] Under the Prevention of Corruption Act, 1906, as amended, penalties for such minor (summary) cases include a fine of up to €3 000. The Irish authorities consider this an efficient and cost-effective way of depriving the offender of the proceeds of crime.

authorities to deprive persons of the benefits from crime. It should be mentioned that in spite of its positive impressions of the civil forfeiture scheme, the GET had some reservations to the provisions of the Proceeds of Crime Act (POCA) which prescribe that a civil forfeiture order can only be secured if the value of the property amounts to more than the equivalent of €13,000. However, the Irish authorities supplied information on the amendments made in 2005 to the legislation on confiscation and forfeiture. Although this is not part of the civil forfeiture scheme as such, the amendment of the Prevention of Corruption (Amendment) Act as mentioned above now makes a form of *in rem* confiscation available for bribes of any amount. Furthermore, amendments to the POCA (section 16B) now provide for a so-called corrupt enrichment order by which a person can be ordered to pay an amount equivalent to the advantage which s/he has gained by what is deemed on the balance of probabilities to have been corrupt conduct, even if this advantage is valued at being less than €13,000. With these two amendments the GET considered the existence of a so-called threshold of €13,000 in civil forfeiture proceedings of a lesser concern in (minor) corruption cases. Also considering the information from the Irish authorities that lowering the threshold could hamper the efficiency of the CAB and the use of ordinary criminal confiscation, the GET concluded that there was no need to push for a reduction or review of the threshold of €13,000 in civil forfeiture proceedings.

33. Turning to interim measures the GET was satisfied that these can be taken at the early stages of both civil and criminal proceedings/investigations to secure (seize) funds and property to prevent their removal from the State and to satisfy subsequent confiscation or forfeiture orders. Furthermore, the GET was of the opinion that the appointment of a 'receiver' under both the criminal confiscation and civil forfeiture scheme provides that the management of seized assets is generally well taken care of.

34. With respect to statistics, the GET took note of the data provided in relation to proceeds recovered/seized by the Criminal Assets Bureau and confiscated in criminal proceedings. The GET found these statistics confusing. Not much light was shed on the extent to which perpetrators of specifically corruption offences - including legal persons - are deprived of illicit benefits and the number of interim measures taken in this regard. The GET was unable to ascertain whether this was due to a lack of adequate registration or to a flaw in the representation of these statistics. For example, the GET was told that the figures relating to criminal confiscation and civil forfeiture were not exhaustive as confiscation may occur without criminal or civil proceedings through the Revenue Commissioners powers under the Taxes Acts, but the only two cases of asset recovery in relation to corruption that were reported did in fact relate to taxation. Leaving aside possible indications from the Criminal Assets Bureau as to which crimes the property to be forfeited is suspected to derive from[10], the GET was of the opinion that a more systematic collection and representation of statistical data may help to identify possible flaws or blind spots in the Irish anti-corruption policy. *The GET therefore observes that the authorities should consider establishing a systematic registration and analysis of the number of seizures, investigations, prosecutions and confiscations (and if possible civil forfeitures) linked to corruption.*

35. Regarding mutual legal assistance, the Irish authorities should be commended for their commitment to international co-operation in criminal matters. The GET noted that the scope of the Proceeds of Crime legislation applicable to civil forfeiture was enlarged in 2005, which expanded the possibilities for Irish authorities to use forfeiture and interim measures in relation to criminal conduct and property outside Irish jurisdiction. Civil (*in rem*) forfeiture is a relatively new

[10] The GET understood that as Criminal Assets Bureau seeks civil forfeiture of assets *in rem*, it does not need to register which crime these assets derive from.

phenomenon and civil forfeiture asset recovery agencies, like the Criminal Assets Bureau, are not recognised in all jurisdictions. This may in some cases be an obstacle for the Criminal Assets Bureau to seek co-operation with entities outside its jurisdiction. Another problem with respect to civil forfeiture is that civil forfeiture orders, not being sanctions, can often not be recognised and therefore not enforced by other jurisdictions. The GET welcomed that in 2005 possibilities for the Criminal Assets Bureau to co-operate with other civil recovery agencies were expanded. As to entities outside Irish jurisdiction seeking co-operation with regard to property situated in Ireland, the GET was informed that all foreign confiscation orders were satisfied for the benefit of the Irish Exchequer.The GET was pleased to learn that preparations for introducing the possibility of asset-sharing with regard to post-conviction confiscation were underway.

36. The GET took note of the broad range of tools for preventing, detecting and enforcing the law on the various forms of money laundering. Any offence generating proceeds, including corruption, may be a predicate offence to money laundering, whether committed in Ireland or abroad. A wide range of institutions and professional bodies are designated to report suspicions of money laundering. The GET was told by some of the designated bodies that the reporting requirements placed upon them were not clear (see further the analysis under Theme III).

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Concept of Public Administration and anti-corruption policy

37. There is no legal or constitutional definition of 'public administration' however the concept includes the following: the Civil Service, Government Ministers and Office holders, local authorities, the National Police (Garda Síochána), the Defence Forces and the Health Service Executive and authorities. In Ireland there is a distinction made between civil servants (administrators employed within the Government administration) and public servants (all other public employees, such as local authority staff, medical personnel, teachers and logistics personnel).

38. Irish Public administration has in recent years undergone a modernisation programme with the overall aim of ensuring that civil and public servants deliver a high quality service to public bodies as well as to the general public. As a result, new legislation and regulations as well as mechanisms for their implementation have been put in place.

39. The *Prevention of Corruption (Amendment) Act 2001* provides the legal basis of Ireland's anti-corruption strategy for public servants. This Act enabled Ireland to ratify the Council of Europe Criminal Law Convention on Corruption as well as anti-corruption conventions of the EU and the OECD. The Act penalises active and passive bribery involving public employees, domestic and foreign public office holders. The Act provides for a maximum penalty for those convicted of the offence of corruption to an unlimited fine and/or up to 10 years' imprisonment or both.

40. The *Ethics in Public Office Act 1995* and the *Standards in Public Office Act 2001* (which builds on the 1995 Act) provide the legal framework for the adherence to good ethical practice - including several aspects relating to the prevention of corruption - by civil and public servants at the central level. Section 10(3) of the 2001 Act foresees that a Code of Conduct for the guidance of public officials shall be drawn up by the Minister of Finance in consultation with the Standards in Public Office Commission. Accordingly, the *Civil Service Code of Standards and Behaviour* was

promulgated by the Minister for Finance on 9 September 2004 and was published by the Standards in Public Office Commission. There are also separate Codes of Ethics for members of Parliament as well as for Ministers published by that Commission.

41. The *Local Government Act 2001* provides the legal framework specifically dealing with the employees and Members of Local Authorities, i.e. County and City Councils. This legislation has also been complemented with more specific guidelines; *the Code of Conduct for Employees* and a separate *Code of Conduct for Councillors* (elected local government members) were adopted by the Minister for the Environment, Heritage and Local Government in June 2004 after consultation with the Standards in Public Office Commission.

42. The *Standards in Public Office Commission* (SIPOC) was established in December 2001 under the Standards in Public Office Act, 2001, when it took over the functions of its predecessor, the Public Offices Commission. The Commission is an independent statutory body which is chaired by a Judge of the High Court. The other members are the Comptroller and Auditor General, the Ombudsman, the Clerks of both Houses of the Oireachtas (Parliament) and a former Member of the Houses. The Commission is charged with supervising the provisions of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001 in so far as that legislation applies to public servants (in the civil service and the wider public service) and members of Parliament who are Office Holders.

Transparency

43. The GET was informed that the introduction of the *Freedom of Information Act 1997*, was a major step in the modernisation process of the public administration in Ireland. This law which was subsequently amended in 2003, provides that every person has a right to *personal information* (concerning him/herself) and to have personal information held on him/her corrected or updated where such information is incomplete, incorrect or misleading. Moreover, reasons should be given for decisions taken by public bodies which affect the person.

44. Moreover, any person also has a presumed right of access to any *other information* concerning official records (created since 21 April 1998) and should in principle be given access to any other information concerning official records (available since 21 April 1998) held by a public body. The Freedom of Information Act applies to some 380 public bodies and is being extended, over time, to more public bodies; it applies to all Government Departments, Local Authorities and the Health Service Executive, as well as to voluntary hospitals, enterprise bodies, universities other third level education institutions and major service providers in the intellectual and physical disability field. Any official information held by public bodies can be sought under this Act. However, the Act provides that certain information is exempt from release. Among the exemptions, many of which contain a harm and/or public interest test, are records relating to the deliberations of public bodies, negotiations, Government meetings, law enforcement public safety, security, defence and international relations, confidential and commercially sensitive information as well as "personal information" other than information relating to the person making the request. Moreover, the Act does not apply to certain records, for example, a record relating to the President, to an investigation or examination by the Ombudsman or the Information Commissioner or to an audit, inspection or examination carried out by the Comptroller and Auditor General.

45. The Freedom of Information Act also established the Office of the Information Commissioner in order to provide an independent mechanism of appeal for the public who are not satisfied with decisions made by public bodies holding the information.

46. There is no application fee for requests of access to *personal information*, however, public authorities may charge for the time used for searching for and retrieving the information that is released (20.95 euros/h) and for copying such information. The application fee for *other information* is 15 euros. The GET was informed that requests for information sometimes were dealt with in an informal manner without the described procedure and connected fees, in particular, with regard to personal information. The fee for an appeal for an internal review of a decision not to give out information is 75 euros and to lodge an appeal with the Information Commissioner costs 150 euros (reduced only for medical card holders). The appeal fees apply with regard to "other information" and not in cases concerning personal information. The GET was told during the visit that the fees had been revised in 2003 in order to prevent abusive requests/appeals. The authorities have added reasons such as "a greater appreciation of the service provided" and "a need to better reflect the cost of administering the Freedom of Information Act".

47. With regard to public consultation, the Government published guidelines for public bodies in July 2005 as had been promised in the 2004 White Paper on Better Regulation entitled *'Regulating Better'*. Consultation in Ireland takes a variety of forms. These vary from public meetings to written consultation depending on the nature of the policy being developed. Consultation can be a statutory requirement, for instance in planning applications and development plans under Local Authorities, where a specific time period is allowed for submission from interested parties. *Regulatory Impact Analysis (RIA)* which was piloted through 2004/2005 (including during the visit of the GET), has been introduced across all Government Departments and Offices as of June 2005. It must be applied to proposals for primary legislation, significant statutory instruments, draft EU Directives and significant EU Regulations. RIA is a tool used to assess the likely effects of a proposed new regulation or regulatory change and includes structured consultation and a more evidence-based approach to regulation. Moreover, particular areas of policy administration provide for consultation with NGOs and community groups through local and governmental partnerships and multi-agency committees.

48. Ireland's process of National Social Partnership involves formal multi-annual (three year) agreements between Government and the Social Partners – trade unions, employers, farming organisations and the community and voluntary sectors and provides a mechanism for ongoing consultation on a range of policy issues. The process has been in operation since 1987 and six social partnership agreements have been concluded.

49. There are also specific provisions in relation to customer service through a *Customer Charter Initiative* launched by the Prime Minister (Taoiseach) in December 2002, which is a theme of the Public Service Modernisation Programme; Government Departments and Offices are required to develop Customer Charters, describing in detail the standards of service they will provide. Charters are based around a four-step cycle of consultation, commitment, evaluation and reporting. It is recognised, however, that each Department/Office needs to tailor its approach to its own circumstances and experiences. Departments and Offices are required to report their progress in their Annual Reports.

50. The GET was also informed about a Government run project "eCabinet" (2001), aiming at introducing a modern system of e-government technologies in Ireland.

Control of Public Administration

51. Public authorities are governed by procedures arising from their statutory remit and the authority involved will usually have clearly defined procedures for dealing with appeals, depending on the

nature and circumstances of the administrative decisions in question. Usually a final right of appeal to the courts will exist in all cases. For example, in taxation matters, a person dissatisfied with an administrative decision of the Revenue Commissioners in connection with any tax or duty under their care and management has a right to an independent review. A senior officer who is not connected with the matter in dispute will review his/her case. Over and above this, there is a right to bring the matter to an independent tribunal known as the Appeal Commissioners. If the person is dissatisfied with the decision of the Appeal Commissioners, s/he may have the appeal reheard in the Circuit Court, or, where a point of law is involved, directly by the High Court ("case stated").

52. The Ombudsman does not have a specific remit in relation to the prevention and detection of corruption; however corruption would fall into the wider remit of independent investigation of malpractice within Government Departments, etc. The Ombudsman has legal powers to demand any information, document or file from a body complained of and can require any person to give information about a complaint. The Ombudsman can investigate all administrative actions, including decisions, refusal or failure to take action as well as administrative procedures.

53. The Information Commissioner (this function is currently carried out by the Ombudsman though the Offices are separate statutory offices) is an appeals body for the public on decisions concerning access to public information. Established under the Freedom of Information Act, the Information Commissioner has the power to carry out investigations and the decisions are binding on both parties. A party to a review, or any other person affected by a decision of the Information Commissioner following a review, may appeal to the High Court on a point of law arising from the decision and subsequently to the Supreme Court.

54. The Standards in Public Office Commission (SIPOC) is an independent statutory body empowered to carry out investigations into possible contraventions of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 and to report on its findings. To this end, it may make whatever enquiries it considers necessary and compel any person to furnish any information which the Commission may require. The Commission may also receive complaints from the public concerning the proper performance of duties by public employees. If during, or at the conclusion of an investigation, the SIPOC was of the opinion that the person who is the subject of the investigation may have committed an offence (as distinct from a contravention of the aforementioned legislation) relating to the performance of the person's official functions, it would report the matter to the Director of Public Prosecutions.

55. Audit at central government level is carried out by the Comptroller and Auditor General. The audit remit extends to government departments (Ministries) and offices, non-commercial State-sponsored bodies, health agencies and educational institutions. An audit opinion is issued annually after examination of the accuracy of the accounts and the regularity of transactions. The Auditor General may at his/her discretion report to Parliament on aspects of financial management and value for money and does so in a series of reports. This body also examines each audited entity's arrangements for corporate governance on an annual basis. The Comptroller and Auditor General is appointed by the President and this Office has an establishment of 150 auditors and 25 support staff. Audits are carried out in accordance with International Auditing Standards.

56. Local government auditors are appointed by the Minister for the Environment, Heritage and Local Government. The service has a staff of twenty-five auditors and ten assistant auditors. Specific audits are assigned to each auditor, under warrant, issued by the Director of Audit. Each auditor is statutorily independent in the exercise of his/her functions. The Minister decides

how audits are to be carried out and has prescribed a statutory Code of Audit Practice in this respect.

Recruitment, career and preventive measures

57. The recruitment procedure to the civil service is as a rule based on open competition. Under the Civil Service Commissioners Act 1956, independent Commissioners are responsible for selection procedures for appointments to the Civil Service. These selection procedures may involve tests, short-listing, interviewing, and certain background checks before an appointment is made. Background checks may include validation of academic qualification, health status, character reports and in certain circumstances broader security clearance. The GET was informed that there are codes of practice to guide the open recruitment to the civil service as well as to local authorities.

58. According to the Public Service Management (Recruitment and Appointments) Act 2004, two new bodies have been set up to replace the Office of the Civil Service Commissioners: (1) Commission for Public Service Appointments (CPSA) is a regulatory body charged with ensuring probity in recruitment & selection to the civil service and certain posts in the local authorities, health services, etc. That body is responsible for, *inter alia*, issuing recruitment licences to the Secretary General of civil service departments, City/County Managers of local authorities and CEOs of the health services, drawing up and publishing codes of practice in recruitment and selection for posts under its remit and for auditing recruitment and selection processes carried out by licence holders; and (2) Public Appointments Service, which is the central recruitment agency, operating under a recruitment licence granted by the CPSA.

Training

59. Newly recruited civil servants receive on their first day information about the fundamental principles inherent to the civil service and must be given a copy of the Civil Service Code of Standards and Behaviour (see below). They must certify in writing that they have received and read the Code, which forms part of their terms of employment. The attention of new recruits is drawn to the main legislation, guidelines and circulars which impose legal and administrative obligations on them, e.g. official secrecy, obligations in relation to integrity, honesty, impartiality, political impartiality, conflicts of interest etc. In addition, all new civil servants attend induction courses after they have spent some time in their new positions. The courses re-iterate the fundamental principles of the public service and expand on how to strive for and achieve those principles in practice. Furthermore, all civil servants are circularised with new instructions that impose legal or administrative obligations on them, e.g. instructions relating to freedom of information. Civil service managers are required to manage their staff in accordance with these principles and to reiterate and emphasise them repeatedly.

Conflicts of interest

60. Under the Ethics in Public Office Acts 1995 and 2001, Civil Service position holders who have "designated positions" are required to declare their interests as well as those of their spouse or children if this could materially influence the Civil Servant in relation to the performance of his/her functions. A 'designated position' is a position in the civil service or in the wider public service generally at Principal Officer level and above together with positions at lower levels which are regarded as sensitive such as those involved with major procurement.

61. There are specific rules contained in the *Civil Service Code of Standards and Behaviour* (2004) with regard to outside employment of civil servants as well as with regard to resigned or retired civil servants (Sections 18 and 20). Moreover, there is an "*Outside Appointments Board*" established by the Minister of Finance to which civil servants at and above Assistant Secretary level who intend to be engaged in or connected with any outside business (on resignation or retirement) will be obliged to report their engagement in outside business which might affect their position as civil servants (Sections 20 and 21).

62. Additionally, the Civil Service Code of Standards and Behaviour contains significant provisions relating to conflicts of interest and outside appointments, concerning for example, impartiality and undue influences (Sections 4, 13 and 14), disclosure of conflicts of interest (Section 15), gifts, hospitality, outside employment, etc.

63. According to the Prevention of Corruption Acts 1889 to 2001 (including the Ethics in Public Office Act 1995), the corrupt giving of gifts to, or receipt of gifts by, civil servants is a criminal offence. Moreover, the Civil Service Code of Standards and Behaviour contains extensive rules and guidelines about gifts to civil servants, i.e. that they "should not receive benefits of any kind which might reasonably be seen to compromise their personal judgment or integrity" (Section 16.1). The Code also establishes guidelines and examples of acceptable gifts (Section 16).

64. There is no formal system (either legal or administrative) of regular rotation of staff. However, civil service managers are required to manage to high standards and, wherever necessary, may use for example periodic rotation as a relevant safeguard to prevent malpractice and illegal activities, such as corruption. The GET was told that staff mobility is a key element of the Performance Management Development both within and between departments. Special attention is paid in this context to particularly vulnerable areas, such as public procurement and licensing.

Codes of conduct/ethics

65. Within the above-mentioned modernisation programme of the Irish public administration, codes of conduct have been considered as important tools, both at central and local level. Under the auspices of the Ministry of Finance in co-operation with the Standards in Public Office Commission, the *Civil Service Code of Standards and Behaviour* was promulgated in 2004. The GET was informed that this instrument, as required by the Standards in Public Office Act 2001, to a large extent is a compilation of various circulars which date back to the early decades of the State. The Standards in Public Office Commission (SIPOC) can have regard to its provisions in the course of investigating a complaint against a civil servant.

66. Similarly, in accordance with the requirements of the Local Government Act (2001) and under the authority of the Ministry for the Environment, Heritage and Local Government and the Standards in Public Office Commission, the Code of Conduct for local authority employees has been developed. This instrument provides an extensive list of guidelines in situations concerning various forms of conflicting interests. The Standards in Public Office Commission can have regard to its provisions in the course of investigating a complaint against a local authority employee. A separate Code of Conduct for Councillors (elected local government members) was published in June 2004.

67. A code for the wider public service, including bodies in the commercial and non-commercial State sector, was at the time of the visit by the GET being drawn up by the Minister for Finance.

68. A person to whom a code of conduct relates is required by law to have regard to and be guided by the code in the performance of his/her official functions and in relation to other matters to which the code relates. The Civil Service Code of Standards and Behaviour and the Code of Conduct for local government employees form part of the terms and conditions of employment. Breaches of any of the Codes will constitute a breach of the terms of employment of a civil servant/local authority employee and may result in disciplinary action (see below) and could give rise to an investigation by the SIPOC.

69. These Codes are admissible in any proceedings before a court, other tribunal or the Standards in Public Office Commission. In the event that disciplinary action is taken against a civil servant, s/he would have recourse to legal advice and/or the assistance of a union official in preparing a response to any charge.

Reporting corruption

70. The Civil Service Code of Standards and Behaviour (Section 6.2) requires that civil servants should refer the matter to their superiors if they have *doubts about the legality of a particular action which they are required to take*. However, there is no general obligation upon civil or public servants to report misconduct, breaches of duty or criminal behaviour, such as corruption that they come across in the course of their duties. They may, however, as any citizen, report such matters to the Police or to the Standards in Public Office Commission.

71. Section 4 of the Standards in Public Office Act 2001 empowers the Standards in Public Office Commission to investigate complaints made against 'a specified person'. A specified person is so widely defined in the Act as to include all public servants. Complaints may be made to the Commission regarding acts or omissions which are inconsistent with the proper performance of the functions of the specified person's office, or with the maintenance of confidence in such performance and the matter is one of significant public importance.

72. Section 5 of the 2001 Act provides immunity in the case of complaints made under Section 4 or under any section of the Act or under the Ethics in Public Office Act 1995 – no cause of action shall lie against the complainant and the complainant will not have disciplinary action taken against him/her. Immunity does not apply, of course, in the case of false, misleading, frivolous or vexatious complaints.

Disciplinary proceedings

73. Circular 1/92 deals with procedures relating to disciplinary measures in the civil service. The objectives of the disciplinary code Grievance Procedure and Disciplinary Code are to ensure that officers against whom allegations are made are dealt with in a fair and equitable manner, and to provide an adequate means by which impropriety can be dealt with effectively and the highest standards of conduct maintained. The code details the investigation procedures to be followed by a Personnel Officer in a Department/Office or another officer nominated for this purpose and the actions to apply when an allegation of misconduct, etc warranting disciplinary action is made against an officer.

74. The disciplinary measures available are the deferral of an increment, debarment from competitions or from promotion for a specified period of time, transfer, the withdrawal of concessions or allowances, the withholding of remuneration during a period of suspension, reduction in pay or rank and dismissal. A disciplinary decision taken by the Department may be appealed to the Civil Service Disciplinary Code Appeals Board (under the Ministry of Finance) for

review. The SIPOC could conduct an investigation relating to an alleged contravention of the Ethics in Public Office Act 1995 or the Standards in Public Office Act 2001. Its report on the findings of the investigation could give rise to disciplinary procedures involving the public servant who is the subject of the investigation. Application of a sanction would be a matter for the head of the relevant public service body.

75. There are no statistics centrally available on the use of disciplinary measures. Different agencies are responsible for monitoring compliance with different Codes of Conduct. Generally, it is the responsibility of each Department to monitor their staff, however, the Standards in Public Office Commission is responsible for monitoring the adherence of office holders to their relevant Codes.

b. Analysis

76. The common view of Irish authorities and public officials met by the GET was that corruption does not represent a major problem in the country, nor in the public administration. This perception seems to be justified and no information that the GET received from public officials or civil society representatives suggests that public administration in Ireland should be systematically affected by corruption. However, instances of corrupt behaviour have occurred from time to time. Following allegations of corruption involving political and business interests, three tribunals of inquiry were established in the late 1990's. The publicity for their continuing enquiries did possibly heighten the perceptions of corruption in public administration as their attention was directed towards the highest level of the political leadership. Some public officials were implicated as well, though only one has been convicted and that conviction was subsequently overturned on appeal. The public tribunals` investigations of corruption-related scandals in Ireland may, however, have had an important impact on the rapid modernisation programme that public administration has undergone in recent years.

77. There is no general explicit anti-corruption strategy. However, fundamental legislation has recently been enacted; the Prevention of Corruption (Amendment) Act, the Freedom of Information Act, the Ethics in Public Office Act, the Standards in Public Office Act and the Local Government Act, supplemented with codes of conduct at both central and local level which constitute a solid ground for a public administration with high integrity. These regulations form a general anti-corruption strategy for the public administration. Ireland should be commended for its focused approach to develop these standards of public administration. Bearing in mind this generally positive assessment, the GET was of the opinion that there is still room for improvement in particular areas.

78. Transparency of public administration is an important factor for the prevention of corruption as well as for general confidence in the administration. The importance of the introduction of the Freedom of Information Act in 1997 should be emphasised in this respect. The transparency of the public tribunals' investigations is another form of openness, which serves the same purpose. As a principle, according to the Freedom of Information Act, any official information held by any public body may be sought. The Act also provides for an internal as well as an independent appeals system (the Information Commissioner) in cases when, for example, the release of records has been refused. The degree of openness was reduced when the exemption relating to governmental meetings was strengthened in 2003. The GET regrets such moves to reduce transparency, but had no indication that this decision was taken without justified reasons. Moreover, for various reasons, *inter alia,* to avoid abusive requests, there is a system of fees concerning requests for information other than information relating to the person in question. The system of fees was restructured in 2003 to incorporate a flat fee element in addition to the pre-existing work related fee. Moreover, there is a fee for internal review of a decision as well as for

an appeal to the Information Commissioner. Although the GET understands the logic and the reasons for the "fee-system", it was of the opinion that the described rules could prevent the public from requesting information and/or appealing a decision not to give out information. Above all, the fee system (as specified in paragraph 46) sends a negative signal to the public, which is to some extent in contradiction with the general principles of the right to access to official information, as provided for in the Freedom of Information Act. **The GET therefore recommends to reconsider the system of fees for requests for access to official information according to the Freedom of Information Act as well as with regard to the available review and appeal procedures in this respect.**

79. The GET was of the opinion that the large variety of independent control mechanisms of public administration, such as the Ombudsman, the Information Commissioner, the Comptroller and the Auditor General and, ultimately, the ordinary courts provide sufficient formal protection against maladministration.

80. Turning to the rules for public officials' conduct, the GET welcomed the promulgation in 2004 of the Civil Service Code of Standards and Behaviour at the central level and the Code of Conduct for Employees at the local government level. Both these instruments are the result of compilation of various regulations, previously existing in different circulars. The GET was pleased to note that these codes cover a large variety of standards required by public officials, for example concerning their impartiality, respect for the law, disclosure of information, conflicts of interest, disclosure of conflicts of interest, gifts, relations with outside bodies, acceptance of outside employment etc. The GET also welcomed the on-going work to establish a code of conduct for the wider public service.

81. The GET was concerned that there is no obligation on public officials to report corruption or suspicions of corruption that they come across, either in the legislation, nor in the Civil Service Code of Standards and Behaviour, nor in the Code of Conduct for Employees at the local government level. The authorities referred in this respect to Section 6.2 in the previous Code which states that civil servants who have doubts about the legality of a particular action that they are required to take in the course of their official duties, should refer the matter to their superiors. The GET was of the opinion that the situation described in Section 6.2 does not at all cover situations where a public official observes, for example, a corruption situation where a colleague appears to be involved.

82. Nothing would in principle prevent a public official, as any other citizen, from reporting instances of corruption directly to a superior, to the Standards in Public Office Commission or to the Police; however, there is no legal obligation nor any ethical guidelines encouraging him/her to do so. The GET was of the opinion that the absence of guidelines in this respect weakens the possibilities to detect possible corruption in the Irish Public Administration. At the same time the GET understands the difficulties connected with the establishment of a reporting obligation in law, and is of the opinion that clear guidelines in codes of conduct/ethics accompanied by training, which is the situation in several member States of GRECO, would sufficiently solve the present "lacuna". Such guidelines would not only be helpful for public officials, but would also be an important message to the wider public and good for the image of the administration. The GET appreciates that there is immunity-protection in place for those who submit complaints to the SIPOC (Section 5, Standards in Public Office Act). However, general rules or guidelines for public officials to report corruption should preferably be accompanied by some form of general protection for those who report corruption in good faith. Consequently, **the GET recommends to introduce clear rules/guidelines and training for public officials to report instances of corruption, or**

suspicions thereof, which they come across in their duty and, to establish adequate protection for public officials who report instances of corruption (whistleblowers).

83. The GET was fully aware that Codes of conduct cannot cover every aspect of public administration and that these kinds of instruments must focus on a few key elements. Moreover, such codes should preferably be "living instruments" and have the possibility to evolve over time. Many of the principles contained in the Codes are generalised and drafted in a short and simplified way and are not always easy to apply in practice, without thorough experience. New input to the Codes is likely to come from ordinary staff, for example, during training sessions. The GET was told that the Civil Service Code of Standards and Behaviour as well as the Code of Conduct for Local Employees are distributed to all public officials, who have to sign a statement that they have received the Code. Moreover, the Codes form part of the training of new recruits. The GET was concerned that all staff should be as engaged as possible in furthering the ethics of public administration and the pure reception of the Code does not appear to be sufficient. One way of promoting the ethics of the codes would be to involve all staff, and not only the new recruits, in training programmes relating to the principles contained in the Codes. Such training could be organised at various levels (centralised or at departmental level), however, with a view to achieve a uniform application of the principles of the codes throughout public administration. The GET would also suggest that training programmes be established by the appropriate authorities with regard to the future code of conduct for the "wider public service". **The GET recommends to establish regular training for all public officials concerned with regard to the principles of the Civil Service Code of Standards and Behaviour (central government) and the Code of Conduct for Employees (local government) as well as with regard to other relevant codes of conduct of the public administration.**

84. The GET could not, in the absence of statistics, assess to what extent disciplinary proceedings/measures against public officials were applied and was told that such information was only available in the departments concerned. The GET was of the opinion that centralised statistics on disciplinary investigations, measures and sanctions would be helpful in deciding policy matters relating to ethics in the public administration. Such statistics should not contain any information with regard to the individuals concerned (personal data). **The GET recommends to establish centralised systems for collecting statistics on the use of disciplinary proceedings and sanctions covering central as well as local administrations.**

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

85. The legal system of Ireland recognises a variety of different forms of companies, which have legal personality and therefore are distinct from those who run them. The principle legislation with regard to companies is contained in the Companies Acts 1963-2005. There are four types of limited companies, where the shareholders responsibility is limited:

- Private companies limited by shares
- Public companies limited by guarantee not having a share capital
- Public companies limited by guarantee having a share capital
- Public companies limited by shares (minimum share capital of approximately 38,000 Euros)

86. The Irish authorities have in addition mentioned the following pertinent forms of associations:

- Single member company (private company limited by shares or a guarantee):

- Unlimited company: no limit on the liability of its members
- European Economic Interest Groupings (EEIG) is a form of association between legal persons and/or individuals to facilitate business within the EU (Council regulation EEC No 137/85)
- Limited partnerships must exist of at least one partner and one limited partner. The limited partner is only liable up to the amount contributed.
- Foreign companies registered abroad may register a branch in Ireland
- Co-operatives and Societies may also have limited liability.

Registration of companies

87. In order to have a company registered the memorandum of association, the name, the registered office (physical location in Ireland), activity description and a list of the company officers must be submitted to the Company Registration Office. All company types (including single member companies) must have at least one secretary and two directors, one of whom - as a main rule - is required to be an Irish resident. Only with regard to public companies limited by shares there is a minimum share capital required.

88. The registration of all Irish companies, as well as the branches of foreign companies and EEIGs, are handled by the Company Registration Office (CRO), which is a statutory State authority led by a Registrar. The CRO, which receives some 15000 applications every year, has no investigative powers. Its function with regard to the registration process is limited to a formal checking that submitted documents fulfil the legal requirements for registration. There is no check carried out with regard to, for example, the existence of the company officials indicated in the application. The GET was informed that the Registry operates on a "good faith principle". The CRO does, however, check whether indicated company officers are disqualified from acting in a leading position before registration, but only with regard to information in Irish registries.

89. The CRO is also the responsible authority for the monitoring of companies' filing obligations and has a number of measures at its disposal to impose on companies who fail to file their annual returns; administrative fines (up to approximately 1200 euros), prosecution or striking the company off the registry. The GET was informed that in respect of 20 per cent of the companies the CRO has to use one or more of these measures.

90. All information contained in the Company Registry is open to the public and accessible on the website of the CRO. The average time for registering a company is three days.

Corporate enforcement

91. In addition to the system of registration of companies, Irish company law provides for the Office of the Director of Corporate Enforcement (ODCE), with the overall objectives of encouraging adherence to the requirements of the Companies Acts and bringing to account those who disregard the law. The ODCE is a multidisciplinary body, staffed with accountants, lawyers and police personnel. It has four main areas of concern; 1) the compliance role (provision of information and assistance to companies), 2) the detective role (investigations including investigative police powers to request documents explanations, etc), 3) the enforcement role (summary prosecution for suspected breaches of company law or referral of the case to the DPP for prosecution on indictment or applying for a civil sanction such as disqualification or restriction) and 4) the insolvency role (inspection of books of companies and application of

measures against company directors, etc). If a case of suspected corruption occurred during ODCE investigations, it would be transferred to the police and/or DPP for action.

Limitations on exercising functions in legal persons

92. Section 160 (1) of the Companies Act 1990, provides that a person is deemed to be disqualified from acting in a leading position in a company for five years in cases where the person "is convicted on indictment of any indictable offence in relation to a company, or involving fraud or dishonesty". Section 160(2) provides that certain persons (company officers, liquidators, creditors, the Director of Corporate Enforcement, etc.) may apply to the High Court for the disqualification of a person from acting in a leading position in a company. The Court has discretion to give such an order if it is satisfied that one or more conditions (e.g. fraud) has been met. Acts of corruption under section 1 of the Prevention of Corruption Act, 1906, as amended, are indictable offences. Therefore, where such offences have been committed in relation to a company or involve fraud or dishonesty, they are predicate offences for the purposes of section 160 of the Companies Act 1990.

93. The Registry on disqualified persons kept by the CRO is public.

94. Section 150 of the Companies Act 1990 provides for a lesser sanction of restriction of directors under which directors cannot, for a period of five years, be appointed or act in any way, whether directly or indirectly, as a director or secretary or be concerned or take part in the promotion or formation of any company unless it meets specific paid up capital requirements. This requirement is €317,435 in the case of a PLC and €63,487 in the case of a private limited company. Under the terms of section 56 of the Company Law Enforcement Act 2001, liquidators of insolvent companies are obliged to report to the ODCE on the conduct of the directors of such companies and to bring Section 150 restriction applications before the High Court, unless relieved of that obligation by the ODCE. Unless the Court is satisfied that the directors acted honestly and responsibly, a restriction order is made. The CRO list of restricted directors currently stands at 500 individuals at the end of 2004 compared with about 100 before Section 56 was implemented. The vast majority of additions to the list resulted from the Section 56 reporting process.

Liability of legal persons

95. According to common law principles, a legal person can always be liable for tort. In addition, the Interpretation Act 1937, provides that in criminal legislation references to natural persons can be interpreted as references to legal persons.

96. Section 59 of the Criminal Justice Act provides, that a body corporate (legal person) may be liable for a criminal offence under that Act.

97. Moreover, the Companies Act 1990 provides in certain circumstances that legal persons as well as natural persons may be held criminally liable, for example with regard to account offences, see below. In contrast, there are company law offences which do not ascribe a liability to legal persons, for example, liability for the destruction, mutilation or falsification of documents.

98. The Prevention of Corruption (Amendment) Act 2001 was enacted to extend the definition of the criminal offences of corruption. Section 9 of the Act provides that legal persons are criminally liable when an offence under the Act is committed with the consent or connivance of

or is attributable to any wilful neglect of a director, manager, secretary or other officer of the body corporate. There is nothing in the legislation to preclude the prosecution of the legal person without the conviction of the natural person, however, Section 9 stipulates that there has to be proof that the natural person did commit the offence. The liability would normally be considered in the same proceedings with regard to both the physical and the legal person. There is no requirement that the benefit has to be effectively realised; the legislation is drafted in such a way that it is clear where a person who for example agrees to receive a bribe is also guilty of an offence in the same manner as where the benefit is actually received (see section 2 of the Prevention of Corruption (Amendment) Act 2001).

Sanctions

99. The sanction for legal persons convicted for corruption or money laundering is an unlimited fine. There is no record in the Irish jurisdiction of a company (legal person) being found liable for an act of corruption.

Tax deductibility

100. Facilitation payments, bribes or similar payments, which would amount to criminal offences, have never been tax deductible in Ireland. Only disbursements that are "wholly and exclusively laid out or expended for the purposes of the trade or profession" are allowable. The relevant legislation is contained in section 81(2)(a) of the Taxes Consolidation Act 1997. Bribery, both active and passive, are criminal offences under the Prevention of Corruption Acts 1889 to 2001.

Tax authorities

101. The Revenue Commissioners - who work closely with the Police and are represented in the Criminal Assets Bureau – are involved in the reporting to the Police of criminal offences, including corruption and money laundering where their officers come across evidence of any such offence. The mechanisms used include the disclosure of information to the CAB, the Police or other officers of the Revenue Commissioners (Section 8 (7) of the Criminal Assets Bureau Act).

102. Section 1 of The Disclosure of Certain Information for Taxation and Other Purposes Act provides the legal mechanism by which law enforcement bodies can access tax records when investigations are being conducted relating to drug trafficking, money laundering, corruption and other offences where confiscation orders can be made. This Section inserts a new Section 63A to the Criminal Justice Act, 1994 which allows an authorised officer of the Irish Revenue in certain circumstances to pass on information to a senior member of the Police. Effectively, this allows the tax administration to share information with the National Police.

Account offences

103. Under Section 202(9) of the Companies Act 1990, companies are required to keep accounting records for six years. Moreover, under Section 886 of the Taxes Consolidation Act, all companies which are chargeable to tax must retain accounting records and books for a period of six years. There are no exceptions to these rules. The GET was informed that the Office of the Director of Corporate Enforcement secured 8, 29 and 41 convictions (in 4, 13 and 14 cases) against companies/company directors in 2002, 2003 and 2004 respectively in this connection. These convictions were secured in relation to offences under the Companies Acts only. One example is the offence of failing to keep proper books of account (section 202(10) of

the Companies Act 1990 - "the 1990 Act"). Certain undertakings such as charities and non-profit organisations are not obliged to keep the same level of accounting records and books as commercial organisations for taxation purposes. However, under the Revenue legislation, they must be able to produce sufficient records to satisfy an officer of the Revenue Commissioners that the organisation is non-commercial in its operations.

104. The GET was informed that the maximum fine available for the summary prosecutions in a case of a failure by a company director to keep proper records of account, was limited to 1 900 euros. The use of invoices or any other accounting documents or records containing false or incomplete information or double invoices are criminal revenue offences under Section 1078 of the Taxes Consolidation Act. On conviction on indictment the penalty is €126,970 or at the discretion of the court, imprisonment for a term not exceeding 5 years or both. Moreover, Sections 242 and 243 of the Companies Act 1990 deal *inter alia* with the falsification, destruction and mutilation of company documents, returns, etc. in certain circumstances. Five convictions were secured against a company director in 2003 for such offences. The Criminal Justice (Theft and Fraud) Offences Act 2001 creates further accounting offences. Sections 6 and 10 relate to accounting offences and Part IV relates to forgery.

Role of accountants, auditors and legal professions

105. Section 194(1) of the Companies Act 1990 deals with the obligation of auditors in certain circumstances to report the failure by companies/company directors to keep proper books of account to the Companies Registration Office and to the Office of the Director of Corporate Enforcement. Section 194(5) also requires auditors in certain circumstances to report to the Office of the Director of Corporate Enforcement suspected indictable offences, under the Companies Act. The incidence of such mandatory reporting was 1,594 in 2004, 1,506 in 2003 and 399 in 2002. The GET was informed that the increase between 2002 and 2003 was primarily a result of a better understanding by auditors of their reporting obligations rather than a decreased compliance by companies with regard to company law obligations.

106. The list of designated bodies required to report money laundering transactions includes accountants, auditors and solicitors. At present these bodies are members of the Money Laundering Steering Committee which is chaired by the Department of Finance. The Committee through ongoing consultation and discussion seeks to establish guidelines for all designated bodies to ensure full compliance with international and domestic obligations in relation to detection and reporting of offences of money laundering.

107. Representatives of accountancy bodies informed the GET that the domestic rules on the reporting of money laundering contained in the Criminal Justice Act were not completely harmonised and the interpretation of the obligation to report was difficult. The GET was also informed by these representatives that the Steering Committee on Money Laundering should preferably play a stronger role to inform all the concerned professions on how to comply with their reporting obligations in order to make this work more effective for those accountants and legal professions which participate in the Steering Group.

Analysis

108. The notion of legal persons is well-defined and there is a variety of different legal persons provided for under Irish legislation. The GET noted that all forms of companies as well as branches of foreign companies are compelled to register at the Company Registration Office

(CRO), which examines and stores information delivered and makes it available to the public, *inter alia*, on the Internet. The CRO has a well-developed and user-friendly web site.

109. It is of crucial importance that the information contained in the company registry is correct and reliable. This is particularly significant with regard to the prevention of legal persons being used to shield inappropriate activities, such as corruption. A thorough control of the data submitted to the registration authorities is therefore preferable, but at the same time it must be taken into account that the CRO has a large number of registrations to deal with (some 15 000 per year). Consequently, there is a balance to be struck between the efficiency of a registration system and the interest to avoid that companies become vehicles for criminal activity. In this respect, the GET noted that, on the one hand, the CRO appeared to be very service orientated and that it would normally process an application speedily (only three days). On the other hand, the checking of the information submitted was merely formalistic with regard to the required documents for an application and that few checks (see paragraph 109) with regard to the persons behind the registration request (founders, directors, etc) for example, concerning their identity, nationality or even their existence were carried out. It is true that the Irish system is based on the "good faith principle" and that the submission of false information could be reported by anyone and subject to subsequent criminal proceedings and punishment, *inter alia*, following investigation of the Office of the Director of Corporate Enforcement and the DPP. However, the GET was of the opinion that some material basic checks should preferably be carried out in the registration process, at least concerning the identity of the persons behind the requests for registrations. The GET therefore **recommends to consider strengthening the material checking function of the Company Registration Office (CRO) with regard to the accuracy of information submitted in the registration process, in particular, with regard to the identity of persons behind a legal person.**

110. According to the Criminal Justice Act 1994 and the Prevention of Corruption Amendment Act 2001, legal persons can be held criminally liable for active bribery and money laundering. Generally, there must be proof that a physical person committed the offence, but the physical person does not necessarily have to be convicted. However, at the time of the visit by the GET trading in influence was not criminalised as such but a Criminal Justice (miscellaneous provisions) Bill was under preparation in order to criminalise trading in influence with regard to physical as well as legal persons. The GET welcomed this information and did not consider it necessary to issue a recommendation in these circumstances.

111. Legal persons are subject to an unlimited fine upon conviction for bribery or money laundering, but there is no record of any legal person being convicted for corruption or money laundering. As a consequence, although the sanctions provided for in the legislation appear to be effective, proportionate and dissuasive, the GET could not assess whether the sanctions as applied by the courts are also effective, proportionate and dissuasive (Article 19 of the Criminal Law Convention).

112. The GET furthermore noted with satisfaction that Irish law provides for various forms of disqualifications of physical persons from acting in leading positions in a company, following conviction of, for example, corruption. Such information is public and available on the Internet and checked by the CRO in the registration procedure.

113. The GET was told by officials that the sanctions available in the summary proceedings which were initiated by the Office of the Director of Corporate Enforcement, for example with regard to the failure of a company to keep proper records of accounts, were not considered proportionate as the fines available were limited to 1900 Euros. The GET was not in a position to assess to

what extent sanctions concerning account offences in general were adequate. It was, however, of the opinion that this situation which falls within the scope of Article 14 of the Criminal Law Convention as well as Guiding Principle 5 of the Twenty Guiding Principles needed to be dealt with by the authorities. **The GET recommends to consider increasing the penal sanctions for account offences in order to ensure that the available sanctions are effective, proportionate and dissuasive.**

114. A wide range of institutions and professional bodies are designated to report suspicions of money laundering. However it became apparent to the GET that the scope of these reporting requirements under the Criminal Justice Act, the 2001 Criminal Justice (Theft and Fraud Offences) Act, the various statutory instruments and the guidelines established for reporting suspicious transactions is not always clear. The GET was for example told by representatives of professional bodies designated to report, that it appeared unclear whether designated institutions and persons were required to report suspicious transactions or that in this regard all suspicious activities should be reported. The authorities, referring to Section 57 of the Criminal Justice Act 1994, have contested this position, claiming that the reporting obligation is legally clear. The GETconsidered that this situation could be further explored by the authorities.

V. CONCLUSIONS

115. Ireland has a solid framework for dealing with proceeds of corruption and instrumentalities. The efficiency of the civil forfeiture schemes is particularly impressive, and even though the main focus in this respect is to recover proceeds in cases involving high economic values, there are rules in place which make it possible to seize and confiscate any proceeds deriving from corruption.

116. The public administration has during the last decade been considerably modernised towards transparency, customer-orientated services and integrity. Several laws and codes of conduct have been enacted in recent years. These are complemented by accurate monitoring mechanisms. It is important that the transparency of the administration is maintained and that all public officials are trained in applying the codes and closely involved in the further development of such guidelines. In particular, guidance to public officials on reporting instances of corruption as well as adequate protection of whistleblowers should be further developed.

117. There is generally a well developed legal system concerning legal persons; however, the registration process of companies and branches is efficient, but could be improved through enhanced material checking of the persons behind legal persons. The effectiveness and dissuasiveness of some of the penal sanctions under company law should be reviewed.

118. In view of the above GRECO addresses the following recommendations to Ireland:

i. **to reconsider the system of fees for requests for access to official information according to the Freedom of Information Act as well as with regard to the available review and appeal procedures in this respect** (paragraph 78);

ii. **to introduce clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty and, to establish adequate protection for public officials who report instances of corruption (whistleblowers)** (paragraph 82);

iii. **to establish regular training for all public officials concerned with regard to the principles of the Civil Service Code of Standards and Behaviour (central government) and the Code of Conduct for Employees (local government) as well as with regard to other relevant codes of conduct of the public administration** (paragraph 83);

iv. **to establish centralised systems for collecting statistics on the use of disciplinary proceedings and sanctions covering central as well as local administrations** (paragraph 84);

v. **to consider strengthening the material checking function of the Company Registration Office (CRO) with regard to the accuracy of information submitted in the registration process, in particular, with regard to the identity of persons behind a legal person** (paragraph 109);

vi. **to consider increasing the penal sanctions for account offences in order to ensure that the available sanctions are effective, proportionate and dissuasive** (paragraph 113);

119. Moreover, GRECO invites the Irish authorities to take account of the *observation* (paragraph 34) made in the analytical part of this report.

120. Finally, in conformity with Rule 30.2 of the Rules of procedure, GRECO invites the Irish authorities to present a report on the implementation of the above-mentioned recommendations by 31 July 2007.