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Enhancing Ireland's response to economic crime – a timetable for reform?

Improving the ability of Ireland's key law enforcement and regulatory agencies to tackle white collar crime is very much on the political agenda, with two developments of note last week.

Following on from the much anticipated Hamilton Review Group Report on investigating and prosecuting economic crime and corruption (the **Review Group Report**), the Minister for Justice and Law Reform, Helen McEntee TD, has now published an action plan for implementing the Group's recommendations. Most of these are due to be completed in the next 18 months.

Also last week, the Joint Committee on Enterprise, Trade and Employment published a pre-legislative scrutiny report on the draft General Scheme of the Companies (Corporate Enforcement Authority) Bill 2018. The key purpose of this legislation is to introduce a new independent agency, the Corporate Enforcement Authority, to replace the Office of the Director of Corporate Enforcement.

The Hamilton Report implementation plan

To briefly recap, the Review Group's Report rejected the introduction of a single stand-alone corporate crime agency, something which had been previously suggested by both Government and the Law Reform Commission. Instead, it made a number of specific recommendations to enhance the structures, powers and resources of existing agencies. There was also an emphasis on providing for greater integration between the various state bodies currently charged with investigating white collar crime. This is to be primarily achieved through the establishment of an 'Advisory Council', the development and implementation of a multi-annual strategy and action plan to tackle economic crime, and the creation of a forum of senior representatives from existing investigative and enforcement bodies. For further details on the Review Group Report's recommendations, please see our previous summary here.

The implementation plan, published on 19 April 2021, sets out 22 headline actions to be taken to progress the 25 recommendations contained in the Review Group Report. These are broadly categorised under three headings (structural/systemic; resourcing; and legislative), and further broken down into 64 sub-actions. The lion's share of the responsibility lies with the Department of Justice. Certain tasks are also assigned to An Garda Síochána, the Office of the Director of Public Prosecutions, the Department of Public Expenditure, and the newly formed 'Advisory Council', which is due to be up and running in Q3 2021.

With the majority of actions scheduled for completion this year, the implementation plan is certainly an ambitious one. However, in terms of driving change, it risks being aspirational – some of the timelines (Q1 2021) have already passed, and it's not clear whether the relevant steps have been completed.

It may have been preferable to identify and prioritise key actions, an approach proposed by the Joint Committee as regards the new Corporate Enforcement Authority, as discussed below. To take one example, the plan identifies the need to obtain legal advice on many of the legislative reform proposals identified in the Review Group Report. One can envisage that some of the far reaching proposals, such as those providing for detention periods up to seven days for certain fraud and corruption related arrestable offences, and increasing the duration of freezing orders for up to six months, will require careful legal scrutiny, which is likely to lead to delays.

The pre-legislative scrutiny report on the Companies (Corporate Enforcement Authority) Bill 2018

In contrast to the Review Group implementation plan, the Joint Committee's report contains a clear message to press ahead in getting the new Corporate Enforcement Authority established, staffed and up-and-running "*as soon as possible*". There is a recognition that addressing further necessary reforms, which have been suggested since the draft outline draft legislation was first published, could stifle progress. Such additional reforms, the Joint Committee suggests, should instead be addressed in "subsequent changes in company law and Criminal Justice legislation". This would seem to be a sensible approach.

The suggestions themselves do, however, merit mention as they will significantly enhance the powers of the new agency to play an effective role and overlap with some of the Review Group's recommendations. They include:

- Clarifying legislation regarding searching of electronic devices
- Allowing non-Garda staff from the authority to attend interviews alongside the Gardaí
- Extending detention periods

Commentary

Progress is certainly being made. The publication of an implementation plan with specific timeframes and responsibilities is a very welcome development. The reality remains, however, that it will take a lot of drive and commitment to build momentum in effecting change.

While the various proposed enhancements to regulatory powers and improved inter-agency cooperation will certainly facilitate the investigation and prosecution of complex economic crimes, the issue of resources will always need to be kept front and centre. This is acknowledged in the Joint Committee's report where it notes the need to keep this "under constant review" with the possibility to scale up and increase staff numbers where required.

The Review Group Report specifically identifies three bodies as requiring further resources: the Garda National Economic Crime Bureau (**GNECB**), the Office of the Director of Public Prosecutions (**ODPP**) and the Standards in Public Office Commission (**SIPO**). While investment in technological capabilities will help in achieving efficiencies, consistently having the right resources will no doubt be a key objective for all agencies tasked with investigating and prosecuting complex economic collar crime.

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