

Publication of the Hamilton Report

- 25 Recommendations for Economic Crime Reform

On 3 December 2020, the Department of Justice published the much anticipated report into the 'Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption' (the Report).

White Collar Crime Package

The Review Group which prepared the Report was established in November 2017 by the former Minister for Justice, Charles Flanagan TD, and was part of a suite of regulatory, corporate governance and law enforcement measures – the 'White-Collar Crime Package' – aimed at enhancing Ireland's ability to combat corporate, economic and regulatory crime.

The significance of this derives from Ireland's place in the business world, particularly in the financial services arena. While the country is small in geographical terms, Ireland punches well above its weight in the global business market; it is the fifth largest provider of wholesale financial services in the EU, with more than 400 international financial institutions located here.

The Review Group – Composition & Objectives

The Review Group was chaired by Mr James Hamilton, former Director of Public Prosecutions, and made up of representatives from the leading State bodies responsible for the prevention, investigation and prosecution of economic crimes and corruption. Notably, only one member of the Review Group was from outside of the public sector.

The Review Group was predominantly tasked with:

- Considering the structures and strategies in place within An Garda Síochána (the police force), and other regulatory/law enforcement agencies, to prevent, investigate and penalise fraud and corruption and proposing solutions to any identified gaps (to include whether a stand-alone anti-fraud/anti-corruption agency should be established)
- Reviewing the crossover of any potential new agency or structure, with the evolving role of the Office of the Director of Corporate Enforcement and the Cost of Insurance Working Group
- Assessing the resourcing and expertise in agencies, and making any relevant recommendations, and
- Considering the adequacy of information/evidence sharing between agencies, and making recommendations for any additional legislation that may be required.

Review Group Output

In total, the Review Group made 25 recommendations which address structural, resourcing, infrastructural, and legislative changes. One key theme which is apparent throughout the recommendations, is the need for more integration between the various State bodies currently charged with investigating corporate, economic and regulatory criminal offences.

Despite this identified shortcoming, the Review Group was firm in its recommendation that the creation of a single standalone agency to deal with all issues relating to the prevention, investigation and prosecution of corruption is not required.

Greater Integration

The Report recognises an important learning which flowed from the prosecutions originating in the 2007 financial crisis, which is the need for a more integrated approach between State bodies, increased resources, and adequate expertise to investigate alleged offences.

Chronic Under-Resourcing and Under-Funding

It is apparent from the Report that under-resourcing and under-funding of key State bodies such as the Garda National Economic Crime Bureau (the **GNECB**) and the Office of the Director of Public Prosecutions (the **DPP**) continues today. Indeed it is called out in the Report that the GNECB is inadequately resourced *'to meet existing demands as well as demands which will arise in the future'*. It is apparent that the absence of sufficient resources has needlessly elongated investigations and hampered efforts to prosecute economic crimes in recent years.

The Review Group's recommendations seek to address these issues by recommending ring-fenced resources and funding as well as training for personnel, from investigators right through to prosecutors and the judiciary. The Report states that better training and infrastructure across State bodies, in particular the implementation of a technologically up-to-date e-disclosure system, should enhance and streamline current processes.

Legislative Reforms

Some of the legislative reforms recommended complement the Review Group's desire to enable greater access to data, to in turn more effectively progress investigations. Most notably, much media attention has been paid to the proposed introduction of legislation to enable officers investigating corruption offences to compel owners of electronic devices to provide passwords to facilitate access to such devices.

Increased Powers of Detention

Some of the recommended legislative reforms are questionable in terms of their necessity and/or merit. In particular, the proposal to extend Section 50 of the Criminal Justice Act, 1997 (relating to the detention of suspects) to all arrestable offences (being indictable offences punishable by imprisonment of five years or more) has dramatic implications for suspects and is ripe for challenge should it be introduced. In essence, without much critical analysis, the Review Group recommends permitting An Garda Síochána to detain someone suspected of committing an arrestable offence, for up to a maximum of seven days (subject to judicial authorisation). The detention period currently stands at 24 hours.

Duration of Freezing Orders

Equally, the recommendation to enable freezing orders to be obtained for a period of up to six months duration, appears to be driven by a desire on the part of investigating agencies to avoid the disruption involved with attending the regular court hearings currently required to extend those orders. It could be argued that a more proportionate means of addressing these practical difficulties faced by the agencies might focus on reforming the order renewal process itself, rather than providing for blanket extensions of such draconian orders, which are severe remedies and which cause great disruption to those impacted by them.

Cohesive Strategy

With many of the recommendations, it is clear that the Review Group is attempting to address the very real issues that exists in devising and co-ordinating a cohesive strategy for tackling economic crimes in Ireland. However, it is unclear from the Report who will take the lead in bringing about the legislative, resourcing and structural changes proposed in the recommendations.

It appears that in general policy terms, it is envisaged that an Advisory Council be established as a 'centre of excellence' to co-ordinate research and analysis, training and to generally promote 'best practice' in relation to anti-corruption activities. It is difficult to see how such a large mandate can be achieved by a body which is recommended to meet at least once a year.

Key Recommendations

Set out in the table below is an overview of the key recommendations from the Review Group from a corporate economic crime perspective:

	Recommendation
Structural Change	<ul style="list-style-type: none"> ■ The establishment of a permanent cross-sectoral partnership-based Advisory Council against Economic Crime and Corruption tasked with making proposals to the Government on strategic and policy responses to all forms of economic crime and corruption. Advisory Council to meet at least once a year. ■ Development of a multi-annual strategy to combat economic crime and corruption and an accompanying action plan. ■ Establishment of a permanent forum of senior representatives from the relevant bodies to facilitate greater inter-agency co-ordination, collaboration and information-sharing. Forum to meet at least on a quarterly basis. ■ Comprehensive analysis to be conducted as to the precise nature and scope of any legislation necessary to facilitate the optimal exchange of information and intelligence between investigative agencies, under a Joint Agency Task Force. ■ Putting in place a statutory framework to allow various relevant agencies to enter agreements to sign up to Memoranda of Understanding that refer explicitly to information sharing and joint inspections.
Resources/ Training/ Infrastructure	<ul style="list-style-type: none"> ■ Prioritisation of the GNECB with a substantial, sustained and ring-fenced increase in resources. ■ Increasing the DPP’s resources for the prosecution of financial crime to include additional prosecutors, along with a seconded specialist in digital forensics and a seconded forensic accountant. ■ Development of a formal and continuous joint training programme for investigators ■ Development of judicial training in respect of complex economic crime /corruption cases, and the possibility of judicial specialisation in this area. ■ Development of a centralised Government framework for the procurement of electronic documentary analysis and e-disclosure systems, which can be accessed by the relevant law enforcement bodies (and by the Chief State Solicitor’s Office).
Legislative Reform	<ul style="list-style-type: none"> ■ Publication and enactment of the Criminal Procedure Bill to be expedited. ■ Amend anti-money laundering legislation to allow judges exercise their discretion to impose a timeframe of up to six months for a freezing order ■ Extend surveillance powers to Office of the Director of Corporate Enforcement (the ODCE) and the Competition and Consumer Protection Commission (the CCPC). ■ Create a specific offence in competition law of bid-rigging or, in the alternative, specify bid-rigging as an offence as a form of market sharing. Also, enable the collection, collation and analysis of all public procurement data to detect and deter bid-rigging. ■ Amend legislation relating to warrants in line with technological advancements to address issues relating to privacy rights. ■ Amend Custody Regulations to allow An Garda Síochána to engage an expert from any statutorily-mandated regulatory or investigative body, or an independent expert, to participate in interviewing a detained suspect.

Recommendation	
Legislative Reform	<ul style="list-style-type: none"> ■ Create a standalone search warrant in the investigation of bribery & corruption offences allowing any investigating member(s) of An Garda Síochána to require persons subject to arrest warrants to provide the passwords to electronic devices owned or controlled by them. ■ Introduce a standard of recklessness into fraud offences. ■ Amend the Criminal Justice (Miscellaneous Provisions) Act, 1997 to require the owner(s) or controller(s) of electronic devices to provide passwords to members of An Garda Síochána carrying out searches. ■ Extend the Criminal Justice Act, 1997 (as amended) to all arrestable offences. Allow a detained suspect to be questioned for a maximum of seven days.

Conclusion

Following the publication of the Report, the Department of Justice stated that ‘implementing new anti-fraud and anti-corruption structures informed by the work of the Review Group is a Programme for Government commitment and Minister McEntee has received cabinet approval to bring forward an implementation action plan for the Report’s recommendations. This will include set timelines for the introduction of a series of reforms to strengthen the State’s capacity to prevent and prosecute white-collar crime.’

Minister McEntee is expected to shortly identify priority recommendations that can be implemented in the shorter term, such as the enactment of the Criminal Procedure Bill which will have a significant impact on pre-trial criminal procedures.

It remains to be seen which recommendations will come to fruition and the timeline for their implementation. One thing is certain: with increased training, resources and infrastructural change in the various State bodies, we expect to see increased activity in the investigation and prosecution of economic crimes in the coming years.

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