

FATF



# Anti-money laundering and counter-terrorist financing measures

## Ireland

Mutual Evaluation Report

September 2017





The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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## Executive Summary

1. This report provides a summary of the AML/CFT measures in place in Ireland as at the date of the on-site visit from 3-17 November 2016. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Ireland's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

- Ireland has a generally sound legislative and institutional AML/CFT framework. In recent years, Ireland has put in place measures to improve its understanding of risks and national coordination and cooperation is a strong point of the Irish AML/CFT system. While a substantial level of effectiveness has been demonstrated in a number of areas, further measures and resources are required for a fully effective AML/CFT system that is commensurate with the risks faced in Ireland.
- National coordination mechanisms such as the Anti-Money Laundering Steering Committee (AMLSC), the Cross Departmental International Sanctions Committee (CDISC) and the Private Sector Consultative Forum (PSCF) were fruitful in broadening the understanding of its ML and TF risks across all relevant agencies and with the private sector. Ireland's first National Risk Assessment (NRA), published in October 2016, takes into account a wide range of inputs in assessing vulnerabilities and threats. While Ireland appears to have a strong understanding of ML risks based on domestic crime, more could be done to clearly identify Ireland's international ML risks, particularly considering that Ireland is a highly interconnected economy and with a large financial sector in relation to GDP. The NRA could be further supported by quantitative data.
- Ireland covers a comprehensive range of reporting entities for the purposes of its AML/CFT system. However there are some technical deficiencies in relation to PEPs, correspondent banking and higher risk jurisdictions. Supervisors are aware of the relevant ML/TF risks and were able to demonstrate that they are taking a risk-based approach to supervision. While the Central Bank of Ireland (CBI) is performing well in supervising financial institutions (FIs) in Ireland, the Department of Justice and Equality (DoJE) who supervises some of the higher-risk DNFBP sectors are under-resourced.
- The private sector's understanding of ML/TF risks is mixed. Members of the PSCF tended to have a better understanding of risks and were able to discuss the issues in the NRA, whereas other

private sector participants tend to have a more basic appreciation. The private sector appeared to have a close relationship with supervisors and law enforcement (particularly the FIU) and assessors were of the view that with time and further outreach activities already planned by the authorities, the level of understanding should improve.

- Ireland has a single police force whose role includes crime and security matters. The FIU is embedded within the police force. Issues relating to the abilities and resources of the FIU identified in the last mutual evaluation of Ireland persist, including its lack of sophisticated IT software which means that there are limits on its ability to undertake strategic analysis. That said, law enforcement agencies demonstrated that they appreciated the importance of financial intelligence and routinely used it in predicate crime investigations and in asset confiscation. The integrated nature of the Irish police force appears to mitigate the technical issues faced by the FIU. In addition, at the time of the on-site visit, Ireland had taken actions to strengthen the IT capacity and prioritised measures to access further financial analysis expertise (by hiring additional forensic accountants). Ireland has also indicated that they intend to put in place mechanisms to protect the independence of the FIU. These actions will not only enhance Ireland's operational capabilities, but also enhance its understanding of ML risks.
- Ireland has a strong legislative framework for pursuing ML; however this has not translated to results at the trial stage. This may reflect reluctance on behalf of prosecutors to test the AML laws or a conservative approach by the judiciary which in turn acts as a disincentive to investigate complex ML cases. Ireland has not fully demonstrated an ability to identify, investigate and prosecute a wide range of ML activity including, in relation to foreign predicate offences and third-party ML. Considering Ireland's position as a regional and international financial centre, more analysis and action by authorities of complex, professionally-enabled ML schemes was expected. While Ireland has had some success in guilty pleas for ML, assessors were concerned that there have been no convictions for ML after a trial.
- Ireland has a strong legislative and institutional framework for asset confiscation, with a multi-agency Criminal Assets Bureau (CAB), which can target criminal proceeds through non-conviction based asset forfeiture, tax assessment and social welfare assessments. While asset confiscation initiatives have strong political and national support, the value of criminal proceeds confiscated and forfeited appear modest for a jurisdiction that pursues confiscation of criminal proceeds as a national priority and operates a post-conviction based and non-conviction based regime. The Office of the Director of Public Prosecutions (DPP)'s post - conviction based results also appear modest and warrant consideration.
- Irish authorities are experienced in dealing with domestic terrorism issues and have also shown an understanding of international TF issues. However, even with this experience and strong interagency coordination mechanisms, Ireland has had no prosecutions or convictions for TF.
- Ireland's system for targeted financial sanctions is generally sound, however deficiencies in the EU system mean that assets are not frozen without delay and further work needs to be done to implement proportional measures in relation to NPOs vulnerable to TF abuse. As with AML issues, national coordination on targeted financial sanctions is strong.

- Ireland’s understanding of the ML/TF risks associated with gatekeepers and vulnerabilities associated with legal persons and arrangements requires, and is receiving, further attention. Measures to increase access to beneficial ownership are in the process of being strengthened and should be a priority considering international risks in this area.
- Irish authorities were able to demonstrate that they cooperate internationally on ML and TF issues. There is a significant upward trend in the number of requests for assistance received and made by Ireland, and the presence of significant ISP companies in the jurisdiction will impact on international cooperation and resourcing for Ireland significantly in the next decade.

### *Risks and General Situation*

2. Ireland is an important regional and international financial centre, and is among the IMF’s 29 systematically important financial centres. Ireland’s funds and insurance sectors are well developed and have strong international links.

3. Ireland has identified its main ML/TF threats as organised crime groups and former local paramilitary groups whose activities relate to drug trafficking, human trafficking and migrant smuggling, fuel laundering, and fraud (including VAT fraud).

4. Domestically, although decreasing, cash continues to be an important part of the domestic economy and cash-intensive sectors such as dealers in high value goods, money remittance and currency exchange, as well as retail banks, pose vulnerabilities for ML/TF. Internationally, the financial sector, particularly the investment funds sector is seen as a vulnerable area for ML. Complex ownership structures and reliance on third-parties to undertake customer due diligence complicates the identification of beneficial ownership and could hide potential money laundering schemes. Gatekeepers also play an important role in this process. Payment institutions, which utilise Ireland as a base to “passport” to the rest of Europe through an extensive network, further increase the need for a close supervision of the sector.

5. Ireland explained that as a result of their efforts to target domestic terrorist groups’ funding sources, the groups’ methods have evolved, from funding their activities through cigarette and fuel smuggling, and violent crimes such as robbery, to “lower” risk activities (for the terrorist groups) such as self-funding, taxation/extortion, and collection of funds from community gatherings. Irish authorities do not see a significant TF risk related to international terrorism, particularly when compared to other European jurisdictions. But Irish authorities acknowledge that such risks do exist and that only small amounts (from both legitimate and illegitimate sources) are needed to support TF. There are only a small number of returned foreign fighters (in the low double digits). While there is little evidence to show any coordinated approach to fundraising in support of terrorism, there are some areas of concern in relation to the collection of charitable funds within the community and the use and transfer of funds by charities/NPOs to conflict zones, which the authorities will continue to monitor.

### ***Overall Level of Effectiveness and Technical Compliance***

#### *Assessment of Risk, coordination and policy setting (Chapter 2-IO.1, R.1, R.2, R.33)*

6. Overall, Ireland has a reasonably good understanding of its ML/TF risks. Ireland's NRA<sup>1</sup> identified a good range of specified threats (e.g. organised crime, drug trafficking, financial crime) and vulnerabilities (e.g. retail banks, payment institutions, funds).

7. While the risk assessment (including the NRA) shows an appreciation of both domestic and international ML risk and the FIU and CBI are active contributors to international AML/CFT fora, the focus of law enforcement authorities appears to be more domestically orientated.

8. Ireland's NRA could have included a more comprehensive range of quantitative data, such as those in relation to international cooperation (both formal and informal). The link between the threat and vulnerabilities assessment should be clearer and give greater consideration to cross-border ML/TF risks.

9. The appreciation of international ML risks, particularly complex schemes, was uneven, especially for the private sector entities. There was also no comprehensive assessment of ML/TF risks of legal persons and arrangements.

10. Authorities displayed a good understanding of domestic and international terrorism threats, and TF risks as they are associated with those threats.

11. Interagency coordination and cooperation is a strong point of the Irish AML/CFT system and includes all the relevant competent authorities.

12. The AMLSC has laid out an Action Plan to address certain ML/TF risks, but there are no specific national AML/CFT policies. Risk mitigation measures have been put in place to address the key ML/TF risks in Ireland, although authorities could enhance measures to address other risk issues such as cash and the use of gatekeepers for ML.

#### *Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

13. Financial intelligence, to a large extent, is accessed and used in investigations to develop evidence and trace criminal proceeds related to ML and predicate offences. Financial information has supported operational needs in terms of terrorism investigations and disruption efforts. Law enforcement routinely request and receive STR and other information from the FIU that assists them in their investigations, and they are generally satisfied with the information obtained upon their request. Coordination and cooperation within the national police force, An Garda Síochána (AGS), and between competent agencies is a strong point of the Irish system, with a range of agencies accessing financial information in a timely manner to assist in investigations. The FIU performs

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<sup>1</sup> Department of Finance (2016), *National Risk Assessment for Ireland, Money Laundering and Terrorist Financing*, [www.justice.ie/en/JELR/National\\_Risk\\_Assessment\\_Money\\_Laundering\\_and\\_Terrorist\\_Financing\\_Oct16.pdf/Files/National\\_Risk\\_Assessment\\_Money\\_Laundering\\_and\\_Terrorist\\_Financing\\_Oct16.pdf](http://www.justice.ie/en/JELR/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf/Files/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf)

operational analysis of STRs and has provided examples of its work to identify complex ML schemes and networks; however its ability to perform strategic analysis is limited under its current IT framework.

14. The FIU is embedded within the AGS, which assists in its ability to collaborate with, and seek input from, other investigative units. However, to ensure the operational independence of the FIU, additional safeguards are necessary to formally ring-fence the FIU from other police functions.

15. While Ireland has had some success in identifying and investigating ML related to predicate crime investigations, its ability to identify a wide range of potential ML activity is limited. The majority of ML cases are associated with investigations into fraud and drug trafficking, which corresponds with the major ML threats identified by Ireland. There are limited examples of successful prosecutions in relation to foreign predicate offences and third-party ML; however, there are several on-going investigations in these areas.

16. Ireland has a strong ML offence but this has not translated into results at the trial stage. While Ireland has managed to secure 22 convictions for ML where the offender has pleaded guilty, there are concerns that there have been no convictions (only 2 acquittals) for ML after a trial. This may reflect reluctance on behalf of prosecutors to test the AML laws or a conservative approach by the judiciary, which in turn acts as a disincentive to investigate complex ML cases. There have been no sanctions against a legal person. While Ireland has some success in ML convictions through guilty pleas, the sanctions applied to natural persons while proportionate to other profit-generating crimes, are not effective and dissuasive.

17. Ireland's framework for confiscation is generally sound. Confiscation is pursued as a national policy objective and has strong political and national support. The multi-agency CAB is dedicated to recovering the proceeds of crime. While Ireland clearly pursues post-conviction based confiscation and non-conviction based confiscation as a policy objective, it is not clear that its confiscation and forfeiture results are fully consistent with the ML/TF risks identified in its NRA. The value of criminal proceeds confiscated appears modest within the context of Ireland's ML risks, but focus on areas of risk including the proceeds of drug crimes and financial crime. Given Ireland has identified a number of threats associated with the activities of OCGs linked with foreign OCGs, it was not clear that Ireland was routinely tracing assets abroad in order to deprive criminals of the proceeds of crime which may have moved to other jurisdictions. Ireland has, to some extent, confiscated cross-border movements of cash as form of dissuasive action by customs authorities. The Office of the Revenue Commissioners (Customs), Ireland's lead agency in the control of cross-border cash movements, pursues confiscation of currency suspected to be proceeds of crime. Allocation of additional resources to Customs will enhance efforts in this area which should be considered a priority given Ireland's identified risk in respect of cash.

#### *Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

18. Irish authorities have a good understanding of their domestic and international terrorism threats, and TF risks as they are associated with those threats. Irish authorities strongly prioritise counter-terrorism initiatives. On-going counter-terrorism and TF investigations (to the extent that

TF investigations have been initiated) are well-co-ordinated within the various units in the police and security service. Ireland has a single police and security service and the authorities have demonstrated successes utilising security and operational intelligence to disrupt terrorist activities.

19. A number of domestic terrorism charges were brought against persons, which resulted in successful prosecutions and convictions. However, no prosecutions of TF offences have occurred either as a stand-alone prosecution or as part of a counter-terrorism prosecution. In instances where TF activities have been identified however, the authorities pursued offences such as forgery and membership of the IRA (under the general counter-terrorism legislation) rather than TF charges. It would appear that the evidential requirements of some elements of the TF offence (such as knowledge and the destination/use of the funds) are difficult to prove beyond a reasonable doubt.

20. Ireland has a legal system in place to apply targeted financial sanctions regarding TF and PF, and has established an effective Cross Departmental International Sanctions Committee (CDISC), to coordinate the implementation of targeted financial sanctions (TFS). The implementation does have technical and practical deficiencies due to the procedures set at the EU level that impose delays on the transposition of designated entities into sanctions lists and the absence of measures to freeze the funds of EU internals.

21. Ireland has considered the potential vulnerabilities within the NPO sector in its NRA and has recently designated a regulator for the sector, however Ireland has not yet applied focused and proportionate measures to such NPOs identified as being vulnerable to TF abuse.

#### *Preventive Measures (Chapter 5– 10.4; R.9-23)*

22. FIs have a reasonably good understanding of the ML/TF risks, with the international FIs having a better appreciation of the cross-border ML/TF risks. Some FIs, particularly the Irish domiciled FIs, appear to be more focused on the domestic risks and pay less attention to cross-border ML/TF risks. FIs' risk understanding is also more focused on the operational aspects and challenges in relation to the collection of identification and verification of customer and beneficial ownership information.

23. Overall, banks, fund administrators and some payment institutions, particularly the international FIs, have developed appropriate AML/CFT controls and processes, including CDD and transaction monitoring. In areas such as controls and processes for higher risk customers and transactions, they could be further enhanced.

24. DNFBPs' understanding of their ML/TF risks are largely domestically focused. Accountants who perform auditing services and some of the larger TCSPs have shown a better understanding of their ML/TF risks including cross-border ML/TF risks. Overall, the AML/CFT controls and process in place for DNFBPs were less sophisticated in nature and in many cases, the CDD and monitoring process are manual (although this could be appropriate in some cases where the business and customer profile are less complex).

25. The implementation of CDD (e.g. collection of beneficial ownership information and existing clients) measures by FIs and DNFBPs could be further strengthened. There are also concerns on

their ability to identify, in a timely and accurate manner, relationships/transactions in relation to PEPs and designated entities in relation to TFS.

26. For some FIs and DNFBPs, there is indication that there is strong reliance on local community networks and knowledge. While this is a useful source, and could enrich customer understanding when used appropriately, it could also be subject to preconceived notions, and not always adequately supported by objective analysis. Further, such strong reliance may reduce the incentive to give adequate focus to external and cross-border factors.

27. The level of STR reporting, particularly by DNFBPs (e.g. TCSPs, PSMDs etc.), is also low.

#### *Supervision (Chapter 6 – 10.3; R.26-28, R.34-35)*

28. The Central Bank of Ireland (CBI) and the Department of Justice and Equality (DoJE) have a good understanding of the ML/TF risks present in the sectors that they supervise. The understanding of risks at an individual entity level is not as comprehensive but will improve with the full implementation of the risk supervisory model.

29. There is good cooperation between FIs and DNFBPs and their supervisors which are well-respected. The outreach measures and guidance have been helpful to them.

30. The CBI has generally robust controls in place at market entry for FIs, including background checks. The CBI also proactively targets unauthorised financial services providers. The DoJE has also fitness and probity controls. Some designated accountancy bodies over-rely on self-declarations.

31. Both the CBI and the DoJE follow a risk based approach.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 – 10.5; R.24-25)*

32. Ireland has good information, available centrally and publicly, on creation and types of legal persons and the legal ownership of corporate vehicles. Similar information on legal arrangements is gathered by Ireland's tax authorities but is not publicly available.

33. Ireland has assessed and acknowledges that legal persons and arrangements may be used by persons seeking to launder illicit proceeds, but not comprehensively.

34. Ireland has taken some measures to prevent the misuse of legal persons. Registration and ongoing filing obligations to CRO provide for detailed measures to ensure legal persons are created in a transparent manner. Basic information and legal ownership information can be easily obtained. However, obtaining beneficial ownership information beyond the immediate shareholder is currently limited. Ireland permits the use of nominee directors and shareholders for companies, but a new obligation on all corporate entities to obtain and hold current beneficial ownership data will provide some mitigation of risks of ML/TF abuse via nominees by effectively requiring disclosure of nominee shareholders and directors where they are used to effectively control the company.

35. Revenue maintains beneficial ownership information for certain legal persons and for legal arrangements which have tax consequences. Further beneficial ownership information is obtained

and maintained individually by FIs and DNFBPs pursuant to CDD obligations provided for in Ireland's AML/CFT law.

36. Competent authorities have the necessary powers to access this information in a timely manner in the cases when the legal person or arrangement has a relationship with the financial institution or professional service provider. Notwithstanding the CDD and tax law requirements, there are limitations on the availability of information regarding beneficial ownership of express trusts.

37. Ireland has proactively taken steps to provide for the central register of corporate beneficial ownership through regulations of 15 November 2016. Once fully established and operational, this will enhance timely access to accurate and up-to-date information on beneficial ownership.

#### *International Cooperation (Chapter 8 – 10.2; R. 36-40)*

38. Ireland demonstrates many characteristics of an effective system for international cooperation. Ireland provides a range of international cooperation, including MLA, extradition, intelligence/information and, where available, beneficial ownership information. Despite the strong domestic asset confiscation framework in place in Ireland, some issues have arisen in relation to confiscation and sharing of assets internationally which require moderate improvements.

#### **Priority Actions**

- Ireland's understanding of risks should include a more comprehensive range of quantitative data, such as those in relation to international cooperation (both formal and informal). Ireland should at the next iteration of the NRA, better illustrate the links between the threat and vulnerabilities assessment and give greater consideration to the cross-border ML/TF risks. FIs and DNFBPs (in particular) should seek to further deepen their ML/TF risks understanding, particularly in relation to cross-border ML/TF risks.
- Ireland should more actively pursue TF prosecutions in line with its risk profile, with a view to securing TF convictions.
- Ireland should seek to prosecute a wider range of ML cases, including both domestic cases and cases with an international component, relating to professional ML schemes and complex financial products, in line with its risk profile. Ireland should ensure that adequate resources are allocated to the dedicated ML investigation teams.
- Authorities should further enhance efforts to pursue the proceeds of crime moved offshore. Ireland should review and strengthen its asset confiscation legislation, procedures and policies in relation to international asset freezing, seizing, confiscation and sharing of assets. Authorities should also ensure that the expansion of their remit to cover mid-level criminality, does not impact the focus on, and resources committed to targeting high-level organised crime figures and complex financial crime.
- It is recommended that focused and proportionate measures be applied to NPOs identified as being vulnerable to TF abuse.

- Ireland should ensure that there are adequate procedures in place to safeguard the role of the FIU and ensure its independence.
- Ireland should take further steps to ensure competent authorities can have timely and accurate access to beneficial ownership information including from FIs and DNFBPs. In this sense, Ireland should continue to take proactive steps to facilitate the operation of the central register of corporate beneficial ownership.
- The DoJE should continue to expand its monitoring of entities under its remit, and increase its resources accordingly.
- Supervisors, in particular for DNFBPs, should further focus on ensuring compliance with PEPs and TFS obligations. The Law Society and designated accountancy bodies should apply effective, proportionate and dissuasive sanctions for non-compliance with AML/CFT requirements.
- Ireland should amend its legislative framework to address the technical deficiencies noted in the TC Annex, such as for some DNFBPs, and in relation to PEPs and high-risk countries.

**Effectiveness & Technical Compliance Ratings***Effectiveness Ratings (High, Substantial, Moderate, Low)*

<b>IO.1</b> - Risk, policy and coordination	<b>IO.2</b> - International cooperation	<b>IO.3</b> - Supervision	<b>IO.4</b> - Preventive measures	<b>IO.5</b> - Legal persons and arrangements	<b>IO.6</b> - Financial intelligence
<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>
<b>IO.7</b> - ML investigation & prosecution	<b>IO.8</b> - Confiscation	<b>IO.9</b> - TF investigation & prosecution	<b>IO.10</b> - TF preventive measures & financial sanctions	<b>IO.11</b> - PF financial sanctions	
<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>	

*Technical Compliance Ratings (C - compliant, LC - largely compliant, PC - partially compliant, NC - non compliant)*

<b>R.1</b> - assessing risk & applying risk-based approach	<b>R.2</b> - national cooperation and coordination	<b>R.3</b> - money laundering offence	<b>R.4</b> - confiscation & provisional measures	<b>R.5</b> - terrorist financing offence	<b>R.6</b> - targeted financial sanctions – terrorism & terrorist financing
<b>LC</b>	<b>LC</b>	<b>C</b>	<b>C</b>	<b>LC</b>	<b>PC</b>
<b>R.7</b> - targeted financial sanctions - proliferation	<b>R.8</b> - non-profit organisations	<b>R.9</b> - financial institution secrecy laws	<b>R.10</b> - Customer due diligence	<b>R.11</b> - Record keeping	<b>R.12</b> - Politically exposed persons
<b>PC</b>	<b>PC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>
<b>R.13</b> - Correspondent banking	<b>R.14</b> - Money or value transfer services	<b>R.15</b> - New technologies	<b>R.16</b> - Wire transfers	<b>R.17</b> - Reliance on third parties	<b>R.18</b> - Internal controls and foreign branches and subsidiaries
<b>PC</b>	<b>LC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>PC</b>
<b>R.19</b> - Higher-risk countries	<b>R.20</b> - Reporting of suspicious transactions	<b>R.21</b> - Tipping-off and confidentiality	<b>R.22</b> - DNFBPs: Customer due diligence	<b>R.23</b> - DNFBPs: Other measures	<b>R.24</b> - Transparency & BO of legal persons
<b>NC</b>	<b>C</b>	<b>C</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>
<b>R.25</b> - Transparency & BO of legal arrangements	<b>R.26</b> - Regulation and supervision of financial institutions	<b>R.27</b> - Powers of supervision	<b>R.28</b> - Regulation and supervision of DNFBPs	<b>R.29</b> - Financial intelligence units	<b>R.30</b> - Responsibilities of law enforcement and investigative authorities
<b>PC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>PC</b>	<b>C</b>
<b>R.31</b> - Powers of law enforcement and investigative authorities	<b>R.32</b> - Cash couriers	<b>R.33</b> - Statistics	<b>R.34</b> - Guidance and feedback	<b>R.35</b> - Sanctions	<b>R.36</b> - International instruments
<b>LC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>
<b>R.37</b> - Mutual legal assistance	<b>R.38</b> - Mutual legal assistance: freezing and confiscation	<b>R.39</b> - Extradition	<b>R.40</b> - Other forms of international cooperation		
<b>C</b>	<b>LC</b>	<b>C</b>	<b>LC</b>		

## MUTUAL EVALUATION REPORT

### *Preface*

This report summarises the AML/CFT measures in place in Ireland as at the date of the Assessment Team's on-site visit from 3-17 November 2016. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Ireland's AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology as updated up to October 2016. The evaluation was based on information provided by Ireland, and information obtained by the Assessment Team during its on-site visit to Ireland.

The evaluation was conducted by an Assessment Team consisting of:

- Ms. Penelope Kelton, Australian Federal Police, Australia (legal expert)
- Ms. Camilla Annerstedt, Swedish National Police Authority, Sweden (law enforcement expert)
- Ms. Poovindree Naidoo, South Africa Financial Intelligence Centre, South Africa (legal expert)
- Ms. Jacqueline Arend, Luxembourg Financial Supervisory Authority, Luxembourg (financial expert)
- Mr. Alvin Koh, Monetary Authority of Singapore, Singapore (financial expert)
- Mr. Kevin Vandergrift, senior policy analyst; Ms. Shana Krishnan and Mrs. Diana Firth, policy analysts, FATF Secretariat

The report was reviewed by Mr. Shahmeem Purdasy, HM Treasury, United Kingdom; Mr. Wayne Walsh, Department of Justice, Hong Kong, China; Mr. Steve Twilton, Reserve Bank of New Zealand; and Ms. Carolina Claver, International Monetary Fund.

Ireland underwent a FATF Mutual Evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2006 evaluation and 2010 follow-up report have been published and are available at: [www.fatf-gafi.org/countries/#Ireland](http://www.fatf-gafi.org/countries/#Ireland).

Ireland's 2006 Mutual Evaluation concluded that the country was compliant with 16 Recommendations and largely compliant with 12 as detailed in the MER. Ireland was found partially compliant with former R. 5, 8, 11, 12, 16, 17, 18, 21, 32, 33, 34, SR. I, III, VI, VIII, and IX and non-compliant with R. 6, 7, 9, 24 and SR VII. Ireland was rated compliant or largely compliant with 13 of the 16 then considered Core and Key Recommendations. Ireland was placed under the regular follow-up process especially due to the PC rating in former R. 5. It exited the follow-up process in 2013, after largely addressing customer due diligence (CDD) related deficiencies under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and related amendments in 2013 (CJA 2010).



## CHAPTER 1. ML/TF RISKS AND CONTEXT

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39. An independent state since 1921, Ireland covers 70 280 square kilometres of the island of Ireland located in the North Atlantic Ocean. Ireland's population is approximately 4.7 million people.

40. Ireland is a parliamentary democracy. The National Parliament (the Oireachtas) consists of the President and two Houses: a House of Representatives (Dáil Éireann) and a Senate (Seanad Éireann). The functions and powers of the President, Dáil and Seanad are derived from the Constitution of Ireland (Bunreacht na hÉireann). All laws passed by the Oireachtas must conform to the Constitution. The country is administratively divided into 26 counties (29 local government administrative counties, as County Dublin is further spilt into four administrative areas) and political power is geographically divided into state, county and municipal levels.

41. Ireland's legal system is derived from the English common law tradition. The Constitution of Ireland, Bunreacht na hÉireann was enacted in 1937. The Constitution establishes the branches or organs of government, the courts, and also sets out how those institutions should be run. The Constitution provides for justice to be administered in public through the courts; the court in which a case is heard will vary depending on the type of offence committed. Summary offences and minor civil cases are dealt with by the District Court presided, over by a District Judge. More serious cases are dealt with by the Circuit Court presided over by a judge who sits with a jury. The most serious cases are heard in the High Court, presided over by a Judge. When criminal cases are being tried, the High Court is known as the Central Criminal Court; a Special Criminal Court deals with terrorism and offences against the State.

42. The most important sectors of Ireland's economy in 2015 were industry (39.1 %), wholesale and retail trade, transport, accommodation and food service activities (12.8 %) and public administration, defence, education, human health and social work activities (12.3%). Ireland's main export partners are the US, the UK and Belgium, while its main import partners are the UK, the US, and France.<sup>2</sup>

43. Ireland is a member of EU and the Eurozone, but is not a member of the Schengen Area. Ireland's GDP was approximately EUR 256 billion for 2015 and financial services play an important role in its economy. Ireland is the 4th largest exporter of Financial Services in the EU, and globally, over 40% of global hedge fund's assets are administered in Ireland.<sup>3</sup>

### ***ML/TF Risks and Scoping of Higher-Risk Issues***

#### *Overview of ML/TF Risks*

44. Ireland is an important regional and international financial centre, and is among the IMF's 29 systematically important financial centres. Ireland's financial economy is well-developed, particularly its funds and insurance sector (non-life, re-insurance and life insurance).

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<sup>2</sup> EUROPA - Ireland | European Union. (n.d.), [https://europa.eu/european-union/about-eu/countries/member-countries/ireland\\_en](https://europa.eu/european-union/about-eu/countries/member-countries/ireland_en)

<sup>3</sup> NRA, p. 13 and 45.

45. Ireland is exposed to a range of money laundering (ML) and terrorist financing (TF) risks. In that regard, it has identified a number of threats associated with the activities of organised crime groups (OCGs), including groups linked with foreign OCGs (e.g. based in Spain, UK, Netherlands) and former local paramilitary groups. Their activities relate to drug trafficking, human trafficking and migrant smuggling, fuel laundering, and fraud (including VAT fraud). The OCGs are becoming more sophisticated and the proceeds could be laundered through businesses and high value goods dealers (HVGDs<sup>4</sup>). Techniques such as money remittance using couriers or mules, or the use of professionals such as lawyers and accountants could also be used. Irish authorities have reported that due to their tightened AML/CFT measures OCGs are increasingly endeavouring to move the control of their operations and proceeds of their criminal activities outside of Ireland.

46. Domestically, the use of cash in ML/TF is recognised by Irish authorities as a key risk, although the authorities noted that cash transactions are progressively giving way to card payments in Ireland. Cash is particularly favoured as a medium by domestic crime groups including for the laundering of drug proceeds and other illicit activities. This exposes retail banks, bureaux de change and HVGDs, as noted above, particularly car dealers, to higher risks. The key mitigation measures on cash relate to those taken at the EU level (e.g. cash threshold reporting).

47. From a cross-border perspective, the financial sector, particularly the investment funds sector and remittance sector are seen as vulnerable areas. As of June 2016, the total value of assets of Irish funds domiciled and administered in Ireland was EUR 1.9 trillion. The often complex legal structures with non-transparent ownership and control associated with these structures, along with the third-party reliance of CDD arrangements, frequently adopted by funds and funds administrators, would also increase the vulnerabilities in that sector. The geographic reach, high volume and low values of transactions performed by money remitters, which typically fall under the CDD thresholds of payment institutions, is also an area of concern. Payment institutions, which utilise Ireland as a base to “passport” to the rest of the EEA through an extensive network, increase the need for closer supervision of the sector.

48. Gatekeepers particularly solicitors, accountants, and tax advisors who provide services such as advisory on tax and other complicated financial advisory and company and trust formation could be exploited by criminals who seek to launder the proceeds of crime or evade tax. The risks are higher in situations where these professionals do not apply comprehensive CDD procedures to identify the beneficial owner and the source of funds. There is awareness among authorities that providers of trust and company formation services, including for customers from higher risk jurisdictions or where there is a lack of face to face contact, are also a risk. In addition, the authorities noted that the property sector could be abused for money laundering purposes and have recently taken steps to supervise the sector.

49. Ireland also recognises the potential ML risks arising from gaming, lottery and betting operators. In addition, e-money and virtual currencies are areas which the authorities are monitoring. There are potential risks in relation to online casinos and the abuse of cryptocurrencies,

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<sup>4</sup> The term High Value Good Dealer in Ireland refers to any person trading in goods, in cash, over EUR 15 000), including the car industry, dealers in precious metals and stones, and other DNFBPs.

particularly Bitcoin (especially in connection with the “Dark Web”) which the authorities are reviewing.

50. TF risks are predominantly associated with the domestic terrorist threat, including from paramilitary groups. The funds could originate from both legal (salaries, social benefits) and illegal (extortion, counterfeiting/fraud, drugs) sources. The movement of funds is usually conducted through money remittance service providers, money exchangers, and cash couriers. Ireland considers that internationally, the terrorism financing threat is not assessed to be comparable to that which exists in other European jurisdictions.

### *Country’s risk assessment & Scoping of Higher Risk Issues*

51. Ireland’s first NRA was published in October 2016. The exercise was coordinated by the Department of Finance, as the Chair of the Anti-Money Laundering Steering Group Committee (AMLSC), with the participation of a range of agencies and the involvement of the private sector, and it was influenced by the work and the discussions of the EU supra-national risk assessment.

52. The NRA covers both ML and TF and identifies major threats, ML/TF risk enhancing and reducing factors, and provides a final residual risk rating (i.e. taking into account AML/CFT measures in place) to financial and non-financial sectors operating in Ireland. The NRA concludes that drug offences pose the most significant threat of ML, with smuggling and financial crime also posing significant threats. The NRA notes that some OCGs operating in Ireland have links with OCGs in other countries or regions such as the Netherlands, Spain, West Africa and the UK. Factors that increase the risks of ML/TF include the openness of the Irish market internationally and in the EU, and its proximity to the UK. Ireland identified the retail banking, money remittance firms and bureau de change sectors as high residual risk for ML/TF.

53. Apart from the NRA, the Central Bank of Ireland (CBI) and the Department of Justice and Equality (DoJE) also undertake risk assessments on specific sectors. Further details of the NRA can be found under Immediate Outcome 1 and R. 1 in the TC annex.

### *Scoping of Higher Risk Issues*

54. In deciding what issues to prioritise during the on-site visit, the Assessment Team reviewed material provided by Ireland on national ML/TF risks, and information from reliable third party sources (e.g., reports by other international organisations). The issues listed present not only potential areas of higher ML/TF risks (including threats and vulnerabilities), but also issues that were of concern to the Assessment Team or where more clarification was sought.

- *Investigation and prosecution of money laundering crimes and confiscation of proceeds of crime:* The Assessment Team sought to understand whether the key profit generating predicate offences in Ireland<sup>5</sup> (drug offences, financial crime, tobacco smuggling and tax evasion) were pursued for money laundering investigation and prosecution. The

<sup>5</sup> NRA, p. 24 – these are the top four predicate crimes in the list of offences.

Assessment Team also explored whether a range of ML activity was being investigated, including stand-alone ML offences and cases with a cross-border element.

- *Asset confiscation*: Given that the key predicate offences, including foreign predicates, would generate high levels of illicit proceeds, the Assessment Team sought to understand why the confiscation figures appeared modest, considering that Ireland is known to have a comprehensive confiscation regime.
- *Financial intelligence*: The Assessment Team also explored the systems in place to ensure that the FIU has sufficient operational independence and to understand the role of the FIU within AGS. The Team also explored the dual reporting system of STRs to AGS as well as the Office of the Revenue Commissioners (Revenue), and cooperation between the agencies.
- *Terrorist Financing*: The Assessment Team explored Ireland's understanding of TF risks in relation to domestic and international terrorism threats. While Ireland has taken substantial counter-terrorism action, it does not have any convictions for the TF offence and the Assessment Team explored whether Irish authorities' were routinely pursuing the money trails, to evaluate the extent to which Ireland may be a source for TF, and any efforts to pursue specific TF offences.
- *The Financial and Non-Financial Sector*: As Ireland is the 4th largest exporter of Financial Services in the EU,<sup>6</sup> and globally, over 40% of global hedge funds' assets are administered in Ireland, assessors explored the risks presented by Funds and Funds Administrators (which hold client relationships). In this context, the role of solicitors, accountants and tax advisers as well as TCSPs were also analysed. The Assessment Team also looked at payment institutions and in particular, at those that passport services into the rest of Europe. Payment institutions were rated as high risk in Ireland, due to the high-volume, cash-based nature of transactions and the strong reliance on agent networks, as some of the vulnerabilities of the sector. Many EEA money remitters utilising their "European Passport" have established networks of Irish agents and branches.<sup>7</sup>
- *Real Estate Sector Property Services Providers (PSPs)*: The Assessment Team looked at risks emanating from the PSP sector as it deals with a considerable number of transactions,<sup>8</sup> files a low level of STRs and only became supervised for AML/CFT purposes in September 2016. PSPs are only required to identify their vendors, leaving a potential CDD gap with regard to the purchaser of property. The assessment also explored the actions taken by the recently appointed Property Service Regulatory Authority (PSRA), and the impact of the potential CDD gap, including whether there could be other interim mitigation measures (e.g. reliance on CDD done by conveyancing lawyers).

<sup>6</sup> NRA, p. 13.

<sup>7</sup> NRA, p. 39.

<sup>8</sup> Ireland indicated that there were 48,511 residential property transactions in Ireland in 2015, worth over EUR 10 billion. NRA, p. 57.

## *Materiality*

55. Ireland's economy operates on open, free market principles with a service-exporting financial services sector that, as mentioned above, was ranked by the IMF among the world's top 29 most interconnected economies, and was ranked the 5th most interconnected country by McKinsey in 2016. All financial services that comprise FATF's definition of FIs are provided for in Ireland, and all Designated Non- Financial Businesses and Professions (DNFBPs) are present with a few caveats, although the size of this sector is smaller in comparison with that of the financial sector. There are no casinos as such. Ireland has Private Members' Clubs (PMCs) which are clubs that provide casino and gaming-type facilities. Notaries and barristers in Ireland do not engage in the activities covered by FATF Standards. This is further explained under the DNFBP section below. Many of the world's top multinationals that operate in the information technology, pharmaceuticals and financial services sectors are based in Ireland.

## *Structural Elements*

56. The elements for effective AML/CFT control appear to be present in Ireland. Political and institutional stability, accountability, transparency and rule of law are all present. Responsibility for developing and implementing AML/CFT policy in Ireland is led by the AMLSC with input from all relevant authorities.

## *Background and other Contextual Factors*

### *AML/CFT strategy*

57. Ireland does not have a documented national AML/CFT strategy. Ireland explained that its AML/CFT policy is formulated at a national level by the AMLSC and it has set out an AML/CFT Action Plan, to strengthen its AML/CFT measures, which sought to take into account the NRA findings. Also, AML/CFT policies are incorporated into overall anti-crime initiatives, such as the country's Policing Plan 2016, which has the core objective of protecting the public from terrorism in all its forms. Similarly AGS has a strategic goal dealing with combatting serious and organised crime under which ML and proceeds of crime actions are taken.

### *Legal & institutional framework*

58. The following are the main ministries and authorities responsible for formulating and implementing the government's AML/CFT and counter proliferation financing policies:

### *Ministries and Coordinating Bodies*

- **Anti-Money Laundering Steering Committee (AMLSC):** AMLSC is the national coordination committee on AML/CFT matters. It facilitates policy formulation among government departments. The mechanism has been used to input into the NRA and is used to discuss specific ML/TF risks or issues of concern that may affect the AML/CFT

framework. Recent national policy discussions that have been facilitated by the AMLSC have included international beneficial ownership issues, international terrorist attacks and implications for law enforcement and supervisors, and discussions around law enforcement activity in respect of organised crime. AMLSC is chaired by the Department of Finance.

- **Cross-Departmental International Sanctions Committee (CDISC):** CDISC monitors, reviews, and coordinates the implementation, administration and exchange of information on international sanctions regimes. Government departments, national competent authorities and other relevant agencies participate in CDISC to discuss emerging issues in this field and to ensure that Ireland is adopting a coherent and effective approach to the implementation of international sanctions. CDISC is chaired by the Department of Foreign Affairs and Trade (DFAT).
- **Department of Finance:** deals with policy and legislation relating to the financial sector. It shares policy and legislation responsibility in relation to AML/CFT matters with the Department of Justice and Equality. The Department of Finance chairs the AMLSC, which is the national coordination committee on AML/CFT matters, and acts as the head of the Irish delegation to the FATF. Under Criminal Justice legislation, the Minister of Finance is empowered to make secondary legislation relating to the EU's restrictive measures regime.
- **Department of Justice and Equality (DoJE):** is the department mandated to implement Government policy on crime and reform of the law in relation to crime. From an AML/CFT perspective, it shares policy and legislation responsibility with the Department of Finance. In addition, the DoJE is the competent authority for the supervision of a range of DNFbps. It acts as the Central Authority in the State for Mutual Legal Assistance (MLA) requests in criminal matters. The DoJE also has responsibility for the processing of European Arrest Warrants (EAW) and for the administrative verification of extradition requests.
- **Department of Foreign Affairs and Trade (DFAT):** DFAT is one of three competent authorities for EU restrictive measures. DFAT acts as the Irish point of contact with the UN's Sanctions Committees and that Department is also primarily responsible for communications with the European Commission and other States (outside of the EU) in respect of implementation of international restrictive measures in Ireland. In that representative capacity, the Department of Foreign Affairs communicates relevant information, policy documents, materials and queries in relation to sanctions from the UN and other partners to members of the CDISC on a very regular basis. DFAT also chairs the CDISC.
- **The Department of Jobs, Enterprise, and Innovation (DoJEI):** is responsible for company law and is the parent Department of the Office of the Director of Corporate Enforcement, Company Registration Office and the Office of the Registrar of Friendly Societies. The Department's Export Control, Licensing Unit, is responsible for monitoring and enforcing EU restrictive measures in relation to trade sanctions.

*Criminal justice and operational agencies*

- **An Garda Síochána (AGS or Garda):** AGS is the national police force in Ireland and is also responsible for national security issues. The management and control of AGS is the responsibility of the Commissioner, who is appointed by the Government. AGS is responsible to the Minister of Justice and Equality, who in turn is accountable to the Irish legislature. The relevant areas of AGS, for ML/TF purposes, fall under the responsibility of the Deputy Commissioner for Policing and Security. There are a number of areas that fall under the Policing and Security group which include Security & Intelligence (which deals with terrorism related issues), Special Crime Operations (which deals with a range of predicate offences and houses the AGS National Economic Crime Bureau which houses the FIU) and regional operational police.<sup>9</sup>
- **Garda National Economic Crime Bureau (GNECB):** The GNECB, formerly named the AGS Bureau of Fraud Investigation, is headed by a Detective Chief Superintendent, and includes the FIU and two Money Laundering Investigation Units (MLIUs) as well as a number of other units that deal with financial crime, fraud and commercial crime. The FIU and the MLIUs report to a Detective Superintendent who is the Deputy Head of the FIU, who in turn reports to a Chief Detective Superintendent who is the head of the GNECB and is the Head of the FIU.
- **The Financial Intelligence Unit (FIU):** The Irish FIU is embedded within the GNECB. Ireland has a dual-reporting system for Suspicious Transaction Reports (STRs) under which STRs are sent to the FIU within AGS and the Suspicious Transactions Unit in the Office of the Revenue Commissioners. Within the FIU there are two people allocated to dealing with TF issues which is referred to as the TFIU. The FIU has been a member of the Egmont Group of FIUs since 2001 and is a member of the AMLSC.
- **The Money Laundering Investigation Units (MLIUs):** There are two Money Laundering Investigations Units (MLIUs) within the GNECB which report to the same Detective Superintendent that manages the FIU. These units undertake enhanced financial analysis and investigate ML detected through STRs or through other reporting to the FIU.
- **The AGS Security Service:** Ireland's security and intelligence service, the Crime and Security Branch works closely with external intelligence agencies, particularly the UK authorities and co-ordinates all intelligence relating to domestic and international terrorism. Within the Crime and Security Branch, the National Criminal Intelligence Unit deals with intelligence in relation to all criminal offences (other than terrorist offences). The FIU works closely with the Crime and Security Branch relating to both the financing of terrorism and criminal intelligence.
- **The Criminal Assets Bureau (CAB):** The CAB is a statutory body established under the Criminal Assets Bureau Act (1996). CAB is a multi-agency body consisting of police

<sup>9</sup> Geographically, the country is divided into six regions and each is commanded by a Garda Assistant Commissioner. These regions are sub-divided into divisions and districts.

officers, customs officers, tax officers and benefit agency personnel. In addition, the CAB has its own legal officer and forensic accountant. The CAB enforces civil forfeiture legislation in Ireland.

- **The Office of the Director of Public Prosecutions (DPP):** The DPP enforces criminal law in the courts on behalf of the people of Ireland, directs and supervises public prosecutions on indictment in the courts, including cases of ML and TF, and provides general direction and advice to AGS in relation to summary cases. The Director gives specific directions in cases where requested. The Chief Prosecution Solicitor provides a solicitor service, within the DPP, to act on behalf of the Director. The DPP is also responsible for making applications to the Court for restraint and confiscation orders, both domestic and international, relating to the proceeds of crime post-conviction under the CJA (1994) as amended and for international mutual assistance in criminal matters.
- **Office of the Revenue Commissioners (Revenue):** Revenue is responsible for the assessment and collection of taxes and duties. As mentioned above, Ireland has a dual reporting system for STRs, with the Suspicious Transactions Unit of Revenue also receiving and analysing all STRs for tax-related purposes. Revenue also houses the Customs Service.
- **Charities Regulatory Authority (CRA):** The Charities Regulator is Ireland's national statutory regulator for charitable organisations. The key functions of the Regulator are to establish and maintain a public register of charitable organisations operating in Ireland and ensure their compliance with the Charities Act. The Regulator also has the power to conduct statutory investigations into any organisation believed to be non-compliant with the Charities Act.
- **Companies Registration Office (CRO):** CRO is the central repository of public statutory information on Irish companies and business names. The CRO operates under the aegis of the DoJEI.

#### *Financial/DNFBP sector supervisors and bodies*

- **Central Bank of Ireland (CBI):** The CBI has responsibility for central banking and financial regulation as set out in the Central Bank Act 2010. It is the designated competent authority for AML/CFT supervision of FIs as provided in the CJA 2010. Financial institutions supervised by the Central Bank for AML/CFT compliance include banks, payment institutions, insurance companies, credit unions, investment and insurance intermediaries, mortgage intermediaries, funds, investment business firms, stockbrokers, exchanges, money lenders, bureaux de change and money transmitters. When TCSPs are subsidiaries of credit or financial institutions, the CBI has also been the competent authority, since 3 March 2014.
- **DoJE's Anti-Money Laundering Compliance Unit (AMLCU):** Appointed by the CJA 2010, the AMLCU is the AML/CFT supervisor for most DNFbps in Ireland, namely:

TCSPs<sup>10</sup>, PMCs at which gaming activities are carried out (similar activities to casinos), HVGDs (including dealers in precious metals and stones), tax advisors, and accountants that do not belong to a designated accountancy body.

- **Property Services Regulatory Authority (PSRA):** The PSRA is the competent authority for supervising property services providers (real estate) as of 1 September 2016. Among its objectives are to achieve uniformity and transparency in licensing, regulation and provision of information to the public.
- **Law Society of Ireland:** The Law Society of Ireland is the educational, representative, and self-regulatory body (SRB) for solicitors, which was specifically appointed as a “competent authority” and supervisor for AML/CFT purposes by the CJA 2010.
- **Designated Accountancy Bodies:** Nine accountancy bodies are recognised by the Irish Minister for Enterprise, Trade and Employment as competent authorities (Self-regulatory bodies or SRB) for accountants.
- **Private Sector Consultative Forum (PSCF):** The PSCF is the main body aimed at enhancing dialogue between the private and public sectors. It supports the development of an appropriate legislative and operational environment so that Ireland has an effective AML/CFT framework in line with international standards; discusses the implementation of AML/CFT measures to ensure compliance with EU law and international standards; develops the understanding of the ML/TF threats, vulnerabilities and risks in the Irish economy and assists in the identification, analysis and review of AML/CFT policies and practices adopted in other jurisdictions.

59. Ireland also has informal cooperation arrangements between different authorities (See Chapter 2).

### *Financial sector and DNFBPs*

60. The total assets in the Irish banking sector are EUR 565 billion, of which nearly 55% (EUR 305 billion) relates to the 5 retail banks. Total assets in the Irish Life Insurance sector are EUR 212 billion. The Irish domiciled Funds industry is also very significant and has EUR 1.9 trillion of total assets under administration. There are approximately 94 500 people working in the financial services industry in Ireland.<sup>11</sup> More than 13 000 work in the funds industry<sup>12</sup> with another 28 000 people working in the insurance industry.<sup>13</sup> 3 500 people are employed by credit unions.<sup>14</sup> The five domestic retail banks employ approximately 28 250 people.<sup>15</sup>

<sup>10</sup> This excludes TCSPs under the remit of the Central Bank, as subsidiary of a FI or to some accountants or some solicitors who provide this type of services.

<sup>11</sup> Central Statistics Authorities, [www.cso.ie/en](http://www.cso.ie/en)

<sup>12</sup> Irish Funds. (2014), *IFIA Announces Record Net Assets In Irish Funds*, [www.irishfunds.ie/news-knowledge/news/ifia-announces-record-net-assets-in-irish-funds](http://www.irishfunds.ie/news-knowledge/news/ifia-announces-record-net-assets-in-irish-funds)

<sup>13</sup> Insurance Ireland (n.d.), *About Us | Insurance Ireland*, [www.insuranceireland.eu/about-us/about-us](http://www.insuranceireland.eu/about-us/about-us)

<sup>14</sup> Credit Union (n.d.), *About the Credit Unions*, [www.creditunion.ie/whoweare/aboutus/aboutthecreditunions/](http://www.creditunion.ie/whoweare/aboutus/aboutthecreditunions/)

<sup>15</sup> Bank of Ireland (2015), Annual Report, Bank of Ireland, <https://investorrelations.bankofireland.com/wp-content/assets/BOI-Annual-Report-2015.pdf>.  
<https://investorrelations.bankofireland.com/wp-content/assets/BOI-Annual-Report-2015.pdf>

61. An overview of the numbers of FIs in Ireland can be found in **Table 1** below. **Table 2** provides an overview of the different FIS in Ireland, which conduct the financial activities included in FATF's definition of financial institution.

Table 1. **Financial Institutions in Ireland (November, 2016)**

Sector	Number of Firms	Number of Passporting Firms/Branches	Total	Asset size (EUR)
Retail Banking	5	0	5	305 bn
Non-Retail Banking	17	29	46	260 bn
Bureau de Change	16	0	16	4 m
Fund Service Providers	35	7	42	1.6 bn
Funds	2 581	0	2 581	1.9 tn
Credit Unions	341	0	341	16 bn
Life Insurance	47	11	245	212 bn
Retail Intermediaries	1 925	56	1 981	not available
Market Operator	1	0	1	60 m
Money Lenders	40	0	40	187 m
E-Money	1	1	2	3 m
Payment Institutions – Money Remitters	6	21	27	93 m
Payment Institutions - Other	6	0	6	320 m
Retail credit Firms	29	0	29	53 m
Investment Firms – Asset Managers	77	20	97	2 bn
Investment Firms - Other	27	14	41	16 bn
TCSPs	38	0	38	55 m
An Post	1	0	1	888 m
<b>Supervisory Population</b>	<b>5 193</b>	<b>159</b>	<b>5 352</b>	<b>2.7 tn</b>

Ulster Bank of Ireland (2014), *Report of the Directors and Financial Statements*,

<http://digital.ulsterbank.ie/content/dam/Ulster/documents/group/ulster-bank-ireland-limited-report-of-directors-and-financial-statements-2014-UBGROUPE0233.pdf>

Permanent TSB (2014), *Annual Report*, [www.permanenttsbgroup.ie/~media/Files/I/Irish-Life-And-Permanent/Attachments/pdf/2015/annual-report-110315.pdf](http://www.permanenttsbgroup.ie/~media/Files/I/Irish-Life-And-Permanent/Attachments/pdf/2015/annual-report-110315.pdf)

KBC (n.d.), *Annual Reports*, [www.kbc.ie/Why-KBC/About-Us/Annual-Reports](http://www.kbc.ie/Why-KBC/About-Us/Annual-Reports)

Table 2. **Financial Institutions in Ireland vs. FATF Definition**  
(all authorised and supervised by the CBI)<sup>16</sup>

Type of Financial Activity	Irish Financial Institution	Relevant Legal References
<b>1. Acceptance of deposits and other repayable funds from the public (including private banking)</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Credit Unions</li> <li>•Payment Institutions</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•Credit Union Act 1997</li> <li>•S.I. No. 383 of 2009</li> </ul>
<b>2. Lending</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Credit Unions</li> <li>•Money Lenders</li> <li>•Retail Credit Firms</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•Credit Union Act 1997</li> <li>• Consumer Credit Act 1995</li> <li>•Part V of the Central Bank Act 1997</li> </ul>
<b>3. Financial leasing</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Credit Unions</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> </ul>
<b>4. Money or value transfer services</b>	<ul style="list-style-type: none"> <li>•Banks (Retail), Credit Unions</li> <li>•Payment Institutions</li> <li>•Money Transfer Businesses</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>• S.I. No. 383 of 2009</li> <li>•Part V of the Central Bank Act 1997</li> </ul>
<b>5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).</b>	<ul style="list-style-type: none"> <li>•Banks (Retail)</li> <li>•Money Transfer Businesses</li> <li>•Electronic Money Institutions</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>• Part V of the Central Bank Act 1997</li> <li>• EC (Electronic Money) Regulations 2011</li> </ul>
<b>6. Financial guarantees and commitments.</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> </ul>
<b>7. Trading in:</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Credit Unions</li> <li>•Investment Firms</li> <li>•Investment Business Firms</li> <li>•Stockbroker authorised under the Stock Exchange Act (1995)</li> <li>•Money Brokers</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•EC (Markets in Financial Instruments) Regulations 2007</li> <li>•Investment Intermediaries Act 1995</li> <li>•Chapter IX of the Central Bank Act 1989</li> </ul>
<b>(a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.)</b>		
<b>(b) foreign exchange</b>		
<b>(c) exchange, interest rate and index instruments</b>		
<b>(d) transferable securities</b>		
<b>(e) commodity futures trading</b>		
<b>8. Participation in securities issues and the provision of financial services related to such issues</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Stockbroker authorised under the Stock Exchange Act (1995)</li> <li>•Investment Firms •Investment Business Firms</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971,</li> <li>EC (Markets in Financial Instruments) Regulations 2007</li> <li>• Investment Intermediaries Act 1995</li> </ul>

<sup>16</sup> Banks are required to be authorised by the European Central Bank (ECB) since 4 November, 2014 and are supervised for AML/CFT purposes by the CBI.

1

Type of Financial Activity	Irish Financial Institution	Relevant Legal References
<b>9. Individual and collective portfolio management</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Stockbroker authorised under the Stock Exchange Act (1995)</li> <li>•Investment Firms</li> <li>•Investment Business Firms</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>EC (Markets in Financial Instruments) Regulations 2007</li> <li>• Investment Intermediaries Act 1995</li> </ul>
<b>10. Safekeeping and administration of cash or liquid securities on behalf of other persons</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Investment Firms and Investment Business Firms</li> <li>•TCSPs</li> <li>•Stockbroker authorised under the Stock Exchange Act (1995)</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•EC (Markets in Financial Instruments) Regulations 2007</li> <li>•Investment Intermediaries Act 1995</li> </ul>
<b>11. Otherwise investing, administering or managing funds or money on behalf of other persons</b>	<ul style="list-style-type: none"> <li>•Banks (Retail and Non-Retail)</li> <li>•Investment Firms</li> <li>• Investment Business Firms</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•EC (Markets in Financial Instruments) Regulations 2007</li> <li>• Investment Intermediaries Act 1995</li> </ul>
<b>12. Underwriting and placement of life insurance and other investment related insurance</b>	<ul style="list-style-type: none"> <li>•Life Insurance Undertakings</li> <li>• Insurance Intermediaries</li> </ul>	<ul style="list-style-type: none"> <li>•Statutory Instrument. No. 485/2015 (EU Insurance Reinsurance Regulations 2015)</li> <li>•Investment Intermediaries Act 1995</li> </ul>
<b>13. Money and currency changing</b>	<ul style="list-style-type: none"> <li>•Banks (Retail)</li> <li>•Credit Unions</li> <li>•Bureaux de Change</li> </ul>	<ul style="list-style-type: none"> <li>•Central Bank Act 1971</li> <li>•Part V of the Central Bank Act 1997</li> <li>•Credit Union Act 1997</li> </ul>

62. The full range of DNFBP sectors contemplated by the FATF Standards, exist within Ireland and are all covered by the AML/CFT regime. However, PMCs that operate in practice as casinos do not require to be licensed. They are required to register with the DoJE for AML/CFT supervisory purposes. Notaries and barristers operate but do not engage in the activities covered by the FATF Recommendations. Even though mentioned in the CJA 2010, notaries do not fall under the scope of the FATF standards, due to the fact that their activities do not correspond to the definition of FATF standards – the main activities of notaries are to authenticate and certify documents presented to them. Even though also mentioned in the CJA 2010, barristers in Ireland would not be in scope of the FATF standards, as their primary focus is in litigation work, and under Irish law, they are not allowed to be solicitors. In some situations, barristers may perform some advisory work which is scenario based, and usually in contemplation of legal proceedings. In most such cases, it would be upon instructions received from the solicitor who is their client. They are therefore excluded from the scope of this ME.

63. The numbers of registered entities under each category of DNFBPs is set out in the table below.

Table 3. DNFBPs in Ireland (November 2016)

DNFBP	Licensing/Registration where applicable (legal references)	AML/CFT Supervisor OR monitoring authority	Number	Asset size where available (in EUR)
PMCs	CJA 2010	DoJE	43	136 million <sup>1</sup>
Real estate agents (PSPs)	The Property Services (Regulation) Act 2011; PSPs require a license to operate	PSRA	5 700 (including 3 900 individuals and firms)	1.31 billion (Turnover) <sup>2</sup>
Solicitors	Solicitors Act (1954); lawyers require a professional certificate for practice	Law Society of Ireland	9 700 (approximately 2 200 firms )	2.36 billion (Turnover) <sup>3</sup>
Accountants Other accounting and auditing professionals Tax advisers	There is no obligation to be licensed or registered to operate, except when performing auditing services.	Several prescribed or designated Accountancy Bodies and the DoJE	6 753 <sup>4</sup>	2.41 billion (Turnover) <sup>5</sup>
Trust and Company service providers	CJA 2010 Central Bank of Ireland Central Bank Act 1994	DoJE CBI (for some trusts)	338	Not available
Dealers in precious metals and dealers in precious stones	n/a	DoJE	451	256 million

Notes:

- 1 The figures for PMCs and dealers in precious metals and dealers in precious stones are estimated based on knowledge of the sectors and inspections conducted.
- 2 Eurostat 2014, based on NACE Code 6830 "Real estate activities on a fee or contract basis".
- 3 Eurostat's NACE turnover estimates includes legal services such as legal representation and the preparation of legal documents and therefore includes a wider range of services and activities than those specified under FATF recommendation 22.1(d). (Eurostat, NACE Rev. 2, European Communities 2008,p 265)  
Eurostat 2014, based on NACE Code 6910 "Legal activities"
- 4 This is the total number of all firms providing accounting/auditing and tax advice services. This includes statutory audit firms under the remit of the designated accountancy bodies.
- 5 Eurostat's NACE turnover estimates includes accounting services such as the auditing of accounting records, preparing financial statements and bookkeeping, and therefore includes a wider range of services and activities than those specified under FATF recommendation 22.1(d). (Eurostat, NACE Rev. 2, European Communities 2008,p 265)  
Eurostat, 2014, based on 6920 "Accounting, bookkeeping and auditing activities; tax consultancy"

### Overview of preventive measures

64. The primary, horizontal, AML/CFT legislation is the Criminal Justice (Money Laundering and Terrorist Financing) Act (CJA 2010, as amended by Part 2 of CJA 2013). It applies to the full range of FIs and DNFBPs. See Immediate Outcomes 3 and 4 and the TC Annex for further details.

*Overview of legal persons and arrangements*

65. Ireland permits the creation of a range of different types of legal persons in the country. The processes are laid out in the Companies Act 2014. The main types of legal persons are: private companies limited by shares (LTD), designated activity companies limited by shares or by guarantee (DAC), private unlimited companies (ULC); public limited companies (PLC), public unlimited companies with shares (PUC) and without shares (PULC); companies limited by guarantee (GLC), and the Societas Europaea (SE). Descriptions of these companies and their creation are available on the website of the Companies Registration Office (CRO). A register of Irish Collective Asset-Management Vehicles (ICAVs) is available on the CBI [website](#).

66. Although they do not have separate legal personality, Ireland also has general partnerships, investment limited partnerships (both governed by the Partnership Act 1890 and common law), and limited partnerships (governed by the Limited Partnership Act 1907). General partnerships are formed by persons carrying on a common interest, and the partners maintain unlimited personal liability. Limited partnerships must be registered with the CRO.

**Table 4. Overview of Company Types (as of 7 November 2016)**

Type of legal person	Number
Private Limited companies	181 847
Public Limited companies	1 434
Unlimited companies	4 538
Guarantee companies	15 618
External companies (i.e. foreign companies registering a branch in Ireland)	2 645
Limited partnerships	1 180

67. Common law trusts, including express trusts, charitable trusts and pension trusts, can be created in Ireland. This is normally done through a professional trustee (i.e. a lawyer, an accountant or a TCSP, or a pensioner trustee, designated persons under CJA 2010 and subject to AML/CFT Obligations); however trusts can also be set-up and managed by non-professionals. There is no specific information available on the number of trusts established in Ireland or via Irish Law; however, Revenue maintains statistics on trusts which generate tax consequences as full details of this must be declared. As of January 2017, there were 4 412 Express Trusts, 305 Charitable Trusts supervised by the CRA, 67 939 Pension Trusts. There are also 543 Non-UCI.

*Overview of supervisory arrangements*

68. AML/CFT requirements for FIs and DNFBPs are contained in the CJA 2010. The CBI is the AML/CFT supervisor for all relevant FIs, while there are several regulators for the different types of DNFBPs: DoJE, PSRA, Law Society of Ireland, and designated accountancy bodies.

*International Cooperation*

69. Ireland has a comprehensive framework for international cooperation. There are various kinds of international cooperation initiatives in the area of AML/CFT. A range of agencies, including the FIU, AGS, DoJE, CBI and Revenue (tax and customs), cooperate with their counterparts internationally, via formal and/or informal cooperation.

1



### Key Findings and Recommended Actions

#### Key Findings

1. Ireland has demonstrated a reasonably good understanding of its overall ML/TF risks. Ireland's NRA is focused on its residual risks, and it identified a good range of specified threats (e.g. organised crime, drug trafficking, financial crime) and vulnerabilities (e.g. retail banks, payment institutions, funds). Interagency coordination is a strong point of the Irish AML/CFT system and includes all the relevant competent authorities.
2. While the risk assessment (including the NRA) indicate an appreciation of both domestic and international ML risk and the FIU and CBI are active contributors to international AML/CFT fora, the focus of law enforcement authorities appears to be more domestically orientated. The appreciation of international ML risk, particularly complex schemes, was uneven, especially for the private sector entities.
3. Although there was some analysis of the ML/TF risks of legal persons and arrangements, it was not comprehensive. This was because the Authorities are of the view that, to be effective, the risk assessment needs to focus firstly on ML activities and secondly on the legal vehicle or arrangement used to engage in those activities.
4. Authorities also displayed a good understanding of domestic and international terrorism threats, and TF risks as they are associated with those threats.
5. Ireland's risk assessment relies heavily on discussions of the Anti-Money Laundering and Steering Committee (AMLSC), which provides a good national coordination framework. Inputs from the private sector were also sought to expand and enhance the risk understanding. While the risk assessment makes good use of the observed experience of the relevant competent authorities and took into account feedback from the private sector, it now needs to be better underpinned by quantitative data to either validate or correct the risk-map that Ireland's first NRA has produced. This statistical work will assist the authorities to identify less visible forms of ML and avoid an over-reliance on their experience and perceptions. Ireland has also identified risk areas in relation to gaming, lottery and betting operators, including online gaming operators, as well as e-money and virtual currencies which it is studying further.
6. The AMLSC has laid out an Action Plan to address the key ML/TF risks but there are no specific national AML/CFT policies. Nonetheless, risk mitigation measures have been put in place to address the key ML/TF risks in Ireland, although authorities could enhance measures to address other risk issues such as cash and the use of gatekeepers for ML. **Recommended Actions**

#### Recommended Actions

1. Ireland's understanding of risks should include a more comprehensive range of quantitative data, such as those in relation to international cooperation (both formal and informal).
2. Ireland should at the next iteration of the NRA, better illustrate the links between the threats and vulnerabilities assessment and give greater consideration to the cross-border ML/TF risks. The assessment should also include a more comprehensive ML/TF risk assessment of how legal

persons and arrangements could be abused.

3. Ireland should develop and document a clear national AML/CFT policy and more clearly prioritise risk mitigation actions identified in the NRA to address key risk areas.
4. Ireland should also consider making better use of the AMLSC to assist it in monitoring the supervision of gatekeepers, particularly the TCSPS, accountants, and lawyers.
5. Ireland is encouraged to complete its ML/TF risk review of its gaming, lottery and betting operators, including online gaming operators, as well as continue its monitoring of e-money and virtual currencies.
6. While Ireland has been considering TF risks as part of its general terrorism risk understanding, it should ensure that future risk assessments be determined with reference to, but separately from the terrorism threat.

70. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1-2.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

71. Ireland has demonstrated a reasonably good understanding of its ML/TF risks. Ireland's NRA is focused on the residual risks, with the "consequences component being regarded as constantly significant".<sup>17</sup> The report identified a range of specified threats and vulnerabilities that it is facing. The results, which are based on multi-sectoral workshops and the discussions of the Anti-Money Laundering and Steering Committee (AMLSC), take into account the observed experience of competent authorities and input of the private sector including via surveys. The Private Sector Consultative Forum (PSCF), formed in March 2015, also assisted in providing private sector feedback on risks.

72. The NRA exercise relies strongly on qualitative information and uses some quantitative data such as size of the sector, STR information, confiscated or seized proceeds of crime and general investigative data. The NRA exercise has sought to supplement its risk understanding through its regular participation at the FATF working groups, EUROPOL, other international fora, and through the EU risk assessment exercise (although this had yet to be completed at the time of the on-site). In summary, the main conclusion of the NRA is that Ireland "faces similar risks (neither significantly greater nor lesser) to those faced by other European Member States of similar size;"<sup>18</sup> that proceeds of crime are generated from a number of sources, particularly drug crime and fraud, and that laundering is attempted through various channels, both financial (retail banking, money remitters, bureaux de change) and non-financial (HVGDs, PMCs, TCSPs).

<sup>17</sup>. NRA, p.6

<sup>18</sup>. NRA, p.3

73. While Ireland has demonstrated a reasonably good understanding of its ML/TF risks, its risks understanding would be further enhanced if it includes a more comprehensive range of quantitative data, such as those in relation to international cooperation (both formal and informal) and the size of specific sectors (e.g. TCSPs) etc. Such additional data would serve to provide additional objective points of reference. While the use of expert opinion and feedback in understanding risk is invaluable, consideration should be given to the detection of new and emerging risks and complex ML schemes. Ireland now needs to consider more quantitative data to either validate or correct the risk-map that Ireland's first NRA has produced. This statistical work will assist the authorities to identify less visible forms of ML and avoid an over-reliance on their experience and perceptions, which may inadvertently place more focus on the visible risks occurring in the domestic context. In this regard, the Irish Authorities are already enhancing their ability to conduct operational and strategic analysis of STRs through the installation of a new IT infrastructure and through the recruitment of specialised staff to improve its analytical capabilities. To further enhance its understanding of cross-border risks, particularly for complex laundering, the Irish Authorities would also be placing greater emphasis on engagement with the private sector and neighbouring FATF members.

74. At the time of the on-site visit, while Ireland had conducted some analysis of the ML/TF risks of legal persons and arrangements, it was not sufficiently comprehensive in that it did not fully identify any unique characteristics of the legal persons or arrangements or prioritise assigning an ML/TF risk-rating to specific legal persons and arrangements. Ireland had explained that a generic but flexible company structure was most frequently used (2014 - 86%+ of all Irish registered companies were 'private limited') by a very diverse SME population (238 000 in 2014). It had therefore preferred to focus on the activities or use of legal persons and arrangements in particular sectors that could be subject to abuse (for example, in the gambling sector) as they were of the view that there are no specific vulnerabilities associated with the legal persons and arrangements established or operating in Ireland. Hence, while the NRA has a specific section on legal persons and arrangements, the conclusion is that the risks associated with legal persons and arrangements are comparable to, or somewhat lower, than in other jurisdictions. To enhance its understanding of the ML/TF risks associated with legal persons and arrangements, the assessment could be more nuanced and have more explicit consideration of the international threats. It would also be useful to have a deeper analysis on issues such as the characteristics and range of factors that have led to the increased use of legal persons, such as financial vehicle corporations, variable capital companies, Irish collective asset management vehicles and other special purpose vehicles. Ireland has since commenced a programme to risk-assess legal persons and arrangements used in specific activity areas.

75. Further, the NRA could be strengthened by having further elaboration on the relationship between the threats identified and the vulnerabilities present in particular sectors. The approach taken was to examine first the proceeds-generating threats, and then analyse the potentially vulnerable sectors, to assess their residual risk for ML/TF. Currently, some aspects of the analysis in terms of vulnerabilities are relatively generic and are not adapted adequately for the Irish context. For example, the NRA could give more explanation on how the Irish financial or non-financial sectors have been or can be exploited for ML or TF purposes. Similarly, it would be helpful if certain

categories such as financial crimes (including white-collar crime, invoice redirection fraud, commercial fraud, phishing, tax evasion and value added tax/missing trader intra-community fraud, etc.) could be further analysed and described. The NRA or other advisory documents should also provide more guidance on methods or typologies used to launder proceeds in particular sectors, much of which is currently done through face-to-face engagement. The Irish Authorities acknowledge that there is room for improvement in the next iteration of the NRA, but emphasise this first risk assessment has been a learning exercise, in which care needed to be taken to avoid providing detailed typological information that could assist those who wish to exploit the system.

76. Ireland has a good understanding of its domestic and international terrorism threats, and TF risks as they are associated with those threats. Ireland has a long history of combatting terrorism going back to shortly after the formation of the State, and in particular over the last 40 years. In order to further strengthen authorities' appreciation of TF issues, it would be useful if the risk assessment for TF could be determined with reference to, but separately from, the terrorism threat. In terms of domestic terrorism, authorities' current focus is more on the relatively minor cost of carrying out an attack. The authorities have explained that as a result of their efforts to target the dissident groups' funding sources, the groups' methods have evolved, from funding their activities through cigarette and fuel smuggling and violent crimes such as robbery, to "lower" risk activities (for the terrorist groups) such as self-funding, taxation/extortion and collection of funds from community gatherings.

77. The NRA also indicates that the threats of an attack by these groups in Ireland is "relatively small", but that Ireland could be used to raise funds and organise potential attacks outside the country. Ireland assesses the threat of an attack related to international terrorism as "moderate" (an attack is possible but not likely).

78. Irish authorities closely monitor financial activities suspected to be related to international terrorism. Irish authorities do not see a significant TF risk related to international terrorism, particularly when compared to other European jurisdictions. But Irish authorities acknowledge that such risks do exist and that only small amounts (from both legitimate and illegitimate sources) are needed to support TF. There is also only a small number of returned foreign fighters (in the low double digits). While there is little evidence to show any coordinated approach to fundraising in support of terrorism, there are some areas of concern in relation to the collection of charitable funds within the community and the use and transfer of funds by charities/NPOs to conflict zones, which the authorities will continue to monitor.

### *National policies to address identified ML/TF risks*

79. The authorities' respective AML/CFT policies address identified ML/TF to a large extent. However, Ireland does not have a specific national AML/CFT policy document. Instead, the AMLSC has laid out a specific Action Plan, although this does not set out clearly the national priorities, nor is there an explicit mechanism for regular policy reviews. Ireland considers that a published AML/CFT policy statement may provide too much information to criminal elements. It would also restrict its ability to react quickly to emerging risks, and hence there is a preference to rely in the AMLSC to refine Irish AML/CFT policy on an on-going basis. The approval of the terms of references for the

AMLSC, CDISC and the PSCF by the Minister for Finance, demonstrates a strong high-level commitment to AML/CFT efforts.

80. The AMLSC Action Plan outlines a broad national strategy to enhance and improve the existing AML/CFT infrastructure by:

- (i) Strengthening inter-agency collaboration with private sector input;
- (ii) Enhancing financial intelligence usage and the law enforcement response; and
- (iii) Improving the effectiveness of the domestic supervisory regime.

81. The AMLSC Action Plan however does not give sufficient focus on the risks identified in the NRA. Many items relate to Ireland's obligations to transpose the EU's 4AMLD rather than ML/TF risks identified in the NRA. For instance, while cash has been identified as a factor in a number of ML risk areas, the AMLSC Action Plan does not have any specific focus in this area, and there was no indication that other mitigation measures such as an implementation of an intra-EU cash declaration were considered.

82. Nonetheless work to cover gaps identified in the risk assessments is included in the Action Plan. This include steps such as building a stronger IT infrastructure for FIU analysis, setting up the Private Security Authority<sup>19</sup>, supervision of the property sector (which was implemented recently), and ongoing plans to raise DNFBP's ML/TF risk awareness and compliance with their obligations.

83. The AMLSC's focus on the DNFBP sector could be further enhanced, to be more comprehensive (e.g. focusing also the resourcing and capacity for the DNFBP sector)<sup>20</sup>. The Action Plan could also be strengthened by having a more clear focus on the completion of the ML/TF assessment of the gaming sector, including online gaming. The AMLSC should also focus on monitoring agencies progress in pursuing ML/TF cases and convictions.

### *Exemptions, enhanced and simplified measures*

84. Ireland has not provided any specific exemptions on the basis of its risk assessments. The current exemptions, enhanced and simplified measures adopted are based mainly on the EU's 3<sup>rd</sup> AMLD (for instance, hotels avail of a general exemption from holding remittance or exchange licenses on the basis of the 3<sup>rd</sup> AMLD definition of derogation for persons carrying out financial services on an occasional or limited basis).

85. However, Ireland's scoping of gaming operators, including online casinos, is an area that it should continue to focus on. For the real estate sector, it is also noted that the lack of AML/CFT

<sup>19</sup> Ireland explained that the Private Security Authority regulates private security services companies and requires them to obtain tax clearance certificates and be subject to vetting by AGS. This authority was put in place to mitigate the risks of exploitation of the legitimate security trade as a vehicle to raise monies through taxation/extortion.

<sup>20</sup> For instance, there was an indication that gold is used in relation to criminal activities domestically, but attention on supervision of PSMDs does not appear to have been enhanced in a corresponding manner. Consideration should also be given on whether the DoJE has sufficient resources to supervise the range of DNFBPs under its charge. It is however noted that while the AMLSC would provide the necessary platforms for such discussions, the AMLSC operates in an advisory capacity and that responsibility for resource allocation is vested in the members of the AMLSC.

requirements for PSPs to perform CDD on the purchaser of property was not based on any specific assessment of low ML/TF risks.

2

### *Objectives and activities of competent authorities*

86. Supervisory authorities such as the CBI and DoJE have taken a risk-based approach in their supervision activities. The approach is generally consistent with the NRA as it is based on the identified sectoral risks. Nonetheless, it is not clear to what extent the sectoral risk assessment takes into account individual ML/TF risks for specific entities in the sector (since not all entities were assessed and rated individually at the time of the on-site). The approach taken by the Law Society and the designated accountancy bodies is less clear and appears somewhat uneven. It is too early to determine the approach taken by the PSRA for the real estate sector. The CBI and DoJE, have also focused their supervisory efforts on raising awareness of ML/TF risks among the entities they supervise by conducting outreach and engagement.

87. As part of the AGS, the FIU is tuned into the objectives and needs of the National Police Force. The AGS (including its specialist units) has a good understanding and focus on the ML predicate offences and terrorism threats. This has led to some results for ML, but more emphasis should be given to pursuing cross-border ML/TF cases. The emphasis on cash as one of the key means of ML, and the need for more focus on mutual legal assistance and other requests for assistance processed in the risk assessment, would also indicate a need for greater focus on cross-border ML/TF. While Ireland has a strong framework for confiscation of assets, the CAB should continue efforts to focus more on high-value/complex crime, major OCGs and proceeds of crime that have been moved offshore. CAB's expanded focus on targeting mid-level criminals may not be fully in line with its ML/TF risks (although it does play an important role in community policing). Stronger engagement of the DPP and the judiciary would strengthen Ireland's ability to prosecute and convict money launderers and terrorist financiers.

### *National coordination and cooperation*

88. Ireland's AML/CFT coordination at the operational level is effective and inclusive of all relevant competent authorities. The AMLSC coordinated the development of the NRA and the Action Plan for Ireland's AML/CFT regime. As noted earlier, it would be better if the Action Plan could more clearly prioritise the ML/TF risks to be addressed. Nonetheless, it is noted that the Irish Authorities intend to use the Action Plan to prompt wider infrastructural changes to its AML/CFT regime so as to better mitigate its ML/TF risks. Competent authorities have put in place mechanisms to seek inputs from the private sector, and the PSCF, which comprises representatives from the banking, funds, payments, insurance, credit unions, legal and bookmaking sectors is a useful platform to seek feedback. For targeted financial sanctions, the CDISC plays a key coordinating role. There are a range of AGS divisions that are involved in the investigation of ML, and while there is generally good cooperation between the investigative agencies and the FIU, the efforts to prioritise ML cases together with the predicate offence investigations can be further enhanced.

*Private sector's awareness of risks*

89. The NRA was published and disseminated to the private sector on 7 October 2016. The various sections on threats, financial and non-financial sectoral vulnerabilities, and terrorist financing etc. in the NRA provide the private sector with some overarching guidance on Ireland's ML/TF risks.

90. However, as the NRA was published less than a month prior to the on-site visit, it was not possible to confirm that the private sector had a good awareness of the risks and is taking mitigating measures based on the findings of the NRA. Discussions with private sector entities revealed that the level of understanding is mixed. Members of the PSCF tended to have a better understanding of risks and were able to discuss the issues in the NRA, whereas other private sector participants tended to have a more basic appreciation. In some cases, the private sector sees their risks as one mainly in relation to their ability to conduct CDD and collection of beneficial ownership information, and have not given much consideration to the threats that they face. Nonetheless, with time and further outreach activities already planned by the authorities, the level of understanding should improve.

*Overall conclusions on Immediate Outcome 1*

**91. Ireland has achieved a substantial level of effectiveness for IO. 1.**



## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 6

1. Financial intelligence, to a large extent, is accessed and used in investigations to develop evidence and trace criminal proceeds related to money laundering and predicate offences. Financial information has supported operational needs in terms of terrorism investigations and disruption efforts.
2. Law enforcement routinely request and receive STR and other information from the FIU that assists them in their investigations, and they are generally satisfied with the information obtained upon their request. Coordination and cooperation within the national police force, An Garda Síochána (AGS), and between competent agencies is a strong point of the Irish system, with a range of agencies accessing financial information in a timely manner to assist in investigations. The FIU and other competent authorities fully secure and protect the confidentiality of the information they exchange and use. The FIU provides feedback to reporting entities to further enhance the quality of reports it receives.
3. The FIU performs operational analysis of STRs and has provided examples of its work to identify complex ML schemes and networks; however its ability to perform strategic analysis is limited under its current IT framework. Authorities routinely access additional information from reporting entities to support their analysis function, but the legal provisions permitting this require further clarification, particularly in relation to international cooperation. The FIU makes good use of its current resources and, at the time of the on-site visit, was at the final stages of putting in place new IT infrastructure and recruiting additional staff (including a forensic accountant and additional AGS analysts) to improve its analytical capabilities.
4. The FIU is embedded within the AGS, which assists in its ability to collaborate with, and seek input from, other investigative units. However, to ensure the operational independence of the FIU, additional safeguards are necessary to formally ring-fence the FIU from other police functions.

##### Immediate Outcome 7

1. While Ireland has had some success in identifying and investigating ML related to predicate crime investigations, its ability to identify a wide range of potential ML activity is limited. The majority of ML cases are associated with investigations into fraud and drug trafficking, which corresponds with the major ML threats identified by Ireland. There are limited examples of successful prosecutions in relation to foreign predicate offences and third-party ML; however, there are several on-going investigations in these areas. The FIU does not have adequate analytical tools to fully identify money laundering networks, potential money laundering cases and complex links in relation to filed STRs. Considering Ireland's position as an international financial centre, there is a lack of evidence of prosecution of complex ML schemes and facilitators.
2. Ireland has a strong ML offence but this has not translated into results at the trial stage. While

Ireland has managed to secure 22 convictions for ML where the offender has pleaded guilty, there are concerns that there have been no convictions (only 2 acquittals) for ML after a trial. This may reflect reluctance on behalf of prosecutors to test the AML laws or a conservative approach by the judiciary, which in turn acts as a disincentive to investigate complex ML cases. There have been no sanctions against a legal person. While Ireland has some success in ML convictions through guilty pleas, the sanctions applied to natural persons while proportionate to other profit-generating crimes, are not effective and dissuasive.

#### *Immediate Outcome 8*

1. Ireland demonstrates some characteristics of an effective system for the confiscation of proceeds of crime. Ireland's framework for confiscation is generally sound. Confiscation is pursued as a national policy objective and has strong political and national support. Ireland has an agency, the CAB, which is dedicated to recovering the proceeds of crime.
2. While Ireland clearly pursues post-conviction based confiscation and non-conviction based confiscation as a policy objective, it is not clear that its confiscation and forfeiture results are fully consistent with the ML/TF risks identified in its NRA. The value of criminal proceeds confiscated appears modest within the context of Ireland's ML risks, but focuses on areas of risk including the proceeds of drug crimes and financial crime. Given Ireland has identified a number of threats associated with the activities of OCGs linked with foreign OCGs, it was not clear that Ireland was routinely tracing assets abroad in order to deprive criminals of the proceeds of crime which may have moved to other jurisdictions.
3. Ireland has, to some extent, confiscated cross-border movements of cash as a form of dissuasive action by customs authorities. Revenue (Customs), Ireland's lead agency in the control of cross-border cash movements, pursues confiscation of currency suspected to be proceeds of crime. Allocation of additional resources to Customs will enhance efforts in this area which should be considered a priority given Ireland's identified risk in respect of cash.

#### ***Recommended Actions***

##### *Immediate Outcome 6*

1. To enhance the usefulness of financial intelligence to law enforcement, Ireland should continue to enhance its capability to conduct enhanced operational analysis, data mining and strategic analysis.
2. Ireland should ensure that there are adequate procedures in place to safeguard the role of the FIU and ensure its independence; this could include formalising documentation outlining the tasks of the FIU.<sup>21</sup>
3. Ireland should continue to provide training and awareness to different parts of LEAs regarding the importance of using intelligence and pursuing the ML offence in relation to predicate offences.
4. Ireland should ensure that provisions are in place so that necessary additional information from financial and credit institutions and DNFBPs can be obtained in a formalised way in the pre-

<sup>21</sup> The Assessment Team was informed after the on-site visit that an internal HQ Directive within the AGS is being drafted for the purpose of safeguarding the independent functionality of the FIU.

investigation stage (i.e. without a court order).

#### *Immediate Outcome 7*

1. Ireland should ensure that adequate resources are allocated to the dedicated ML investigation teams to enhance the investigation of complex ML schemes and develop its technical and human resource capabilities in this area, including by continuing to increase its access to forensic accountants.

Ireland should ensure *that* all units investigating predicate offences outside of the AGS are referring cases of ML to AGS (particularly in relation to tax crime).

2. Ireland should seek to prosecute a wider range of ML cases, including both domestic cases and cases with an international component, relating to professional money laundering schemes and complex financial products, in line with its risk profile. Ireland should continue to spread awareness of the importance of pursuing the ML offence in relation to the investigation and prosecution of predicate offences and work to increase knowledge of complex ML techniques.
3. Ireland should ensure that domestic legal provisions permit full participation in Joint Investigation Teams in the framework of the European Union.

#### *Immediate Outcome 8*

1. Authorities should further enhance efforts to pursue the proceeds of crime moved offshore. Authorities should also ensure that the expansion of their remit to cover mid-level criminality, does not impact the focus on, and resources committed to targeting high-level organised crime figures and complex financial crime.
2. Review the effectiveness of asset sharing provisions.
3. Review whether the CAB's existing outsourced/receivership model for confiscated assets management remains effective.
4. Implement a robust system for the declaration of cross-border movements of currency within the EU via parcels, freight and cargo and institute further measures to ensure a dissuasive system for seizing and confiscating falsely / not declared cross-border movements of currency and BNIs.
5. Implement measures to identify and seize cash transported via parcels, freight and cargo.
6. Review the effectiveness of domestic provision (s.61 CJA 1994) on forfeiting instrumentalities of crime.

92. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

**Immediate Outcome 6 (Financial intelligence ML/TF)***Use of financial intelligence and other information*

3

93. It is clear from the case studies provided by the AGS that, to a large extent, investigators access and use financial intelligence and other relevant information from the FIU to develop evidence of ML, associated predicate crimes and to trace the proceeds of crime in ongoing investigations and, to some extent, for TF. The FIU has access to a broad range of financial and other information which supports this process.

94. Competent authorities consistently provided examples of their use of financial intelligence in investigations for money laundering and associated predicate offences. . In particular, the specialist Money Laundering Investigation Units (MLIUs) are based within the Garda National Economic Crime Bureau (GNECB), as is the FIU, and both the FIU and the MLIUs work closely together. All of the cases investigated by the MLIU are based on financial intelligence developed by the FIU. Similarly, the CAB draws on financial intelligence to confiscate the proceeds of crime. Other units within the AGS which investigate the largest proceeds generating offences, including fraud (GNECB) and drugs and organised crime (the Garda National Drugs and Organised Crime Bureau (GNDOCB)), provided many examples of their use of financial intelligence or information.

95. In some of those cases, financial intelligence also led to the identification of new targets and to the targeting of the suspect's assets. One example is Operation Mantel (see case example below), which was initiated by an STR, assigned to the MLIU for investigation, and led to a joint investigation between MLIU and CAB. In this case, the analysis of STRs revealed further transactions and identified a number of targets.

96. Financial intelligence is also used to develop evidence for counter-terrorism investigations. There are two staff members in the FIU (the "TFIU") who are dedicated to conducting further analysis into potential TF-related STRs. The result of the enhanced analysis is forwarded to Security and Intelligence (section of AGS – see IO.9) where it is used together with intelligence from other sources. At the time of the on-site visit, there had been no TF prosecutions in Ireland,<sup>22</sup> and only a few TF investigations, but financial intelligence has supported the operational needs in terms of terrorism investigations and disruption efforts.

97. Ireland operates a dual-reporting system for STRs and both AGS and Revenue receive STRs in accordance with the CJA 2010. The STRs are received at the Suspicious Transactions Unit (STU) in Revenue. The work of Revenue in relation to the STRs focuses on the identification and investigation of tax evasion and customs and excise offences. The Revenue estimates that in excess of 90% of the incoming STRs are of interest to their organisation. STR data is incorporated into the REAP (Risk Evaluation, Analysis and Profiling) system used by Revenue to identify high-risk cases. STR data is also used to develop analytical products covering a range of criminal and fraudulent behaviour. The dual reporting regime of STRs to both the AGS and Revenue adds value to the development of

<sup>22</sup> During the on-site visit, the Assessment Team was made aware of one live investigation that had reached an advanced stage. A suspect was charged on 27 April 2017 with two counts of terrorist financing. This is the result of the investigation which has been ongoing since 2015, involving cooperation with a neighbouring jurisdiction. The accused has been remanded in custody following his appearance in court on the two TF charges.

financial intelligence primarily for tax-related predicate offences but also for associated ML activity. Revenue and AGS noted that they are in constant communication, and that if a particular STR was of interest to the FIU, AGS's investigation would take priority and the STR is hidden on the Revenue system until the investigation is completed. The FIU also noted that the dual reporting system is beneficial as Revenue deal with a range of non-ML, tax-related reports, which frees resources for the FIU.

### Case Example 1. Operation Mantel -

#### **Example of the use of financial intelligence in a ML case**

In late 2012, as a result of an STR, the FIU identified the transfer of EUR 1.6 million into Ireland into the account of a front company and the rapid dispersal of EUR 1 million of these funds. Following analysis, the matter was assigned to one of the MLIUs which took immediate action to restrain approximately EUR 1 million under Section 17 (1) & (2) CJA 2010 orders. A joint investigation was carried out by the MLIU and CAB.

#### ***Financial analysis***

Analysis of STRs identified two further transactions amounting to over EUR 3 million and identified a number of potential operational targets. These funds were dispersed shortly after arriving in recipient accounts.

It was suspected that the funds were the proceeds of investment fraud. While the initial transaction moved through the account of a front company that was engaged in investment frauds, the other transfers moved through a dormant account associated with a legitimate business and an account linked to a further suspect.

#### ***Investigation***

The investigation accessed all bank account information using s.63 of the CJA 1994, as amended, and accessed Companies Registration Office records to identify suspects.

Victims were identified in three European jurisdictions who were all interviewed. The support of the Europol Analytical Unit was obtained and briefing presentations were made to effected jurisdictions in Europol where relevant intelligence was shared. A number of arrests were carried out and further enquiries have been conducted in a large number of further EU countries.

This significant case has required international co-operation from eight EU states as well as a number of other jurisdictions globally. Investigators made enquiries through FIU.net, Egmont, Europol and Interpol and sought a number of MLA requests. Intelligence gleaned from this investigation has been shared with European counterparts through EUROPOL.

#### ***Asset seizure***

The EUR 1 million that has been seized also forms part of ongoing CAB section 3 POCA 1996 actions. A number of persons involved have also been the subject of CAB investigation and have been served with substantial revenue and social welfare assessments.

**Prevention**

Financial intelligence obtained from the FIU has been instrumental in further liaison with financial institutions to prevent the opening of a number of bogus accounts through which it is suspected that the proceeds of international frauds were to be routed.

**Outcome**

Two substantial investigation files were sent to the DPP with directions being received to initiate prosecutions against three suspects in relation to 12 money laundering charges.<sup>23</sup>

*STRs received and requested by competent authorities*

98. Law enforcement routinely request and receive reports based on STR and other information from the FIU that assists them in their investigations, and they are generally satisfied with the information obtained upon their request. The FIU receives a range of reports (STRs, cash declarations and cash seizures) and undertakes outreach with the private sector to ensure that reports contain relevant and accurate data.

99. The FIU has access to the police database and units of the AGS which enables it to link STR and other data to targets identified by other units of the AGS. Investigators reported that, as a matter of course, they request FIU data in every case, although they did not produce any investigative guidelines or checklists to support this. As demonstrated in the table below, the number of reports generated from the FIU as a result of Garda enquiries is increasing (proactive disseminations are covered under the next sub-heading). The increase of reporting in 2015 and 2016 is due to proactive work by the FIU to increase awareness of the benefits of financial intelligence and the increase in training for Gardaí particularly in financial crime investigations.

**Table 5. Reports generated as a result of police enquires**

2012	2013	2014	2015	2016*
251	239	249	402	420

\* This includes data for the full year (i.e. including one month after the on-site visit).

100. The FIU receives a wide range of reports including STRs, cash declarations and cash seizures. The main source of financial intelligence in the Irish ML/TF system is STRs submitted by the reporting entities. The FIU noted that STRs are usually of high quality and include information on the suspected source of funds and CDD information including driver's licenses, passport numbers, CCTV information etc.

101. The number of STRs has been steadily increasing (see the table below). The majority of the STRs are reported from the banks, credit unions and payments institutions. STRs are required to be submitted 'as soon as practicable' and the FIU noted no issues in relation to the timeliness of

<sup>23</sup> Since the on-site visit, two suspects have been brought before the courts and charged with 10 counts of ML. A European Arrest Warrant is currently being sought to return a third suspect to Ireland to face a further two charges of ML.

reporting. The FIU did note that payment institutions are slower than other reporting entities in submitting their reports, but in some cases this may be due to the payment institution conducting its own analysis prior to submitting its report. The FIU noted that there were some concerns regarding the quality and timeliness of STRs submitted by credit unions, but these were addressed with engagement with the industry. The FIU also noted that reporting from money remitters passported into Ireland and bureaux de change was lower than the risks identified for that sector.

**Table 6. Number of STRs to the FIU from Designated Persons (Total)**

Year	Number of STRs
2012	12 390
2013	15 242
2014	18 302
2015	21 682

102. In order to improve the quality of its disseminations, the FIU can, in some circumstances, seek additional information from reporting entities (without prior judicial authorisation). The FIU relies on section 56 of the CJA 2010 for this power, but this provision is limited in scope to information held by financial and credit institutions in relation to the nature of a business relationship. Authorities informed the Assessment Team that in practice the FIU can informally access both customer and transaction information from all reporting entities as a result of the close relationship that exists between the FIU and reporting entities. The formal power to obtain additional information is via judicially authorised court orders (production orders under CJA 1994, s. 63). Investigators reported that they do not face difficulties in obtaining production orders but it appears that this provision cannot be relied upon in situations where they are gathering information prior to a firm suspicion of criminal activity (i.e. in the intelligence phase). The FIU reported that enquiries for further information are not dependent on STRs being filed. While reporting entities have been highly cooperative to date and requests for information have never been refused, it is important that the FIU has the legal ability to seek additional information from reporting entities (particularly in relation to international cooperation – see analysis under IO.2.)

103. Feedback to the reporting entities is generated automatically by the system on a weekly basis in relation to each STR and periodic feedback is provided on a biannual basis. Private sector representatives were generally positive about the level of input they received from the FIU but some noted the need for more feedback on the results of their reporting. The FIU has engaged with a range of reporting entities by delivering presentations addressing the quality of reporting and relevant issues affecting the sector (see the table below). These presentations are made either on request or where the FIU has identified particular risks or weaknesses in the quality of reporting. The FIU also engages with reporting entities through face-to-face meetings, particularly with banks, to provide detailed feedback on STRs (see further discussion in IO.4).

Table 7. Number of FIU presentations to reporting entities

2013	2014	2015	2016
8	11	15	13*

\* This includes data for the full year. Eleven presentations were made before the end of the on-site visit.

104. Information on cash declarations, including bearer negotiable instruments (BNI), for persons entering or leaving the EU with EUR 10 000 or more in cash or bearer negotiable instruments is compiled by Revenue and sent to the FIU on a quarterly basis. The table below sets out the number of cash declarations made under EC Regulation 1889/2005 to Revenue and Customs. Customs noted that declarations under the EU regulation have mostly related to legitimate cross-border movements of cash. It is important to note that while cash represents a significant ML/TF vulnerability, there is no framework for reporting cross border movements of currency and BNI via mail and cargo to the FIU. The FIU has identified the attempted movement of proceeds of crime out of Ireland in at least one case as a result of this process.

Table 8. Cash declarations

Year	Total
2012	64
2013	68
2014	61
2015	87
2016	83*
<b>Total</b>	<b>363*</b>

\* This includes data for the full year (i.e. including one month after the on-site visit).

105. Reports on cash seizures made by Revenue and Customs under Section 38 of the CJA 1994 are sent to the FIU immediately after the seizure has taken place. The FIU staff manually enters data received on cash seizures and cash declarations on the FIU database and checks them against existing data, including information on the police database.

#### *Operational needs supported by FIU analysis and dissemination*

106. Financial analysis and dissemination does, to a large extent, support law enforcement's operational needs in relation to the investigation and prosecution of predicate offences and the confiscation of the proceeds of crime. However based on the IT and personnel resources available to it at the time of the on-site visit, the FIU was not able to fully exploit opportunities to identify complex ML schemes and networks to support operational efforts on ML. During investigations of predicate or ML offences, AGS specialist units regularly interact with the FIU where financial intelligence or information is needed (as noted under the analysis of STRs received or requested

above). The case studies provided by Garda show that financial intelligence has been used to identify new targets in existing cases and in relation to asset profiling.

107. The FIU accesses and uses a range of additional information to analyse and add value to STRs. The FIU's GFIN database links with previous reports and the FIU has direct access to a number of relevant databases. The GFIN database includes information regarding the analysis of previous STRs and cash declarations and seizures, any enquiries from AGS, reporting entities or other authorities including international counterparts and information on investigations initiated on the basis of the STR.

108. All STRs are manually inputted into the FIU database (GFIN) by administrative staff at the FIU (currently 7 staff) who also check if there are previous or related STRs. Authorities did not raise any issues about the timeliness of access to financial information although 40 per cent of STRs are received in hard copy.

109. Once the STRs are inputted on the GFIN database, FIU analysts (currently there are eleven analysts) undertake a number of database checks, particularly against Garda's National PULSE database that allows the FIU to cross-reference data on convictions, criminal intelligence holdings, pending charges, vehicle and firearms registrations, arrest warrants, current criminal cases and prisoner records. The analysts also undertake checks against open source information and can check information held by other agencies including the Companies Registration Office, the Garda National Immigration Bureau (GNIB) and the Land Registry. The FIU can also access information from the databases of Revenue and the Department of Social Protection upon written request. The FIU also has access to World Check and Vision Net and makes inquiries through Egmont and the EU's FIU.net.

110. Prioritisation of STRs is done on a case-by case basis and meets operational needs. Factors such as reoccurring patterns of transactions, the subject of an underlying report, links to criminal activity or associates and the urgency associated with the reported activity may lead to their prioritisation. STR packages received from banks or payment institutions are usually quite sophisticated and are prioritised by the FIU analysts. On completion of the analysis, the analysts will develop a report based on information from the STR and disseminate it to a specialist AGS Section or the Garda National Criminal Intelligence Unit (NCIU; which uses the intelligence to enhance their knowledge on persons of interest). Analysis of STRs can also be sent to regional units or to the CAB. The FIU provided the Assessment Team with good examples of the disseminations it had made to law enforcement which demonstrated its ability to build on and add value to STRs and other reports.

111. While analysis and dissemination by the FIU meets operational needs of law enforcement in relation to identified targets, efforts to identify complex money laundering networks and intermediaries that are removed from the predicate offending may not be equally effective. The current FIU database, GFIN, has limited analysis capacity including limited ability to obtain complex statistics. GFIN does not assist analysts to detect patterns and automatically link incoming STRs. The FIU noted that its manual data entry system has benefits as administrators have 'eyes-on' all STRs coming into the system and can draw links manually with other STRs. However, the technological gap has been identified by the FIU and has led to the acquisition of a data analytics tool and software package (the GoAML system, the Enterprise version). All FIU staff have been trained on how to use the new system which will go live in May 2017.

112. At the time of the on-site visit, there were some expert resources available to the FIU to undertake complex financial analysis as the FIU had access to two forensic accountants that were shared within the GNECB. In order to enhance its analytical capability, the GNECB has secured approval to hire two additional forensic accountants, one of which will be dedicated to the FIU and the MLIU.<sup>24</sup> The FIU also has access to two crime analysts within the GNECB who provide analytical support. The FIU Analysts are all AGS detectives and are accredited fraud investigators who have completed training in Fraud investigations and ML/TF training courses. With the decision to recruit additional forensic accountants, the Assessment Team are satisfied that the FIU will have the sufficient expertise to develop financial intelligence.

113. The FIU noted that the moratorium on recruitment to the public service as a result of the financial crisis restricted the ability of the FIU to increase staffing levels in proportion to the rise in STRs reported. However, the staff numbers have not reduced. The Detective Chief Superintendent of the GNECB (the Head of the FIU) noted that the budget of the FIU has not been affected by other police priorities and that the FIU has had success in securing additional resources (both IT and personnel). Measures to safeguard the FIU will also ensure that the FIU continues to have access to an adequate amount of resources. Issues relating to the independence of the FIU are covered under R.29, and while Ireland does not have laws, policies and procedures in place to establish the role of the FIU, the Assessment Team does not consider this has had an impact on their effectiveness.

114. The authorities have provided a table showing disseminations by suspected underlying predicate offence to CAB and different AGS Divisions. The vast majority of the cases are categorised as “unknown”, which may reflect difficulties in detection, analysis and dissemination of useful financial intelligence products. When a report is listed as unknown, the STRs are sent to regional AGS units according to the location of the subject of the report. Further, the limitations in software available to the FIU analysts means that they cannot proactively mine STR and other financial information to reveal previously unknown leads or schemes. The overall number of reports disseminated by the FIU is stable around 750-800 from 2012 to 2015 although there has been an increase in reporting in STRs. The FIU noted that the increase in STR reporting does not necessarily correlate with an increase in proceeds of crime being channelled through the financial system. In 2016, there has been a drop in the number of disseminations made to law enforcement. The FIU explains this as a quality-control measure where they adopted the approach of making fewer disseminations of higher quality as a result of having access to additional analysts.

Table 9. **Number of disseminations from FIU to MLIU**

Year	2012	2013	2014	2015	2016	Total
<b>Total number of disseminations</b>	354	345	330	328	135	1492

<sup>24</sup> Ireland has informed the Assessment Team that these two additional forensic accountants have been in place since January 2017 and February 2017 respectively.

Table 10. Number of STRs by topic of dissemination to regional AGS divisions

	2012	2013	2014	2015	2016*	Total
<b>Not known</b>	631	696	593	607	378	2 905
<b>Revenue offence</b>	60	64	56	72	28	280
<b>Brothel keeping / prostitution</b>	5	4	5	2	2	18
<b>Non-criminal</b>	40	24	22	1		87
<b>Drugs related</b>	9	12	13	26	19	79
<b>Money laundering</b>	5	5	10	20	7	47
<b>Fraud related</b>	10	9	10	12	5	46
<b>Fuel smuggling</b>	10	11	8	5	4	38
<b>Serious crime</b>	6	4	7	7	12	36
<b>Organised crime</b>		3	4	9	8	24
<b>Terrorism financing</b>	1	1		3	9	14
<b>Theft</b>	2	4	1	6		13
<b>People trafficking</b>		3	4	2		9
<b>Crime ordinary links</b>	4	2	1		1	8
<b>Cigarette smuggling</b>	1	2	3	1	1	8
<b>Counterfeiting</b>		1	1	2		4
<b>Proceeds of crime action</b>	4					4
<b>Murder / suspicious death</b>		3				3
<b>Extortion</b>	1					1
<b>Grand Total</b>	<b>789</b>	<b>848</b>	<b>738</b>	<b>775</b>	<b>474</b>	<b>3624</b>

Note: this is a consolidation of data provided by Ireland, based on the most relevant categories.

\* 2016 data captures all disseminations up to November 2016.

115. While the FIU does not systematically develop strategic intelligence, the FIU did provide the Assessment Team of an example in which they took a strategic approach to analysing financial flows between Ireland and another country. This occurred as a result of FIU analysis which identified unusual financial flows out of the country and the FIU sought assistance from a reporting entity to further study those transactions and investigations are ongoing.<sup>25</sup> In addition to this, the FIU does provide guidance on identified trends and typologies to LEAs in the form of feedback or presentations. Various intelligence bulletins are forwarded where onward dissemination is authorised by the author, however, the FIU does not produce its own strategic analysis reports. The FIU believes that the implementation of the GoAML system in 2017 will increase its ability to perform strategic analysis in order to further support the operational needs of the AGS. In addition, in lieu of strategic analysis, the FIU position within AGS which is a unified national police force which

<sup>25</sup> After the on-site visit, authorities have informed the Assessment Team that the investigation has concluded and charges for ML will be laid.

also performs a national security and intelligence role, means that it has access to a range of information which assists it to identify and prioritise ML/TF issues.

### *Cooperation and exchange of information/financial intelligence*

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116. The FIU and other competent agencies cooperate and exchange information and financial intelligence to a large extent. Coordination and cooperation between the FIU, other divisions of the AGS and between competent authorities is strong with a range of agencies accessing financial information in a timely manner to assist in investigations. The fact that there is only one police agency in Ireland, the AGS, facilitates the interaction needed in relation to obtaining intelligence and information.

117. Cooperation with Revenue takes place through bi-monthly meetings, regular phone calls and interaction where both operational and strategic issues such as STRs of mutual interest, quality of STR reporting and roll-out of new technology solutions (GoAML) are discussed.

118. The FIU and other competent authorities fully secure and protect the confidentiality of the information they exchange and use. Intelligence received at the FIU is stored in the secure database GFIN. Only FIU staff has full access to the FIU database. The staff of the National Criminal Intelligence Unit (NCIU) can access the FIU database on a hit/no hit basis. The confidentiality of an STR is protected throughout the intelligence process. If the financial information is needed for evidence at a later stage, investigators use legislative powers to obtain financial material on the basis of a court order. Dissemination of intelligence to other Garda units takes place through secure e-mail.

119. Ireland engages in a wide range of international cooperation through various channels such as FIU.net, Egmont Secure Web, Europol and Interpol to support operational needs. Further analysis of the FIU's role in international cooperation is discussed in Chapter 8.

### *Overall conclusions on Immediate Outcome 6*

120. Ireland has achieved a substantial level of effectiveness for IO.6.

### ***Immediate Outcome 7 (ML investigation and prosecution)***

121. Ireland has sound legal provisions to criminalise ML in line with the Palermo and Vienna conventions. Investigations of ML cases and most underlying predicate offences are conducted by the AGS. Bodies such as the Director of Corporate Enforcement, Revenue and the Department of Social Protection have a role in the detection of company law, taxation and social welfare offences.

122. ML investigations and investigations into underlying profit generating predicate offences are conducted by specialist units at a national level such as the GNECB, GNDOCB, GNIB and the Garda National Protective Services Bureau (GNPSB) or at a regional/local level. There are two specialised ML Investigation Units (MLIUs) in the GNECB. These units conduct financial investigations in cases where the file has been referred to them by the FIU. The majority of the more complex ML investigations, including those with an international element, are conducted by the two MLIUs.

*ML identification and investigation*

123. While Ireland has had some success in identifying and investigating ML related to predicate crime investigations, it has not demonstrated an ability to identify a wide range of potential ML activity. The FIU does not have adequate analytical tools to fully identify money laundering networks, potential money laundering cases and complex links in relation to filed STRs. It also became clear to the Assessment Team that investigations into predicate offences and confiscation of assets were prioritised over pursuing ML for most AGS Specialist Units and Regional and Local Units with the exception of the MLIUs which are dedicated to investigating ML activity. The burden of proof for proving an ML offence is high and in many cases, investigators and prosecutors may see no additional benefit in a parallel ML investigation where a ML prosecution may not be pursued. However there are positive signs of increased focus by LEAs on ML activity as demonstrated in cases provided to the Assessment Team during the on-site visit. Also investigators participating in different investigation courses, e.g. the Fraud Investigators Course are provided training by the FIU in ML/TF matters. Increased cooperation between competent agencies within different units of AGS in relation to OCGs and the nature of crime, suggests that ML activities will be pursued more thoroughly.

124. Irish authorities have provided a number of case studies relating to investigations into ML and various predicate offences. The majority of the ML investigations were triggered in the course of an investigation of a predicate offence or by a complaint made by an injured party (particularly in cases of invoice redirect fraud). Authorities provided evidence to suggest that financial investigations were pursued where a money trail was clearly identified. Dedicated asset profilers (trained by CAB) are allocated to each specialist AGS division and region and assist in asset investigations and interact with the FIU to support financial investigations.

125. While AGS provided examples of cases that were identified by an STR, it appeared that the majority of these cases were the result of a complaint by a victim or as a result of a substantial analysis by a reporting entity. While Ireland is commended for pursuing these cases, the Assessment Team was also looking for examples of ML cases identified via interrogation of FIU databases and the identification of previously unknown ML networks. As the FIU's current IT infrastructure, does not enable it to interrogate its data in a sophisticated manner, it is likely that Ireland is unable to identify a range of ML activity, including money laundering networks and other complex schemes.

126. During the on-site visit and in case studies provided, it was apparent that investigators prioritise investigations into predicate offences and confiscation of assets over pursuing ML offences. This is because investigators and prosecutors see no additional benefit in a ML charge, when the sentences operate concurrently and the burden for proving a ML offence is high. The exception to this is the MLIUs who are dedicated to pursuing leads derived from STRs and demonstrated examples of complex ML investigations into complex financial products with overseas links. At the time of the on-site visit, the MLIUs were lacking adequate resources but as stated previously, processes to increase their resources were well-advanced at the time of the on-site.

127. There are indications that there is an increasing focus on ML. The nature of crime and OCG activities in Ireland has encouraged cooperation between competent agencies and within different bureaus of the AGS. For example, targeting cash couriers in drugs related cases often involves

collaboration between, GNDOCB, GNECB and CAB. Ireland established a formal Multi-Disciplinary Investigation Team (M.D.I.T) in 2016 in relation to the investigation of a subject allegedly involved in a variety of crime areas with extensive cross-border implications and a main focus of its first case is suspected ML.

3

128. Investigations of predicate/ML offences have in some cases included foreign elements which require interaction between investigators in other jurisdictions. The Assessment Team was informed by Irish authorities that Irish legislation only allows limited participation in Joint Investigation Teams under the specialised EU framework. However Ireland has reported that, in practice, it has participated in investigations parallel to EU JITs.

129. Ireland could not provide the Assessment Team with statistics on the number of ML investigations it has conducted due to limitations in AGS's IT system which does not track investigations for specific offences. The AGS were, however, able to provide statistics on the number of charges laid for ML and the predicate offences associated with those ML charges. It is difficult to draw any trends from these statistics, other than that ML charges have been substantially higher than those in 2012 and that the value of proceeds to which the ML charges relate are fairly modest. The vast majority of ML charges relate to drug-related activities, in line with the NRA finding that this is one of the largest profit-generating crimes in Ireland.

Table 11. ML charged 2012-2016

	2012	2013	2014	2015	2016 (early November)	Total
<b>Charges*</b>	4	71	15	32	20	<b>142</b>
<b>Persons Charged</b>	4	15	10	16	17	<b>62</b>
<b>Amount EUR</b>	234 990	354 772	2 465 485	657 959	1 859 602	<b>5 572 807</b>

\*See Table 12 below for a breakdown of the predicate offences linked to the charges for ML.

Table 12. Charged - Linked Predicate Offences

Predicate Offence	2012	2013	2014	2015	2016 (early November)	Total
<b>Drugs</b>	3	68	13	31	4	<b>119</b>
<b>Robbery</b>	1	0	2	0	0	<b>3</b>
<b>Deception</b>	0	2	0	0	16	<b>18</b>
<b>Theft</b>	0	1	0	1	0	<b>2</b>
<b>Total number of charges</b>	<b>4</b>	<b>71</b>	<b>15</b>	<b>32</b>	<b>20</b>	<b>142</b>

*Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

130. While the types of ML investigations and prosecutions to a large extent correspond to the major proceeds generating crime in Ireland, there is a concern that more complex cases of ML in relation to these predicate offences are not being pursued due to conservative approach by the prosecution and the judiciary.

131. Irish authorities have estimated that there are approximately 40 OCGs in Ireland, many of them with international links. OCGs are involved in crime areas such as human trafficking, drugs smuggling and distribution, firearms smuggling, tobacco smuggling, vehicle theft and counterfeiting. According to the Irish NRA, the multi-jurisdictional OCG activity in Ireland has increased in recent years. Authorities informed the Assessment Team that the proceeds of drug-related crime in Ireland are often kept in cash and/or quickly utilised for expenses and criminals are reluctant to use regulated channels such as bank accounts. Some particular areas vulnerable to ML in relation to drugs offences have been identified by Irish authorities. Case studies provided to the Assessment Team show a number of investigated drugs related cases involving modus operandi in line with the identified risks. The ML investigations were mostly triggered in the course of the investigation of the drugs offence although the FIU provided support in relation to the parallel financial investigation.

132. A high proportion of the cases investigated involve various types of fraud e.g. VAT fraud, Ponzi scheme fraud and invoice redirection. Fraud has also been identified as a significant threat in Ireland as regards to ML. The organisational structure with two ML investigation units in the Garda Economic Crime Bureau (GNECB), reflects the link between the investigation of fraud and ML offences.

133. According to authorities, prostitution and the sex industry in Ireland is often linked to human trafficking. The AGS has provided cases involving this crime area where the ML element has been investigated.

134. According to the NRA, Revenue secured 28 criminal convictions for serious tax evasion in 2015. A number of MLA requests regarding tax crime/ML have been submitted by Irish authorities since 2010. None of the finalised ML case studies provided to the Assessment Team involved tax evasion as a predicate offence. Ireland noted that in September 2016, at the request of the FIU, AGS initiated a taskforce to investigate a serious ML case related to tax crime. AGS also noted that they have investigated another case involving tax crime, but that there was not enough evidence to pursue a prosecution for ML. Considering that a dual reporting system exists in Ireland and that Revenue receives all STRs and that a close relationship exists between Revenue and AGS, it is not clear why Ireland have not been able to secure ML convictions for tax-related offences.

135. ML prosecutions mainly involve fraud and drugs predicate offences which correspond to the risks identified by Ireland in its NRA. However, considering Ireland's position as an international financial centre, there is a lack of evidence of prosecution of complex ML schemes and facilitators. That said, the MLIU did provide examples of complex cases that are currently being investigated which accord with Ireland's role in the European financial market.

136. Legislative changes to the ML offence were introduced in 2010 with the purpose of lowering the burden of proof on the prosecution in ML cases. Although, by law, it is not necessary to prove a predicate offence and prosecutors can rely on circumstantial evidence, in practice in the limited number of cases that have gone to trial, the evidential threshold is high. The prosecutors noted that the main reason for not prosecuting ML offences is the difficulty in proving the *mens rea*, the intentional element of the offence. While this can be a difficulty in all criminal trials, the legislative actions to address this issue and to provide a range of presumptions in favour of the prosecution, have not translated into convictions. Discussions with authorities suggested that investigations and prosecutions focus on the predicate offence where the likelihood to have a successful outcome in court is higher.

137. The DPP also noted that a major difficulty is in proving that the funds in question are moved for the purpose of laundering. The DPP noted that the burden of proof in drugs-related cases is much lower as all they need to prove is possession. The DPP noted that if the ML element is relatively minor and it is easier to prove the predicate offence, the ML offence would not be prosecuted, principally because the additional charge will not affect the sanction imposed. The average time elapsed from the start of a prosecution to conviction or acquittal is 1-2 years or with a plea, 6-8 months.

138. Ireland has provided figures on the results of ML prosecutions. The table below shows that there have been no convictions after trial. All convictions are the result of a guilty plea. Only two cases were taken to trial and they both resulted in acquittals.

Table 13. Results of ML prosecutions

	2011	2012	2013	2014	2015	2016 (10 October)
<b>Not yet disposed of</b>	0	0	0	1	7	9
<b>Convictions after Guilty Pleas</b>	2	4	3	7	6	0
<b>Convictions after Trial</b>	0	0	0	0	0	0
<b>Acquittal</b>	1	0	1	0	0	0
<b>Prosecution withdrawn</b>	0	0	0	0	1	
<b>Total</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>8</b>	<b>14</b>	<b>9</b>

*Note:* The prosecutions named “not yet disposed of” may include cases where the accused is awaiting trial or sentence or the case is ongoing. The figures for 2016 reflect cases that have already been directed by the DPP and with most of them being charged.

139. The lack of convictions after trial and the two acquittals (that were not appealed) demonstrate that there have been few instances where the courts have assessed evidence in ML trials and this is a concern for the Assessment Team. This may reflect reluctance on behalf of prosecutors to test the AML laws or a conservative approach by the judiciary, which in turn acts as a disincentive in

pursuing the investigation of complex ML cases. Alternately, prosecutors have not been able to demonstrate their effectiveness as difficulties in detecting and investigating complex ML cases have led them to focus on predicate offences or lower-level ML offences.

### *Types of ML cases pursued*

140. While Ireland demonstrated that it has been able to prosecute third-party money laundering, as opposed to just self-laundering, the Assessment Team was not satisfied that different types of ML cases were being prosecuted to a large extent. In particular, the Assessment Team was provided with only limited cases of standalone ML (i.e. where there is no investigation of the predicate offence) or cases relating to complex ML networks or facilitators. The range of ML associated with foreign activity that has been prosecuted is minimal considering Ireland's risk profile, and the range of offenders targeted are limited to natural persons.

141. Irish legislation does not distinguish between self-laundering and third-party laundering. Ireland has provided statistics from the DPP regarding prosecutions where these two categories have been separated (i.e. where the person prosecuted for ML has not also been charged for the predicate offence). The number of prosecutions for third-party laundering is higher than the statistics for self-laundering. The DPP explained that this might be due to lack of evidence to direct any prosecution for the underlying predicate offence in these cases. In many of the case studies, the third-party ML prosecutions related to criminal associates or family members that were close to the main offender and it is not clear that this would meet the FATF understanding of third-party ML as the laundering of proceeds by a person who was not involved in the commission of the predicate offence. According to the DPP, the reason for the lower number of self-laundering prosecutions may be that in these situations, the predicate offence is easier to prove and there is no added sentencing incentive to prosecute for ML—so in these cases the predicate offence was pursued.

**Table 14. Self-Laundering and Third-party\* ML of 42 prosecutions from 2011**

	2011	2012	2013	2014	2015	2016 (10 <sup>th</sup> October)	Total
<b>Self - Laundering</b>	0	1	1	3	1	2	<b>8</b>
<b>Third party-laundering*</b>	3	3	3	5	13	7	<b>34</b>

\* For the purpose of providing these statistics, third-party ML is counted in situations when a person charged with ML was not also charged with the predicate offence due to insufficient evidence. This is different to the FATF definition in footnote 75 of the FATF Methodology (that is, laundering of proceeds by a person who was not involved in the commission of the predicate offence), however the DPP noted that it was not possible for the DPP to state whether or not a suspect was actually involved in the commission of the predicate offence.

142. A further breakdown of prosecutions into cases by purely domestic activities or activities with a foreign element shows a rather small proportion of cases with a foreign element. According to Irish legislation, it has to be proven that the conduct committed in another jurisdiction was an offence in that country. The DPP states that in practice it has not been a problem to establish such

facts. Legislation also allows for the admission of certificate evidence from a lawyer in another jurisdiction confirming that the particular conduct is an offence in that country. In early 2016, Ireland made one request for such a certificate and the process is on-going. Considering, Ireland's financial services sector and interaction with other jurisdictions, the level of prosecutions with a foreign element is low.

Table 15. **Domestic and Foreign element to 42 ML prosecutions 2011**

	2011	2012	2013	2014	2015	2016 (10 October)	Total
<b>Domestic</b>	3	4	2	8	12	7	<b>36</b>
<b>Foreign</b>	0	0	2	0	2	1	<b>6</b>

143. There has been no investigation or prosecution of a legal person in Ireland. Prosecutors noted that, in general, it is easier to prosecute the director of a company than the legal person however this has not been tested in an ML case.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

144. While Ireland has some success in ML convictions through guilty pleas, the sanctions applied to natural persons are proportionate to other profit-generating crimes, they are not effective and dissuasive. The penalties imposed for ML are low, especially considering the proportion of suspended sentences imposed (approximately half of convictions led to completely suspended sentences or good behaviour bonds). According to the prosecutors, the penalties imposed are appropriate and similar to other equivalent crimes and reflect that, in most cases, when a guilty plea is entered, sentences are likely milder. However, the low sentences also suggest that the types of ML cases that have been prosecuted are neither serious nor complex. No legal persons have been sanctioned as there have been no investigations or prosecutions of a legal person.

145. In Ireland, a person convicted of ML is subject to a maximum term of imprisonment of 14 years or a fine (or both). A part, or all, of the sentence can be suspended. A suspended sentence places certain conditions on the convicted person (for example, the requirement to present regularly to a parole officer or participate in a rehabilitation course, a good behaviour bond, restrictions on travel) with a failure to meet these conditions resulting in imprisonment. The table below illustrates the sentences that have been imposed on the 19 individuals convicted of ML since 2011.

Table 16. Sentences imposed in ML Convictions

	2011	2012	2013	2014	2015
Prison sentences 5 years or more (Incl. partially suspended sentences)	0	0	1	0	1
Prison sentence between 2 and 5 years (Incl. partially suspended sentences)	1	1	1	2	2
Prison sentence less than 3 years (Incl. partially suspended sentences)	0	0	0	0	1
Fully suspended sentence	1	3	0	3	1
Other/Community service orders	0	0	0	1	0
<b>Total</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>6</b>	<b>5</b>

146. There have been two cases where the imposed sentence was over five years. In 2013, a person was sentenced to five years imprisonment of which four years were suspended. In 2015, a person was sentenced to seven years imprisonment of which three years were suspended; this is the maximum sentenced imposed in Ireland for a ML case.

147. Prosecutors have a limited role in sentencing in ML cases and do not recommend a particular sanction to the court. When asked why sentences were not closer to the higher limit for penalties (14 years), the DPP explained that while maximum sentences are high in Ireland, they are rarely imposed. In order for an Irish court to hand down a sentence in the upper scale of the sanctions, the conduct must be of utmost seriousness. Sentences imposed for ML offences are largely in line with the type of ML activity prosecuted and with sentences handed down in comparable financial crime cases. The prosecutors reported that they are satisfied with the imposed sanctions and that they have not made any appeals on leniency.

#### *Alternative criminal justice measures*

148. Ireland is of the view that it does apply alternative criminal justice measures in the form of prosecutions for the predicate offence or proceeds of crime action, however, these measures are applied whether or not it may be possible to secure a ML conviction.

149. Alternative criminal justice measures as described above are the instances when prosecutors have chosen to prosecute a predicate offence but have not pursued the ML offence for 'evidential or strategic reasons'. However, the Assessment Team was not provided with examples of such cases and are led to believe that prosecutions for ML are not always pursued due to practical considerations (it is easier to prove the predicate offence than the ML offence and sanctions applied do not necessarily lead to longer sentences). However, this is not a justifiable reason for not prosecuting the ML offence for the purposes of the FATF Standards. Due to the lack of convictions after trial, thresholds for evidence have not been tested in court apart from the two cases that resulted in acquittals. Ireland has noted that increased liaison between AGS and the DPP since September 2016, as a result of a monthly joint meeting between the agencies looking into areas of legislation, practice and method, has started to help identify and pursue cases of ML.

150. The non-conviction based actions taken by CAB to secure assets based on civil standard of proof can be applied when a conviction has not been handed down for a ML or predicate offence (see the case example below). Other confiscation provisions in the CJA can also assist. For example, in one of the cases that were finally acquitted, cash seized at the border was confiscated on the basis that, on the balance of probabilities, it was the proceeds of crime.

#### Case Example 2. **Alternative criminal justice measures**

Ireland has demonstrated a case involving a Ponzi Scheme where the suspect held accounts in several jurisdictions that had received funds from his account in Ireland. The funds were frozen both in Ireland and in the foreign jurisdictions. The funds from abroad were returned to Ireland with the consent of the suspect. A file was sent to the DPP, however the suspect had returned to his jurisdiction. The funds from abroad were returned to Ireland with the consent of the suspect who returned to his jurisdiction. A file was sent to the DPP who decided there was insufficient evidence to prosecute. CAB took action that resulted in over EUR 5 million being forfeited. These funds were returned to the various injured parties in Ireland.

#### *Overall conclusions on Immediate Outcome 7*

**151. Ireland has achieved a moderate level of effectiveness for IO.7.**

#### ***Immediate Outcome 8 (Confiscation)***

##### *Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

152. Confiscation of the proceeds of criminality and property of equivalent value is pursued as a policy objective in Ireland and has strong political and community support. As a result, Ireland has a generally comprehensive and well-developed asset confiscation framework, utilising both post-conviction based confiscation and non-conviction based civil forfeiture (non-conviction based confiscation).

153. Ireland has been at the forefront of international efforts to introduce non-conviction based confiscation systems. Ireland established its multi-agency Criminal Assets Bureau (CAB) in 1996 and the country continues to enjoy a strong reputation internationally in this area. Under the non-conviction based system, there are legislative provisions in place to appoint a receiver to manage confiscated assets, however authorities noted that the effectiveness of outsourcing the asset management function could be reviewed.

154. Between the post-conviction and non-conviction based systems, assets representing the proceeds of crime and property of an equivalent value are confiscated, forfeited or frozen as a national policy objective. The forfeiture of instruments of crime is provided for by section 61 of the Criminal Justice Act 1994; however, the figures for forfeiture of instrumentalities appears to be decreasing. The DPP, as the relevant authority for the forfeiture of instrumentalities, did not

consider that the statutory provisions hindered the effectiveness of the regime, however there appears to be some room to clarify the requirements under section 61.

155. Based on the proceeds-generating crimes identified by Ireland in its NRA as high-risk, the value of criminal proceeds confiscated and forfeited appear modest for a jurisdiction that pursues confiscation of criminal proceeds as a national priority and operates a dual post-conviction based and non-conviction based regime. However, the relevant authorities reported that they are adequately resourced and operational coordination works well as the CAB is a multi-agency taskforce.

156. The CAB reported that it has expanded its focus to pursue a policy towards lower value assets targeting more middle-ranking criminals to counter the dispersion of assets held by criminals who have changed their methods in response to CAB's early confiscation work. In recent years the CAB has particularly focused on organised travelling criminal groups primarily engaged in burglary and robbery. The authorities advise that while this approach may not realise extensive financial returns, it demonstrates CAB's ability to react to local community concerns and hence the approach is seen as an effective use of CAB's resources. The authorities also advised that this strategy is effective in hindering lower and middle-ranking criminals before they can establish their criminal networks and perpetrate more serious crimes. This policy is further discussed in relation to Ireland's risk profile below.

#### *Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

157. Based on the proceeds-generating offences identified in Ireland's NRA, confiscation from domestic predicate offences and the tracing of assets abroad and detection and identification of proceeds of complex financial crime has only been achieved to some extent.

158. While there have been successes in confiscation of proceeds of crime both through the conviction based and non-conviction based systems, overall confiscation values are modest, as are the number of confiscation cases. There are examples of GNECB following the proceeds of domestic crimes that have moved to other countries offshore and seeking informal cooperation and assistance from foreign countries. However, efforts to pursue the offshore movement of proceeds of criminal activity, other than fraud, could be enhanced.

159. CAB has a wide statutory remit which covers actions brought under proceeds of crime legislation, revenue and social welfare legislation to target the suspected proceeds of criminal conduct and provides the taskforce with multiple toolkits and options for confiscating assets. The CAB actively engages in training and development of Divisional Asset Profilers which increases the ability of regional areas to undertake parallel financial investigations with a view to confiscating the proceeds of crime. There are currently 185 trained Divisional Asset Profilers of AGS, 15 officers Revenue and 3 officers of the Department of Social Protection. The authorities report that this initiative is effective in tackling individuals involved in criminal activity at a local and community level.

160. While the number of cases commenced by the CAB almost doubled from 2011 to 2012, the number of cases since that time has remained relatively consistent. It should be noted that confiscation cases are complex and time and resource consuming.

161. CAB notes that, in response to its successes in targeting criminal assets, there has been a deliberate distribution of assets among gang members in order to lower the amounts in the possession of any single member. However this does not appear to have translated into an increase in the number of cases undertaken by the CAB to confiscate these assets.

**Table 17. Number of cases commenced by the CAB under the Proceeds of Crime Act by year**

Year	Number of cases commenced
2011	6
2012	14
2013	9
2014	10
2015	13
2016* partial year	9

162. The value of disposal orders and funds returned to the exchequer dropped from 2011. The authorities indicated that the decrease in property values following the global financial crisis has impacted heavily on the values of confiscated property and this is reflected in the figures due to the lag time between the obtaining of freezing orders and non-conviction based disposal orders (under the Proceeds of Crime Act property must be frozen for 7 years before a disposal order can be made). This may go part way to explaining the apparently modest values confiscated. Although, cash and funds in bank accounts (which are not subject to the same decrease in value) accounted for the vast majority of the asset type frozen under the non-conviction based (NCB) regime from 2011 to date.

163. Table 18 shows the combined levels of proceeds of crime taken out of circulation through initial freezing orders under sections 2 and 3 of the Proceeds of Crime Act, prior to ultimate forfeiture by s 4 and 4A disposal orders.

164. The 'Tax and Interest collected' figures in the Table 19, reflect actions by CAB Revenue officers to assess and collect tax from those under investigation. Revenue Bureau Officers utilise powers under the Revenue Acts to ensure that proceeds of crime or suspected proceeds of crime are subjected to tax. Overall, the number of cases conducted by CAB utilising revenue powers<sup>26</sup> appears higher than the number of cases for actions under the Proceeds of Crime Act and the amounts returned to the Exchequer are greater utilising these powers. Of note, these figures represent only the taxable amount assessed rather than the full value of assets as for actions under the Proceeds of

<sup>26</sup> For example, the amount of tax recovered in 2015 amounted to EUR 2 038 000 from 43 individuals / entities. In 2014, the amount recovered was EUR 3 017 000 from 55 individuals / entities. In 2013, the amount recovered was EUR 5 418 000 from 38 individuals / entities.

Crime Act. The Social Welfare amounts in the table above reflect welfare amounts recovered after an assessment by CAB Social Welfare officers of welfare entitlements. A significant number of Social Welfare action cases are undertaken each year by CAB, although the amounts, as would be expected in relation to social welfare recoveries, are relatively low<sup>27</sup>.

**Table 18. CAB Annual Report Statistics – Proceeds of Crime Actions (in EUR)**

	s.2 Interim orders	s. 3 Interlocutory orders	s. 3(3) orders to discharge or vary interlocutory orders	s. 4 and 4(a) disposal and consent disposal orders
<b>2011</b>	5 384 599.73	7 169 793.98	2 843 012.96	2 734 715.00
<b>2012</b>	1 960 446.55	2 017 512.54	741 555.06	4 850 540.17
<b>2013</b>	2 821 305.00	2 180 940.21		1 038 680.52
<b>2014</b>	6 760 182.00	1 563 841.75	2 000	467 152.37
<b>2015</b>	941 078.59	7 225 091.98		1 642 962.29

*Notes:*

s 2 Interim Orders allow CAB to apply to the High Court, ex parte, for an interim order freezing property valued at over EUR 5 000 where the Court is satisfied, on the balance of probabilities, that the property is the proceeds of crime. An interim order can remain in place for 21 days.

s 3 Interlocutory Orders allow CAB to apply, on notice, to the High Court for an order freezing property valued at over EUR 5 000 that is the proceeds of crime.

The figures in the table above under s 2 Interim Orders and s 3 Interlocutory Orders are estimates of gross property value and represent the value of funds removed from criminals and taken out of circulation.

s 3(3) of POCA enables a person claiming ownership of the property to challenge an interlocutory order granted by the High Court and to have those orders varied or discharged where the Court is satisfied that property is not the proceeds of crime or the order causes injustice. The majority of these monies as listed in the table above represent amounts returned to the victims of the crime.

s 4 of the POCA allows CAB to apply for a disposal order forfeiting the assets to the State where an interlocutory order has been in place for 7 years. These figures represent the value actually recovered by the Exchequer.

**Table 19. CAB Annual Report Statistics – Funds returned to the Exchequer (in EUR)**

	Proceeds of Crime S4 and 4A transferred to Minister	Tax and Interest collected	Social Welfare Recovered	Total Amount Returned to the Exchequer
<b>2011</b>	2 734 715	3 804,867	454 037	6 993 619
<b>2012</b>	4 850 540	1 967 925	393 797	7 212 262
<b>2013</b>	1 038 680	5 418 000	287 380	6 744 060
<b>2014</b>	467 152	3 017 000	335 911	3 820 063
<b>2015</b>	1 642 962	2 038 000	185 354	3 866 316
<b>Total</b>	10 734 049	16 245 792	1 656 479	28 636 320

<sup>27</sup> For example, actions pursuant to the social welfare remit of the CAB were initiated against 74 persons in 2015.

165. Post-conviction based confiscation and forfeiture is undertaken by the DPP. The forfeiture and confiscation values in respect of the post-conviction based regime also appear relatively modest. Overall, the value of forfeiture and confiscation orders in the conviction based regime dropped from 2012; however they increased again in 2015. Figures are not available for 2016 hence it is not possible to draw conclusions on the trends in forfeiture and confiscation values. The conviction based regime is not subject to the 7 year disposal requirement as is required under the non-conviction based system and property can be disposed of immediately on the making of an order. Of note, there was also a downward trend from 2012 in respect of the number of confiscation and forfeiture orders made (apart from s. 39 cash forfeitures which have remained relatively constant) and it does not appear that confiscation is pursued in the majority of criminal cases based on the number of orders provided in the table below.

Table 20. DPP statistics on confiscation and forfeiture (in EUR)

	S 39 Cash Forfeiture (includes cross-border movement of cash, and cash forfeited based on a civil standard).		S 61 CJA 94 – Forfeiture (instruments of crime)		S 4 CJA 94 – Confiscation (drugs-related conviction based confiscation)		S 9 CJA 94 – Confiscation (non-drugs offences related conviction based confiscation)		Total
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	Amount
<b>2012</b>	40	967 920.26	27	486 623.00	16	908 112.88	0	0	<b>2 362 656</b>
<b>2013</b>	24	609 898.39	13	100 433.00	6	228 013.66	1	262 404.35	<b>1 200 749</b>
<b>2014</b>	31	861 508.53	10	51 930.00	5	256 795.13	1	2 551.55	<b>1 172 785</b>
<b>2015</b>	36	1 207 719.43	3	120 373.00	8	267 313.00	2	1 804 276	<b>3 399 681</b>
<b>Total</b>	131	3 647 046	53	759 359	35	1 660 234	4	2 069 231	

Note: The figures provided in the table above reflect actual amounts recovered by the DPP.

166. The Criminal Justice (Mutual Assistance) Act 2008, includes provisions enabling the enforcement in Ireland of Orders for the freezing and confiscation of property that could be evidence or the proceeds of crime. Few requests have been made for the recognition of foreign orders, however the DPP noted that it applied for and obtained two confiscation cooperation orders in Ireland in 2013 for EUR 17 683.61 and EUR 35 000. In respect of the post-conviction based system, the Criminal Justice (Mutual Assistance) Act 2015 provides for the sharing of assets obtained through executed foreign confiscation cooperation orders and forfeiture orders. Ireland did not provide any examples of assets shared under these provisions.

167. In respect of the non-conviction based system, the Proceeds of Crime Acts apply to foreign predicate offences where the property is in the jurisdiction. Similarly orders under the Proceeds of Crime Act can be granted over properties abroad, however the CAB advises that efforts to have its non-conviction based orders recognised in the EU have been unsuccessful. The Assessment Team has not been provided with any examples of challenges encountered outside of the EU or with

evidence of efforts to pursue funds moved offshore to countries that recognise non-conviction based confiscation.

168. There are no provisions within the Proceeds of Crime Act to share forfeited assets with any other state. Section 3(3) of the Proceeds of Crime Act allows for restitution of funds to victims of crime upon the direction of the High Court. Although not its intended use, there is the potential for this provision to be used in future for sharing of frozen assets with other countries.

169. The CAB took action under the Proceeds of Crime Act in respect of two notable cases (see below) involving the proceeds of foreign offences that have been identified in Ireland by foreign authorities, but has been unable to share the assets. The CAB has noted that it has advocated for adoption of non-conviction based asset confiscation through many international fora, particularly at the EU level, as a way to enhance the overall effectiveness of the international system for confiscation. The CAB also noted that in the absence of recognition of non-conviction based orders in Europe, it had cooperated closely with another jurisdiction in relation to the assets of an OCG to aid the other jurisdiction to take domestic confiscation action.

#### Case Example 3. **Criminal Assets Bureau v. Siriwan**

*High Court Record No. 2014/12/CAB*

As a result of an US Federal Bureau of Investigation (FBI) investigation, in 2014, CAB commenced proceedings against a Thai national and daughter of the former Governor of the Tourism Authority of Thailand. The proceedings related to bribes paid by two Americans, Graham and Patricia Green, to the Governor. The Greens were found guilty in the US of various bribery offences and the FBI investigation identified that GBP 200 000 of HSBC policies were held in Ireland in the Governor's name by his daughter. The US sent a MLA request to Ireland and a freezing co-operation order was granted by the Irish High Court (s. 35 of the Criminal Justice (Mutual Assistance) Act 2008). After discussions with the US and difficulties with the MLA process, CAB obtained a freezing order under Proceeds of Crime legislation in 2015 and the funds remain frozen. Thailand has been informed of the potential for an application to be made under section 3(3) of the Proceeds of Crime Act to recover some or all of the monies, but to date no application has been made.

Case Example 4. **CAB v. Mohammed Sani Abacha**

*High Court Record No. 2014/10/CAB*

In 2014, CAB commenced proceedings against Mr Mohammed Sani Abacha, the son of the late General Sani Abacha of Nigeria who had defrauded Nigeria's Central Bank. The FBI had carried out a two year investigation in an attempt to identify the whereabouts of almost USD 1.8 billion and informed Irish authorities when they discovered an account held with HSBC Life Ireland. Based on investigations by the Irish authorities, USD 6 277 500 remained in the account. The funds were frozen and a full investigation was carried out, in partnership with the UK's National Crime Agency and the FBI. Ultimately, in 2015, the Irish High Court was satisfied, on the balance of probabilities, that the monies represented the proceeds of criminal conduct and the funds were frozen under Proceeds of Crime legislation. The funds remain frozen. Nigeria has been informed of the potential for an application to be made under section 3(3) of the Proceeds of Crime Act to recover some or all of the monies, but to date no application has been made.

*Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

170. Ireland has, to some extent, confiscated cross-border movements of cash as a form of dissuasive action by customs authorities. Revenue (Customs), Ireland's lead agency in the control of cross-border cash movements, pursues confiscation of currency suspected to be proceeds of crime. While the framework for cross-border cash declaration has significant gaps, the provisions that allow the seizure and confiscation of cash that is suspected to be the proceeds of crime are relatively strong. However, the overall value of cash seizures is relatively modest and the value of confiscations does not appear commensurate with the risks associated with cash. Allocation of additional resources to Customs and tightening of the legislative framework will enhance efforts in this area which should be considered a priority given Ireland's identified risk in respect of cash and the level of cash usage in domestic ML.

171. The only cash declaration requirement in Ireland is through EC Regulation No. 1889/2005 providing for declaration of movements of cash of EUR 10 000 or more across the external borders of the EU. The authorities acknowledge that there is a risk of cash transportation at the border with Northern Ireland and within the EU however no declaration system exists for such movements. Ireland's NRA also recognises that there is evidence that criminals utilise opportunities to transport cash via parcels, cargo and freight but Ireland does not have a declaration / disclosure system in place for the movement of cash via cargo or mail.

172. Both AGS and Customs have the power of seizure and detention of 'cash'<sup>28</sup> above the prescribed sum where there are reasonable grounds to suspect that it represents the proceeds of

<sup>28</sup> S. 22 of 2005 legislation amended s 43(1) of Criminal Justice Act 1994 to extend the definition of 'cash' to include 'notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bank drafts, bearer bonds and bearer shares'.

crime or is intended for use in any criminal conduct (Criminal Justice Act 1994 as amended by Section 20 of the Proceeds of Crime Act 2005, s. 38). In August 2016, the 'prescribed sum' for the purposes of s. 38 was lowered to EUR 1 000 by S.I No. 436 of 2016 pursuant to s. 44 of the Criminal Justice Act 1994 (as amended). Prior to this date, the prescribed sum was EUR 6 348.69. Accordingly, using this provision undeclared or falsely declared funds can be seized (and ultimately forfeited) provided it is also suspected that they represent the proceeds of crime. Within two years of seizure, following an investigation into the origin of the cash by the Customs authorities, an application for forfeiture must be made pursuant to section 39 of the CJA and is determined under the civil burden of proof. The lowering of the threshold amount (referred to above) enhances the powers of authorities to seize suspicious and undeclared currency. The effectiveness of this amendment cannot be assessed at this point in time due to its recent implementation. The authorities recognise that challenges may arise in establishing that such relatively smaller amounts are the proceeds of crime and cannot be explained by legitimate means. In practice, the majority of cash seizures pursuant to section 38 are made by Customs officials at airports and ports. Forfeitures are relatively modest considering the risks of cross-border cash movement identified by Ireland.

**Table 21.** Seizures by Revenue (Customs) (in EUR)

	Seizures (s 38)		Forfeitures (s 39)	
	No.	Amount	No.	Amount
<b>2010</b>	46	1 709 579.69	25	2 231 550.66
<b>2011</b>	39	1 029 038.33	18	1 466 720.47
<b>2012</b>	48	1 190 350.37	29	714 510.56
<b>2013</b>	60	1 341 221.58	17	385 019.91
<b>2014</b>	38	906 221.94	23	474 161.42
<b>2015</b>	45	1 626 880.60	33	1 155 516.96
<b>2016</b>	73	945 962.00	16	507 775.00

173. Ireland provided a case example demonstrating how s 38 seizure, and failure to declare, supported the commencement of a money-laundering investigation and charges. While the prosecution was ultimately not successful, the authorities were successful in demonstrating that the cash was reasonably suspected of being proceeds of crime and having it forfeited on a civil basis. Ireland could take steps to further demonstrate the proactive investigation of declarations of substantial sums of currency for suspicions of ML.

174. Customs officers are trained in cash detection and cash detector dogs are used together with risk analysis of profiles associated with currency couriers and intelligence reports. However, Ireland should further consider what measures it can put in place to better detect and confiscate the movement of cross-border cash.

*Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities*

3

175. To some extent, Ireland's confiscation results reflect ML/TF risks and national policies and priorities. The confiscation results in recent years reflect a high proportion of the assets confiscated as having been derived from crime types identified in the NRA as high risk domestic ML predicate offences such as drug trafficking, fraud and organised crime and theft and property offences. However, confiscation and forfeiture values remain modest due to the level of sums typically involved in such offences.

176. While Ireland pursues post-conviction based confiscation and non-conviction based confiscation as a policy objective, it is not clear that its confiscation and forfeiture results are consistent with the level of ML/TF risks. While the authorities acknowledge that international aspects of investigations have become more pronounced to the point that virtually every investigation underway has some international aspect to it, its confiscation and forfeiture efforts are focussed predominantly on domestic, local and community concerns. Confiscation and forfeiture results across both the post-conviction and non-conviction based regimes remain at a consistently modest level and it does not appear that assets are being pursued in line with the country's international risk profile.

177. The nature of the criminal environment and Ireland's status as an international financial centre warrants an enhanced commitment by the relevant law enforcement agencies to targeting high value and complex financial frauds with an international aspect. The authorities should increase their focus on tracing assets abroad and the detection and identification of proceeds of complex financial crime to ensure that assets are generally pursued in line with the country's international risk profile.

*Overall conclusions on Immediate Outcome 8*

**178. Ireland has achieved a moderate level of effectiveness for IO.8**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### Key Findings and Recommended Actions

#### Key Findings

##### Immediate Outcome 9

1. Irish authorities have a good understanding of their domestic and international terrorism threats, and TF risks as they are associated with those threats.
2. Irish authorities strongly prioritise counter-terrorism initiatives. On-going counter-terrorism and TF investigations (to the extent that TF investigations have been initiated) are well-coordinated within the various units in the police and security. Ireland has a single police and security service and the authorities have demonstrated successes utilising security and operational intelligence to disrupt terrorist activities.
3. A number of domestic terrorism charges were brought against persons, which resulted in successful prosecutions and convictions. However, no prosecutions of TF offences have occurred either as a stand-alone prosecution or as part of a counter-terrorism prosecution.
4. In instances where TF activities have been identified however, the authorities pursued offences such as forgery and membership of the IRA (under the general counter-terrorism legislation) rather than TF charges. It would appear that the evidential requirements of some elements of the TF offence (such as knowledge and the destination/use of the funds) are difficult to prove beyond a reasonable doubt.

##### Immediate Outcomes 10 and 11

1. Ireland has a legal system in place to apply targeted financial sanctions regarding TF and PF, and has established an effective Cross Departmental International Sanctions Committee (CDISC), to coordinate the implementation of targeted financial sanctions (TFS). The implementation does have technical and practical deficiencies due to the procedures set at the EU level that impose delays on the transposition of designated entities into sanctions lists.
2. Ireland does not have formal procedures for identifying targets for designations and has not proposed or made any designations. Ireland has considered the potential vulnerabilities within the NPO sector in its NRA and has recently designated a regulator for the sector.
3. While some steps have been taken in the NPO sector relating to TF, Ireland has not yet applied focused and proportionate measures to such NPOs identified as being vulnerable to TF abuse.
4. The CDISC is working effectively in ensuring that the UN listings are communicated to the relevant authorities. The financial sector appears to have a good understanding of their freezing and reporting obligations. However the awareness of the TFS obligations for DNFBPs is not as evident. The authorities have indicated that the risk of TF in Ireland is relatively low compared to other EU countries and have therefore supervised and monitored the DNFBPs on TFS to the extent

commensurate to the risk. No sanctions have been imposed for failures relating to TFS obligations.

### ***Recommended Actions***

#### *Immediate Outcome 9*

4

1. Ireland should more actively pursue TF prosecutions in line with its risk profile, with a view to securing TF convictions.

There should be greater co-operation between the DPP and the investigative authorities to prioritise and actively pursue the prosecution of TF activities.

It is recommended that where TF activities are identified, an investigation with the objective to charge an individual or organisation for TF be actively pursued. In situations when it is not practicable to prosecute for TF, Ireland should ensure it has a range of alternative measures available to disrupt potential counter-terrorism/TF activities, including for example the revocation of passports of suspected foreign fighters.

Ireland should provide additional resources to the TFIU and ensure a proper filtering process for STRs with potential links to international terrorism, for example by including adequate TF categories in the STR form.

#### *Immediate Outcomes 10 and 11*

Ireland should implement mechanisms to reduce the time between transposition of the UN and EU sanctions lists.

Additional outreach to the DNFBPs and the smaller FIs on their TFS obligations is recommended. Ireland should utilise the Private Sector Consultative forum or other mechanisms to enhance outreach to and input from the Law Society and designated accountancy bodies on overarching TFS issues. Further, DNFBP supervisors should enhance their supervision on DNFBPs' implementation of their TFS obligations.

It is recommended that focused and proportionate measures be applied to NPOs identified as being vulnerable to TF abuse.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

### ***Immediate Outcome 9 (TF investigation and prosecution)***

#### *Prosecution/conviction of types of TF activity consistent with the country's risk-profile*

179. The authorities have a good understanding of the domestic and international terrorism threats in Ireland, and TF risks as they are associated with those threats. Ireland has a long history of combatting terrorism going back to shortly after the formation of the State, and in particular over the last 40 years. TF was considered in the country's NRA and it was determined that the most

significant terrorist financing threat in Ireland stems from domestic terrorists – four loosely organised dissident groups (Real IRA/New IRA; Óglaigh ná hÉireann; Continuity IRA, and Irish National Liberation Army) – that have not supported the ceasefire and peace process since 1997. While Ireland has been considering TF risks as part of its general terrorism risk understanding, it should ensure that future risk assessments be determined with reference to, but separately from, the terrorism threat. In terms of domestic terrorism, the authorities' current focus is more on the relatively minor cost of carrying out an attack. The authorities have explained that as a result of their efforts to target the dissident groups' funding sources, the groups' methods have evolved, from funding their activities through cigarette and fuel smuggling and violent crimes such as robbery, to "lower" risk activities (for the terrorist groups) such as self-funding, taxation/extortion and collection of funds from community gatherings.

180. The NRA also indicates that the threats of an attack by these groups in Ireland is "relatively small", but that Ireland could be used to raise funds and organise potential attacks outside the country. Ireland assesses the threat of an attack related to international terrorism as "moderate" (an attack is possible but not likely).

181. Irish authorities closely monitor financial activities suspected to be related to international terrorism. Irish authorities do not see a significant TF risk related to international terrorism, particularly when compared to other European jurisdictions. But Irish authorities acknowledge that such risks do exist and that only small amounts (from both legitimate and illegitimate sources) are needed to support TF. There is also only a small number of returned foreign fighters (in the low double digits). While there is little evidence to show any coordinated approach to fundraising in support of terrorism there are some areas of concern in relation to the collection of charitable funds within the community and the use and transfer of funds by charities/NPOs to conflict zones, which the authorities will continue to monitor.

182. The decision whether to prosecute terrorist financing or counter terrorism related offences on indictment rests with the Directing Division of the DPP. The directions to prosecute counter terrorism and terrorist financing offences are sent to the Solicitors Division of the office or the State Solicitors, whose role is the preparation and presentation of cases before the non-jury Special Criminal Court. Appeals from the Special Criminal Courts are heard in the Court of Appeal.

183. As of the time of the on-site visit, Ireland had not prosecuted TF activity to any extent, nor had the DPP received any case files involving clear evidence of TF, and this is not consistent with Ireland's risk profile. The authorities indicated that there has not been sufficient evidence to bring a provable case to the DPP. The authorities further indicated that the evidential requirements of some elements of the TF offence (such as knowledge, destination/use of the funds or an accomplice) are more challenging to prove beyond reasonable doubt. Examples were given in instances of counter-terrorism cases that may have had a TF element but other offences such as membership of the IRA were pursued rather than a prosecution for TF. Prosecutions for membership in the IRA are pursued under the Offences Against the State Act (amended in 1972 and 1998) – Ireland's main counter-terrorism legislation – which currently designates two dissident organisations. Suppression orders under this Act apply to these organisations. Under this legislation, the Chief Superintendent's opinion can be used as evidence of membership in a terrorist organisation and refusal to answer

questions can be used as inference evidence. Given these less burdensome evidentiary requirements, the Irish authorities have therefore successfully used this legislation on many occasions.

184. The tendency has also been to prosecute a person for another criminal offence (such as counterfeiting and forgery) even if there is an element of TF activity. Such a case is described below. However, as of the time of the on-site visit, there was an active investigation related to international terrorism. This involved TF activity, and the authorities indicated that this would soon be filed with the DPP and may lead to specific TF charges.<sup>29</sup>

#### Case Example 5. **Domestic Terrorist Forgery**

Subject 'A' was supplying key members of the Dublin Real IRA with a large quantity of counterfeit euro bank notes. A targeted operation indicated that Subject 'B' and Subject 'C' were going to deliver a quantity of cash to Subject 'A' in return for forged Euro notes.

In the course of the operation Subject 'A' was observed transferring packages to either Subject 'B' or 'C'. This resulted in armed intervention, the arrest of the three suspects and the seizure of EUR 20 000 in forged Euro notes. During the search of Subject 'A' a set of keys was found. Analysis linked these keys to commercial premises. During searches of these premises, a further EUR 189 000 in counterfeit notes and an additional EUR 2 million of counterfeit notes (in an 'unfinished state') were seized. Computers, printing equipment and counterfeit documents including marriage certificates and driving licences were also recovered.

As a result of this operation Subject 'A' was prosecuted and sentenced to six years imprisonment, Subject 'B' pleaded guilty to possession of the 400 counterfeit EUR 50 notes and was jailed for two years. Subject 'C' was given a suspended sentence. These latter sentences were for membership in the IRA, and the financial flows in the investigation were used to help prove this.

The evidence of the exchange between A and B or C was part of the evidence relied upon as against C in the membership charge.

Ireland assessed that had the dissident group taken control of the counterfeit currency it would have been used to finance their activities in Northern Ireland and in the UK.

#### *TF identification and investigation*

185. AGS is both the national police force and the security intelligence service for Ireland. The main security intelligence structures are contained within the Crime and Security Division. All counter-terrorism operations are directed and co-ordinated by the Crime and Security Division. Within this Division are:

<sup>29</sup> A suspect was charged on the 27 April 2017 with two counts of terrorist financing. This is the result of the investigation which has been ongoing since 2015, involving cooperation with a neighbouring jurisdiction. The accused has been remanded in custody following his appearance in court on the two TF charges.

- The Security and Intelligence Section (S&I), which is responsible for collecting, analysing, and disseminating intelligence to the operational units within AGS and includes intelligence information relating to counter terrorism and TF activities.
- The Special Detective Unit (SDU), which is responsible for the investigation of, among others, counter-terrorist and TF activities. The SDU unit itself is staffed with over 100 members of AGS.
- Within the SDU is a dedicated unit specifically dealing with domestic and international terrorism investigations. The Unit is staffed with between 17-18 members of AGS.

186. These units work closely with each other, and also with the FIU, which has two officials responsible for analysing and disseminating information relating to counter-terrorism and TF. Some officials in AGS have received specialist training in TF and international terrorism.

187. Under Irish law, AGS does not initiate or track investigations for specific offences. Rather, its remit is to investigate any suspected crime. And through the investigations, case files are developed with evidence of more specific offences that are then filed with the DPP. Therefore, authorities were not able to provide the overall number of on-going TF investigations for the last few years in order to demonstrate that TF activities are investigated with the objective to prosecute individuals or organisation for TF offences. The authorities did not provide statistics on the number of investigations that had TF activities associated with an investigation but were subsequently closed.

188. Financial investigations are conducted in support of counter-terrorism investigations. Counter-terrorist investigations contain an investigation into the financial aspects and potential TF activity, through cooperation with the FIU. Investigators use this to seek evidence to support terrorism prosecutions. While the authorities indicated that investigators always seek evidence to support a TF prosecution, the Assessment Team could not confirm this and concludes that TF activity, in itself, is investigated only to some extent. Examples of a few on-going investigations involving TF were shared with the Assessment Team.

189. The vast majority of terrorism cases and any related TF activity are identified through intelligence—the Security and Intelligence Section, the local AGS units, the SDU, or the FIU. These are then further developed through close cooperation of the units. SDU leads most counter-terrorism investigations and where evidence of TF is found the SDU would also be responsible for investigating the TF element. All STRs that are reported to the FIU are first analysed by administrative support staff, who apply a series of automatic indicators to determine if there is any possible link to international terrorism. These indicators include: whether there is any previous link or hit in the system to other STRs or entries linked to potential TF; any previous links to enquiries initiated by Security and Intelligence and/or the SDU; transactions to/from or involving conflict zones or high-risk areas. These are then allocated to the dedicated officials in the FIU responsible for terrorism related activities for further analysis. The FIU conducts further enquiries using tools and screening databases available to the FIU (AGS database (PULSE), Security and Intelligence Checks, SDU checks, World Check, etc.). Depending on the outcome of these enquiries, an intelligence dissemination package is forwarded to Crime and Security division for further action.

190. The FIU provided statistics on the number of STRs that were received, and that, through the checks indicated above, were flagged as having potential links with international terrorism. Also included in the statistics is the number of subsequent disseminations to the Crime and Security division as well as false positives.

Table 22. **STRs with an international terrorism link**

Year	Number of STRs with potential links to international terrorism	Total number of STR-based reports submitted to crime and security	Number of STR-based reports submitted to crime and security that relate to active targets	Number of STRs found to be false positive matches (of the total STRs flagged) on UN/EU sanctions lists
2012	683	76	24 (relates to 15 targets)	21
2013	707	104	89 (relates to 16 targets)	6
2014	926	114	44 (relates to 14 targets)	3
2015	1155	93	23 (relates to 17 targets)	13
2016	948	90	56 (relates to 16 targets)	9

191. According to the overall FIU statistics provided, besides tax evasion and other tax related activities, suspected international terrorism makes up the highest number of STRs. The authorities explained that the numbers are high because: (1) these STRs are flagged because of the indicators mentioned above and (2) that once an STR was flagged, then all further transactions related in any way to flagged STRs (including any matches with individual or company names, or account numbers) are also flagged. The authorities indicated that the process by which the large numbers of STRs are being forwarded to the TFIU by the FIU will be further streamlined by the new GoAML software system. The immediate benefits of this will be the speed at which intelligence reports can be forwarded to Crime and Security. The high number also reflects a general caution by both the banks and the FIU to flag this kind of activity. A number of STRs refer to the same “active target”, resulting in the relatively high numbers in the fourth column above. Nevertheless, the very high number of STRs flagged as having potential links with international terrorism may overburden TFIU with having to review too many STRs to properly analyse and make them useful for investigations or intelligence in a timely manner.

192. When a file from the FIU is referred to the Security and Intelligence Division, the information is used to build intelligence on individuals already on their database or to add new individuals (with data relevant to them) to the database. An information product may then be disseminated to SDU for investigative or development purposes. Investigations undertaken by the SDU can obtain the financial evidence directly from FIU and further develop that through specific sections of the Criminal Justice Act via court orders such as directing FIs to release account information. The authorities however were not able to demonstrate an historic picture of the number of referrals from the FIU that have led to TF investigations.

193. As mentioned above, the authorities indicated that in many cases the threshold of evidence to prove TF activities is found too high to pursue charges. In cases where persons are suspected of

having committed TF offences they are either charged under counter terrorism legislation (other than for TF activities) or under equivalent criminal legislation. However evidence of utilising funds to finance terrorism has been used to support other charges, for example a charge of membership of the IRA. The authorities also indicated that as many of the investigations begin from intelligence sources it is not possible to use this information in evidence in court proceedings without jeopardising the source of the information or method used to acquire the information, so other avenues to disrupt TF activities are pursued instead of stand-alone TF charges being brought.

*TF investigation integrated with -and supportive of- national strategies*

194. Ireland in general, and SDU specifically, does not have a single written counter terrorism or TF strategy, but a strategy for counter-terrorism is included in an organisational annual Policing Plan for 2016, such as targeted operations against terrorist groups including those involved in organised crime. Police plans within other AGS units such as GNECB contain strategies on the support role to address counter terrorism and TF activities to some extent. These include strategic plans focused on, among others, targeted operations against terrorist and extremist groups including dissident groups; targeting domestic related terrorism activity; assisting in the targeting of foreign and domestic terrorists engaged in cyber activity; and increasing the exchange of information and intelligence with domestic and international agencies.

195. To assist in countering the threat from Islamic Extremist Terrorism, in 2015 AGS reviewed its strategy and in this regard established three distinct groups to assist Ireland's approach:

- The "Regional Enquiry Teams" in each AGS Region comprise representation from Ethnic Liaison Officers, Immigration Officers, Criminal Intelligence Officers and members of the local Detective Branch. The Teams are chaired by the Regional Detective Superintendent.
- At the national level an Operational Group meets every two months to review on-going investigations to ensure that there is a fully integrated approach to the investigation of persons of interest and that all Units (local and national) are being tasked to feed into these investigations. This group is chaired by the SDU and it reports quarterly to the Assistant Commissioner for Crime & Security.
- A Strategic Group at Deputy Superintendent level meets every quarter to monitor the development of AGS strategy in this area. This group also reports to the Assistant Commissioner for Crime and Security.

196. The authorities indicated that every counter terrorism investigation takes into account any TF activities. Having the Security and Intelligence Division, the SDU and the FIU within AGS streamlines the co-operation between the sections enabling the timely and effective exchange of information. This working relationship works both ways in that the SDU regularly make requests of FIU regarding the financial activities of individuals who are of interest to the section, and the FIU will often encounter a person of whom they hold concerns and request any information that the SDU may hold.

197. Examples of the type of co-operation that occur between the Security and Intelligence Division and the FIU are outlined below:

**Example A**

A person of interest to the Security and Intelligence Division uses their phone to purchase items. In the course of this transaction the subject makes use of a previously unknown credit card. Security and Intelligence utilise their liaison with the FIU to enquire into other transactions for which the card has been used and the location from where these transactions were made.

**Example B**

The FIU receive a report in relation to a suspicious transaction. Included in the detail of the report is intelligence that credit has been purchased for a telephone which was previously unknown. The FIU communicates this intelligence to the Security and Intelligence Section to assist in developing the intelligence picture of the subject.

198. In the majority of cases, persons who are suspected of having committed TF offences are either charged under counter terrorism legislation (other than for TF activities) or under equivalent criminal legislation. However evidence of utilising funds to finance terrorism has been used to support other charges and convictions, such as membership in the IRA. The financial intelligence was also used to identify terrorist, terrorist organisations, and terrorist support networks. Some examples of integrated counter-terrorism and TF investigations, and identifying networks, are as follows:

**Case Example 6. International Counter-Terrorism**

Intelligence received by Security and Intelligence indicated the establishment of a company of interest a number of years ago. This company was of particular interest to S&I due to the presence of a number of individuals on the list of directors that were already persons of interest for supporting and facilitating the travel of individuals for violent extremist purposes.

S&I instigated enquiries with FIU, who were able to provide confirmation on the company status and its list of directors. Since the establishment of this company, S&I have obtained numerous intelligence reports linking this company to the suspected laundering of monies belonging to designated terrorist organisations.

Through constant interaction with FIU, by way of keeping them apprised of all available intelligence on this company and people linked to it, the FIU was able to carry out the appropriate enquiries with the relevant financial institutions.

Information obtained by the FIU pertaining to the financial activities of the company enabled S&I to build up a more detailed comprehensive background on individuals linked to the company who were already of interest to S&I as well as bring to light the activities of individuals previously unknown whose actions could be deemed a threat to security within the jurisdiction. S&I were then in a position to provide the SDU with the relevant intelligence to begin investigating the activities of the company and the relevant individuals.

As a result of the intelligence gathered by S&I and shared with FIU for the purposes of providing

specific financial data, SDU were in a position to make a number of important arrests and seizures. From a financial point of view this company as well as a large number of individuals receiving monies from it have had their bank accounts closed with Irish Financial Institutions.

This investigation is still ongoing.

#### Case Example 7. **Example of intra-authority cooperation**

Co-operation between the FIU, S&I and international partner services is evidenced in a 2015 case involving a foreign born, Irish citizen. Initial information indicated that the subject had departed Ireland using false documentation and travelled to the European mainland. Information also indicated the possibility that the subject of interest was seeking out individuals who may have been in a position to assist him in planning a terrorist attack on an unknown target.

With particular information available to AGS, assistance was sought from the FIU at GNECB which made possible the tracking of the movements of the subject through several cities throughout Europe. S&I identified the location of the subject in Spain and the accommodation he had reserved, in time with his arrival there.

The intelligence picture continued to be developed through the close co-operation that S&I have with the FIU. The information achieved through this liaison allowed for desk officers to analyse the movements of the subject and provide a detailed assessment report to international security partners with whom close co-operation was also being maintained.

This co-operation led to the arrest and detention of the subject by a European country. The intelligence as provided by AGS was recognised by international partners as being significant in the successful outcome.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

199. There has been no prosecution or conviction for a TF offence, so no sanctions have been applied for the TF offence.

#### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

200. As indicated above, in the majority of cases, persons who are suspected of having committed TF offences are either charged under counter terrorism legislation (other than for TF activities) or under equivalent criminal legislation. In many cases, this involved prosecuting and convicting for possession of weapons and explosives, or membership in the IRA (including its splinter groups). In these cases it was not practicable to secure a TF conviction—as noted above the evidentiary standards for TF are more difficult to prove than for terrorism or other offences.

However evidence of utilising funds to finance terrorism has been used to support and convict for these other charges. Case Example 5 above.

201. Overall, counter terrorism prosecutions of dissident groups based in Ireland for the period 2011 to 2016 is indicated in the table below:

Table 23. Counter-terrorism prosecutions of dissident groups

	2011	2012	2013	2014	2015	2016
<b>Investigation</b>	16	17	25	17	27	19
<b>Prosecutions</b>	16	17	25	17	22	12
<b>Convictions</b>	6	11+ (3 pending for trial)	6+(4 pending for trial)	11+ (5 pending for trial)	1+ (21 pending for trial)	3 + (9 pending for trial)
<b>Investigations which involved elements of TF in charges preferred</b>	Figures not available	0	8	5	7	6

202. These resulted in the following sentences:

Table 24. Sentences related to counter-terrorism prosecutions of dissident groups

Offences	Number of charges	Maximum sentence on conviction	General sentence *
<b>Murder</b>	1	Life	Life
<b>Possession of explosives</b>	21	14 years	9-11 years
<b>Possession of firearms</b>	25	14 years	4-5 years
<b>Possession of ammunition</b>	3	14 years	2-5 years
<b>Membership of the IRA</b>	52	8 years	4-6 years
<b>Assisting the IRA</b>	3	8 years	TBC
<b>Membership of the INLA</b>	1	8 years	4-6 years
<b>Directing terrorism</b>	1	Life	20 years

\* This is a view of the general sentence handed down by the Courts on each of these offences. It is dependent on the various circumstances of each offence and would not include the outliers for each offence. Except where a mandatory sentence is provided for in law (such as in the case of murder) the sentence in any given case is a matter for the trial judge or court to decide.

203. The authorities provided the Assessment Team with other examples where security and operational intelligence was used to successfully disrupt terrorist activities.

### Case Example 8. Extortion Case

In November 2013, intelligence indicated that a British businessman was being extorted by members of the Real IRA. This extortion was ongoing over a period of months and involved Real IRA members from North and South of the border.

This intelligence indicated that:

- • A sum of EUR 20 000 would be collected on behalf of this businessman and handed over to senior figures from the Real IRA in Northern Ireland.
- • Dublin Real IRA members, subjects 'E' and 'F', would be involved in the transfer of the money from Dublin to Northern Ireland.
- • Subjects 'E' and 'F' were reluctant to travel to Northern Ireland therefore a male ('subject D'), unknown to the security services would be deployed in their place to transfer the money.
- • "D" had been instructed to meet with senior Real IRA members, namely subjects 'G' and 'H' at a location in Northern Ireland.

Due to a narrow operational window of opportunity to intercept the target, a decision was made by Security and Intelligence to brief operational management in Monaghan (a border county) in relation to this activity and to seek their assistance in intercepting this vehicle and the funds being transferred.

A successful conclusion to the operation resulted in the seizure of EUR 20 000 in cash and the arrest of subject D. It is assessed that the money seized deprived the Real IRA of money which would have been used to finance terrorist activities in Ireland. The operation also resulted in the disruption of racketeering activity being conducted by that organisation. A critical factor in bringing this operation to a successful conclusion was the seamless relationship between Security and Intelligence and the various limbs of AGS.

This case ultimately ended up before the courts in a Police Property Application where the Court ordered the EUR 20 000 to be forfeited to the State. There was no criminal prosecution against the individual found in possession of the money.

204. The authorities indicated that there are only a small number of individuals in Ireland involved in international terrorism activities and a strong reliance is placed on the financial intelligence received from the FIU to monitor these individuals.

205. In respect of foreign terrorist fighters, the authorities indicated that they are aware of a small number of individuals that have travelled to high risk jurisdictions and those that have returned are under surveillance. Most of these individuals are believed to be self-funded and lead a frugal lifestyle. Irish authorities maintain close monitoring of these individuals.

206. Ireland indicated that there was a previous instance of a suspected facilitator of the terrorist network being deported. As of the time of the on-site visit, Irish authorities were also

pursuing deportation against another individual. However, other disruptive methods such as revoking the passports of persons who may be suspected of terrorist related activities have not been actively utilised.

*Overall conclusions on Immediate Outcome 9*

4 **207. Ireland has achieved a moderate level of effectiveness for IO.9.**

***Immediate Outcome 10 (TF preventive measures and financial sanctions)***

*Implementation of targeted financial sanctions for TF without delay*

208. The procedures and implementation of targeted financial sanctions (TFS) in Ireland (like other EU countries), established by the EU Council Decisions and Regulations are not effective due to the deficiencies within the framework of applicable EU regulations.

209. TFS pursuant to UNSCR 1267 and subsequent resolutions are not implemented without delay (as defined by FATF) due to the delay taken to transpose UN designations into the EU legal framework. (See Recommendation 6 in the Technical Compliance (TC) Annex.) This is a serious impediment to Ireland's effectiveness in preventing terrorists from moving funds. Irish authorities indicated that in the event a financial institution detected a transaction involving a person or entity listed by the UN but not yet by the EU, Part 4 of the CJA 2010 would apply. This is the reporting requirement for TF-related STRs. Once the transaction is reported, the Superintendent can issue an order to the FI not to carry out the transaction for seven days (s.17(1) CJA 2010). However, this mechanism has not been used, and it is also not clear what evidentiary standard would be required to maintain the funds frozen beyond the seven days.

210. Ireland does not have formal procedures for identifying targets for designations and has not made any designations. There are informal arrangements in place and Ireland has outlined the process a designation proposal would go through should it be required (see R.6 in the TC annex).

211. Ireland has established a co-ordinating committee called the Cross-Departmental International Sanctions Committee (CDISC) to ensure that it meets its international obligations for the implementation of TFS. CDISC's task is to facilitate communication, discussion and the exchange of information between the relevant State authorities in respect of all sanctions regimes, including sanctions relating to terrorist financing and proliferation, arising at domestic, EU and international levels. Representatives of the DFAT attend the EU's Working Party of Foreign Relations Counsellors (RELEX) committee, which develops and implements the EU's restrictive measures regime, and report on sanctions-related discussions in RELEX to CDISC on a regular basis. All changes to the Consolidated United Nations Security Council Sanctions List are notified to Ireland through its Permanent Mission to the UN in New York and directly to DFAT (International Terrorism Unit) which circulates those changes immediately to the members of CDISC.

212. The CDISC consists of the:

- CBI (which is responsible for the administration, supervision and enforcement of financial sanctions in Ireland as it relates to financial institutions);

- DoJEI (which is responsible for implementing the various measures that have been adopted concerning trade sanctions);
- DFAT (which chairs the CDISC and leads Ireland’s international engagement with the relevant sanctions bodies at the UN and the EU). DFAT (International Terrorism Unit) represents Ireland at meetings of the EU Council Working Party on the application of specific measures combat terrorism (known informally as CP391) with respect to designations relating to the UNSCR 1373 sanctions regime;
- Department of Finance;
- DoJE;
- Department of Transport, Tourism and Sport;
- AGO;
- Revenue; and
- AGS.

213. This is a non-exhaustive list and when appropriate other Departments or State Agencies can be invited to attend meetings or join the Committee. Non-state bodies, for example the Law Society, and designated accountancy bodies do not participate in the CDISC. TFS issues are sometimes (but not regularly) discussed within the Private Sector Consultative Forum (PSCF).

214. EU measures are supplemented by domestic provisions providing for penalties for non-compliance. The Department of Finance has lead responsibility on the drafting of statutory instruments to impose penalties for non-compliance with terrorist financing sanctions regimes.

215. The CBI regularly checks TFS implementation as part of its supervisory process. This did not seem the case for the DoJE or other supervisors for DNFBPs. However, the authorities indicated that DNFBPs are supervised and monitored for TFS to the extent commensurate to the risk. Since no breaches have been found, no sanctions have to date been required to be imposed for failures relating to TFS obligations.

216. The CBI has had extensive engagements with the banks on the TFS obligations and the financial sector has a good understanding of their freezing and reporting obligations. Both the CBI and DoJE have updated information on the sanctions listings as well as guidance on their respective websites. However the awareness of the TFS obligations for DNFBP sectors is not as evident. The authorities have indicated that the risk of TF in Ireland appears to be relatively low compared to other EU countries and have therefore supervised and monitored the DNFBPs on TFS to the extent commensurate to the risk.

217. Ireland’s procedures for directly receiving foreign requests to take freezing action pursuant to UNSCR 1373 are addressed via the Central Authority for Mutual Assistance and the FIU. In addition, requests are received indirectly through the regular EU channels. Ireland has never designated a person/entity or requested another country to take freezing action pursuant to UNSCR 1373. The freezing obligations of UNSCR 1373 do not apply to EU internals, although since the entry into force of the Treaty of Lisbon (2009), Art. 75 of the Treaty on the Functioning of the European Union (TFEU) provides a legal basis to introduce a mechanism to do so. However, the European Commission has not yet put forward a proposal for a regulation as stipulated in Art. 75 para 1 TFEU in this regard. This negatively impacts effectiveness.

*Focused and proportionate measures to NPOs vulnerable to TF abuse*

218. The NPO sector was addressed in the NRA and it is acknowledged that there is an intelligence gap in respect of ML/TF in this sector. The overall ML/TF risk for the NPO sector is considered as medium-low. While some measures have been taken to address TF in the NPO sector, Ireland has not yet applied focused and proportionate measures to such NPOs identified as being vulnerable to TF abuse.

219. Pursuant to the Charities Act 2009, Ireland formally established the Charities Regulatory Authority (CRA) in October 2014 to regulate the charity sector and its Board Members were appointed. But the CRA became more formally operational in May 2016 when the first CEO was appointed. Since that time, the CRA focused on registering charities as required under the Act. As of November 2016 over 8 000 had registered, and Ireland expected an estimated 12 000 registered charities by the end of 2016. The CRA was also reviewing charities' annual return information. CRA had also conducted outreach to the sector on the registration requirements, including 23 workshops and feedback through phone, web, and email. CRA also conducted a series of meetings with other regulators, enforcement bodies and organisations relevant to the sector. But the CRA had not yet prioritised outreach to NPOs in relation to terrorist financing.

220. As of November 2016, the CRA's Monitoring Programme was being finalised, including a Registration Policy and an Enforcement Policy. CRA had a staff of 31, with plans to increase to 50. But the draft programmes did not include targeted measures on TF. CRA was also in the initial stages of formulating fundraising guidelines. CRA was also beginning some enforcement activities, relating to fraud.

221. Some of the other initiatives taken by Ireland in the NPO sector take place in the context of Ireland's Official Development Assistance (ODA) which primarily comprises the Irish Aid programme, which is managed by Irish Aid, a division of DFAT. ODA is also managed by other Departments. NGOs funded by Irish Aid work primarily in developing country contexts and in conflict-affected environments. Decision making regarding Irish Aid's principal development and humanitarian funding mechanisms for NGOs is based on criteria such as governance, financial management, financial control, and risk management procedures. NGOs in receipt of these funding schemes are subject to rigorous financial and narrative reporting requirements on an annual basis, as well as intensive monitoring and evaluation procedures. Dóchas—the Irish Association of Non-Governmental Development Organisations—is also an important go-between for the network of charities and donors, mainly Irish Aid, and further promotes transparency and corporate governance in the sector.

222. While these measures are important steps in the right direction, Ireland needs to implement a targeted approach to overseeing NPOs vulnerable to TF abuse.

*Deprivation of TF assets and instrumentalities*

223. Section 17 of CJA 2010 gives the authorities the power to freeze funds in an account but this power has not been used for any TFS related activity. The authorities further indicated that the Offences Against the State Act currently designates two dissident organisations. Suppression orders

under this Act apply to these organisations. The Criminal Justice (Terrorist Offences) Act, 2005 includes provisions relating to forfeiture of property of these organisations. However none of these provisions have been applied for TFS related activity.

224. The CBI provided information on funds that were frozen in respect of TFS. There were a total of 36 transactions relating to Al Qaida, for a total of approximately USD 1 200 000 and PKR 53 600. These freezes were reported to the CBI but the funds were actually held outside of Ireland. Irish officials indicated that these all related to freezes before 2012, with no reported freezes in the past few years. The funds remain frozen. Although FIs query the CBI regularly to check the status of positive hits, CBI reported that queries have decreased substantially in the last few years, as a result of CBI guidance and outreach efforts mentioned above.

225. In terms of criminal justice measures, Ireland has not had any TF cases, so no assets or instrumentalities have been frozen, seized, or confiscated in this process. Ireland has deprived terrorists of assets under its other criminal justice measures. See case examples in Immediate Outcome 9.

#### *Consistency of measures with overall TF risk profile*

226. While Ireland faces domestic and international TF risk, authorities in Ireland have determined that the international risk is considered lower than in other European countries. For TFS, there are still delays in transposition between the UN and EU lists. For NPOs, Ireland has taken some steps in relation to TF and recently designated a regulator for the sector. But Ireland has not yet applied focused and proportionate measures to NPOs vulnerable to TF abuse.

#### *Overall conclusions on Immediate Outcome 10*

227. Ireland has achieved a moderate level of effectiveness for IO.10.

#### ***Immediate Outcome 11 (PF financial sanctions)***

##### *Implementation of targeted financial sanctions related to proliferation financing without delay*

228. As a member of the EU, Ireland applies the EU framework for implementing designations under UN Security Council Resolution 1718 (DPRK) (Council Regulation No.329/2007, as amended, and Council Decisions 2013/183/CFSP) and Security Council Resolution 1737 (Iran) (Council Regulation No.267/2012 as amended and Council Decision 2010/413) respectively. Council Regulation (EU) 2015/1861 introduces changes to take account of the Joint Comprehensive Plan of Action which apply from 16 January 2016. These measures apply directly to Ireland and apply to freezing measures to a broad range of funds and property.

229. An effective system of financial sanctions regarding proliferation depends on the immediate implementation of the UNSCRs, monitoring compliance with the measures imposed, co-ordinated action by the authorities concerned to prevent the measures being circumvented and preventive action. Ireland implements *without delay* (as required under FATF Recommendation 7) the TFS

defined in the UNSCRs relating to combatting PF with regard to Iran but does not do so with regard to DPRK. See Recommendation 7 in the Technical Compliance Annex.

230. With regard to Iran, these mechanisms do not suffer from technical problems in the length of time for transposition. Since Regulation 267/2012 was issued in March 2012, there were only two occasions where the UN added designations to the list (two entities and one individual on 19 April 2012, and two entities on 20 December 2012). In both cases, these individuals and entities had already been listed in the EU framework (see Regulation 1245/2011 of 1 December 2011, and Regulation 54/2012 of 23 January 2012), and subsequently incorporated into Annex IX of Regulation 267/2012.

231. In fact, the EU applies sanctions to a significant number of entities that are not designated by the UN, as they are designated associates of, or otherwise associated with, other UN and EU-designated individuals and entities. These measures may mitigate the risk of UN listed persons and entities evading the sanctions measures.

232. For DPRK, the UN added individuals and entities to the list four times between March 2012 and November 2015. Five (out of 14) of the entities had already been listed in the EU Framework. On three other occasions, the designations by the UN (of 22 January 2013, 7 March 2013, and 28 July 2014) took approximately 4 weeks, 6 weeks, and 10 weeks, respectively, to be incorporated into the EU framework. While these sanctions thus are generally not implemented “without delay”, the sanctioning system (similar to the system for Iran) is also mitigated by the significant number of other designations by the EU.

233. There are three competent authorities responsible for EU Restrictive Measures that deal with targeted financial sanctions relating to financing of proliferation, these are the: (i) Financial Sanctions Section, Enforcement Department, CBI; (ii) Export Control, Licensing Unit, DoJEI and (iii) the DFAT. DoJEI leads on the drafting of statutory instruments to impose penalties for non-compliance with non-proliferation sanctions regimes.

234. The competent authorities are assisted in this role by the CDISC who facilitates communication, discussion and exchange of information between the relevant State authorities. This mechanism is described in IO.10 above.

#### *Identification of assets and funds held by designated persons/entities and prohibitions*

235. The CBI provided information on reports received from an FI relating to funds that were frozen in respect of TFS for Iran and DPRK. For Iran, the freezes took place up to 2011; for DPRK, up to 2013. There have not been further notifications of freezes since then. These assets remain frozen.

Table 25. Funds Frozen related to TFS; Iran and DPRK

Country	Number of transactions	Amounts
Iran	30	USD 214 716
		GBP 687 427
		AUD 810
		AED 6 377
		EUR 940
DPRK	1	KRW 50 000

236. Ireland has a robust regime for enforcing trade restrictions with regard to Iran and DPRK. This is administered by the DoJEI in close cooperation with Revenue's Customs Service. Although these are not directly related to the issue of proliferation finance under IO.11 and R.7, they do contribute to Ireland's overall efforts to prevent proliferation.

#### *FIs and DNFBPs' understanding of and compliance with obligations*

237. The CBI has had extensive engagements with the banks on the TFS obligations and the financial sector has a good understanding of their freezing and reporting obligations. Both the CBI and DoJE have updated information on the sanctions listings as well as guidance on their respective websites. However the awareness of the TFS obligations for most of the DNFBP sectors is not as evident.

#### *Competent authorities ensuring and monitoring compliance*

238. The authorities have indicated that the risk of PF in Ireland appears to be relatively low compared to other EU countries, and DoJE and other supervisory bodies have therefore supervised and monitored the DNFBPs on TFS to the extent commensurate to the risk. In this context, CBI regularly checks TFS implementation as part of its supervisory process. This did not seem the case for the DoJE or other supervisory bodies for DNFBPs. Since no breaches have been found, no sanctions have to date been required to be imposed for failures relating to TFS obligations.

#### *Overall conclusions on Immediate Outcome 11*

**239. Ireland has achieved a substantial level of effectiveness for IO.11**



## CHAPTER 5. PREVENTIVE MEASURES

### Key Findings and Recommended Actions

#### Key Findings

1. FIs have a reasonably good understanding of the ML/TF risks, with the international FIs having a better appreciation of the cross-border ML/TF risks. Some FIs, particularly the Irish domiciled FIs, appear to be more focused on the domestic risks and pay less attention to cross-border ML/TF risks.
2. FIs' risk understanding is also more focused on the operational aspects and challenges in relation to the collection of identification and verification of customer and beneficial ownership information.
3. Overall, banks, fund administrators and some payment institutions, particularly the international FIs, have developed appropriate AML/CFT controls and processes, including CDD and transaction monitoring. In areas such as controls and processes for higher risk customers and transactions, they could be further enhanced.
4. DNFBPs' understanding of their ML/TF risks are largely domestically focused. Accountants who perform auditing services and some of the larger TCSPs have shown a better understanding of their ML/TF risks including cross-border ML/TF risks. Overall, the AML/CFT controls and process in place for DNFBPs were less sophisticated in nature and in many cases, the CDD and monitoring process are manual (although this could be appropriate in some cases where the business and customer profile are less complex).
5. The implementation of CDD (e.g. collection of beneficial ownership information and existing clients) measures by FIs and DNFBPs could be further strengthened. There are also concerns on their ability to identify in a timely and accurate manner relationships/transactions in relation to PEPs and designated entities in relation to TFS.
6. For some FIs and DNFBPs, there is indication that there is strong reliance on local community networks and knowledge. While this is a useful source, and could enrich customer understanding when used appropriately, it could also be subject to preconceived notions, and not always adequately supported by objective analysis. Further, such strong reliance may reduce the incentive to give adequate focus to external and cross-border factors.
7. The level of STR reporting, particularly by DNFBPs (e.g. TCSPs, PSMDs etc.), is also low. In some sectors (e.g. funds and credit unions), it would be useful to review if the level of reporting is commensurate with the risks.

#### Recommended Action

1. Financial institutions and DNFBPs (in particular) should seek to further deepen their ML/TF risks understanding, particularly in relation to cross-border ML/TF risks. The authorities, including the PSRA, should conduct additional outreach to better sensitise the entities of their risks, including those identified in the NRA. The outreach should also include online casinos/gaming entities operating in Ireland.
2. Authorities are encouraged to work more closely with the FIs and DNFBPs (in particular), to strengthen their understanding and controls in relation to CDD, especially for PEPs and higher risk customers.

3. Ireland should amend its legislation to be able to apply countermeasures and deal with high risk countries as required by R. 19.
4. FIs such as bureaux de change, credit unions, moneylenders and DNFBPs, such as PMCs, PSMDs, law firms and some TCSPs, should seek to use and develop better (and more sophisticated) AML/CFT tools, particularly in relation to the identification and detection of PEPs, as well as designated entities in relation to TFS.
5. DNFBPs in particular should seek to increase their level of STR reporting. Where appropriate, FIs and DNFBPs should seek to develop and adopt more systematic (automated) way of transaction monitoring.
6. Authorities should provide more feedback and guidance to reporting entities. This should include feedback on typologies, red flag indicators and the quality of STRs, including in relation to defensive filing or STRs lacking in adequate details on the reasons for suspicion.

240. The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

#### ***Immediate Outcome 4 (Preventive Measures)***

##### *Understanding of ML/TF risks and AML/CTF obligations*

###### *Financial Institutions*

241. Most FIs have a reasonably good understanding of ML risks (particularly when they relate to domestic Irish clients), but less so on the cross-border ML risks. Most FIs also have a reasonably good understanding of the TF risks which is closely linked to their understanding of terrorist risks.

242. Since CBI's guidance to the banks in February 2015 and fund sector in November 2015, the level of ML/TF understanding for these sectors and the level of implementation are seeing signs of improvement. Nonetheless, FIs' understanding on risks tends to be based more on the requirements and challenges in collecting CDD information (e.g. BO information, source of wealth, use of complex structures), and need for better internal controls.

243. On cross-border risks, the international FIs (such as the banks and fund administrator/service providers) tend to have a more developed understanding and awareness of their ML/TF risks. They would also take into account and leverage their group level understanding and resources. Irish domiciled operators however, have a more domestic focus and there is a risk that they may not adequately consider the ML/TF risks arising from the cross-border nature of their products/business and source of funds. However, this risk is mitigated to the extent that business activities of the domestic FIs are largely concentrated within Ireland.

244. The payment institution met on-site showed a reasonably developed ML/TF risk understanding and was able to discuss the challenges in relation to both the domestic, regional and international ML/TF risks it faces. However, it could not be concluded that there is a similar level of ML/TF risk understanding of the other smaller payment institutions as the team did not have the

opportunity to meet other payment institutions. Nonetheless, given the predominance of the payment institution met and discussions with Ireland, this may not be a significant area of concern.

245. Other financial sector entities (such as moneylenders, and bureaux de change) tend to have a lower level of risk understanding than the sectors mentioned above. Based on feedback received, there is also indication that the level of ML/TF risks awareness and understanding for credit unions would not be as developed as other sectors. Part of the reason appears to be the strong reliance on local network and community knowledge; there are some potential risks which are elaborated below.

#### *DNFBPs<sup>30</sup>*

246. Most DNFBPs have a reasonably adequate understanding of ML risks (particularly when they relate to domestic Irish clients). Large firms with significant international exposure have a better understanding of the cross-border ML risks. Most DNFBPs also have a reasonable understanding of the TF risks which is closely linked to their understanding of terrorist risks.

247. Among the DNFBPs met, the accountants demonstrated a stronger understanding of ML/TF risks, both domestically and in a cross-border context. In part, this was due to the nature of their work, including having close interactions and engagement with a range of FIs.

248. PMCs (excluding likely online casinos/gaming entities that could be based in Ireland<sup>31</sup>) have a relatively good understanding of their domestic ML/TF risks. Their knowledge of the local community provides a good perspective on the potential risks from domestic criminal entities and groups. The main challenge is in relation to potential ML/TF risks arising from overseas customers.

249. TCSPs and lawyers (or solicitors) in general have a mixed level of understanding of their ML/TF risks. For instance, the larger TCSPs which have a strong international presence tend to have a better ML/TF risk understanding. TCSPs that are more domestically focused (i.e. little or no international presence), tend to have a better appreciation of the domestic ML/TF risks, and would be less focused on how they could also be abused for ML/TF by foreign entities, including through the use of complex structures.

250. PSMDs have a limited understanding of their ML/TF risks, and it is predominantly domestically focused. In part, this could be due to most HGVDs/PSMDs not having much of an international clientele and being community focused. Nonetheless, given the increasing: (i) links between domestic crime groups and other foreign crime groups; and (ii) exposure of PSMDs to non-domestic customers, their level of risk understanding, particularly with regard to cross-border risks, may need to be further strengthened.

251. It is also observed that many of the FIs and DNFBPs tend to place a strong reliance on local community networks and knowledge. While this is a useful source and could enrich customer understanding, particularly in the domestic Irish context, there could be potential issues from a

<sup>30</sup> The DNFBP write-up does not specifically comment on notaries and barristers as their activities in Ireland do not fall specifically within the FATF-defined activities. See also Chapter 1.

<sup>31</sup> This area is an area that the Irish authorities are still studying. As such, there is no specific data on the number of such entities operating in Ireland, and the extent AML/CFT obligations, if any, are applicable.

broader ML/TF risk understanding – it could be subject to preconceived notions and undue influence, and may not always be adequately supported by objective facts, especially when they relate to cross-border issues and risk factors. This could also create unintended risks in the implementation of AML/CFT controls, e.g. an assumption of knowledge and status of their customers, although it may not always be possible to know if a local could be involved or wanted by foreign authorities. Application of risk mitigating measures

#### 5 *Application of enhanced or specific CDD and record keeping requirements*

252. FIs, such as banks, funds administrators, insurers, and payment institutions, generally understand the need to, and have put in place internal systems and controls to mitigate the identified ML/TF risks. Within the financial sector, the internal controls for bureau de change, moneylenders and credit unions tend to be weaker.

253. Most DNFBPs understand the need to, and have put in place some form of internal systems and controls. However, these tend to be less sophisticated, e.g. HGVDs/PSMDSs' internal controls and policies could be a short document with little elaboration to conduct risk assessments or address higher risk scenarios, although in part, this could also be reflective of the nature of the sector. Some TCSPs and accountants have relatively stronger internal controls and have developed policies that deal with assessing customer risks, and dealing with higher risk customers. For real estate agents, it was not possible to ascertain the level of understanding and implementation of the internal systems and controls as supervision was only recently implemented.

254. Not all FIs' and DNFBPs' controls and procedures have included the full range of measures to mitigate ML/TF risks (e.g. there is no requirement to conduct specific measures on domestic PEPs) – this is possibly due to the fact that as at the time of the on-site, the CJA 2010 has yet to be revised to fully comply with the revised FATF Standards.

#### *CDD and record keeping requirements*

255. FIs are generally aware of, and have in place CDD and record keeping measures – this would include the use of a customer risk assessments matrix and with enhanced measures taken for higher risk customers. However, CDD issues (e.g. those related to existing clients) remain a key challenge in terms of implementation. Further, a potential risk area for the funds sector is that there is heavy reliance on third parties on their level of CDD. Between 2013 and 2015, CDD findings remain the most frequent weakness noted by the CBI. Another significant area relates to corporate governance which also includes issues relating to internal controls and policies.

256. However, there is some indication that this is improving for the banking, funds industry and payment institutions as CBI has improved its AML/CFT outreach, supervision and enforcement measures.

Table 26. Supervisory Findings by Financial Sector 2013-2016

Sector	Corporate Governance	CDD	Record Keeping	Total
Banking – Non-Retail	29	30	1	60
Banking – Retail	61	72	1	134
Bureau de Change	36	22	1	59
Credit Unions	70	69	2	141
Fund Service Providers	16	37	0	53
Funds	15	45	0	60
Investment Firms – Asset Managers	6	8	0	14
Investment Firms-Other Investment Firms	34	25	2	61
Life Insurance	17	60	1	78
Market Operator	10	7	0	17
Money Lenders	23	12	2	37
Payment Institutions – Money Remitters	36	24	3	63
Payment Institutions-Agent	12	14	4	30
Payment Institutions - Others	12	8	2	22
Retail Credit Firms	9	1	0	10
Retail Intermediaries	26	27	1	54
TCSPS (affiliated with FIs)	19	13	4	36
<b>Total</b>	<b>431</b>	<b>474</b>	<b>24</b>	<b>929</b>

257. In general, DNFBPs, with the exception of real estate which cannot be ascertained, have in place some level of CDD measures and record keeping. In terms of implementation, the CDD implementation and proper keeping of records remain a challenge for some of the DNFBPs. Depending on the sector, about 69-78% of the entities inspected by the DoJE (i.e. TCSPs, PMCs and PSMDs) were found to be fully compliant with their AML/CFT obligations. However, for those entities deemed to be partially compliant, over 80% were deemed to be somewhat deficient in terms of their CDD and record keeping. This represents, depending on the sector, some 31-22% of the overall DNFBP population under the supervision of the DoJE. More lawyers are also beginning to put in place AML/CFT controls (the number of law firms with no AML procedures had decreased from 47 in 2013 to 38 in 2014 and 20 in 2015), but the level of implementation of these AML/CFT procedures continue to be a challenge (the number of law firms with AML procedures not applied satisfactorily increased from 21 in 2013 to 39 in 2014 and 53 in 2015). Interviews conducted

revealed that among the DNFBPs, accountants have a better level of implementation, especially with regard to CDD and record keeping.

### *PEPs, Higher Risk Customers and Targeted Financial Sanctions*

258. FIs generally understood the need to perform specific enhanced measures for foreign PEP clients. However, there is currently no specific requirement to include domestic PEPs. FIs' understanding with regard to higher risk countries (including the FATF ICRG-monitored jurisdictions) and activities is more uneven and follows from their level of ML/TF risks understanding and the fact that current measures to deal with higher risk countries are not in line with FATF Standards. As such, international FIs, particularly for banks and the fund sectors, tend to have a more developed approach, and in many cases, would have included domestic PEPs in their AML/CFT controls due to their group policies.

259. Most of the larger FIs such as banks, funds sector, insurers and a major payment institution, have adopted automated process to identify and detect PEPs and to comply with their targeted financial sanctions compliance requirements. In many cases, the FIs also rely on external service providers to aid them in their compliance. These controls would also assist them in complying with their wire transfer obligations, although some challenge could exist due to the quality of CDD information obtained at the onset.

260. However, not all FIs (e.g. bureaux de change, credit unions, moneylenders) have in place adequate controls to identify and detect PEPs and designated entities in relation to TFS. For these FIs, the process (including transaction monitoring, which is relevant to the detection of suspicious transaction) is manual and is thus more prone to error and timing lapses (TFS). To some extent, the use of the consolidated lists linked to on the Central Bank's [website](#), help to alleviate some of the concerns.

261. The CBI provided information on funds that were frozen in respect of TFS. There were a total 36 transactions relating to Al Qaida, for a total of approximately USD 1 200 000 and PKR 53 600. These freezes were reported to the CBI but the funds were actually held outside of Ireland. Irish officials indicated that these all related to freezes before 2012, with no reported freezes in the past few years. The funds remain frozen. Although FIs query the CBI regularly to check the status of positive hits, CBI reported that queries have decreased substantially in the last few years, as a result of CBI guidance and outreach efforts mentioned above.

262. DNFBPs' implementation of foreign PEP requirements was less sophisticated, although part of the reason would be due to the nature of their business, some of which are predominantly domestically focused. They also suffered from the same challenges in relation to domestic PEPs. Many DNFBPs' (e.g. PMCs, HGVDs/PSMDs) have adopted manual checks and monitoring which is often ex post facto. This raises the risks in relation to their ability to identify and detect customers who are PEPs, higher risks, or subject to targeted financial sanctions in a timely manner. Nonetheless, this risk may not be as material as a number of the DNFBPs have a greater domestic focus, and would tend to be less exposed to foreign PEPs. Further it is noted that some of the larger and international TCSPs have put in place automated process which are more robust.

263. As noted above, there are indications that a number of DNFBPs tend to rely on their perceived knowledge of their customers, and while this could be useful, there are also potential downsides and could lead to potential CDD gaps in identifying and understanding the customers' risks.

#### *Correspondent Banking, Wire Transfers and New Technology*

264. Banks were able to demonstrate a good understanding of the risk assessment and controls required to mitigate the ML risks for correspondent banking. On wire transfers, the banks and payment institution appear to have a good understanding of their obligations. Screening measures and record keeping are applied by the vast majority of the FIs, and would include the relevant information obtained from the CDD process.

265. The need to adopt measures to prevent the risk of money laundering and terrorism financing from the use of new technologies appear to be understood by the FIs. However, the actual use of new technology does not appear to have taken on a significant role yet. Nonetheless, with the increasing influence of e-money, virtual currencies (including cryptocurrencies), and other new payment methods, this is an area which the authorities are continuing to focus on.

#### *Suspicious transactions reporting*

266. STRs are filed with the FIU based in AGS as well as Revenue. In general, the level of STR reporting has increased over the years and is a positive sign of awareness and reporting obligations by reporting entities generally.

267. Most FIs and DNFBPs met have a reasonable understanding of their legal obligations to file STRs. CBI's and DoJE's supervisory findings also indicate that STR issues tend to be less severe in nature, with more findings relating to minor enhancement and improvements (such as more timely filing of STRs).

268. There also appears to be a reasonably good level of awareness and sophistication (including the use of automated transactions monitoring systems) with regard to STR reporting in the banking and established payment institutions in the financial sector. Accountants met on site have a reasonably good understanding of their reporting obligations.

269. The STRs would typically relate to cash intensive business, large cash transactions not commensurate with the clients' profile, fraud, abuse of products sold and tax evasion (including window dressing of balance sheets). There are also STRs filed in relation to TF.

270. There are however some specific areas of concerns in terms of the level of STRs and practices in relation to STR reporting.

Table 27. Suspicious Transaction Reports

Sector	2012	2013	2014	2015
Accountancy Bodies	2	1	0	2
Accountants	39	43	30	44
Accountants/Auditors	20	26	23	36
Auctioneers/Property Service Providers	0	0	2	3
Banks (Credit Institutions)	9 596	9 078	10 677	13 534
Building Societies	1	3	3	1*
Bureaux de Change	44	39	46	84
Private Members Clubs	4	1	2	7
Credit Card Companies	43	27	78	80
Other Credit Institutions	1	0	22	14
Credit Unions	1 370	2 340	3 640	5 066
Dealers in High Value Goods (including precious stones and metals dealers)	5	6	19	32
Other Financial Institutions	166	371	569	492
Financial Service	5	36	38	41
Foreign Banks	1	0	0	1
Funds Industry	7	13	19	73
Insurance Companies/Services	191	246	275	346
Insurance Brokers	0	0	0	1
Investment Managers	125	157	141	155
Investment Companies	2	4	1	8
Investment Intermediaries	0	1	12	47
Money Lenders	25	7	1	19
Mortgage Brokers	18	26	7	4
Other – Bookmakers	1	10	9	20
Other – Money Cards	0	0	1	1
Other – Not Designated	5	2	1	36
Other – Financial Brokers	0	0	0	1
Payment Institutions and Agents	583	2717	2 556	1 382
Regulatory – Competent Authorities – section 63	74	43	73	108
Solicitors	12	10	20	11
Spread Betting Companies	1	0	1	0
Stock Brokers	10	15	12	20
Tax Advisors	1	1	2	1
Trust/Company Service	38	19	22	11
<b>Total</b>	<b>12 390</b>	<b>15 242</b>	<b>18 302</b>	<b>21 682</b>

\* Data on building societies is presented here for historical purposes given that currently there are no building societies authorised in Ireland.

271. For the financial sector, the authorities should study and consider whether the level and quality of STR reporting for the funds sector and credit unions are commensurate with the risks.

272. The number of STRs for the funds sector appear low, although it is noted that there are also some STRs from other relevant parties such as investment managers and companies, and to some extent, reliance on 3<sup>rd</sup> party CDD controls could have helped to lower this number. However, more work should be done to ascertain if this is due to over reliance by some funds relying on the asset or investment managers, and not carrying out adequate checks and monitoring on their part.

273. On the other hand, the number of STRs filed by credit unions is exceedingly high, and is 2<sup>nd</sup> only to the banking sector. The numbers do not appear to be commensurate with a medium-low risk sector. The authorities had explained that this was due to the lack of filters. However, authorities should take further steps to study and address this situation, including whether the number of STRs could relate to defensive filing of STRs which are not comprehensive in explaining the reasons for suspicion.

274. The authorities should also consider the specific factors leading to the more than 40% decrease in STRs from payment institutions, i.e. from 2 556 in 2014 to 1 382 in 2015, especially taking into account the FIU's concern over the level of STR reporting from payment institutions passported into Ireland.

275. For the DNFBP sector, the low numbers of STRs filed (e.g. TCSPs, PMCs, PSMDs, PSPs) indicate that more could be done. The authorities should also consider studying further reasons for the decreasing number of STRs from TCSPs.

276. Another key issue is that certain DNFBP sectors seem more reluctant to file STRs. This could be due to a range of factors such as a lack of awareness and guidance (for some DNFBPs) and the social/cultural context. It is noted that where employees know their customers personally, they would be reluctant to file an STR. This is further made more difficult for sectors such as the PSMDs as the business may be closely related to their livelihood. Thus the decision on whether to file an STR, even when the transactions are suspicious (but would affect their business) may be more challenging. Reporting entities fear being known to be the ones to have made the STRs, particularly in areas where the community is small or where there is a strong social network.

277. It would be useful for the authorities to provide more feedback to reporting entities (aside from the specific feedback on STRs which the FIU would provide to reporting entities when contacted), including on typologies, red flag indicators (including for TF) and the quality of STRs. The authorities should also consider conducting more outreach, including taking steps to provide greater assurance on the confidentiality of STRs to increase the level and quality of STR filing.

#### *Overall conclusions on Immediate Outcome 4*

**278. Ireland has achieved a moderate level of effectiveness for IO.4.**



## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. The Central Bank of Ireland (CBI) and the Department of Justice and Equality (DoJE) have a good understanding of the ML/TF risks present in the sectors that they supervise. The understanding of risks at an individual entity level, is not as comprehensive but will improve with the full implementation of the risk supervisory model.
2. There is good cooperation between financial institutions (FIs) and DNFBPs and the supervisors which are well-respected. The outreach measures and guidance have been helpful to them.
3. The CBI has generally robust controls in place at market entry for FIs, including background checks. The CBI also proactively targets unauthorised financial services providers.
4. The CBI's current enhanced ML/TF risk assessment model has been in place since Q3 2015. It assesses ML/TF risk on a sector and individual entity level basis and this informs its supervisory strategy. The CBI's sector risk findings were inputted into the NRA and the overall findings in the NRA were calibrated back into CBI's ML/TF risk assessment model in 2016.
5. The CBI also developed an AML supervisory engagement model combining inspections, review meetings, risk evaluation questionnaires and information from prudential supervisors or law enforcement. This has been accompanied by a substantial increase in resources of the CBI's AML Division, from 18 employees in 2014 to 34 in November 2016.
6. The DoJE has good fitness and probity controls, however, some improvements can still be made to avoid over-reliance on self-declarations.
7. The DoJE adopted risk-based supervision in October 2015, for the DNFBPs (i.e. TCSPs, tax advisers/external accountants, PMCs and HVGs) it supervises. The DoJE has concentrated its efforts on PMCs, and TCSPs, with a majority of the inspected entities rated as low risk, after considering inspection results. The nine designated accountancy bodies have varied approaches to monitoring, hence results are uneven. The Law Society has consistently conducted supervision based on general risk factors, since 2003, and covered its entire supervisory population at least once. The PSRA was appointed in September 2016, as the AML/CFT supervisor for the real estate sector, and has begun AML/CFT supervision of the sector.
8. The full scope of the supervisory population, falling under the DoJE remit (in particular, TCSPs, PSMDs, tax advisers, external accountants) still needs to be further determined, as some of the persons or entities conducting activities covered by the CJA 2010, are still being identified by DoJE and brought under the AML/CFT regime.

#### **Recommended Actions**

##### **Financial Institutions**

1. The CBI should continue to enhance its ML/TF risk understanding of individual FIs. It should also continue to develop a greater number of quantitative factors, in order to capture

evolving ML/TF risk in the financial sector.

2. The CBI could consider further strengthening its licensing process, including by extending the criminal background check requirement for directors, senior management, qualifying shareholders as appropriate, and in particular for non-Irish applicants to an Irish FI.
3. The CBI should continue to take dissuasive sanctions against FIs that do not comply with their AML/CFT requirements, and where appropriate, sanction individual senior management (none have been taken to date).
4. The CBI should continue to issue reports or guidance on its regulatory expectations.

#### **DNFBPs**

1. Some DNFBP supervisors should improve internal controls on fitness and probity and not only rely on self-declarations.
2. Certain legislative amendments should be made to bring measures applicable to DNFBPs fully into compliance with the FATF standards. In particular, due diligence controls should be made on the purchaser of real estate transactions and PMCs should be licensed.
3. The DoJE should clearly determine the PSMD, TCSPs, external accountants and tax advisors' supervisory population. A registration regime or some other form of control, could be implemented for accountants that perform the activities indicated in FATF Recommendation 22.1 (d), ensuring that those not captured by a designated accountancy body, are supervised by the DoJE (since not all accountants are required to belong to an accountancy body to practice, and are still in the process of being identified by the DoJE).
4. DoJE should continue to enhance its understanding of risks, including the risks bared by entities not yet fully monitored, e.g. PSMDs or other DNFBPs not yet fully captured under its supervisory programme.
5. The DoJE should continue to expand its monitoring of entities under its remit, and increase its resources accordingly.
6. The PSRA should continue the monitoring of PSPs, implement a risk-based approach, issue AML/CFT guidance and provide feedback to PSPs.
7. A more harmonised risk based monitoring, including the criteria to classify the accountants as compliant or not for AML/CFT matters, and sanction framework would be appropriate for the nine designated accountancy bodies.
8. DNFBP supervisors should increase their controls as regards the application of targeted financial sanctions. The DoJE should continue to provide feedback on the results of its monitoring programme to the various sectors, and focus on CFT.
9. The Law Society and designated accountancy bodies should apply effective, proportionate and dissuasive sanctions to DNFBPs, which do not comply with their AML/CFT requirements.

279. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34 & 35.

### *Immediate Outcome 3 (Supervision)*

*Licensing, registration and controls preventing criminals and associates from entering the market*

#### *Financial institutions*

280. Licensing controls are generally robust in the financial sector, with the CBI conducting a variety of controls in functions requiring pre-approval such as directors, senior management, qualifying shareholders, beneficial owners of FIs before an authorisation is granted. AGS vetting is done systematically for one-person companies and for others, once any suspicion arises from a general background check (i.e. online databases, prior employers' references, etc.). For non-Irish applicants to Irish FIs, self-declarations are completed and background checks are done as a rule, and include contacting the regulator of the country of the applicant. However, no criminal background checks are performed on a systematic basis. This is an area that could be further strengthened. The principal criteria for assessing applications include: a) acceptability and transparency of the ownership of the FIs; b) fitness and probity of the directors and senior management (which is assessed based on sector legislation) and c) suitability of qualified shareholders. The CBI also looks at the adequacy of the capital to be invested from a prudential perspective, internal controls and risk management systems and the level of resources and expertise of the staff. The most recent authorisation process the CBI went through before Ireland's on-site visit, was the licensing of an electronic money institution where the CBI conducted an on-site visit at the headquarters of the parent organisation to further understand controls in place. The CBI provided figures where fitness and probity led to either refusals or withdrawals of applications. Refusals are rare, while the request for more information from CBI, often led applicants to withdraw their application. From 2012 to 2016, there were 15 153 fitness and probity applications. While there were no refusals, 730 requests were withdrawn.

281. A dedicated unit of CBI proactively targets unauthorised financial service providers (the Unauthorised Providers Unit (UPU) team). It issues correspondence to providers, notifications to law enforcement and to foreign regulators and publishes warning notices to alert the public and encourage reporting of unauthorised activities. The unit made a court direction to one unauthorised provider in 2015. It also inspected the premises of firms suspected of providing unauthorised financial services. CBI indicated that the majority of the cases related to boiler-room scams operating from other jurisdictions that advertise their services through websites, to customers in Ireland.

#### *DNFBPS*

282. The DoJE performs some fit and probity controls at market entry, with AGS vetting for TCSPs. In respect of the other DNFBPs under DoJE's supervision, controls are often performed before inspection for PMCs, and only following an on-site inspection for other sectors. Controls of TCSPs are done again at the time of the renewal of the authorisation. Fitness and probity controls are applied by most of the designated accountancy bodies, but they are largely based on a self-declaration completed by the applicants, which must be renewed annually. The Law Society follows the same

principle of self-certification by the applicant (which must be renewed every year) whereby the solicitor declares if he/she has been convicted and imprisoned for a criminal offence. The Law Society is not performing any specific internal control on those self-certifications, but lawyers involved in a court case (in Ireland) would be known to the Law Society and this is believed to facilitate awareness of any misconduct or reputational issue. In a typical year, about fifteen solicitors are struck-off for various reasons, e.g. professional misconduct.

283. In any case, if the applicants intentionally complete a declaration incorrectly, they may be liable to prosecution.

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### *Supervisors' understanding and identification of ML/TF risks*

#### *Financial Institutions*

284. Ireland has a well-developed financial sector and is the 4<sup>th</sup> largest exporter of financial services in the EU. In particular its investment funds and money remittance sectors may be inherently vulnerable to both money laundering and terrorist financing risks.

285. The CBI has a good understanding of the ML/TF risks of the sectors it supervises. The understanding of risks at an individual entity level is not as comprehensive but will improve with the full implementation of the risk supervisory models.

286. The AML Division (AML/D) within CBI is responsible for AML/CFT supervision. This division had 34 full time employees at the time of the on-site visit, and has notably increased its staff from 18 in 2014. Staff members have various appropriate backgrounds (legal, financial, and audit). The AML/D is divided into two main Functions: Supervision; and Legal, Policy & Risk. At the time of the on-site visit, the Supervision team comprised 20 people and was split into four units: high-risk, medium-high risk, medium-low risk, and responsive supervision. The Legal, Policy and Risk Function comprises three teams: Risk and Analytics Team, Legal and Policy team, and the Financial Crime Team (Financial Sanctions and UPU).

287. The AML/CFT supervisory strategy up to 2014 was based in two pillars: on-site inspections were completed each year by the AML/D, and a prudential risk based framework was followed, involving prudential supervisors carrying out both desk based supervision and on-site interviews and testing. In 2015, the CBI established a framework to assess ML/TF risk in each financial sector and at the individual firm level. The CBI defined the risks at each financial sector level, after it completed its first sector ML/TF assessment in October 2015. The sector process was based on consultations with relevant stakeholders. The sector assessment was updated in 2016 to incorporate the results of the NRA.

288. The AML supervisory engagement model is risk-based and uses four ratings, with one per sector: high, medium-high, medium-low and low. It defines inherent risk based on the nature, scale, and complexity of each sector, products and services offered, customers' types, distribution channels, and geography. The adequacy of the management systems and controls is also assessed. The level of inherent risk, taking into account the quality of the controls, leads to the residual risk. The same methodology is used to apply ML/TF risk ratings to individual FIs and the sectors to which

they belong. The CBI ML/TF risk assessment methodology comprises both qualitative and quantitative elements into a defined calculation process thus enhancing the objectivity of the assessment process. CBI could however enhance its ML/TF risk assessment methodology, and develop a greater number of quantitative factors, in order to better capture evolving ML/TF risk in the financial sector.

289. CBI applies an individual rating to each FI, which is initially derived from its sectorial rating. The FI's ML/TF risk rating is then reassessed each time there is a supervisory engagement (e.g. inspections, Risk Evaluation Questionnaires, MLRO meetings). Other triggers for the reassessment of the FI's ML/TF risk rating, may include information received from prudential supervisors, law enforcement or other regulators. There is scope to enhance the rating process, in order to maintain consistency between the ratings of individual FIs, and the rating of the sector they belong to. At the time of the on-site, not all FIs under CBI's supervision had been individually risk assessed.

290. The sectors defined as high risk are the retail banks, bureaux de change, electronic money institutions, and MVTS. The high ML/TF rating was applied to retail banks due to nature, scale and complexity of the sector, and its role in providing core banking services to a broad population. Others, such as bureaux de change, were rated high risk because the products and services offered are cash based, which facilitates anonymity and makes them more vulnerable from an ML/TF perspective. Other information and intelligence shared by law enforcement and other sources was also considered in determining the ratings of the various sectors. STR levels and any particular concerns expressed by AGS, were also considered.

291. There are five categories of risks defined at the FI level, which are the same as the sector ratings, plus an ultra-high sub-category. These are high-risk entities which involve the use of new technologies or other factors, which increase their risk level. These FIs are assessed at the ultra-high level given the nature and scale of their activities and the inherent ML/TF risk present, regardless of the level of their compliance measures. At the time of the on-site, these ultra-high-rated entities were the three (3) largest retail banks and a large financial institution that operates on a cross-border basis in the EEA.

### *DNFBPs*

292. There is a dedicated unit within the DoJE in charge of AML/CFT matters and inspections (AMLCU) for the majority of the DNFBPs falling under its remit. Others are covered through the Law Society, designated accountancy bodies and the PSRA. The AMLCU had, at the time of the on-site visit, three full time employees and one part-time employee in charge of the inspection of 1 929 identified DNFBPs falling under the remittance of DoJE<sup>32</sup>. The DoJE's supervisory strategy before 2014 was to create awareness in the sectors, and since October 2015, to apply risk based supervision. The DoJE has a good understanding of ML/TF risks present in the DNFBPs it supervises.

<sup>32</sup> This supervisory population includes all High Value Good Dealers in Ireland which does not only include PSMDs but other high value good retailers (i.e. any person trading in goods in cash, over EUR 15 000), including the car industry which was considered of a particular risk for Ireland,(even if the MER would not focus on these, according to R. 22).

A similar level of understanding of risks is not present among the other bodies that monitor the range of DNFBPs.

293. During the on-site visit, the Assessment Team met, among others, with the PSRA. Prior to being appointed as the competent authority for AML/CFT purposes, the PSRA was the licensing and regulatory authority for the real estate sector (since 2011). The PSRA appeared to have a good understanding of the ML/TF risks in the real estate sector, in Ireland, although a more formal identification of the risks is yet to be done.

294. The Law Society has a good understanding of the domestic risks, rather than cross-border risks, which could be an issue as aside from providing legal advice, lawyers can provide trust and company formation and administration services. The designated accountancy body which the Assessment Team met during the on-site visit, as a representative of a considerable part of the accountancy sector, demonstrated a good understanding of the risks, but was also more focused on domestic risks. The role of these gatekeepers and the use of complex offshore structures would benefit from closer monitoring. There is also some room to improve the understanding through more awareness and coordination by the authorities, especially as regards to designated accountancy bodies.

295. The sector level risk rating used by DoJE follows the risk levels identified in the NRA: TCSPs, PMCs, HVGs, tax advisors/external accountants, and legal services are rated medium-high, while real estate and notaries are rated medium-low. DoJE also adopted a risk based approach and a supervisory strategy comprising desktop reviews, on-site inspections, review meetings and outreach and awareness.

296. The DoJE designed a checklist specific to each sector, which is completed by the authorised officer, before each inspection, so as to have comparable information from each sector. Responses to these checklists determine the ultimate level of compliance within an entity i.e. compliant, partially compliant or non-compliant and the necessary follow-up actions (if any) required, and have an impact on risk classification. The DoJE is very aware of the ML/TF risks associated with PMCs and during 2016 undertook to inspect and risk rate each of these entities.

297. At the time of the on-site visit, not all DNFBPs under DoJE's supervision had been individually risk assessed taking into account the entity specific risks. The DoJE indicated that this is a work in progress and that it continues to develop an overall understanding of sectoral risk, through the assessment of entities within its supervisory programme.

298. The Law Society conducts reviews which are generally based on risk, while not AML/CFT specific. The factors taken into account when assessing a firm's risk profile include previous investigation histories of firms, compliance with their annual reporting requirements, delays in filing accountants' reports or complaints received, judgment debts registered, issues concerning unpaid cheques drawn on office account, media reports or tip-offs.

299. Each of the nine designated accountancy bodies has its own assessment of risk, although they do not specifically focus on AML/CFT matters, but rather on professional standards. A number

of designated accountancy bodies in Ireland are also members of the Accountants Affinity Group<sup>33</sup> and share a common, basic understanding of what can be considered compliant vs. non-compliant, corresponding level of risk, and what follow-up actions should be taken for each behaviour. However, there is no common risk assessment framework adopted by the nine designated accountancy bodies.

### *Risk-based supervision of compliance with AML/CTF requirements*

#### *Financial institutions*

300. As explained above, the CBI applies a risk-based approach and a combination of supervisory actions. The CBI indicated that an on-site inspection takes on average 25 days. The supervisory engagement model includes on-site inspections, review meetings (meetings with Senior Management), the completion of Risk Assessment Questionnaires (REQs) which include information on ML/TF risk assessments, CDD and on-going monitoring, training, policies and procedures, financial sanctions, and suspicious transactions. It may also involve frequent communication through the appointment of a dedicated Relationship Manager for the ultra-high risk rated entities. The minimum supervisory engagement model is further detailed, per type of entity in the table below, where medium-high entities are inspected at least every five years and medium-low entities are inspected following spot checks or as a response to a specific concern.

**Table 28. CBI's Supervisory engagement model**

FI level	Ultra High	High	Medium High	Medium Low	Low
Inspection	Every year	Every 3 years	Every 5 years	Spot checks & responsive	Spot checks & responsive
Review meetings	Annually	Annually	5 years	Spot checks & responsive	No
REQ	Annually	Annually	2 years	3 year	Spot checks & responsive
Relationship Manager	Yes	No	No	No	No
Total FIs	4	45	129 (excluding 2,581 funds)*	574	2019

\* REQs will be sent to all investment funds, but the funds themselves will not be inspected. Inspections will be made at fund administrators' level.

301. During the period 2013-2015, 84 on-site inspections were performed: 22 in 2013, 30 in 2014, and 32 in 2015; 26 desk-top reviews were conducted over the same period. Considering the figures since the RBA supervision was implemented in 2015 and up until the date of the on-site visit, 26 high-risk and ultra-high risk entities, and 14 medium-high were inspected, out of a total of 67 entities, which is positive.

<sup>33</sup> The Accountants Affinity Group (AAG) is a sub-committee of the United Kingdom's Anti Money Laundering Supervisors Forum. The AAG is a forum in which professional bodies work collaboratively to develop accountancy sector supervisory policy to promote consistency in standards and best practice. This includes AML/CFT.

302. Aside from AMLD inspections, the prudential supervisors within the CBI, may identify AML/CFT issues when conducting its own inspections. These are then referred to the AMLD. The AMLD and the prudential supervisor hold regular meetings and have good cooperation. 111 prudential inspections involving an AML/CFT component were conducted during the years 2013-2015. Four referrals to AMLD were made following these inspections.

303. Based on the inspection files examined, the quality of the CBI's on-site inspections is satisfactory. Special focus was made on correspondent banking during the summer 2016, in three retail banks, where preliminary findings related to training, and policies and procedures.

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304. CBI conducts AML/CFT supervision of agents and branches of FIs that operate in Ireland under EU passporting rules. In this regard, the Irish financial sector is home to six money remitters, and there are 21 foreign money remitters passporting with an establishment in Ireland. The CBI has also put in place a framework to cooperate with other prudential and AML supervisors in respect of a financial institution that is authorised in Ireland and passports across the EU. A wider concern remains that EU rules impose on the host supervisor a requirement to supervise; however some host supervisors may not have the power to, or decide not to supervise. While this deficiency is not attributable to Ireland, the CBI has attempted to mitigate it through engagement with host supervisors.

305. Irish domiciled funds are administered by 42 Fund Service Providers (FSPs) based in Ireland. The CBI inspected the major FSPs over the years 2014-2016, representing approximately EUR 1.6 trillion or 84% of the total Irish domiciled funds under administration. More than 80% of the shares of these funds are distributed to EEA countries, the USA, and Japan. The major channel of distribution is through AML/CFT regulated intermediaries. Funds may rely on those third parties to conduct CDD. International experience suggests that there may be some difficulties in identifying beneficial owners.

306. However, CBI's recent inspections of smaller fund administrators indicated that they have appropriate CDD processes to identify beneficial owners, good ML/TF risk assessments, and the awareness on how to deal with complex structures.

307. The AMLD Inspections Procedure Manual as of October 2016, made a brief reference to the supervision of financial groups and in practice, the CBI expects that groups will implement group wide programmes, and where a firm is part of a financial group that has been subject to an on-site inspection, any findings made will also be reflected in the AML/CFT policies and procedures of the other group entities. For example, an on-site inspection was carried out on a large retail bank in 2013, that also has a life insurance subsidiary. During the on-site inspection of the life insurance subsidiary in 2015, the CBI noted that its policies and procedures had been updated to reflect the findings made in the inspection of its parent in 2013.

### *DNFBPs*

308. The DoJE has conducted inspections following a risk-based approach, in the various sectors under its remit (see Table 29 below), and also considers authorisation renewals (i.e. It is required that TCSPs are inspected at a minimum, once every three years or before renewal, but overall

numbers above are considered balanced), with the length of inspections determined by the nature and size of the entity, e.g. a TCSP could take up to a day whereas a HVGD (including a PSMD) could take on average two hours with inspection of PMCs being on average three – four hours long. During inspections DoJE reviews compliance with the AML/CFT legislation, but these also serve to raise the entity’s awareness of its AML/CFT obligations. As a result of each inspection, the entity is assessed as being fully compliant, partially compliant, or not compliant. An entity that is fully compliant is one that can demonstrate that it meets all its AML/CFT requirements under the legislation. A partially compliant entity would have failed to demonstrate compliance in respect of one or more key requirements (i.e. CDD obligations, PEPs, etc.), while an entity that is not compliant would not meet any of its AML/CFT requirements. In addition to this, following inspection, each entity is risk rated, also on the basis of pre-determined criteria for the purpose of categorising the entity’s inherent risk. The majority of the inspected entities thus far (as of the time of the on-site visit), were generally rated low risk, given the results of their inspections, even if the risk sector to which they belong originally to, was higher.

**Table 29. Number of Inspections by Sector**

	2013	2014	2015	2016*	Total number of inspections	Total number of entities **
<b>TCSPs</b>	127	69	88	65	349	314
<b>PMCs</b>	35	29	37	34	135	40
<b>PSMDs</b>	1	3	1	1	6	451
<b>Tax Advisors / External Accountants</b>	40	19	11	2	72	120
<b>Total</b>	<b>203</b>	<b>120</b>	<b>137</b>	<b>102</b>	<b>562</b>	<b>925</b>

\*Number of inspections from 1 January 2016 to 30 September 2016

\*\*The total number of entities may increase in the case of accountants for instance, where authorities indicated they are in the process of identifying other accountants which may be performing activities covered under CJA 2010 and may need to be brought under the regime.

309. The DoJE has placed significant emphasis in its monitoring programme, on the motor industry as it has the potential to be used as an outlet for AML/CFT activities. This could explain the lack of focus in other areas such as PSMDs in the table above. The focus on the motor industry however, is supported by intelligence from the AGS and follows the risks described for this particular sector in the NRA. PSMDs have not been intensively supervised over the last four years (six inspections during the period). Authorities indicated that this is also justified because of the economic situation (post 2008 financial crisis), where they have witnessed a substantial decrease in transactions pertinent to the FATF standards when consulting with the sector, and therefore considered them as lower risk. Authorities indicated that this sector comprises around 451 entities (many of them small, family-run businesses), however, there is no clarity on the size and materiality of the sector. Further, the NRA and private sector feedback suggests that PSMDs, including through cash, could be used for money laundering and organised criminal activities.

310. The Law Society has a team of 11 investigating accountants specialised in solicitors' practices who perform, among others, AML/CFT supervision. There are 2 200 solicitors' firms and 9 700 solicitors with practising certificates in Ireland. Around 18% of the firms are inspected every year for compliance with their statutory obligations, including AML compliance. It has been the Law Society experience that there is a strong correlation between statutory obligations' breaches and poor or non-compliance with solicitors' AML obligations. A routine inspection would be expected to take on average three days of which about half a day will be devoted to AML/CFT obligations. The fulfilment of CFT obligations does not seem to be a focus of the investigations, albeit the lists of UN sanctioned entities are available on the Law Society members' [website](#).

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311. The designated accountancy bodies normally carry out AML/CFT controls as part of their inspections on the adherence to required professional standards. Inspections are performed on the basis of a combination of desk based reviews of annual returns and on-site visits, which makes it sometimes difficult to isolate the AML/CFT elements from the accounting requirements. Recent years have seen an increased focus on adapting a risk-based approach to monitoring. The nine designated accountancy bodies have however varied approaches to monitoring, and the results of monitoring are uneven.

312. The designation of the PSRA as competent authority for the real estate sector (Property Services Providers (PSPs)) was effective only 1 September 2016. In November 2016, 267 AML reviews had been assigned and conducted, but had not been fully analysed. Authorities indicated that they showed a low level of AML/CFT compliance of PSPs. Furthermore, PSPs are not required by law to perform due diligence on the purchasers of property, which is not in line with R.22 of the FATF standards (i.e. it should be extended to both the purchasers and vendors of the property), and this has an impact on compliance with CDD obligations.

313. Generally speaking, the DNFBP supervisors should put greater emphasis on the role of the gatekeepers in the context of the use of complex offshore structures and on the controls of TFS.

314. The total number of PSMDs and TCSPs is not clearly established. The DoJE is aware that a number of entities within the sectors falling under its remit, namely TCSPs, HVGs, tax advisers, external accountants, are not being supervised for AML/CFT purposes. There are some concerns as to the frequency and intensity of the DoJE inspections and its limited resources (3 full time persons and 1 part time person). Further, coverage needs to be enhanced, especially as DoJE is aware that certain entities falling under its remit (TCSPs, HVGs, tax advisers, external accountants) are not being monitored for AML/CFT purposes. DoJE is taking steps to expand its supervisory reach in this regard.

315. Apart from PMCs and some TCSPs, other DNFbps are subject to less intense monitoring, leaving them susceptible to abuse (PSPs, PSMDs, accountants, and tax advisers). It is acknowledged that significant supervisory efforts were placed in the motor industry as this has been identified as a vulnerable sector in Ireland in the context of AML/CFT, albeit it does not fall within the FATF standards. A more harmonised risk based monitoring could also be appropriate for the nine designated accountancy bodies.

*Remedial actions and effective, proportionate, and dissuasive sanctions**Financial institutions*

316. The CBI has a full range of measures available including remedial actions and sanctions, such as issuing statutory directions, supervisory warnings or imposing penalties, pursuant to CBI administrative published sanctions procedure. At the time of the on-site visit, no statutory directions or withdrawals of licences had been made relating to AML/CFT breaches, and no sanctions had been imposed on senior management for AML/CFT violations.

317. From 833 findings over the years 2013-2015 (84 inspections and 26 desktop reviews), there were 1 644 remedial actions taken, concerning 95 FIs. During the same period, 11 cases were referred to the Enforcement or sanctions area within the CBI, to investigate and consider whether financial penalties should be imposed. The inspection files can only be closed when all remedial actions have been taken, and it was noted that all inspections completed prior to 2016 were closed. Up to November 2016, there were 118 findings open on 16 FIs inspected in 2016. FIs are required to provide CBI with regular written updates on their progress to address the findings. The files reviewed during the on-site demonstrated this rigorous follow-up. The CBI has indicated that on average the majority of remedial actions are closed within a period of six months, unless for example, specific IT developments have to be made.

318. The five following fines have been imposed as regards breaches of AML/CFT legislation:

Table 30. **AML/CFT fines imposed by CBI**

Year	Type of FIs	Amount (EUR)
2012	Credit union	21 000
2012	Life insurance company	65 000
2013	Life insurance company	50 000
2015	Money remittance firm	1.75 million
2016	Retail Bank	3.325 million

319. The determination of the amount involves considering a range of factors such as the seriousness, the consequences and the tolerance level of the breaches. An important part of the sanctioning regime is the publication of a public statement by the CBI, that sets out the nature of the violations and the fine imposed. In addition to the sanctions imposed at the time of the on-site visit, there are further cases referred to Enforcement for action. The referral rate of AMLD inspections to Enforcement in the period 2013-2015 is 11 out of 195 inspections (these number includes both prudential, where a matter to be referred was found, and AML/CFT related inspections).

*DNFBPs*

320. Administrative sanctions taken by the DoJE so far, are mostly issuing directions (to take remedial actions). In relation to TCSPs, the DoJE may also revoke an authorisation or impose

conditions on a TCSP (this was applied six times in 2014 and 10 times in 2015). The DoJE follows an outreach and “compliance approach” in its supervision, where it prefers to encourage DNFBPs to be compliant, and create awareness about what is required to be compliant. The DoJE can apply criminal sanctions under the CJA 2010 for controls breaches, but typically relies on its direction making power. Some directions have been issued, and according to the DoJE, have been increasingly effective.

Table 31. Directions issued by DoJE

Year	HVGD	Tax advisors	TCSP	PMC	total
2013	8	0	0	6	14
2014	6	0	2	0	8
2015	7	1	0	0	8
2016 (up to early Nov.)	2	0	1	1	4
<b>Number of directions issued</b>	<b>23</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>34</b>

321. Since PSRA was only designated as the PSP supervisor on 1 September, 2016, no action or sanction against a PSP had been taken as of November 2016.

322. The Law Society referred one case related to unsatisfactory AML procedures in 2015 to the Solicitors Disciplinary Tribunal, this has not yet been adjudicated. In 2013-2015, several calls for remedial action/satisfactory actions in relation to AML procedures were made. The lack of procedures effectively diminished from 47 (2013) to 20 (in 2015), for the same period. At the time of the on-site visit, no financial sanctions had been imposed for AML/CFT violations and no sanctions had been imposed on management of law firms.

323. As each designated accountancy body has its own monitoring process and remedial methods in cases of non-compliance, there is room for a greater harmonisation of follow up of remedial actions and sanctions specifically taken for AML/CFT matters. Remedial actions taken by some designated accountancy bodies and the Law Society seem effective. Specific AML/CFT sanctions have however, not been applied.

### *Impact of supervisory actions on compliance*

#### *Financial institutions*

324. FIs noted that communication with the supervisor is generally good and they have a good working relationship. The CBI issued in 2015 and 2016 four (4) sector reports on banks, credit unions, life insurance and investment funds that set out CBI’s expectations. These reports were positively received by the industry.

325. The CBI noted that those reports had a positive impact on the FIs, as some of them undertook a gap analysis versus the expectations mentioned in those reports. Specifically for a financial group, as indicated above, the CBI noted that the policies and procedures on a life insurance company had been updated to reflect the findings made in the inspection of its parent in 2013. Furthermore, in the

case of MVTs providers, the remedial actions imposed on one firm had some positive consequences on the compliance of agents appointed by both this firm and other MVTs providers. The CBI indicated that while sanctions may not always ultimately be applied, the possibility of enforcement actions, along with other supervisory actions has brought about increased compliance.

### *DNFBPs*

326. The DoJE and the Law Society indicated that inspections have an impact on the awareness of the DNFBPs under their monitoring, to become compliant. Nevertheless the level of compliance, around 80% on average for the Law Society, would merit closer monitoring. An 80% average of compliance may seem high, however the level of compliance slightly decreased from 2013 to 2014 and remained at 80% for 2015, instead of improving. Consideration should be given to the fact that solicitors have been consistently inspected since 2003.

327. Because of the variety of actions possible at a designated accountancy body level and of the lack of statistics regarding the remedial actions and sanctions imposed for AML/CFT, it was difficult to assess the impact for the accountancy sector. Although there is one case where monitoring by one accountancy body resulted in increased compliance in a small rural firm, which was then involved in a potential tax evasion case, where the accountancy firm acted promptly to prevent it. The improvement in compliance of this firm, in subsequent AML/CFT inspections, was notable.

### *Promoting a clear understanding of AML/CTF obligations and ML/TF risks*

#### *Financial Institutions*

328. The CBI uses a variety of outreach methods to communicate with the FIs to create understanding and awareness of AML/CFT obligations and understanding of the risks including letters to the CEOs of FIs (other details for CBI and other authorities in terms of Guidance are provided under R.34). The CBI participated in the drafting of guidelines prepared by a number of industry representatives. The CBI also provides regular presentations and seminars to the industry, and participates as a presenter in other training events by external parties. It also uses its [website](#) and the on-site inspections to raise awareness and communicate supervisory expectations through issuance of reports for some sectors. Some bilateral meetings with Money Laundering Reporting Officers (MLROs) took place over the course of 2015, to promote good practises and highlight improvements to be made. Through its supervisory engagement model, the CBI promotes a good understanding of AML/CFT risks.

### *DNFBPs*

329. The DoJE [website](#) offers information leaflets for PMCs and HVGs, a list of ML risk factors, STRs forms and information on targeted financial sanctions. The website describes the role of the AMLCU and its supervisory expectations. The DoJE held two briefing sessions for DNFBPs in 2016, jointly with CBI, AGS and Revenue.

330. The DoJE should however seek to give some feedback on the results of its monitoring programme, to each specific sector, and focus on CFT topics.

331. The Law Society raises awareness of solicitors' AML duties and ML risks, through a variety of methods, including its AML Guidance Notes, a dedicated AML web resource which highlights red flag indicators, eZine, website and Gazette alerts, international guidance, a dedicated AML Helpline, and education and training seminars. AML training is compulsory for all trainees and for all firms. These should also focus on TF risks.

332. Most of the designated accountancy bodies provide training, advice and guidance to the members through their respective websites. A specific guide ("M42") that provides guidance on a firm's compliance with the aspects of the CJA was issued in 2010 by the Consultative Committee of Accountancy Bodies, which is an umbrella group of the accountancy profession in Ireland. ICAI, ACCA and ICPA have technical helplines for their members. CAI chairs and generally hosts the "AML Accountancy Group". This group has proven useful, allowing the professional accountancy bodies to share experiences, regulatory information, and best practices.

333. The PSRA should begin guidance on AML/CFT obligations and the understanding of the ML/TF risks for the real estate sector.

334. Irish supervisors generally promote a clear understanding of AML/CFT obligations, and to some extent, a clear understanding of ML/TF risks, through various means explained above. Industry representatives interviewed during the on-site visit nevertheless indicated a strong appetite for more engagement and guidance on the supervisors' expectations, especially with respect to the forthcoming 4AML.D.

#### *Overall conclusions on Immediate Outcome 3*

**335. Ireland has achieved a substantial level of effectiveness for IO.3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. Ireland has good information, available centrally and publicly, on creation and types of legal persons and the legal ownership of corporate vehicles. Similar information on legal arrangements is gathered by Ireland's tax authorities but is not publicly available.
2. Ireland has assessed and acknowledges that legal persons and arrangements may be used by persons seeking to launder illicit proceeds. But there is not yet a comprehensive understanding of the vulnerabilities and the extent to which legal persons created in the country can be, or are being, misused for ML/TF.
3. Ireland has taken some measures to prevent the misuse of legal persons. Registration and ongoing filing obligations to CRO provide for detailed measures to ensure legal persons are created in a transparent manner. Basic information and legal ownership information can be easily obtained. However, obtaining beneficial ownership information beyond the immediate shareholder is currently limited. Ireland permits the use of nominee directors and shareholders for companies, but a new obligation on all corporate entities to obtain and hold current beneficial ownership data will provide some mitigation of risks of ML/TF abuse via nominees by effectively requiring disclosure of nominee shareholders and directors where they are used to effectively control the company.
4. Revenue maintains beneficial ownership information for certain legal persons and for legal arrangements which have tax consequences. Further beneficial ownership information is obtained and maintained individually by FIs and DNFBPs pursuant to CDD obligations provided for in Ireland's AML/CFT law. Competent authorities have the necessary powers to access this information in a timely manner in the cases when the legal person or arrangement has a relationship with the financial institution or professional service provider. Notwithstanding the CDD and tax law requirements, there are limitations on the availability of information regarding beneficial ownership of express trusts.
5. A range of sanctions for failure to provide annual filing information are generally applied effectively; but it is unclear if other sanctions are proportionate and dissuasive.
6. Ireland has proactively taken steps to provide for the central register of corporate beneficial ownership through regulations of 15 November 2016. Once fully established and operational, this will enhance timely access to accurate and up-to-date information on beneficial ownership

#### **Recommended Actions**

1. Ireland should continue work to conduct comprehensive ML and TF risk assessments for all types of legal persons, specifically considering international threats.
2. Ireland should continue to take proactive steps to facilitate the operation of the central register of corporate beneficial ownership.
3. Ireland should enact and implement further measures to mitigate the ML / TF risk posed by nominee directors and shareholders.

4. Ireland should take further steps to ensure competent authorities can have timely and accurate access to beneficial ownership information including from FIs and DNFBOs.
5. Ireland should ensure that there are proportionate and dissuasive sanctions for failing to collect timely and accurate BO information.

336. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

#### *Public availability of information on the creation and types of legal persons and arrangements*

337. Ireland has good information, available centrally and publicly, on creation and types of legal persons established in Ireland. This information is available publicly on the Company Registration Office (CRO) [website](#). The process for the creation of legal persons and for obtaining and recording basic ownership information is set out in the Companies Act 2014 and through pamphlets issued on the CRO website. Information is updated through the requirement on all registered legal persons to make annual and event-driven filings of basic data.

338. Legal persons can only be created in Ireland through registration on either the CRO, as a company or industrial and provident society, or on the CBI's ICAV register as an Irish Collective Asset-Management Vehicle. Both these registers are publicly accessible.

339. Currently, there is no central repository for information about the creation and types of legal arrangements, and the information that is filed is not publicly accessible. Express trusts that generate income or that have tax consequences are required to register for tax with Revenue; however this information is not accessible in a public database. Trustees of registered trusts file basic information on trusts with the tax authorities. Pursuant to the 4AMLD trust-related information thus filed will be used to establish a central repository of beneficial ownership information on trusts and similar legal arrangements. Pending consideration by the EU of the privacy implications of granting public access by Member States to central registries of legal arrangements, Ireland's repository will not be publicly accessible.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

340. Ireland has assessed and acknowledges that legal persons and arrangements may be used by persons seeking to launder illicit proceeds. But there is not a clear understanding of the vulnerabilities and the extent to which legal persons created in the country can be, or are, misused for ML/TF. In the cross-border context, the authorities reported that the main risks appear connected with those legal persons that have complex ownership structures established in jurisdictions where the information on legal and/or beneficial ownership is not publicly available and reliable.

341. At the time of the on-site visit, Ireland had not comprehensively assessed ML/TF risks of all categories of legal persons and arrangements. The Authorities did not consider that doing so was resource efficient for its first NRA where a significant proportion (86%) of Irish registered companies were of the same generic type. Instead, Ireland preferred to focus on the activities or use of legal persons and arrangements in particular sectors that could be subject to abuse (for example, in the gambling sector) on the basis that there are no specific vulnerabilities associated with legal persons and arrangements established or operating in Ireland. Hence, while the NRA has a specific section on legal persons and arrangements, Ireland's overall general conclusion is that the risks associated with legal persons and arrangements is comparable to, or somewhat lower, than in other jurisdictions. The authorities suggest that the legal form is rarely a significant determinant of vulnerability to a ML / TF risk and that activity-targeted risk assessments provide a more accurate indicator of risk. According to the authorities, there was no evidence of widespread domestic use of specific types of legal persons in ML schemes. Nevertheless, Ireland has commenced a programme to risk-assess persons and arrangements used in specific activity areas.

342. The identified terrorism cases and suspected TF typologies did not involve the use of legal persons, and there has been no evidence of possible misuse of legal persons or arrangements or non-profit organisations for TF purposes.

343. Ireland does recognise, in its NRA, that further detailed analysis should be conducted on the ML / TF risks of legal persons and structures within more specialised areas of the economy, for example SPVs.

344. As an important regional and international financial centre, Ireland could further efforts to identify, assess and understand the vulnerabilities of corporate structures and legal arrangements both for ML / TF particularly in relation to international threats, as assessment efforts to date appear to have a predominantly domestic focus.

#### *Mitigating measures to prevent the misuse of legal persons and arrangements*

345. Ireland has implemented some measures to prevent the misuse of legal persons and arrangements for ML and TF.

346. Registration and ongoing filing obligations pursuant to the Companies Act 2014 provide some measures to ensure legal persons are created in a transparent manner. Ireland's corporate registration regime allows public access to CRO data. However, the CRO does not validate the information it receives; rather it relies on the signed declarations on directors and shareholders which is supplied by the company. The majority of companies must also register with Revenue for tax purposes. This creates another repository of corporate information which is used to validate the information on the CRO and ICAV Registers.

347. Financial institutions and DNFBPs are required to conduct CDD and ongoing monitoring, maintenance of records, training and reporting and are subject to oversight to ensure they assist in combatting ML and TF. Express trusts generating income are required to register for tax with Revenue; this information is not accessible in a public database but can be readily available to law enforcement. Where a trust is not registered with Revenue, beneficial ownership information may

nonetheless be available pursuant to the requirements of the Criminal Justice (Money Laundering & Terrorist Financing) Acts 2010-2013 which place CDD obligations on “designated persons” to obtain, verify and retain information on the identity of customers. Such obligations arise on both the establishment and administration of trusts by designated persons and in connection with financial transactions for or on behalf of the trust.

348. Notwithstanding these CDD and tax law requirements, there are limitations on the availability of information regarding beneficial ownership of express trusts. For example, a lay person acting as trustee of a trust established without professional assistance is not subject to the obligations to conduct CDD or retain records. Hence, there is no requirement to record or maintain information on the settlor, trustee, or beneficiaries or to make this information available.

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349. The Assessment Team was provided with case studies demonstrating effective interagency collaboration, information and intelligence sharing pursuant to legislative disclosure gateways.

350. Data interfaces have been established between the CRO and Revenue, as the two key data repositories of corporate information in Ireland. Such interfaces allow the authorities to conduct ongoing red-flag monitoring and some verification of the information held. For example, Ireland has assessed that higher ML, TF and tax evasion risks attach to entities which, although incorporated through CRO, fail to engage with Revenue. The interface between CRO and Revenue combats risks associated with ‘non-engaged’ entities and enquiry letters are generated.

351. Ireland permits the use of nominee directors and shareholders for companies, but a recently established obligation for corporate entities to obtain and hold their beneficial ownership information will provide some mitigation of the opacity caused by nominees (see comments in Rec. 24.12 of the TC Annex). Following transposition of the 4AMLD, the beneficial ownership data obtained and held by corporate entities will need to be filed to a central register.

352. Ireland has prohibited the issue of bearer shares and bearer share warrants for companies registered in Ireland by providing that a company shall not have the power to issue any bearer instrument. If a company purports to do so, the shares specified are deemed not to have been allotted and the amount subscribed is a debt due by the company to the subscriber.

353. Article 31 of the 4AMLD, once transposed, will require trustees of any express trust governed in Ireland to obtain and hold adequate, accurate and up to date beneficial ownership information regarding the trust. If the trust generates tax consequences, this information will be required to be held in a central register.

*Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons and legal arrangements*

354. In respect of legal persons, current basic information on all companies incorporated in Ireland is publically available from the CRO [website](#). Therefore, relevant competent authorities easily obtain this information. The size of Ireland and the unified nature of its key agencies facilitate timely access to beneficial ownership information, where this information is collected (i.e. where the legal owner and beneficial owner are the same). Obtaining beneficial ownership information beyond the immediate shareholder of a company is more challenging. Through a form CT1, filed by close

companies to Revenue, Revenue can access and demand this information for what it regards to be the majority of companies. “Close companies” are those with five or fewer owners / controllers and represent about 91% of the total legal entities registered in Ireland. While this gives LEAs access to beneficial ownership information for the majority of companies (assuming companies provide it when requested and provide accurate information) the greater risk may be the remaining non “close companies” with complex ownership structures for which beneficial ownership information is not available.

355. Beneficial ownership information on any express trust generating tax consequences and on any company with tax liabilities must be disclosed to Revenue, and the competent authorities can access this information. Nevertheless, it is not known how many express trusts are subject to these requirements, and therefore, whether the information is easily obtainable.

356. Designated persons (including the full range of FIs and DNFBPs) are obliged to collect beneficial ownership information of legal entities or arrangements utilising financial or professional services. This information can be accessed by the relevant competent authorities - An Garda Síochána, the FIU and Revenue - utilising investigative powers and Court ordered powers of compulsion. The authorities do not report any difficulties in accessing this information in a timely manner. Irish law enforcement do not experience the impediments described by law enforcement agencies in other jurisdictions in relation to claims for legal privilege when seeking to access such information.

357. It must be noted however, that only information required to be kept can be accessed and such information is only available where the relevant entity or structure has a relationship with a financial institution and or professional service provider and where law enforcement are aware of this relationship in order to seek that information.

358. Timely access to beneficial information on companies and express trusts will be enhanced in the near future when Ireland fully implements articles 30 and 31 of the 4AMLD.

359. In the meantime, Ireland has proactively taken steps to provide for the central register of corporate beneficial ownership, which is required to be established under Article 30(3) of the 4AMLD to be operational from the outset, by enacting the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 which took effect from 15 November 2016. This statutory instrument requires legal entities incorporated in Ireland to obtain and hold adequate, accurate and current information in respect of its beneficial owners. This will allow for entities to be able to transmit this information to the central register once established under Article 30(3) of the 4AMLD. As this instrument was only enacted during the on-site visit, it will take time before it is fully implemented and effective.

360. In addition to the above register, section 767 of the Companies Act 2014 provides that the Director of Corporate Enforcement can, in certain circumstances, require a person to provide information as to past or present interests in shares or debentures, including the identification of the persons so interested and details of persons who may have acted on behalf of the beneficial owners. The Director may also, in certain circumstances, appoint an inspector to investigate and report on the true ownership of a company (section 764). These powers have been exercised in a small number of cases in the past.

*Effectiveness, proportionality and dissuasiveness of sanctions*

361. The CRO pursues a range of administrative sanctions and prosecution action against corporate entities that fail to comply with information filings. Companies that fail to complete the required annual filings of information are ultimately liable to being struck off the register. The annual filing information required covers all basic information. Sanctions also include fines that may increase on a daily basis up to EUR 5 000. A total of approximately EUR 10 million has been collected in late filing fines.

362. The Companies Act 2014 provides for a category 3 offence in relation to the failure to keep a register of members (s. 169 (6)). The penalty on conviction for such an offence is currently a fine of up to EUR 5 000 and/or a term of imprisonment of not more than 6 months. Over the period 2011 to 2016, the ODCE received a total of 67 complaints which related to the register of members. All of these complaints were rectified by means of compliance following intervention by the Office. No prosecutions ensued in relation to any of these cases

363. A range of offences sanctioned by a class A fine (a fine not exceeding EUR 5 000) is provided for in the recently enacted SI on Beneficial Ownership of Corporate Entities, including for failing to keep the register up to date or making a false statement. As the SI has only just commenced there is no available information in relation to enforcement of these sanctions. The potential fine of up to EUR 5 000 does not appear proportionate and it is too early to assess whether it will be dissuasive.

364. Sanctions (including fines issued following “prosecutions” as defined in the Companies legislation) for failure to file annual returns:

Table 32. **Sanctions imposed by CRO**

Year	Enforcement Action	
	Involuntary strike-off	Prosecutions
2011	7 938	179
2012	7 333	78
2013	7 077	95
2014	6 840	66
2015	3 072	18**
2016*	7 499	N/A

Notes:

\* Up to the time of on-site visit in November 2016

\*\* Figures for 2015 were low as processes were suspended while the CRO transitioned to the new Companies Act 2014.

365. The average fine issued for the above was EUR 1 270 in 2015. The average fine over the period 2011 to 2015 was EUR 692.

366. In respect to legal arrangements, offences for non-compliance with CDD requirements by designated persons dealing with trusts are contained in Part 4 of the Criminal Justice (Money

Laundering & Terrorist Financing) Acts 2010. No instances of non-compliance have been identified by the authorities and consequently no sanctions on either FIs or DNFBPs have been imposed.

367. Sanctions for the failure to submit information on trusts to Revenue are available under the Consolidated Tax Acts 1997. The sanctions available include powers to impose penalty-taxes and fines and to publish details on tax defaulters.

368. Ireland's Office of Corporate Enforcement can apply for Court orders to disqualify non-compliant company officers. In addition, the directors of insolvent companies may face restriction and / or disqualification of applications made by liquidators of insolvent companies. These provisions address misuse of legal persons and arrangements generally. While the provisions are not specific to concerns around ML and TF, they are capable of being applied in such instances. The number of company directors sanctioned in recent years is outlined as follows:

Table 33. Sanctions on company directors

Years	2011	2012	2013	2014	2015
No. Of Restricted Company Directors	135	244	244	182	150
No. Of Disqualified Company Directors	12	16	12	20	14
<b>Total:</b>	147	260	256	202	164

369. It is therefore difficult to judge whether these sanctions are proportionate and to conclude that they are dissuasive.

#### *Overall conclusions on Immediate Outcome 5*

Ireland has achieved a moderate level of effectiveness for IO.5



## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

1. Ireland demonstrates many characteristics of an effective system for international cooperation. Ireland provides a range of international cooperation, including MLA, extradition, intelligence/information and, where available, beneficial ownership information. Despite the strong domestic asset confiscation framework in place in Ireland, some issues have arisen in relation to confiscation and sharing of assets internationally which require moderate improvements.
2. Irish law enforcement and supervisory authorities generally cooperate well with their foreign counterparts. Overall, the feedback from the majority of countries indicates that legal assistance and informal information exchange is of sufficient quality and timely. Several agencies provided examples of their efforts to proactively engage with international partners in relation to ML.
3. Ireland has procedures in place to protect confidentiality of requests and no issues in this regard were raised in the feedback.
4. There is a significant upward trend in the number of requests for assistance received and made by Ireland. However, the proportion of international cooperation (mutual legal assistance and extradition) made by Ireland dedicated to ML / TF, while increasing, remains a very small proportion of all requests, which may reflect the priority being given to investigating predicate offences rather than ML.

#### **Recommended Actions**

1. Ireland should ensure that the FIU can seek information from reporting entities to assist international counterparts, to the same extent that it can seek this information for domestic purposes.
2. Ireland should ensure that all its agencies provide proactive and spontaneous exchange of information for international cooperation purposes.
3. Ireland should ensure it is requesting a full range of international cooperation, including MLA and extradition, to combat ML and TF.
4. Ireland should continue to capture and enhance statistics available to assess the effectiveness of its framework for international cooperation, for example collecting statistics on proactive and spontaneous FIU disseminations, statistics on MLA requests by underlying predicate offence and statistics on informal international cooperation requests between supervisory authorities.
5. Ireland should review and strengthen its asset confiscation legislation, procedures and policies in relation to international asset freezing, seizing, confiscation and sharing of assets.

370. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

***Immediate Outcome 2 (International Cooperation)****Providing constructive and timely MLA and extradition*

371. To a large extent, Ireland has provided constructive and timely MLA and extradition across a range of international cooperation requests, and the quality of that assistance is generally of a high standard. Ireland benefits from simplified extradition procedures within EU-members which enhances the effectiveness of its cooperation with key partner countries. MLA requests in relation to asset freezing and confiscation are low and are possibly due to limitations in asset sharing provisions.

*Mutual Legal Assistance*

372. Ireland provides constructive and timely MLA across the range of international cooperation requests and the quality of the assistance provided is generally effective.

373. Ireland has a strong legal framework for incoming mutual legal assistance requests under the Criminal Justice (Mutual Assistance) Act 2008 (CJA 2008) which does not include any impediments to providing assistance with regard to money laundering and terrorist financing offences, in addition to a wide range of predicate offences.

374. The Central Authority has mechanisms in place to ensure the prioritisation and timely response to requests. The Central Authority, which is contained within the Criminal Mutual Assistance and Extradition Division of the DoJE, has produced a Guide setting out Irish law in relation to international judicial cooperation to assist other jurisdictions in the making of a request. The Central Authority utilises a case management system for the prioritisation, execution and monitoring of requests and takes care to ensure the confidentiality of requests.

375. The quality of assistance provided by Ireland is generally effective as confirmed by feedback received from 20 countries. The vast majority of countries which responded did not present any information which identified major concerns with Ireland's cooperation.

376. As illustrated in the table below, between 2012 and 2015, Ireland received a total of 2 462 requests for MLA in regard to a variety of offences. The available data shows that there is a general upward trend in the overall number of incoming requests for assistance. The authorities advised that cybercrime and the exponential number of requests globally in relation to ISP data was impacting Ireland's mutual assistance authorities. Ireland has identified that within the next decade it will be one of the single largest data repository jurisdictions due to the number of internet companies based there. Authorities are currently engaged proactively in a review to further enhance their systems and address the resourcing implications which will flow from this. Despite the significant upward trend in relation to requests for assistance, the proportion of requests relating specifically to money laundering has remained constant at 4-5 per cent of all requests.

Table 34. Money Laundering Incoming MLA requests

	2012	2013	2014	2015
<b>Money Laundering MLA Requests</b>	26 (5%)	37 (4%)	43 (4%)	34 (5%)
<b>Total number of Requests received</b>	536	583	678	665

377. The number of requests in relation to asset confiscation (approximately five requests between 2012 and 2016) are low considering the range of asset confiscation available to Irish authorities. Asset sharing is available under the post-conviction based confiscation regime (to a maximum value of 50 per cent of the confiscated assets). Asset sharing is not available under the non-conviction based system utilised by the CAB. This is discussed in further detail in Chapter 3.

378. It is difficult to conclude on Ireland's response to incoming TF-related MLA requests as the Central Authority's database does not distinguish between terrorist offences in general and terrorist financing. Ireland provided a breakdown of assistance sought in relation to each request and it appears one request in 2015 related to the provision of money or other property for the purposes of terrorism and the requested information (which was not financial in nature) was provided to the requesting country.

379. Between January 2012 to May 2016, Ireland refused 10 requests for assistance relating to money laundering and terrorist offences. All refusals appear to be legitimate as they were made on the basis that the material sought was outside of Ireland's jurisdiction and the requesting authorities were advised of this.

### *Extradition*

380. Ireland has separate procedures in place for extradition from EU Member States and for extradition with States outside of the EU. Simplified measures within the EU (European Arrest Warrant Framework) (EAW) have expedited extradition procedures with some of Ireland's partner countries. The process for extradition with countries who are neither members of the EU nor members to the European Convention on Extradition 1957 is based on reciprocity and is potentially more cumbersome but has proven possible in one case.

381. Ireland has a faster response time to EAW's than other extradition procedures. Ireland's average response time for the execution of an EAW is between six to nine months from the date of arrest, as opposed to two to four years under other extradition arrangements. Between 2012 and 2015, Ireland received 949 EAWs, with the number of EAWs requested steadily decreasing since 2012. The authorities noted that the reasons for the decline are unclear. The countries most likely to make an EAW request to Ireland are Poland, UK and Lithuania. The proportion of EAW requests related to the laundering of proceeds of crime or related to terrorism is less than one per cent of all requests.

382. Extradition procedures in Ireland with countries other than EU Member States are governed by the Extradition Act 1965 as amended, which implements obligations under the

European Convention on Extradition 1957 and allows for Ireland to send and receive requests from countries that are party to this Convention. Ireland also has bi-lateral extradition treaties with Australia; Hong Kong, China; and the United States of America.

383. As noted above, extradition pursuant to the European Convention on Extradition 1957, bilateral extradition treaties and ad-hoc agreements is slower than the EU's EAW process. Ireland identified various factors that can cause delay including communicating with different legal and judicial systems, language barriers and the requirement to establish dual criminality. Between 2012 and 2015, Ireland received 24 extradition requests of which none was related to ML and three that were terrorism-related, including TF.<sup>34</sup> The majority of extradition requests to Ireland originate from the United States with which Ireland has a bi-lateral treaty. The 1957 Convention was used to good effect to extradite persons from South Africa and Jersey in 2015 in the absence of a bi-lateral treaty.

384. One country has provided some specific feedback raising concerns with regarding to Ireland's response to an extradition request. The feedback provided confirmed that Irish prosecutors and central authority counterparts were cooperative and responsive but expressed disappointment with the legal outcome. Ireland has indicated that it has taken on board this feedback and met directly with the country in relation to its concerns.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

385. Ireland has, to some extent, sought legal assistance for international cooperation in an appropriate and timely manner to pursue domestic ML and TF. Since 2010, Ireland has issued a total of 1,073 letters of request for legal assistance. Ireland's requests for assistance have significantly increased, with more than triple the number of requests made in 2015 compared to 2010 and the proportion of ML requests also increasing. The increase in requests is primarily due to the changing nature of criminal investigations which often involve evidence of data stored electronically and outside the jurisdiction. The types of assistance requested include the taking of statements by victims, provision of bank records, ISP locations and data for internet related offences and police records and conviction records. One case example in which MLA was requested to achieve a ML prosecution is included below.

Table 35. **Outgoing Requests for MLA**

	2010	2011	2012	2013	2014	2015
<b>Number of money-laundering Requests</b>	0 (0%)	2 (1%)	5 (2%)	12 (7%)	5 (2%)	18 (7%)
<b>Total number of Requests made</b>	86	151	221	181	201	268

<sup>34</sup> In relation to the three TF related extradition requests, two requests related to the same person. The first request was refused by the High Court under Section 15 of the Extradition Act 1965 and the second request was also refused by the Courts but the decision has been appealed by Ireland. In relation to the third request the person was surrendered under a European Arrest Warrant (EAW).

**Case Example 9. Informal Cooperation and MLA request in Money Laundering Case**

In late 2012, the FIU detected potential ML relating to the inward movement of EUR 1.6 million, rapidly dispersed. Investigations revealed a significant fraud had occurred and victims in three European jurisdictions were interviewed. The support of the Europol Analytical Unit was obtained and briefing presentations were made to affected jurisdictions in Europol. A number of arrests were carried out and other EU countries are conducting their own enquiries.

The case required international co-operation from eight EU states as well as a number of other jurisdictions. Informal cooperation was sought through FIU.NET, EGMONT, EUROPOL and INTERPOL, and nine different MLA requests to five different jurisdictions were also made seeking bank and company records and making requests to interview witnesses. As a result, two files were sent to the DPP with directions being received to initiate 12 ML prosecutions against those involved. The prosecution of the Irish national is ongoing and there are two further non-Irish suspects.

**Case Example 10. MLA Request in Terrorist Financing Case**

The Office of the DPP has records of one letter of request dealing with the financing of terrorism which was issued in 2016. It involved the arrest in Ireland of an individual who appeared to be using an alias. This person was sending messages over a phone regarding the funding of terrorism in another State.

The request sought information from another State in relation to:

- The arrest of an individual using a different name who was believed to be the same suspect.
- Records of the telephone device used by this individual.

Authorities sought this assistance to confirm whether the person arrested in Ireland was using the same device as the person arrested in another State. The material requested was obtained and as a result an investigation file has now been sent to the Office of the DPP.

386. Ireland did not provide statistics on the number of MLA requests made in relation to the asset investigations. Ireland was able to provide one example in which it cooperated with Austrian authorities to have an Irish confiscation order recognised in Austria, although no MLA request was ultimately made.

387. With regard to extradition, there have been minimal requests made in relation to ML and TF. Between 2012 and 2015, out of 330 outgoing EAW requests only one was made in relation to the laundering of proceeds of crime. In relation to other extradition arrangements, the Central

Authority's database shows that between 2012 and 2015 only 1 outgoing request was made in regard to the laundering of the proceeds of crime and no requests were made in relation to terrorism or TF. However, data provided by the Central Authority shows that Ireland has made requests in relation to predicate offences. The most common countries to receive an EAW from Ireland include the UK, Spain, the Netherlands, Poland and Romania and the most common countries to receive a request for extradition under another arrangement are the United States and Australia. This is consistent with Ireland's transnational crime risks.

*Providing and seeking other forms of international cooperation for AML/CTF purposes*

388. Ireland engages actively in all areas of informal international cooperation and is achieving good results from successful cross-border cooperation. Competent authorities regularly seek forms of international cooperation, other than MLA or extradition, to exchange relevant information in an appropriate and timely manner with foreign counterparts. While it is clear that the FIU and Garda are cooperating with international counterparts, they could not provide statistics on proactive and spontaneous disseminations.

389. The FIU effectively exchanges information and financial intelligence via FIU.NET and the Egmont Secure Web. The number of requests made by Ireland dropped in 2013 and 2014 but is now higher than 2012 request levels. Information is also exchanged using Europol and Interpol. The FIU maintains statistics on information exchanged using these avenues that was provided to the Assessment Team (see Chapter 3). In terms of providing assistance to non-Irish FIUs, it appears that the FIU cannot use powers it uses domestically to obtain further information from reporting entities to assist foreign counterparts. A mutual assistance request is required in these cases (see analysis of R.40). The FIU noted that in cases where there is a foreign suspicion of ML or TF, the FIU can approach Irish FIs and that, usually, an STR will be filed in response which can be shared with foreign FIUs. No negative feedback from delegations was received in terms of FIU-to-FIU cooperation in this regard.

390. The FIU was not able to provide statistics on the number of disseminations that were spontaneous. Data provided by a key partner for international cooperation reveals that the number of spontaneous disseminations is very low; however, the FIU explained that this was because cooperation occurs informally through police-to-police channels. The FIU was also able to provide an example where it proactively alerted Europol members of a fraud and money laundering typology that had been observed in a case in Ireland.

391. Ireland also engages in international cooperation through contributions to Europol Sustrans. During the period 2012-2016 (September), the FIU made 91 contributions to Europol Sustrans, but there appears to be a downward trend in the number of contributions made to Europol. The FIU noted that figures in 2013 were high and related to a particular operation.

**Table 36. Requests submitted to Europol Sustrans**

2012	2013	2014	2015	2016 (September)
26	34	10	8	13

Table 37. FIU enquiries made through FIU.Net and Egmont Secure Web

Year	Number
2012	129
2013	95
2014	89
2015	156

392. The Central Bank actively seeks cooperation with international counterparts through participation in EU supervisory colleges, working groups and liaison with other AML/CFT supervisors. It seeks and shares regulatory and supervisory information of a general nature (i.e. about the domestic regulatory systems of other countries and on financial sectors) as well as supervisory information on particular FIs where appropriate. If there is an international element to an inspection being conducted by the Central Bank or an international parent company of a financial institution being inspected enquiries are typically conducted with the home regulator by the Central Bank. The Central Bank does not maintain a tracking system or figures in relation to its international cooperation efforts.

393. The CAB has formed relationships with Interpol, Europol and Camden Asset Recovery Inter Agency Network (CARIN) to assist in pursuing assets derived from criminal conduct. The CAB also represents Ireland at the Asset Recovery Offices in Brussels. CAB actively participates in CARIN (an informal network of experts in the field of asset tracing and confiscation) contributing to international knowledge sharing and building. The Asset Recovery Office provides a central point and legal basis for the exchange of information between ARO member states. CAB does not maintain statistics for requests made and received through CARIN or ARO.

394. Ireland's Revenue engages actively with foreign counterparts and law enforcement agencies and is achieving good results from successful cross-border cooperation. Revenue in particular maintains useful statistics and records of information exchanges that were provided to the Assessment Team. Under Project Archangel, Revenue has undertaken a novel project to share STR information with its counterpart in the UK in relation to areas of mutual interest. Revenue assures that STR information is dealt with sensitively and protected under this project.

395. Revenue exchanges information in respect of customs and excise offences, specifically drug trafficking and smuggling of excisable products such as oils and tobacco and cash controls. It exchanges information with EU member states directly on a peer to peer basis and for non-member states through the Europol desk. Revenue also actively exchanges information in respect of indirect taxes (excise and VAT) and direct taxation.

### Case Example 11. Office of the Revenue Commissioners - Project Archangel

Project Archangel is the exchange of STR information between the Revenue in Ireland and Her Majesty's Revenue and Customs (HMRC) in the UK under a letter of understanding and protocol covering the exchange of STR information which has been in place since 2011.

Since 2011, approximately 100 cases from each side have been exchanged and referred to districts for consideration of risk. STRs with the greatest potential for investigation are being selected by experienced officers in both jurisdictions. Revenue and HMRC meet several times a year to discuss suspicious transactions of mutual interest.

Under this Project, an STR conference was held in 2015 with over 300 money laundering reporting officers and compliance professionals attending, particularly those operating on the border between Ireland and Northern Ireland. Speakers at the conference were drawn from Revenue, AGS, CBI, Department of Finance and HMRC.

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### *International exchange of basic and beneficial ownership information of legal persons and arrangements*

396. To a large extent, Ireland responds to requests for cooperation in relation to basic and, where available, beneficial ownership information of legal persons and arrangements.

397. Revenue is the competent authority for direct taxes, and Revenue's Corporate Business and International Taxation Division's role includes exchanging information with other countries in respect of identifying basic and beneficial ownership.

398. Statistics were provided on requests for and provision of basic and beneficial ownership to and from Revenue (as set out below), but it was difficult for the Assessment Team to draw any conclusions regarding trends from those figures.

**Table 38. Requests of Basic and Beneficial Ownership Information to Revenue**

	Basic information		Beneficial ownership information	
	In	Out	In	Out
<b>2013</b>	7	0	0	0
<b>2014</b>	10	1	3	1
<b>2015</b>	7	10	4	9
<b>2016</b>	1	0	0	0
<b>TOTAL</b>	25	11	7	10

399. In terms of the received requests ("in"), in all cases where sufficient information was provided by the requesting jurisdiction to allow Revenue to identify the Taxpayer/person, requests for both basic and beneficial information were answered. The average response time for Revenue sending final responses to requests for basic information over the period 2013-2016 was 109 days (the request received in 2016 is ongoing). The average response time for responding to requests for

beneficial information requests was 54 days in the period 2013-2016. Ireland's normal procedure is to send publicly available information such as legal ownership information available from the CRO in an interim reply while continuing to deal with the other data requested. Each request usually contains a request for multiple types of data.

400. In terms of outgoing requests, the timeframe for a response for 1 basic request sent in 2015 was 138 days, the information sought was provided by the other jurisdiction. The 6 other requests for both basic and beneficial information sent in 2015 are ongoing. The requests are linked requests and have been sent to the same jurisdiction. While the requests are ongoing there has been interaction between Revenue and the Competent Authority in the other jurisdiction, with requests for clarifications having been answered by Revenue. The requests sent in 2014 had a response timeframe of 397 days, the information sought was provided and updates were supplied by the requested jurisdiction.

#### Case Example 12. Provision of ownership information to other jurisdiction

In October 2015, Revenue was contacted by the Competent Authority in a partner jurisdiction requesting information in relation to the ultimate beneficial ownership of an Irish incorporated company. This was required for an ongoing audit into a property transaction in that jurisdiction.

The requesting jurisdiction provided the name of an Irish company involved in the property transaction. Revenue's records were able to identify that the owners of this company were three discretionary trusts. It was then able to identify the trustees of these trusts from the Revenue discretionary trust database. In November 2015, Revenue wrote to the trustees seeking copies of the trust deeds, details of the beneficiaries and details of any distributions from the trust.

The trustees provided the information in December 2015 and this was forwarded to the requesting jurisdiction.

401. Other Irish authorities that engage with foreign counterparts, such as the CAB and FIU also include requests and basic and beneficial ownership information of legal persons and arrangements where appropriate.

402. See Chapter 7 and IO.5 for further information as to the availability of basic and beneficial ownership information.

#### *Overall conclusions on Immediate Outcome 2*

**403. Ireland has achieved a substantial level of effectiveness for IO.2.**



## **TECHNICAL COMPLIANCE ANNEX**

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report. The analysis includes details of Irish authorities' plans to amend laws in accordance with the 4th EU Anti-Money Laundering Directive (4AMLD) but these planned actions have not impacted on the ratings under this Annex.

### ***Recommendation 1 - Assessing Risks and applying a Risk-Based Approach***

**Criterion 1.1** - Ireland undertook a national ML/TF risk assessment (NRA) coordinated by the Department of Finance with the participation of relevant government agencies, including An Garda Síochána (AGS; including, but not limited to, the Garda National Economic Crime Bureau (the GNECB; which houses the FIU) and the Criminal Assets Bureau (CAB)), the Office of the Revenue Commissioners (Revenue), the Central Bank of Ireland (CBI), the Director of Public Prosecutions (DPP), and the Department of Justice and Equality (DoJE). A number of competent authorities undertake risk assessments on specific sectors. For example, the CBI, through its Anti-Money Laundering Department (AML/D), analyses and determines the ML/TF risks of the entities it supervises and indicated that it takes into account input from law enforcement and revenue authorities in this process. Likewise, the Anti-Money Laundering Compliance Unit (AMLCU) in the DoJE uses standardised ML/TF risk assessment tools for Trust or Company Service Providers (TCSPs), Private Members' Clubs (PMCs), and High Value Goods Dealers (HVGDs), including dealers in precious metals and stones (PSMDs). Revenue also undertakes general risk assessments although these are not specific to ML/TF. As part of the NRA process, authorities and private sector representatives were asked to provide their expert knowledge along with the results of any sectoral risk assessments they had undertaken. The NRA was also influenced by the ongoing EU supra-national risk assessment. The NRA was published in October 2016.

**Criterion 1.2** - Ireland has an Anti-Money Laundering Steering Committee (AMLSC) with a sub-group tasked with conducting the NRA. Members of the AMLSC include representatives from the Department of Finance, DoJE, the FIU, Revenue, DPP, the CBI, the Department of Jobs, Enterprise and Innovation (DoJEI), the Attorney General's Office, the Companies Registration Office (CRO), and the CAB.

**Criterion 1.3** - Ireland published its first NRA in October 2016 and intends to update its understanding of ML/TF risks on an ongoing basis. The steering committee's sub-group on NRA will continue to meet frequently (approximately every six to eight weeks) and is intended to feed into ongoing sectoral risk assessments by competent authorities. Additionally, authorities advised that in transposing Article 7.2 of the 4AMLD, Ireland must create a mechanism in law to keep the NRA updated.

**Criterion 1.4** - The NRA was published on the Department of Finance and the DoJE websites on 7 October 2016. Authorities have also provided the NRA directly to key stakeholders, and the results of the NRA have been discussed at the Private Sector Consultative Forum (PSCF). The CBI has sent e-

mail alerts to financial institutions (FIs) it supervises, and the DoJE has issued a flyer to entities under its remit.

**Criterion 1.5** - Ireland utilises the AMLSC to take a whole-of-government and risk-based approach to implement measures to prevent and mitigate ML/TF risk. The AMLSC has developed an Action Plan on AML/CFT which authorities indicated is the result of the NRA and the discussions that took place in the development of the NRA. The Action Plan, while a good step in coordinating efforts on AML/CFT and strengthening the AML/CFT system as a whole, does not address all the high-risk issues borne out of the NRA. However, minutes from the AMLSC meetings indicate that authorities are evaluating risk on an ongoing basis and are reviewing measures accordingly. The AMLSC also influences resource allocation, and there is evidence that at an agency level, resources are being allocated according to risk.

**Criterion 1.6** - AML/CFT measures apply to most of the relevant FIs and designated non-financial businesses and professionals (DNFBPs) in Ireland. However, Ireland has decided to not apply some of the FATF recommendations requiring financing institution or DNFBPs to take certain action in relation to particular products or customers, such as FIs carrying on lower amounts of financial activity (See s.25 (4) CJA 2010), but this is not having had regard to a low risk of ML/TF.

**Criterion 1.7** - Financial institutions and DNFBPs are required to take enhanced measures in case of some higher-risk scenarios, including: PEPs, non-cooperative countries or countries with inadequate AML/CFT procedures and correspondent relationships. In addition to the specific high-risk circumstances identified by the FATF Recommendations, they are required to apply additional due diligence measures in cases where the customer or the authorised representative is not physically present for identification purposes (s.38 CJA 2010) and where the business is exposed to significant risks of ML/TF (s.39 CJA 2010). No specific measures to manage or mitigate risks identified through the NRA process have yet been put in place. There is no legal requirement for FIs and DNFBPs to undertake a risk assessment, and hence there is no requirement that information on higher risks be incorporated into their risk assessments (see criterion 1.10).

**Criterion 1.8** - Ireland allows for simplified CDD measures, for specified customers and products based on the Third EU Money Laundering Directive (3AMLD), as detailed in s.34 of the CJA 2010. This is however not based on the fact of it being consistent with the country's assessment of ML/TF risks.

**Criterion 1.9** - There are a number of authorities or organisations that are tasked with supervising FIs and DNFBPs for compliance with AML/CFT obligations, including obligations relating to taking a risk-based approach. These include the CBI (for credit and financial institutions), DoJE (DNFBPs including HVGDs (which include PSMDs)), TCSPs, tax advisers or external accountants, and PMCs), designated accountancy bodies, the Law Society of Ireland (for solicitors), and the recently appointed Property Services Regulatory Authority (PSRA) for property services providers (PSPs). These supervisory bodies perform inspections and, in most cases, can provide directions to the reporting entity to ensure compliance with a risk-based approach. See analysis of R.26 and R.28 for more information. However, while supervisors seek information from FIs and DNFBPs about their risk understanding to assess their AML/CFT policies and procedures, there is no legal obligation for FIs and DNFBPs to identify, assess, and understand their ML/TF risks.

**Criterion 1.10** - FIs and DNFBPs are required to adopt policies and procedures to prevent and detect ML/TF (s.54 (2) (a), CJA 2010), which include the assessment and management of ML/TF risks. There is however no express requirement to identify, assess, and understand ML/TF risks, and keep these assessments up to date, as further explained below under (a) and (c).

(a) While not stated explicitly, it is implied that designated entities must document their risk assessments to meet the requirements in s. 54 of the CJA 2010. The Financial Services Industry Guidelines and the CBI reports on AML/CFT compliance in the banking, credit union, funds and life insurance sectors also point to this.

(b) The Guidelines to the CJA 2010 provide advice on the range of relevant risk factors that a designated person should take into account in deciding the level of risk and mitigation measures to be applied (paragraphs 54 – 63). The NRA also provides guidance on risks by sector.

(c) There is no specific provision in the legislation that requires FIs and DNFBPs to assess their ML/TF risks as also indicated under R.15. Ireland notes that s.54(2) (a), and the requirement to undertake Enhanced Due Diligence (EDD) in circumstances of heightened risk under s.39, has an implicit duty of assessing risk on an ongoing basis. Ireland also noted that the proposed legislation to give effect to the 4AMLD will require risk assessments to be kept up-to-date.

(d) Section 67(1) of the CJA 2010 provides a mechanism for the state competent authority to direct a designated person to provide such information or documents (or both) relating to the designated person as specified in a notice in writing.

**Criterion 1.11** - FIs and DNFBPs are required to adopt policies and procedures, in relation to the designated person's business, to prevent and detect the commission of ML/TF (s. 54(1) CJA 2010). The Guidelines to the CJA 2010 advise that senior management should establish procedures to ensure that there is objective validation of the risk assessment and management processes of internal controls. FIs and DNFBPs are required to adopt policies and procedures in relation to the monitoring and management of compliance with the assessment and management of ML/TF risk and internal controls (s.54(4) CJA 2010). Finally, FIs and DNFBPs are required to apply additional measures where there are reasonable grounds to believe that the circumstances relating to a customer, beneficial owner, service, product or transaction may present a heightened risk of ML/TF (s. 39, CJA 2010).

**Criterion 1.12** - Ireland allows FIs and DNFBPs to take simplified CDD measures, for specified customers and products based on the 3AMLD, as detailed in s. 34 of the CJA 2010. Such simplified CDD measures could not be taken whenever there is reasonable grounds to suspect ML/TF (s.33(1)(c), CJA 2010).

### *Weighting and conclusion*

Ireland has used cross government coordination mechanisms to conduct an NRA to identify and assess its ML/TF risks and, for the most part, there are measures to mitigate identified risks. However, there are minor shortcomings, particularly in relation to Ireland's decision to exempt some of the FATF Recommendations in certain circumstances which are not based on the results of a risk

assessment, and there is a lack of an express requirement for FIs and DNFBPs to identify, assess and understand ML/TF risks and keep those risk assessments up-to-date.

**Recommendation 1 is rated largely compliant.**

### ***Recommendation 2 - National Cooperation and Coordination***

**Criterion 2.1** - AMLSC's Action Plan and ongoing interagency discussions form the basis of Ireland's national AML/CFT policy. The ongoing discussions of the AMLSC also help to address emerging risks and to regularly review their response. The Action Plan addresses issues identified in the NRA, but it is more largely aimed at strengthening Ireland's broader AML/CFT system and to implement the 4AMLD. Also, some of the key risks identified in the NRA are not adequately addressed in the Action Plan or yet to be discussed by the AMLSC.

**Criterion 2.2** - The AMLSC, chaired by the Assistant Secretary of the Financial Services Division in the Department of Finance, meets monthly to facilitate domestic coordination on amongst other things, developing Ireland's first NRA and working on transposition of the EU's 4AMLD. Members of the steering committee include representatives from the DoJE, the AGS (including the FIU), Revenue, DPP, the CBI, the DoJEI, the Attorney General's Office, the CRO and the CAB. Other departments and agencies, such as the Department of Social Welfare and Protection, the PSRA and Charities Regulatory Authority (CRA) assist the steering committee in relation to specific issues of risk. The AMLSC can also meet in various configurations including bilateral meetings with certain sectors.

Separately, the Cross-Departmental International Sanctions Committee (CDISC) co-ordinates all measures necessary to implement international financial sanctions to counter terrorist financing and weapons proliferation and provides information on relevant risks to the AMLSC. See R.6 and Immediate Outcome 10.

**Criterion 2.3** - As mentioned above (see criterion 2.2), AML/CFT coordination meetings are held on a regular basis. The AMLSC is responsible for making decisions in relation to policy. The PSCF operates a revolving chair chosen from members of the forum which include entities such as banks, life insurers, Payment Institutions, Investment Firms, Funds Service Providers and DNFBPs and also includes representation by government agencies, by invitation. The PSCF is intended to develop a shared understanding of ML/TF risks and discuss issues related to the implementation of AML/CFT measures. There are no formal mechanisms for coordination of operational issues, except in relation to terrorism investigations, but operational coordination occurs on an ad hoc basis.

**Criterion 2.4** - As mentioned above (see criterion 2.2), the CDISC co-ordinates all measures necessary to implement international financial sanctions to counter proliferation of weapons of mass destruction. The CDISC facilitates the dissemination of information on sanctions made at EU and international levels. It also includes consideration of implementation/operational issues. On the policy side, it facilitates discussion and input as necessary between relevant Irish authorities with regards to sanctions arising at the domestic, EU, and international levels.

*Weighting and conclusion*

The minor shortcomings are in relation to the lack of a clear link between the major risks identified in the NRA and the actions set out in the Action Plan or in discussions by the AMLSC, and the lack of formal cooperation mechanisms for operational matters.

**Recommendation 2 is rated largely compliant.**

*Recommendation 3 - Money laundering offence*

Ireland was rated LC for R.1 and 2 (the predecessors to R.3) in its 3<sup>rd</sup> MER. The main deficiency was the low amount of prosecutions and convictions for ML. The ML offence was substantially revised under the CJA 2010 in order to overcome difficulties identified in successfully prosecuting ML. This Act was further updated in 2013.

**Criterion 3.1** - ML is criminalised on the basis of the Vienna and Palermo Conventions (2010 Act, s.7(1)(a)(i-iii). Section 7 covers concealing, disguising, converting, transferring, handling, acquiring, possessing, or using property that is the proceeds of criminal conduct.

**Criterion 3.2** - Ireland applies the ML offence to all criminal conduct, including tax offences (2010 Act, s. 6). The ML offence applies to the widest range of predicate activity, including all designated categories of offences.

**Criterion 3.3** - This criterion is not applicable as Ireland does not apply a minimum threshold for designating predicate offences for ML (see criterion 3.2 above).

**Criterion 3.4** - The offence of ML extends to any type of property that directly or indirectly represents the proceeds of crime. The 2010 Act definition of 'property' and 'proceeds of criminal conduct' is sufficiently wide (s. 2 and s. 6).

**Criterion 3.5** - Irish legislation does not include a specific requirement that a person be convicted of a predicate offence to prove that they laundered the proceeds of crime. Section 11 (4) sets out a range of circumstances where it is reasonable to conclude that property is the proceeds of criminal activity, including where the value of the property concerned is out of proportion to the income and expenditure of the accused.

**Criterion 3.6** - The 2010 law specifies that the underlying criminal conduct for a ML offence can constitute conduct that occurred outside of Ireland, provided that the conduct would constitute an offence under Irish law (s. 6 (b)).

**Criterion 3.7** - Self-laundering is not excluded in the ML offence provision (2010 Act, s.7).

**Criterion 3.8** - Objective factual circumstances can be considered in determining whether an accused person 'knows' or 'believes' that property is the proceeds of criminal activity or is reckless to the fact. Section 11 of the 2010 Act provides that in proceedings for section 7, 8 or 9 of the Act (the money laundering offences), the accused is presumed to have known or believed, or have been reckless, unless the court or jury finds that there is a reasonable doubt to the contrary, taking into account 'the whole of the evidence'.

**Criterion 3.9** - Ireland has proportionate and dissuasive sanctions for ML. For a summary conviction of a ML offence, natural *persons* are subject to imprisonment of a term not exceeding 12 months and/or a fine not exceeding EUR 5 000. For a conviction on indictment for ML, natural persons are subject to imprisonment of a term not exceeding 14 years and/or indeterminate fine (s.7(3), 8(2), 9(2), and 10(2)).

**Criterion 3.10** - According to the rules of statutory interpretation in Ireland, the word 'person' applies to both legal and natural persons (Interpretation Act 2005; s. 18(c)). Therefore, the ML offence also applies to legal persons, and Ireland indicates that the penalties stated above in Criterion 3.9 therefore apply to legal persons. As the fine for a conviction on indictment is indeterminate, the sanctions for a legal person can be considered proportionate and dissuasive. Individual officers of a corporation can also be found guilty of an ML offence if they have committed the acts with the consent or due to their wilful neglect (2010 Act; s.111).

**Criterion 3.11** - Ireland has an appropriate range of ancillary offences to the offence of ML. Attempting to commit a ML offence is covered (2010 Act; s.7 (2)), including when the attempt occurs outside of Ireland (2010 Act; s. 9(1)). Aiding, abetting, counselling or procuring the commission of an indictable offence is treated in the same way as the principle offence (Criminal Law Act 1997, s.7(1)), including when committed outside of Ireland (2010 Act, s.10(1)) and the same penalties as for the principle ML offence apply (2010 Act, s.10(2)). Section 22 of the Petty Sessions (Ireland) Act 1851 provides the same for summary offences.

*Weighting and conclusion:*

**Recommendation 3 is rated compliant.**

#### ***Recommendation 4 - Confiscation and provisional measures***

Ireland was rated C for R.3 (the predecessor to R.4) in its 3<sup>rd</sup> MER.

The Provisions of the Proceeds of Crime Act 1996 (POCA 1996) operate *in rem* and are not dependent upon the conviction of any person for a criminal offence. While the 1996 Act allows for an AGS Chief Superintendent to make applications under the Act, as a matter of policy and practice it is only availed of by the CAB which is headed by the Chief Bureau Officer who is an AGS Chief Superintendent or an application can also be made by an authorised officer of Revenue. The CAB was established by the Criminal Assets Bureau Act 1996.

**Criterion 4.1** - Ireland has measures to provide for the confiscation of all proceeds, laundered property, instrumentalities of crime, property related to any criminal activities committed within the context of a criminal or terrorist organisation and property of equivalent value, regardless of whether the property is held by criminal defendants or third parties. In particular:

- Conviction-based confiscation of proceeds of crime is covered in Part II of the Criminal Justice Act 1994 (CJA 1994). Section 4 allows for the confiscation of the benefit derived from drug trafficking offences and section 9 deals with the confiscation of the benefit derived from all other indictable offences. Under section 9, the benefit derived from an

offence is the value of the property obtained as a result of, or in connection with, the commission of an offence. Under section 4, there is a presumption that the accused's income over the past six years is the proceeds of crime. 'Property' has a wide definition under the act as money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property. Confiscation orders under sections 4 and 9 are treated as judgment debts (CJA 1994; s. 19) and it is up to the defendant to satisfy those debts with whatever funds are at his disposal (i.e. property of equivalent value). Criminal forfeiture of the instruments of crime is covered under sections 61 and 62 of the CJA 1994. As identified in the previous MER (para. 149), s. 61 requires that the instrument be in the possession or control of the defendant at the time of apprehension and this may have an impact on the effectiveness of this provision.

- Non-conviction based confiscation is available under the POCA 1996, which provides for interim, interlocutory and disposal orders for proceeds of crime (ss. 2, 3 and 4 respectively). The POCA 1996 allows for *in rem* confiscation and can target an asset regardless of who possesses it (i.e. third parties) once it can be shown that the asset or property directly or indirectly is the proceeds of criminal conduct. Instruments of crime cannot be targeted under this legislation. Under the POCA 1996, property cannot be disposed of until seven years have elapsed since the confiscation unless the defendant agrees to its disposal.
- It is also possible to confiscate assets *in absentia* when a person has been convicted and died or where proceedings have been initiated but the suspect has absconded (CJA 1994; s.13).
- Seizure and forfeiture of cross-border movement of cash is covered under the CJA 1994 (as amended by Proceeds of Crime (Amendment) Act 2005) (ss. 38-39) and can be forfeited based on a civil standard (balance of probabilities) – see analysis on R.32.
- Confiscation of property that is the proceeds of, used in, or intended or allocated for use in the financing of terrorism or terrorist acts is covered under sections 14-18 of the Criminal Justice Act (Terrorist Offences) Act 2005, as amended in 2015 (CJA 2005). 'Funds' is defined broadly (CJA 2005, s. 12). Post-conviction confiscation for instruments or proceeds of terrorism financing is also available (CJA 1994, ss. 8A-E). Section 17 of the Offences Against the State (Amendment) Act 1998 provides for the forfeiture of property where a person is convicted of explosives and firearms offences.

**Criterion 4.2** - Ireland has implemented the *following* measures to enable competent authorities to take provisional measures –

- a) Both AGS and the CAB have measures in place to allow them to identify, trace and evaluate the proceeds of crime. Access to databases such as the Land Registry, the Company Office, vehicle registration data, as well as access to police, tax, customs, and social protection agency databases assists in identifying assets.
- b) Provisional measures are available under conviction-based confiscation/forfeiture (CJA 2010, ss.17-20; CJA 1994 s.24) and non-conviction based forfeiture (POCA 1996, s.2 and s.2A

for property with a minimum value of EUR 5 000). Interim orders for terrorist financing are also available (CJA 2005; ss. 14 – 18).

c) Orders made by the High Court under section 24 of the CJA 1994 prohibit people from dealing with any property that can be confiscated which assists to prevent or void actions to prejudice Ireland's ability to restrain or confiscate the proceeds of crime.

d) For conviction-based asset forfeiture, Garda has the relevant investigative powers (see analysis of R. 31). For non-conviction based forfeiture, CAB can apply for, or issue in urgent cases, search warrants.

**Criterion 4.3** - In relation to both the conviction-based and non-conviction-based regimes, the rights of bona fide third parties are protected in relation to freezing orders, forfeiture orders and cash forfeiture orders. (POCA, ss. 2-3; CJA 1994, ss. 24(6), 38(5) and 61(5 - 5A)).

**Criterion 4.4** - Ireland has mechanisms for managing and disposing of property frozen, seized or confiscated. Under the conviction-based regime, section 4 or 9 orders are treated as judgement debts that the accused must satisfy. Under the non-conviction based regime, a court can appoint a receiver to manage property under an interim or interlocutory order (POCA 1996, s. 7). Property can be forfeited to the government after it has been under restraint for at least seven years ('disposal order': POCA 1996, s. 4 and CJA 2005, s. 16).

#### *Weighting and conclusion*

**Recommendation 4 is compliant.**

#### ***Recommendation 5 – Criminalisation of TF***

In its 3rd MER, Ireland was rated LC for SR.II, which contained the previous requirements in this area. The deficiencies related to the lack of specifically covering the financing of the individual terrorist (outside the scope of a terrorist act), and it was too early to assess the effective implementation of the TF offence provisions, since they had only been operative since March 2005.

**Criterion 5.1** - Ireland's TF offence closely mirrors the language in the TF Convention. Section 13(1) of the Criminal Justice (Terrorist Offences) Act 2005, as amended up to 2015 (CJA 2005) provides that it is an offence if in or outside Ireland, a person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part, to carry out certain acts. These acts are: 1) an act that constitutes an offence under Irish law *and* as defined in any treaty listed in the annex to the TF Convention; or 2) or any other act that is intended to cause death or injury and the purpose is to intimidate a population or influence a government.

Ireland criminalises the full range of acts contained in the annex to the TF Convention, thus making them terrorist acts. The acts in the Diplomatic Agents Convention, the Hostages Convention, and the Terrorist Bombing Convention, are spelled out in the CJA 2005. The others are covered through: the Air Navigation and Transport Act 1973, the Air Navigation and Transport Act 1975 as amended in 1988, the Radiological Protection Act 1991, and the Maritime Security Act 2004.

**Criterion 5.2** - The financing of all terrorist acts covered in section 2(1) of the TF Convention are covered. Section 13(3) also makes it an offence to provide, collect or receive funds intended for use of terrorist group or carry out an act in terms of section 6. "Terrorist group" – cross-referencing the EU Framework Decision of 13 June 2002 – is defined as a group of three or more persons. The legislation therefore does not cover the financing of an individual terrorist or two terrorists acting together outside the scope of an intended terrorist act.

**Criterion 5.2bis** - Section 13(3) (a) covers the financing for the benefit or purposes of a terrorist group. "Benefit" and "purposes" are not defined, and have not been tested in practice, so it is not clear to what extent this covers financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

**Criterion 5.3** - Section 12 of the Act covers all types of funds and assets, however acquired, in line with the TF Convention and R.5.

**Criterion 5.4** - Section 13(5) provides that an offence may be committed whether or not the funds are actually used to carry out or attempt a terrorist act or linked to a specific terrorist act.

**Criterion 5.5** - The Act covers the commission or intended commission of such an offence and refers to the intent and knowledge. Proof of intent and knowledge is inferred from the whole of the evidence before the court; this includes objective factual circumstances.

**Criterion 5.6** - Section 13(7) provides for a maximum sentence of 20 years or a fine upon conviction. These penalties are proportionate and dissuasive.

**Criterion 5.7** - Criminal liability applies to legal as well as natural persons. S.18c of the Interpretation Act, 2005 provides that the term "person" shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual. Section 45 of Terrorist Offence Act deals with body corporates. Fines are the only penalty applicable to bodies corporate directly by the CJA 2005. This does not preclude other civil or administrative penalties parallel to criminal proceedings.

**Criterion 5.8** - It is an offence to aid, abet, counsel or procure the commission of any indictable offence; this is provided for in s.7 of the Criminal Law Act, 1997. Attempt is also covered by Section 13(2) of the CJA 2005. Organising or directing others to commit FT, or contributing to the commission of TF by a group of persons are covered as follows. Section 6 of the Offences Against the State (Amendment) Act 1998 makes it an offence to direct the activities of an unlawful organisation. Section 21A of the Offences Against the State Act 1939 makes it an offence to knowingly render assistance to an unlawful organisation. The CJA 2005 provides that a terrorist group that engages in, promotes, encourages or advocates the commission, in or outside the State, of a terrorist activity is an unlawful organisation for the purposes of the 1998 and 1939 Acts. "Terrorist activity" under that Act includes terrorist financing. Therefore directing or participating in the activities of a terrorist group engaged in terrorist financing is an offence. In addition, the conduct at (c) and (d) would fall under aiding, abetting, counselling or procuring an FT offence.

**Criterion 5.9** - Since the money laundering offence applies an "all crimes" approach to predicate offences, TF is a predicate offence for ML.

**Criterion 5.10** - TF offences apply regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur. This is provided for in Section 13(1) (which makes reference to it being an offence if it is in or outside Ireland), while subsections (6) and (7) deal with acts committed outside Ireland.

#### *Weighting and conclusion*

While Irish legislation covers the large majority of the technical criteria, the legislation does not specifically cover the financing of the individual terrorist or two terrorists acting together in the absence of an intended terrorist act. There is also a minor shortcoming in the coverage of financing the travel of individuals to engage in terrorist planning or training.

**Recommendation 5 is rated largely compliant.**

#### ***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

In its 3<sup>rd</sup> MER, Ireland was rated PC for SR.III, which contained these requirements. The main reasons for the ratings were that: Ireland had limited ability to freeze funds in accordance with UNSCR 1373 outside the EU listings system, and lack of communicating measures to, and monitoring of, DNFBPs.

**Criterion 6.1 in relation to designations pursuant to UNSCR 1267 (1988 and 1989)** - The Department of Foreign Affairs and Trade (DFAT) is responsible for communicating with the UN and through the Permanent Mission of Ireland to the UN communicate any proposal for listing of persons under UNSCR 1267 and successor resolutions. Such communications would be dealt with by the First Secretary in the Permanent Mission to the UN with responsibility for Security Council matters, who would liaise with the Political Division (International Terrorism Section) and Legal Division of the DFAT.

a) There is no formal procedure in place for identifying targets for designation, based on the designations criteria set out in the relevant UNSCRs. Work is ongoing in establishing a clear framework and relevant procedural rules for considering any such proposal, which is also assessing the appropriate evidential burden to be applied.

b) There is no formal procedure in place to follow the procedures and standard forms for listing as adopted by the relevant Committee. Ireland has never proposed a designation to the UN Sanctions Committees; therefore an evidentiary standard of proof of “reasonable grounds” or “reasonable basis” has not been applied. Ireland indicates that the framework being established, described above, is also assessing the appropriate evidential burden to be applied. If a designation were to be made, the Political Division (International Terrorism Section), in consultation with Legal Division, of the DFAT would deal with preparing the proposal in accordance with the relevant procedures and standard forms. Under the current EU framework, Art.75 TFEU would allow designations of EU “internals” (i.e. persons who have their roots, main activities, and objectives within the EU), either

upon reasonable grounds/basis or otherwise. However, the European Commission has not yet put forward a proposal for a regulation as stipulated in Art.75 para 1 TFEU in this regard.

c) There is no formal procedure in place to follow the procedures and standard forms for listing as adopted by the relevant Committee. Ireland indicates that if it were to propose a designation, the procedures and standard forms for listing, as adopted by the relevant UN Sanctions Committees, would be followed to the fullest extent possible. For example, Ireland has entered into a bilateral agreement with the Office of the UN Sanctions Ombudsperson with respect to the handling of confidential information, and follows the established procedures in the implementation thereof. Such a designation would likely in the first instance be generated based on intelligence of AGS; which could be channelled through the DoJE, who could then bring it to the attention of DFAT for political input.

d) There are no formal procedures in place to deal with the provision of information. Ireland indicates that it would, as a matter of principle, include to the full extent possible all relevant information and adequate identifiers. Ireland would also give careful consideration to, and would specify whether, its status as a designating state could be made known. Ireland indicates that the procedures described above would apply.

**Criterion 6.2** in relation to designations pursuant to UNSCR 1373 -

a) The freezing obligation under UNSCR 1373 is implemented at the EU level through CP 2001/931/CFSP and Council Regulation 2580/2001, as amended. The EU Council is responsible for deciding on the designation of persons or entities (Regulation 2580/2001 and Common Position 2001/931/CFSP). Within the context of Common Position 2001/931/CFSP and Regulation 2580/2001, EU listing decisions would be taken on the basis of precise information from a competent authority, meaning a judicial authority or equivalent of an EU Member State or third state. DFAT would be the competent authority that would refer the proposal to designate to the EU Council. However, Ireland indicates that the procedure to make such a designation of an Irish person or entity would likely in the first instance be generated based on intelligence of AGS; the police information could be channelled through the DoJE, which could then bring the recommendation to the attention of DFAT for political input. Upon reaching consensus to proceed with the designation, the recommendation would be forwarded at the EU Commission's CP 931 Committee.<sup>35</sup>

b) The mechanisms described in conjunction with Criterion 6.1(b) also apply to designations relating to UNSCR 1373.

c) Concerning requests received, the verification of their reasonable basis is handled at the European level by the 'Common Position 2001/931/CFSP on the application of specific measures to combat terrorism' Group (CP 931 Working Party) at the EU Council which examines and evaluates the information to determine whether it meets the criteria set forth in UNSCR 1373<sup>36</sup>. There is no requirement that a prompt determination be made.

<sup>35</sup> Immediately following the on-site visit, on 21 November 2016, RELEX agreed on the draft mandate to modify the CP 931 Working Group to become the COMET Working Group, that will deal with both CP 31 listings and listings under regulation 2016/1686 of 21 September 2016.

<sup>36</sup> All the Council CP working parties are comprised of representatives of the governments of Member Countries. The criteria set forth in Common Position 2001/931/CFSP are compliant with those stipulated in UNSCR 1373.

d) At the EU level, the CP 931 Working Party examines and evaluates information with a view to listing and de-listing of persons, groups and entities, and to assessing whether the information meets the criteria set out in Common Position 2001/931/CFSP. It will then make recommendations which will be adopted by the Council on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority, without it being conditional on the existence of an investigation or conviction (therefore based on ‘reasonable grounds’).

e) At the European level, there is an alignment procedure that allows for asking non-EU member countries to give effect to the EU list. At the national level, there is no formalised procedure to deal with the provision of information or under which Ireland could ask another country, including other EU countries, to give effect to freezing measures undertaken in Ireland. Ireland indicated that in principle it would provide as much identifying information as possible in order to enable another country to satisfy itself that the criteria for listing are met and to properly identify the individual or entity.

### Criterion 6.3 –

a) The competent authorities have the necessary powers and mechanisms enabling them to identify persons or entities that might meet the criteria for designation. At the national level, AGS has the legal authority to gather information. At the European level, all the EU Member States are required to share with one another all the pertinent information in their possession in application of the European regulation on the freezing of assets. They must work together to achieve the most extensive level of assistance possible to prevent and combat terrorist acts<sup>37</sup>.

b) The designations must take place ‘without prior notice’ (*ex parte*) being given to the person or entity identified<sup>38</sup>. The Court of Justice of the EU confirmed the exception to the general rule of prior notice of decisions so as to avoid compromising the effectiveness of the freezing measures. Ireland indicated that in the event of considering putting forward a designation, it would use section 14 of the CJA 2005. This allows for *ex parte* applications to freeze funds that are being used or may be intended for use in committing or facilitating the commission of a terrorist offence or for the benefit or purpose of a terrorist group. The freezing order is issued in the High Court, based on an *ex parte* application by the AGS. The order has the effect of prohibiting any person from disposing or dealing with or diminishing those funds. Section 18 of the 2005 Act deals with evidence, the standard of proof and court proceedings under section 14 and certain other sections of the Act. Section 14 indicates that a member of the AGS can apply for a freezing order to the High Court under the legislation. However, there is not a firm indication of the timeframe for court proceedings in relation to Section 14 applications.

**Criterion 6.4 -** In the EU framework, implementation of targeted financial sanctions pursuant to UNSCRs 1267/1989 and 1998 does not occur “without delay”. Because of the time taken to consult between European Commission departments and translate the designation into all official EU languages, there is a delay between when the designation and freezing decision is issued by the UN and when it is transposed into EU law under Regulation 881/2002. In 2015, these delays took between four and 12 days. In February 2016 the Council began to take steps to address this. In

<sup>37</sup> Reg.1286/2009 Para. 5 of the Preamble and Art. 7a(1).

<sup>38</sup> Reg.1286/2009 Para. 5 of the Preamble and Art. 7a(1).

February 2016, it adopted an action plan (COM (2016) 50 final) to seek to reduce the time taken to transpose UN listings. Although some of these measures have been implemented – resulting in transposition times of four-six days in 2016 – it is still not possible for implementation to take place within hours as ideally required by the FATF standards. As regards Resolution 1988, similar issues arise when the Council transposes the decision under Regulation 753/2011. The two designations in 2015 (there were no additions in 2016) by the 1988 (Taliban) Committee took 127 days (over 4 months), and 15 days.

Ireland indicates that this can be supplemented using domestic measures, i.e., Sections 14 and 15 of the CJA 2005. These detail the provisions to freeze funds suspected of being intended for use in committing or facilitating the commission of terrorism or terrorist financing. The freezing order has the effect of prohibiting any person from disposing or dealing with or diminishing those funds. However, these measures have not been tested (such as the level of suspicion or proof required, and the time required to implement the measures) as they have not been used to implement targeted financial sanctions. There is not a firm indication of the timeframe for court proceedings in relation to Section 14 applications.

Targeted financial sanctions, in application of UNSCR 1373, are implemented by Council regulations (taken in application of Regulation 2580/2001) that are implemented immediately and directly in Irish law. As a result, these sanctions are implemented ‘*without delay*’.

**Criterion 6.5** - Ireland has the following powers and mechanisms to ensure the implementation of targeted financial sanctions:

a) Pursuant to UNSCR 1267/1989 and 1988, European regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list<sup>39</sup>. But because of delays in the transposition of UN designations (see criterion 6.4), freezes are not implemented ‘*without delay*’, and this delay can result in de facto prior notice to the persons or entities in question. For designations under UNSCR 1373, the regulations are self-executing in all Member States and that no prior notice is to be given to the designated persons or entities<sup>40</sup>. EU internals (i.e. persons who have their roots, main activities, and objectives within the EU) are not subject to the freezing measures set forth in Regulation 2580/2001, although they are subject to increased police and judicial cooperation among Member States: CP 2001/931/CFSP footnote 1 of Annex 1 Persons who do not abide by the freezing measures set forth in the European regulations are subject to sanctions at the Irish level.

b) Pursuant to UNSCR 1267/1989 and 1988, the freezing obligation extends to all the funds or other assets defined in R.6, namely funds owned by designated persons (natural or legal) as well as funds controlled by them or by persons acting on their behalf or on their orders. These aspects are covered by the notion of “control” in Art.(2) Regulations 881/2002, and 753/2011 Art.3. The definition of “funds or other assets” was amended to include economic resources pursuant to Art. 1 of Regulation 2016/1686 (applying additional restrictive measures against ISIL (Da’esh) and Al-Qaeda) of 20 September 2016. With regard to UNSCR 1373, the freezing obligation under Art.2(1)(b) Regulation

<sup>39</sup> Regulations 881/2002 Art. 2 (1), 1286/2009, Art. 1 (2), 753/2011, Art. 3, and 754/2011, Art. 1.

<sup>40</sup> Reg.2580/2001, Art. 2 (1) (a).

2580/2001, and under the RD of 28 December 2006 is not extensive enough as it does not cover the issue of “control”.

c) At the European level and in compliance with the UNSCRs, the regulations prohibit EU nationals and all other persons or entities present in the EU from making funds or other economic resources available to designated persons or entities<sup>41</sup>.

d) Designations made pursuant to the EU regulations are published in the Official Journal of the EU (publicly available on the [EURLEX](#) website) and on the website of the European External Action Service (users may subscribe to an automatic alert notification). The European Commission updates the Financial Sanctions Database after the publication of a listing in the Official Journal. The financial sector and DNFBPs can subscribe to the RSS-file with the latest updates. Credit institutions can also download the consolidated list through ftp access. DFAT notifies all members of the CDISC of relevant entries on the day of the publication in the Official Journal. An information page is included on the website of DFAT at [Competent Authorities for EU Restrictive Measures](#). The competent authorities have a mechanism in place for communicating updates on designations to the financial sector; they web-publish daily updates on EU/UN designations and links to the relevant publications. The competent authorities send out periodic updates on financial sanctions to subscribers to an email service. The CBI has published FAQs for credit and financial institutions, which provide information on keeping up to date on EU Financial Sanctions lists and UN targeted financial sanctions lists and what to do in the event of a match (or a “hit”) for a sanctioned individual or entity. The EU Council provides guidance by means of the EU Best Practices for the effective implementation of restrictive measures.

e) The natural and legal persons targeted by the European regulations must immediately provide all information related to any matches and freezes to the competent authorities of the Member States in which they reside or are present, as well as to the Commission, either directly or through these competent authorities<sup>42</sup>.

f) The rights of bona fide third parties are protected at the European level<sup>43</sup>.

**Criterion 6.6** - There are mechanisms for de-listing and unfreezing the funds/other assets of persons/entities which do not, or no longer, meet the criteria for designation.

a) Any de-listing request would be communicated by the DFAT through the Permanent Mission to the United Nations in New York to the relevant UN Security Council Committee.

b) Pursuant to UNSCR 1373, the Council revises the list at regular intervals (at least every six months – CFSP Art.6) in accordance with the assessment of the CP 931 Working Party.

c) At the EU level, a listed individual or entity can write to the Council to have the designation reviewed or can challenge the relevant Council Regulation, a Commission Implementing Regulation, or a Council Implementing Regulation in Court, per Treaty on the Functioning of the European Union (TFEU), article 263 (4)). Article 275 also allows legal challenges of a relevant CFSP Decision.

<sup>41</sup> Regulations 881/2002 Art. 2(2), 753/2011 Art. 4, and 2580 Art. 2(1).

<sup>42</sup> Regulations 881/2002, Art. 5.1 and 2580/2001, Art. 4.

<sup>43</sup> Regulations 881/2002 Art. 6; 753/2011 Art. 7; 2580/2001 Art. 6.

d) & e) For designations pursuant to UNSCR 1267/1989 and 1988, designated persons and entities are notified of their designation and the reasons, as well as its legal consequences; they have the right to request a review of the designation in court. At the EU level, there are procedures that provide for de-listing names, unfreezing funds and reviews of designation decisions by the Council of the EU (Article 11 of Council Regulation 753/2011 and Article 7a of Regulation 881/2002). At the UN level, the review would be brought by the DFAT via the Permanent Mission to the UN in New York, to the Ombudsperson (established pursuant to UNSCR 1904 (2009)) for the examination of de-listing requests, in compliance with UNSCR 1267/1989 and 2255, or, where applicable, before the UN Focal Point Mechanism (established pursuant to UNSCR 1730) for UNSCR 1988.

f) There are publicly known procedures for obtaining assistance in verifying whether persons or entities having the same or similar name as designated persons or entities (i.e. a false positive) are inadvertently affected by a freezing mechanism<sup>44</sup>. The procedures are published on the [Department of Foreign Affairs and Trade](#) website. In practice, any query from a financial institution would usually be addressed in the first instance to the CBI, who in turn would inform other competent authorities (DoJ&I and DFAT) and/or the CDISC, should it be considered appropriate. Any necessary contact with the Council of the EU, the EC, or the UN Sanctions Committee would be carried out by the DFAT. The procedures described in sub-criteria (a) to (e) above also apply to the unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing mechanism.

g) De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journal of the EU, and guidance is available, pursuant to criterion 6.5 above. DFAT also communicates the decisions to the members of the CDISC.

**Criterion 6.7** - At both the European level, there are procedures in place to authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses pursuant to UNSCR 1452<sup>45</sup>.

### *Weighting and conclusion*

The inability to freeze “without delay” the assets of persons/entities designated by the UN and the absence of any specific measures to freeze the assets of listed EU internals are fundamental components of R.6. There is no formalised procedure for identifying targets for designation or to deal with the provision of information or under which Ireland could ask another country, including other EU countries, to give effect to freezing measures undertaken in Ireland. Consequently, the shortcomings described for criteria 6.2(e), 6.4 and 6.5(a) are especially important.

**Recommendation 6 is rated partially compliant.**

### ***Recommendation 7 – Targeted financial sanctions related to proliferation financing***

As a member of the EU, Ireland applies the EU framework for implementing designations under UN Security Council Resolution 1718 (DPRK) (Council Regulation No. 329/2007, as amended, and

<sup>44</sup> EU Best Practices for the effective implementation of restrictive measures.

<sup>45</sup> Regulations 881/2001, Art. 2a, 753/2011, 2580/2001, Art. 5.

Council Decisions 2013/183/CFSP) and Security Council Resolution 1737 (Iran) (Council Regulation No. 267/2012 as amended and Council Decision 2010/413) respectively. Council Regulation (EU) 2015/1861 introduces changes to take account of the Joint Comprehensive Plan of Action which apply from 16 January 2016. These Regulations have direct force of law in Ireland from the date of their publication in the Official Journal of the European Union.

**Criterion 7.1** - R.7 requires the implementation of targeted financial sanctions “without delay”, meaning in this context, “ideally, within a few hours”. Although European regulations are implemented immediately in all EU Member States upon the publication of decisions in the EU Official Journal, there are delays in the transposition into European law of UN decisions on DPRK. For DPRK, the UN added individuals and entities to the list five times between March 2012 and November 2016. Twelve of the entities (out of 26) and one individual (out of 23) had already been listed in the EU Framework. On four other occasions, the designations by the UN (of 22 January 2013, 7 March 2013, 28 July 2014, and 2 March 2016) took approximately 4 weeks, 6 weeks, and 10 weeks, and 2 days, respectively. While the sanctions for DPRK thus are generally not implemented “without delay”, the sanctioning system (similar to the system for Iran) is also mitigated by the significant number of other designations by the EU. With regard to Iran, the technical problems in the EU for the transposition of UN sanctions and any delays which might have occurred in Ireland after such transposition have not in practice led to any delays in the implementation of TFS related to PF.

**Criterion 7.2 -**

a) Council Regulation No. 329/2007 and Council Regulation No. 267/2012 are directly applicable in Irish law upon the day of publication in the Official Journal of the European Union. The EU Regulations require all natural and legal persons within the EU to freeze without delay the funds or other assets of persons or entities designated under the EU’s anti-proliferation regimes. These regulations are supplemented by domestic instruments<sup>46</sup> which make it an offence for all natural and legal persons within the country not to freeze assets pursuant to the EU’s anti-proliferation measures. In the event of a match or a ‘hit’ against a sanctioned individual or entity pursuant to an EU Council Regulation, persons and entities within the jurisdiction or within the EU are required to immediately freeze the account and/or stop the transaction and report the match/hit to the any of the three competent authorities along with other relevant information. In practice, any query from a financial institution would usually be addressed in the first instance to the CBI, who in turn might inform other competent authorities (DoJEI and DFAT) and/or the CDISC, should it be considered appropriate. The AMLD unit within the CBI is the competent authority designated for directly supervising FIs’ compliance with TFS obligations. The DoJE, PSRA, the Law Society and designated accountancy bodies supervise DNFBPs that fall within their remit of supervision.

b) The freezing obligation applies to all types of funds.

c) The regulations prohibit making available, directly or indirectly, funds or economic resources to designated persons or entities or for their benefit, unless otherwise authorised or notified in compliance with the relevant UN resolutions (Art.6.4 Regulation 329/2007 and Art.23.3 Regulation 267/2012).

<sup>46</sup> Statutory Instrument, European Union (Restrictive Measures concerning Iran) Regulations 2016 (S.I. No. 478 of 2016) implements penalties in respect of Council Regulation (EU) No 267/2012.

d) Mechanisms for communicating designations are the same as those detailed above at Criterion 6.5(d). The lists of designated persons and entities are communicated to FIs and DNFBPs through the publication of a consolidated list on the EU site is available and can be downloaded at: [Common Foreign and Security Policy \(CFSP\)](#). Such publication constitutes a notification to all addresses of the requirements. Guidance to FIs and DNFBPs and others who may be holding targeted funds or other assets is publicly available.

e) In the event that a match occurs against a sanctioned individual or entity, the financial institution must immediately freeze the account and/or stop the transaction and immediately report the matter to any of the three competent authorities along with other relevant information. In practice, any query from a financial institution would usually be addressed in the first instance to the CBI, who in turn might inform other competent authorities (DoJEI and DFAT) and/or the CDISC, should it be considered appropriate. FIs and DNFBPs must immediately provide to the competent authorities all information, including information about the frozen accounts and amounts (Art.10 Regulation 329/2007 and Art.40 Regulation 267/2012).

f) The rights of bona fide third parties are protected by the relevant EU Regulations (Art.11 Regulation 329/2007 and Art.42 Regulation 267/2012).

**Criterion 7.3** - Sanctions for non-compliance with UNSCRs 1737 on Iran and 1718 on DPRK are provided for in the European Union (Restrictive Measures concerning Iran) Regulations 2016 (Statutory Instrument No. 478 of 2016) and the European Union (Restrictive Measures concerning the Democratic People's Republic of Korea) (No. 2) Regulations 2016 (Statutory Instrument No. 540 of 2016). respectively. In both cases, persons who fail to comply are subject to a class A fine (up to EUR 5 000) or to imprisonment for a term not exceeding 12 months or both, or (b) on conviction on indictment, to a fine not exceeding EUR 500 000 or to imprisonment for a term not exceeding 3 years or both (Regulations 4-6 and Regulation 4, respectively).

**Criterion 7.4** - The European regulations establish measures and procedures for submitting de-listing requests in cases where the designated persons or entities do not meet or no longer meet the designation criteria.

a) The EU Council communicates its designation decisions, including the grounds for inclusion, to the designated persons or entities which have the right to comment on them. If this is the case or if new substantial proof is presented, the Council must reconsider its decision. Individual de-listing requests must be processed upon receipt, in compliance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures. Designated persons or entities are notified of the Council decision. Delisting requests may be directly filed with the Council of the EU or with the competent UN authority (Focal Point established pursuant to UNSCR 1730 (2006)). When the UN decides to de-list a person, the EC modifies the lists in the annexes of the European regulations without the person in question having to request it (Arts.13.1(d) and (e) Regulation 329/2007, and Art. 46 Regulation 267/2012). The persons and entities affected by restrictive measures may file a petition for delisting with the competent national authorities that will channel such request to the respective institutions. Designated persons or entities individually affected may also institute proceedings before the European Court of Justice in order to challenge the relevant (EU) Sanctions Regulations.

b) Publicly known procedures are available for obtaining assistance in verifying whether persons or entities are inadvertently affected by a freezing mechanism having the same or similar name as designated persons or entities (i.e. a false positive).

c) At the EU level, there are specific provisions for authorizing access to funds or other assets, where the competent authorities of Member States have determined that the exemption conditions set out in Resolutions 1718 and 1737 are met, and in accordance with the procedures set out in those resolutions. EU implementing regulations provide mechanisms for authorising access to frozen funds or other assets which have been determined to be necessary for basic expenses, the payment of certain types of expenses or for extraordinary expenses. Any of the three competent authorities may authorise, under such conditions as deemed appropriate, the release of certain frozen funds or economic resources, if the competent authority determines that the relevant conditions as set out in the relevant EU financial sanctions regulation have been met. Applications to release funds from frozen accounts or to make funds, economic resources or financial services available to or for the benefit of a designated person should be made in writing to the competent authority.

d) The procedures set out in 6.5(d) are equally applicable to any changes to EU listings, which will be given effect to by a Council Regulation or a Council/Commission Implementing Regulation, notice of which will appear in the Official Journal and will be communicated by DFAT to the members of the CDISC. Notice will, in turn, appear on the website of the Competent Authorities.

#### **Criterion 7.5 -**

a) The European regulations permit the payment to the frozen accounts of interests or other sums due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that these amounts are also subject to freezing measures (Art.9 Regulation 329/2007 and Art.29 Regulation 267/2012).

b) Provisions authorise the payment of sums due under a contract entered into prior to the designation of such person or entity, provided that this payment does not contribute to an activity prohibited by the regulation, and after prior notice is given to the UN Sanctions Committee (Arts.24-25 Regulation 267/2012).

#### *Weighting and conclusion*

As with R.6, the ability to ensure asset freezing without delay is the element that distinguishes targeted financial sanctions from other measures relating to criminal proceedings. While the EU measures for Iran are implemented without delay, they are not done so for DPRK. Therefore criteria 7.1 and 7.2 are fundamental components of R.7.

**Recommendation 7 is rated partially compliant.**

#### ***Recommendation 8 – Non-profit organisations***

In its 3rd MER, Ireland was rated PC for requirements pertaining to NPOs (formerly SR.VIII). Ireland was in the process of completing a review of its NPO sector, but had not yet implemented measures

to ensure accountability and transparency in the sector, or to ensure that funds/assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations. Since then, Ireland adopted the Charities Act 2009, and its CRA became operational in October 2014. Ireland indicated that in developing these, Ireland had due regard to the (2012) Interpretative Note to SR.VIII.

#### **Criterion 8.1 -**

(a) Ireland has identified the subset of organisations that fall within the FATF definition of NPO, and these are the NPOs that are covered under the Charities Act 2009 (the Charities Act). In developing the Charities Act, Ireland had due regard to the (2012) Interpretative Note to R.8. The Charities Act defines the organisations covered in the act as those with “charitable purposes” – i.e. for the benefit of the public, and in particular: the prevention of relief of poverty or economic hardship, the advancement of education or religion, or any other purpose that is of benefit to the community.

The core focus of Ireland over its first strategy 2016-2018 is to build a comprehensive, intact register of all Charities operating in Ireland. While Ireland is not in a position to indicate the total number of NPOs operating in the country, all charities that conduct international activities are included in the Charities Act and register. Nevertheless, beyond the category of charitable organisations Ireland has not identified features and types of NPOs which by virtue of their activities and characteristics, are likely to be at risk of terrorist financing abuse.

(b) Ireland has not fully identified the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors could abuse those NPOs. The NRA indicates that, while there is no evidence of NPOs being abused for ML or TF, there are groups or entities seeking funds online which are not registered Irish charities.

(c) Ireland has reviewed to a limited extent the adequacy of laws and regulations that related to the subset of the NPO sector that may be abused for terrorism financing support. Ireland’s Law Reform Commission undertook an extensive Consultation and Policy Review of the entire NPO sector in Ireland. The Review was published by the Law Reform Commission in October 2006 and this was followed by the enactment of the Charities Act and establishment of the CRA in October 2014. But the review did not specifically look at potential TF abuse in Ireland or the types of entities that might be abused beyond the definition of charity described above.

(d) The Charities Act is due to be reviewed in 2019. It is not clear whether and to what extent this will include reviewing new information on the sector’s potential vulnerabilities to terrorist activities.

#### **Criterion 8.2 -**

(a) The Charities Act includes a number of measures to promote transparency, integrity, and public confidence in the administration and management of charities. As all charities are placed on the CRA’s register, their particulars are publicly accessible and include: the name of charity; principle business address, other names (e.g. trading names; other language versions of name; etc.); registered charity number; charitable tax exemption number; legal form adopted by the charity (e.g. company; association; etc.); company registration number (where applicable); country of establishment of the charity; charitable purpose; charitable objects (as set out in the charity’s governing instrument);

names of the charity trustees; other addresses in Ireland from which the charity operates; and locations abroad in which the charity operates. All of this information is available to view on the CRA website **Charities Regulator**. There is no exemption from registration. However, there is an exemption as set out in 39(6) from providing all the details listed above. This exemption has only been applied in one circumstance to date - for primary level schools which are to principally regulated by the Department of Education and Science.

(b) There has been no specific outreach to NPOs dealing specifically with TF but it is envisaged that guidelines and advice on TF will be incorporated into future relevant guidance documents (pursuant to Section 14(1)(i) of the Charities Act). Furthermore, it is intended to examine the possibility of forming 'issues groups' for different elements of the charities sector with a view to examining issues such as terrorist financing within the different areas. The CRA's [website](#) provides information on FATF and information in relation to best practices and their importance was issued to over 14 000 NPOs in November and December 2016.

(c) The CRA has produced a limited amount of information on best practices in relation to addressing terrorist financing risks. This provides links to a range of relevant important information for charities **Charities Regulator - FATF**. Throughout 2017 and 2018 the Authority will publish specific guidelines on best practices. The Authority will also be developing an increased information and communication technology (ICT) capability and online communications channels which will enable targeted contact with charities who are engaged in activities or locations which would require increased protection against terrorist financing abuse.

(d) Throughout 2017 and 2018 the CRA will publish specific guidelines on best practices. The Authority will also be developing an increased ICT capability and online communications channels which will enable targeted contact with charities who are engaged in activities or locations which would require increased protection against terrorist financing abuse.

**Criterion 8.3** - With the establishment of the CRA in 2014, it is now mandatory for all charities (as defined in the Act) operating in Ireland to apply to be placed on the CRA register (Section 39(3)). This registration is publicly available.

Charities are required to maintain information on the purpose and objectives of their stated activities, and the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees.

Section 48 of the Charities Act 2009 outlines the obligations on registered charities to provide annual statements of accounts to the CRA. Section 52 sets out the obligations on charities to prepare and submit annual reports to the CRA at the end of each financial year detailing activities in that financial year. These reports must be made available for public inspection in accordance with Section 54.

The CRA monitors charities through reviewing the compulsory provision of annual statements of accounts and reports by registered charities. The accounting requirements emphasise records on how funds are spent. Section 47 of the Act outlines the obligations on registered charities in relation to keeping proper books of account. In addition, in accordance with Section 64, the CRA may appoint an inspector to conduct a statutory investigation of a charitable organisation. Section 39 of the Act

outlines charity details that must be provided when applying to be placed on the register. This includes the plans of the charity (i.e. any NPO with a “charitable purpose”) with respect to funding activities in furtherance of its objectives.

In assessing an application for charitable status the CRA assesses whether the NPO is established to provide a public benefit. In order to satisfy the CRA that a NPO meets this requirement, information regarding beneficiaries, independent third party letter confirming status from other state organisations involved in funding, regulating or otherwise interacting with the NPO are requested. The individual identity of beneficiaries is a matter for the NPO; however, the CRA applies a rigorous assessment process to ensure that the NPO provides public benefit and that this is conducted in an appropriate way.

Section 47 of the Charities Act details the requirement of charities to keep proper books of account and obliges charities to keep associated records for a period of not less than 6 years from the end of the financial year to which it relates.

The CRA has a consultative panel in place as per the Charities Act. This panel will inform the approach to charitable fundraising and it is anticipated that it will complete its work by early 2017. Any proposed Regulations resulting from this process will then be drafted. The CRA intends to approve guiding principles for charitable fundraising.

**Criterion 8.4** - As of the time of the on-site visit, Ireland did not have in place a programme for monitoring compliance with the requirements of Recommendation 8. Part 4 of the Charities Act gives the CRA statutory powers of investigation with respect to charitable organisations. The CRA follows up on complaints received about charities within the powers and resources currently available to it. The CRA considers complaints where there is the potential for serious abuse of a charity, its assets or its beneficiaries. In practice, compliance is currently monitored by adherence to yearly reporting obligations. Reporting is done through a digital system which allows the CRA to quickly see which charities are meeting their filing dates. The intention of the CRA going forward is to audit a proportion of registered charities on the basis of risk and to publish its findings.

Since its establishment in October 2014 the CRA has been focussing on the establishment of its register. Once the register is complete the focus will shift to a risk-based monitoring process for registered charities. This risk-based monitoring process will include, inter alia, risk factors for terrorist financing to facilitate an understanding/ awareness of the sector’s potential vulnerabilities to terrorist activities. The CRA is developing and implementing a regulatory risk framework as part of an operational committee whose Terms of Reference will cover all core regulatory affairs.

Section 10 of the Charities Act sets out the penalties which can be imposed on those found guilty of an offence under the Act. A person guilty of an offence shall be liable: on summary conviction, to a fine not exceeding EUR 5 000 or to imprisonment for a term not exceeding 12 months or to both; or on conviction on indictment, to a fine not exceeding EUR 300 000 or to imprisonment for a term not exceeding 10 years or to both. Section 73 of the Act outlines circumstances under which it would be considered reasonable and proportionate to apply intermediate sanctions in place of criminal proceedings for contravention of requirements laid down by various sections of the Act. This includes rectification orders, and removal from the register or publication of particulars of the contravention on the CRA’s [website](#). Some aspects will also be included in new accounting

regulations, which were still in the drafting stages at the time of the on-site visit. Breaches of these accountant regulations will constitute an offence.

Section 43 of the Charities Act also provides that when the CRA, following consultation with the AGS, is of the view that a body registered in the register is or has become an excluded body by virtue of its promoting purposes that are in support of terrorism or terrorist activities, among others, then the charity will be removed from the register.

**Criterion 8.5 -**

(a) There are established mechanisms for co-operation, co-ordination and information sharing amongst all the relevant authorities. The CRA liaises closely with the charities section of Revenue. An MOU between the CRA and Revenue has been signed in March 2016. The CRA and AGS participated on an interagency group on terrorist financing. Both formal and informal meetings have taken place to advance co-operation in this area. An MOU is currently being developed between the CRA and AGS. The CRA and AGS liaise with each other in regard to the threat of terrorist financing in the NPO sector via interagency working groups in addition to on an agency to agency basis. In addition, the CRA works with numerous government bodies including but not limited to: the CRO; the Housing Registration Office; the Department of Education; the Health Service Executive; the Health Information and Quality Authority; and the Department of the Environment.

(b) With effect from 5 September 2016, the CRA has the power to investigate charities, replace trustees and/or take a charity off a register. However, as of the time of the on-site visit, the investigative expertise and capability within the CRA was in the initial stages of being developed. As of the time of the on-site visit, the CRA was monitoring charities through unsolicited information which is risk assessed and acted upon.

(c) Full access to information on the administration and management of particular NPOs may be obtained during the course of an investigation. The Charities Regulator receives financial and programmatic information from registered charities on an annual basis. Section 48 requires charities to provide annual statements of accounts; section 52 outlines the obligations with regard to the preparation and submission of annual reports. The CRA also has the power to require a charity to provide it with any information it deems necessary to carry out its functions (s. 53). In addition, the CRA may appoint an inspector to conduct a statutory investigation of a charitable organisation (s. 64).

(d) The CRA is required under section 28 of the Charities Act, to report any information obtained by it that causes the CRA to suspect that an offence has been committed by a charity trustee or a charitable organisation. This legal obligation extends to (a) the AGS (b) Revenue, (c) the Director of Corporate Enforcement, and d) The Competition and Consumer Protection Commission. The CRA has in the course of performing its functions in 2016 formally disclosed information to some of the bodies listed above. Reporting arrangements have already been agreed and these will be further strengthened by the signing of memoranda of understanding later in 2017.

**Criterion 8.6 -** The Head of Compliance within the CRA is the main point of contact for international requests. This was already informally the case as of the time of the on-site visit and will be formally prescribed later in 2017. The CRA has commenced a process of putting in place MOU and data

sharing agreements. In the first instance these will be with Irish Statutory Authorities including AGS. Section 34 of the Charities Act outlines the circumstances under which the CRA may provide administrative co-operation to foreign statutory bodies on law enforcement matters. “Foreign statutory body” is defined as a person prescribed by regulations made by the Minister, in whom functions relating to charitable organisations or charitable trust are vested under the law of another country. No such foreign statutory body had been proscribed as of the time of the on-site visit.

### *Weighting and conclusion*

With the enactment of the Charities Act in 2009 and establishment of the CRA in 2016, Ireland has taken steps to promote accountability and transparency in NPOs. However, beyond the category of charitable organisations Ireland has not identified features and types of NPOs which by virtue of their activities and characteristics, are likely to be at risk of terrorist financing abuse or adequately reviewed those measures (criterion 8.1). There has also not been specific outreach to NPOs on TF issues or the development of best practices. As of the time of the on-site visit, Ireland was in the initial stages of implementing a risk-based approach to monitor NPOs; this is expected to be strengthened in 2017.

**Recommendation 8 is rated partially compliant.**

### *Recommendation 9 – Financial institution secrecy laws*

Recommendation 4 (now R.9) was rated C in the 3<sup>rd</sup> Round MER and as before, there are no statutory or other financial secrecy or confidentiality laws in Ireland that inhibit the implementation of FATF Recommendations. Assessors at the time were mindful that there were measures yet to be implemented, such as those regarding SR. VII (wire transfers) and they recommended that Ireland ensured that any provisions implemented in this regard would also be compliant with this principle.

**Criterion 9.1** - There are no statutory laws or other measures which inhibit the implementation of FATF Recommendations. In fact, Ireland has several provisions which enable authorities to share information, including for supervisors and law enforcement (this include Tax Information Exchange Agreements which are considered useful in terms of obtaining and sharing information for the confiscation of proceeds of crime). Whenever there is a Revenue inquiry in Ireland, including an investigation by the CAB, the Revenue can request information from FIs abroad and are able to share it with Revenue Officers seconded to CAB.

The CBI can share information with foreign counterparts pursuant to, among others, sections 33 AK and 63 of the Central Bank Act 1942 and regulations 135 and 143 of the S.I. No. 60 of 2007/ European Communities (Markets in Financial Instruments) Regulations 2007. Pursuant to section 54 of the Central Bank Reform Act 2010, the CBI may, at the request of a Member State authority or a third country authority, to require information and request the production of documents under the legislation of any provision of financial services. Authorities also indicated that the sharing of information between FIs is not restricted where this is required by R. 13, 16 and 17. The obligations under Part 4 of the CJA 2010 which refer among others, to STRs, have a derogation from the

provisions of the Data Protection Act 1988 as amended (section 8(e)). Information can also be exchanged, from the FIU perspective, through the following provisions:

1. Section 1 of the Disclosure of Certain Information For Taxation and Other Purposes Act 1996
2. Section 8 Data Protection Act 1988

Authorities explained that as a police based FIU, all information can be exchanged freely between the FIU and the Irish Police Force (AGS).

*Weighting and conclusion*

**Recommendation 9 is rated compliant.**

***Recommendation 10 – Customer due diligence***

In its 3<sup>rd</sup> round MER, Ireland was rated PC for R. 10 (former R.5). The technical deficiencies related to the lack of a requirement to apply CDD measures whenever there was suspicion of ML/TF, the absence of legally binding provisions instead of guidance requiring to investigate the purpose and intended nature of business relationship, among others. These deficiencies were largely addressed according to Ireland’s 11<sup>th</sup> FUR, with some minor shortcomings.

**Criterion 10.1** - Financial institutions are prohibited from facilitating setting up or maintaining anonymous accounts or providing anonymous passbooks to any customer (s. 58 of the CJA 2010). This applies to any anonymous accounts or passbooks in existence prior to the commencement of the CJA 2010. Accounts under fictitious names are not explicitly prohibited, but the range of CDD requirements effectively prevent this.

**Criterion 10.2** - Section 33(1) of the CJA 2010 requires FIs to identify and verify their customers prior to establishing a business relationship, carrying out an occasional transaction or carrying out any service for the customer if there are suspicions of ML/TF, or doubts about the veracity or adequacy of documentation or information previously obtained. Occasional transactions are defined as a single transaction or as series of transactions which appear to be linked, where there is no business relationship and which amount to or exceed EUR 15 000 (s. 24 of CJA 2010). Ireland requires CDD to be undertaken when carrying out occasional transactions that are wire transfers in the circumstances covered by Recommendation 16 and its interpretative note. Section 24(1) of the CJA 2010 was extended through section 4 of the CJA 2013 to cover transfers of funds (within the definition of Regulation (EC) No. 1781/2006) with an amount not less than EUR 1 000. Full customer diligence measures (including the requirement to identify the beneficial owner) are applied to “occasional transactions”, and therefore, to wire transfers with the value not less than EUR 1 000.

**Criterion 10.3** - Financial institutions are obliged to identify and verify the identity of a customer on the basis of documents and information that a designated person may have reasonable grounds to believe can be relied upon. This includes, but not limited to, documents from a government source or any prescribed class of documents or combined classes of documents ( s. 33 of CJA 2010).

**Criterion 10.4** - There is no specific requirement to verify that any person purporting to act on behalf of the customer is so authorised, and to identify and verify the identity of that person (i.e. legal representative), although CDD practices would typically ensure that such persons be identified and verified.

**Criterion 10.5** - Financial institutions are required to identify the beneficial owner and verify the beneficial owner's identity to the extent necessary, to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is [s. 33(2)]. Beneficial owners are defined as any individual who ultimately owns or controls a customer (s. 30 of CJA 2010) and this is in line with the definition provided in the FATF Glossary.

**Criterion 10.6** - Financial institutions must obtain information on the purpose and nature of the intended business relationship with a customer, prior to establishing a relationship (s. 35 of CJA 2010).

**Criterion 10.7** - Financial institutions must monitor dealings with a customer by scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the designated person's knowledge of the customer and the customer's business and transactions pattern (s. 35 (3) of CJA 2010). There should be policies and procedures in order to keep documents and information updated (s. 54, (3)(c) of CJA 2013).

**Criterion 10.8** - In case the client is a legal person or a trust, FIs are mandated to understand the ownership and control structure of that person (s. 33 (2) (b) (ii) of CJA 2010).

**Criterion 10.9** - The specific requirements of 10.9 are not contained in the law or other enforceable means. They are described in the Financial Services Industry Guidelines. While these Guidelines are issued pursuant to section 54(2)(a) of the Act (the requirement to have AML/CFT controls in place), these do not impose directly enforceable obligations. The Guidelines include as a requirement to identify and verify a) an entity's name, legal form & proof of existence; address of registered office and main place of business; the nature of the business and its ownership and control structure. Directors or equivalent, either two directors or one director and one authorised signatory (this is more restrictive than point (b) of the criterion), and b) the beneficial owner (s) (extent of verification as warranted by risk).

**Criterion 10.10** - Financial institutions must establish the beneficial owner's identity (see c.10.5 above; there is an obligation to identify and verify), following section 33 of the CJA 2010. The definition of the "beneficial owner" includes the elements of the controlling ownership interest (as set out in the sub-criterion 10.10.a, subject to those with 25% controlling interest or who benefit in 25% from the business). Section 26 (b) of CJA 2010 refers to the beneficial owner being whoever "otherwise" exercises control over the management of the body corporate, and could be considered to include control through other means (as set out in the sub-criterion 10.10.b, when there are no "apparent" natural persons). The definition does not include the element of the senior managing official (sub-criterion 10.10.c).

**Criterion 10.11** - Financial institutions must identify and verify the beneficial owner of a customer (See also 10.5 above). In the case of trusts and other legal arrangements different to these, sections 26, 27, 28, 29 and 30 of CJA 2010 define beneficial owners generally, summarising these provisions

as those who exercise control, take part, or have an interest, remainder, or reversion in a partnership or a trust (e.g. beneficiaries and protectors), or those who benefit from these. Section 28 of the Act refers to “control” meaning in regards to a trust, the ability to wholly or jointly (therefore covering control through chain of control/ownership) (with another or with the consent of another person) to exercise the following: a) dispose of advance; b) vary the trust; c) add or remove a person as a beneficiary or to or from a class of beneficiaries; d) appoint or remove trustees; e) direct, withhold consent to or veto the exercise of any power referred to in (a) to (d).

**Criterion 10.12** - Beneficiaries of life insurances have to be identified and verified (s. 33 (7), in conjunction with s. (2) and (4) of the CJA 2010), prior to the policy being paid out and prior to the beneficiary exercising any other right vested under the policy. 10.12 (a) and (b) are not met. There is no specific requirement to obtain the name of a specifically named beneficiary at the time of establishment of the relationship, or to gather adequate information in the case of a class of beneficiaries.

**Criteria 10.13** - Section 39 of the CJA 2010 provides that where a designated person has reasonable grounds to believe that the circumstances relating to a customer, beneficial owner, service, product or transaction may present a heightened risk of money laundering or terrorist financing the financial institution shall, in respect of that customer or beneficial owner, apply additional measures (s. 39 of the CJA 2010). However, there are no specific requirements to include beneficiaries of life insurance and whenever these are legal persons and arrangements, as heightened risk factors.

**Criterion 10.14** - Section 33(5) of the CJA 2010 allows for the verification of customers or beneficial owners identity during the establishment of a business relationship where the financial institution has reasonable grounds to believe that: verification prior to this would interrupt the normal conduct of business and there is no real risk that the customer or service sought is for the purpose of money laundering or terrorist financing. However, the financial institution should ensure reasonable steps are taken to verify the identity of the customer or beneficial owner as soon as practicable. According to section 33 (6), a bank account can be opened, as long as verification occurs before any transactions by or carried on behalf of the corresponding customer or beneficial owners, are carried out.

**Criterion 10.15** - It is permitted to enter into a business relationship prior to verification (see above c. 10.14) pursuant to section 33(5). However, as explained above, verification must occur before any transactions are carried out.

**Criterion 10.16** - There are no specific requirements for existing customers; however, there are a number of provisions regarding ongoing due diligence. Section 35(3) refers to the obligation to monitor dealings with a customer by scrutinising transactions to determine consistency with the client’s profile, and section 54(3) refers to the duty to maintain databases and information up to date.

**Criterion 10.17** - Financial institutions must apply additional due diligence measures, whenever they have reasonable grounds to believe that the circumstances related to the customer, beneficial owner, service, etc., present a heightened risk of money laundering or terrorist financing (s. 39 of CJA 2010).

**Criterion 10.18** - Ireland allows for simplified due diligence measures as explained under criteria 1.8 and 1.12.

**Criterion 10.19** - Section 33(8) of the CJA 2010 provides that a financial institution, which is unable to apply the measures, specified in relation to CDD for a customer as a result of any failure on the part of the customer, shall not provide the service or carry out the transaction and shall discontinue the business relationship. Section 42(4) of the CJA 2010 outlines that a financial institution should consider making a suspicious transaction report (STR) where a customer fails to provide the requisite CDD documentation or information (given that this would be one of the factors or constitute reasonable grounds to suspect that another person has been or is engaged in an offence of money laundering or terrorist financing).

**Criterion 10.20** There is no explicit provision for FIs not to pursue CDD and file an STR when they believe that performing the CDD process will tip off the customer. However, as explained under 10.19, a financial institution shall not provide a service or carry out a requested transaction, as a result of any failure on the customer's side, to complete CDD and to file an STR instead. Further, under section 17 of the CJA 2010, the authorities may direct a financial institution not to carry out a specified service or transaction.

### *Weighting and conclusion*

The key elements to identify customers and beneficial owners are present but there are minor deficiencies in connection with the identification of legal persons, and beneficiaries of life insurance policies.

**Recommendation 10 is rated largely compliant.**

### ***Recommendation 11 – Record keeping***

**Recommendation 11 (formerly Recommendation 10) was rated C in the 3<sup>rd</sup> MER.**

**Criterion 11.1** - Financial institutions must keep documentation and records of all transactions for a period of at least five years (s. 55 (3) of CJA 2010), in particular, those related to the history of services and transactions carried out by a customer.

**Criterion 11.2** - Financial institutions must keep all documents serving the purpose of identification pursuant to sections 33-40 of CJA 2010. There is no specific requirement to keep business correspondence or the results of the analysis undertaken in connection with complex and unusual transactions for 5 years.

**Criterion 11.3** - Although there is no explicit obligation for FIs that transaction records should be sufficient to permit reconstruction of individual transactions, the requirements to keep records of all transactions (in criterion 11.1) would appear to be adequate, to a certain extent, for this purpose.

**Criterion 11.4** - Section 55 of CJA 2010 requires FIs to keep records in a manner allowing their reproduction in a written manner, and restrict the possibility of keeping records outside of Ireland if such records cannot be reproduced in Ireland as soon as practicable, after the records are requested.

Section 56 of CJA 2010 further requires that institutions have a system in place to enable it to respond fully and promptly to AGS enquiries with regard to a) if it has or has had a business relationship with a person specified (within the previous 6 years), and b) the nature of the relationship.

*Weighting and conclusion*

There are minor shortcomings in connection to keeping business correspondence and other record-keeping obligations.

**Recommendation 11 is rated largely compliant.**

***Recommendation 12 – Politically exposed persons***

Recommendation 6 (which formerly contained the requirements for PEPs), now R. 12, was rated NC in its 3<sup>rd</sup> MER because of the absence of measures to deal with PEPs. These were included as part of the CJA 2010 and revised by CJA 2013. These were implemented based on EC/EU legislation and deemed largely compliant in Ireland’s 11<sup>th</sup> FUR. The 2012 Recommendations have been extended to domestic PEPs and the definition now also includes persons who have been entrusted a prominent function in an international organisation.

**Criterion 12.1** - With regard to transactions or business relationships relating to customers or beneficial owners which are PEPs resident outside Ireland, FIs are required to (s. 37 CJA 10):

- have appropriate risk-based procedures to determine whether the customer or beneficial owner is a PEP;
- obtain senior management approval before (and on an ongoing basis) establishing business relationships with such customers/ beneficial owner;
- determine the source of wealth and source of funds that are involved in the business relationship or transaction; and
- conduct enhanced ongoing monitoring of the business relationship (s. 35 of the CJA 2010).

The requirement does not cover foreign PEPs residing in Ireland.

**Criterion 12.2** - Provisions in CJA 2010 have not been updated to include domestic and international organisation PEPs. Authorities indicated they will be updated with the transposition of the EU 4AMLD.

**Criterion 12.3** - Financial institutions are required to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates of PEPs residing in another country. There are no measures for international organisations or domestic PEPs.

**Criterion 12.4** - While there is a requirement to identify and verify beneficiaries of life insurances (s. 33 of CJA 2010), there is no specific requirement to determine the beneficial owner or whether these

are PEPs, or to inform senior management before the payout of the policy proceeds. There is also no requirement to consider making a suspicious transaction report.

### *Weighting and conclusion*

The definition of “PEP” is not consistent with definition of “PEP” in the FATF glossary.

**Recommendation 12 is rated partially compliant.**

### ***Recommendation 13 – Correspondent banking***

Recommendation 13 (former R. 7) was rated NC in the 3<sup>rd</sup> MER, due to the absence of legislation regarding correspondent banking which was largely resolved with the issuance of CJA 2010, as indicated in Ireland’s 11<sup>th</sup> FUR.

**Criterion 13.1** - With regard to cross-border correspondent banking relationships, credit institutions are required to (s. 38 of the CJA 2010):

- gather sufficient information about a respondent institution to understand fully the nature of its business and be able to ascertain the reputation of the institution and the quality of supervision both on reasonable grounds, and on the basis of publicly available information (although, no indication of the need to include whether or not it has been subject to ML/TF investigations or regulatory actions, provisions may be sufficiently broad to cover the above);
- satisfy themselves of the respondent institution's AML/CFT controls:
- obtain approval from senior management before establishing new correspondent banking relationships;
- document the respective responsibilities of each institution.

However, these measures apply only to respondent institutions outside the EU. Authorities argued that Member States must approve unanimously any policies concerning the defence and foreign affairs (of the EU) and that for this reason, entering correspondent banking relationships with institutions in other Member States does not require the same level of enhanced customer due diligence as with institutions outside Member States. However, this is not in line with the FATF standard, and this was highlighted as part of Ireland’s 11<sup>th</sup> FUR.

**Criterion 13.2** - With respect to payable-through accounts, credit institutions must be satisfied that (s. 38 of CJA 2010):

- the respondent institution has verified the identity of, and performed ongoing due diligence on the customers having direct access to accounts of the correspondent;
- has applied measures to understand the nature and purpose of the business relationship and applies ongoing monitoring/scrutiny of transactions (equivalent to those in s. 35 (1) and (3) of CJA 2010);

- it is able to provide relevant CDD documents or information (whether or not in electronic form), to the correspondent bank, upon request.

Although the requirements reflect those of R.13, their scope of application is limited to respondent institutions located outside the EU.

**Criterion 13.3** - Credit institutions are not allowed to enter into or continue a correspondent banking relationship with a shell bank (as defined in s.59 of the CJA 2010), and they are required to take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a credit institution which is known to permit its accounts to be used by a shell bank. The definition of “shell bank” is in line with the FATF definition.

*Weighting and conclusion:*

Enhanced measures regarding correspondent banking relationships apply only to respondent institutions outside the EU.

**Recommendation 13 is rated partially compliant.**

### ***Recommendation 14 – Money or value transfer services***

Recommendation 14 (formerly SR.VI) was rated NC because of deficiencies linked to old R.5, R.17, SR. VII, among others, which were greatly solved before this Mutual Evaluation (with deficiencies in namely old R.20 and 21 remaining), according to Ireland’s 11<sup>th</sup> FUR.

**Criterion 14.1** - Persons that provide MVTS in Ireland need to be authorised according to Regulation 8 of the Payment Services Regulations 2009 (implemented in Ireland through Statutory Instrument No. 383 of 2009) and section 29 of the Central Bank Act 1997. The following individuals or body corporates can provide money transmitting services: (a) a credit institution within the meaning of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (including a branch, within the meaning of Article 4(3) of that Directive, located in a Member State of a credit institution having its head office in or, in accordance with Article 38 of that Directive, elsewhere than in a Member State) (i.e. Banks); (b) an electronic money institution (within the meaning of the European Communities (Electronic Money) Regulations 2002 (S.I. No. 221 of 2002)); (c) The Post (postal services) in its capacity as a provider of banking and giro services, or the postal authority of another Member State in its capacity as the provider of a giro service; (d) a credit union (within the meaning of the Credit Union Act 1997 (No. 15 of 1997)); and (e) a payment institution authorised under Chapter 2 or by Regulation 115, whose authorisation has not been revoked, among others. The licensing process includes a fitness and probity test, although involvement in money laundering or terrorist financing is not a cause for a license to be revoked.

**Criterion 14.2** - The unauthorised provision of MVTS activities is a criminal offence and the country has taken action to identify activities carried out without a license. There is a specialised unit within the CBI, the Unauthorised Providers Unit (UPU). Unauthorised activity can also be sanctioned with the issuance of Directions or orders to cease operations, enforcement orders to restrain action and

permanent publication of Public Warning Notices on persons that are providing services without due authorisation [(Central Bank (S&E) Act 2013; Payment Services Directive Regulations 2009 and Part V of the Central Bank Act 1997)].

**Criterion 14.3** - As explained above, all MVTS providers are subject to AML/CFT monitoring. Section 60(2)(a) of the CJA 2010 provides that the CBI is the competent authority for those MVTS providers that are credit or financial institutions. Section 63(1) of the CJA 2010 outlines the general function of a competent authority as being to “effectively monitor the MVTS providers for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those MVTS with the requirements specified in this Part”. This includes monitoring MVTS providers that operate in Ireland under the EU passport.

**Criterion 14.4** - The Payment Services Directive Regulations 2009 indicate that if a payment institution intends to provide a payment service through an agent it shall, at least 30 days before the agent commences to provide the service, notify the CBI in writing of the following: (a) the name and address of the agent; (b) a description of the internal control mechanisms that will be used by the agent to comply with the payment institution’s obligations in relation to money laundering and terrorist financing; (c) the names of directors and persons responsible for the management of the agent; and (d) evidence that they are fit and proper persons. Once information is received, the CBI may list the agent in a Register which shall be publicly available and up to date (regulations 9 and 28). The Central Bank Act also makes reference to the need of establishing and keeping updated, a register of persons authorised to carry on a money transmission (s. 36D and 36E of the Central Bank Act 1997). The latter provisions are somewhat limited in that they require the CBI to list those authorised to carry on money transmitting businesses but not its agents.

**Criterion 14.5** - MVTS providers have full and unconditional responsibility for the agents it uses and therefore has to include them in all the aspects of the business (i.e. risk assessment, compliance programme, etc.), in order to comply with CJA obligations according to regulation 31 of the 2009 Payment Services Directive/ S.I. No. 383 of 2009. One of the steps the CBI takes towards institutions using agents, is to request the firm amends its business plan to reflect engagement of agents and that this entails submitting AML/CFT policies and confirming that training is provided. However, there is no explicit requirement for MVTS providers to include agents in AML/CFT programmes and to monitor them for compliance.

### *Weighting and conclusion*

There is no explicit requirement for FIs to include agents in their AML/CFT programmes.

**Recommendation 14 is rated largely compliant.**

### ***Recommendation 15 – New technology***

This Recommendation (formerly R.8) was rated PC given the limited actions Ireland had taken to deal with risks deriving from non-face-to-face interaction and the development of new technologies. This was fixed according to its 11<sup>th</sup> FUR, through, among others, CDD measures for customers not

present at the time of identification and verification, and requiring specific measures for new technologies, new products and new practices.

**Criterion 15.1** - Ireland has not conducted a specific assessment of ML/TF risks related to new products or technologies. However, as a Member State of the European Union, Ireland participates in committees where the risks of several products and services such as cross-border banking services, cross-border payment services, virtual currency and e-money are discussed. At a national level, Ireland works with its AMLSC and the CDISC to assess both EU-identified risk and also technology driven ML/TF that are specific to the jurisdiction (i.e. self-fill ATMs). Financial institutions are required to assess ML/TF risks derived from new technologies as detailed below, but are not required to assess ML/TF risks derived from new products, new business practices, prior to their utilisation, among others.

**Criterion 15.2** - There is no requirement for FIs to undertake risk assessments specifically prior to launch of new products, practices or technologies, and hence, no measures to manage and mitigate the risks. Section 54 (3) (Internal policies and procedures and training) of CJA 2010, imposes an obligation on FIs to adopt policies and procedures dealing with measures to be taken to prevent (b) the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity, and (e) the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered. This does not apply to existing products or services.

### *Weighting and Conclusion*

There is no specific requirement to undertake risk assessments of new products, business practices or technologies, prior to their utilisation.

**Recommendation 15 is rated partially compliant.**

### ***Recommendation 16 – Wire transfers***

Ireland was rated NC in its 3<sup>rd</sup> MER because the requirements to record, include and maintain originator information in wire transfers, were limited and only contained in non-mandatory guidance. There was also no obligation to verify that the originator information was accurate and meaningful or to require FIs to apply risk-based procedures when the originator information was incomplete. This was resolved according to its 11<sup>th</sup> FUR, with the adoption of EU Regulation No. 1781/2006 through Irish Statutory Instrument No. 799 of 2007.

EU Regulation 1781/2006, however, did not include all the requirements of the revised R.16.<sup>47</sup> Most significantly, it does not include requirements regarding information on the beneficiary of a wire transfer, which were added to the FATF Standards in 2012. Therefore, the criteria below describe

<sup>47</sup> It should be noted that a new EU Regulation on information accompanying transfers of funds (Regulation 2015/847) was passed on 20 May 2015 which repeals the current one. Apparently, it has addressed most of the deficiencies under the old Regulation. However, it will only apply starting from 26 June 2017 and therefore cannot be taken into consideration for the purposes of this analysis.

only the measures that are in force regarding originator information. The analysis (“met, “partly met” etc.), even when not explicitly stated, takes into account that corresponding requirements for beneficiary information do not apply.

**Criterion 16.1** - Financial institutions are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by the required and accurate originator information (Art.4 and 5 EU Regulation 1781/2006; 4-7 of the Wire Transfer Regulations).

**Criterion 16.2** - The requirements of Regulation 1781/2006 regarding batch files are consistent with the FATF requirements regarding originator information (Art.7.2 EU Regulation 1781/2006).

**Criterion 16.3** - Regulation 1781/2006 requires collection of payer information in case of transactions below EUR 1 000.

**Criterion 16.4** - Financial institutions are required to identify their customers and to verify their identity where there is any suspicion of ML or TF (s. 33 of the CJA 2010). Art.5.4 EU Regulation 1781/2006 also states that the exemption from verifying the originator’s identity does not apply if there is any suspicion of ML/TF.

**Criterion 16.5** - For domestic transfers (within the EU)<sup>48</sup>, the Regulation contains an exemption from the requirement to provide complete originator information (Art.6.1 EU Regulation 1781/2006). However, the exemption may only apply where complete information about the originator can be made available to the beneficiary’s financial institution by other means: at the request of the beneficiary’s payment service provider, the originator’s payment service provider must be able to furnish complete information about the originator (Art.6.2 EU Regulation 1781/2006).

**Criterion 16.6** - Under the exemption explained above, the transfer may be accompanied solely by the originator’s account number or unique identifier allowing the transaction to be traced back to the originator (Art.6.1 EU Regulation 1781/2006). It must nonetheless be possible for full information about the originator to be sent to the beneficiary’s institution within three working days of receiving any request (Art.6.2 EU Regulation 1781/2006).

**Criterion 16.7** - The originator’s financial institution is required to keep the complete originator information which accompanies transfers for five years (Art. 5.5 EU Regulation 1781/2006).

**Criterion 16.8** - Failure to comply with Art.5-14 EU Regulation 1781/2006 (i.e. the provisions concerning the accuracy of the originator information since information on beneficiary is not included as explained in the introductory paragraph to this Recommendation), that is, who fails to comply with the Parliament and Council Regulation, commits an offence and is liable on summary conviction to a fine not exceeding EUR 3 000. Not complying with the duty of identification and verification in case of suspicion of money laundering or terrorist financing in line with section 33 of CJA 2010 also carries an offence<sup>49</sup>.

<sup>48</sup> The definition of a domestic transfer within the EEA-area in the Regulation (Art. 6.1) is wider than that in R.16, which refers to “a chain of wire transfers that takes place entirely within the EU”. The Regulation refers to the situation where the payment service provider (PSP) of the payer and the PSP of the payee are situated in the EEA-area. Hypothetically, this means that according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

<sup>49</sup> S.I. No. 799 of 2007 and section 33 of CJA 2010.

**Criterion 16.9** - Intermediary FIs are required to ensure that all originator information received and accompanying a wire transfer, is kept with the transfer (Art.12 EU Regulation 1781/2006).

**Criterion 16.10** - Where the intermediary FI uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary financial institution upon request, within three working days, and must keep records of all information received for five years (Art.13 EU Regulation 1781/2006).

**Criterion 16.11** - Intermediary financial institutions are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

**Criterion 16.12** - Intermediary financial institutions are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate follow-up action.

**Criterion 16.13** - Beneficiary financial institutions are required to detect whether the fields containing required information on the originator or payer have been completed, and to have effective procedures to detect whether the required originator information is missing (Art.8 EU Regulation 1781/2006). There are no measures for post-event or real time monitoring or to identify missing required beneficiary information as generally described in the introduction to this Recommendation.

**Criterion 16.14** - There is no requirement for beneficiary FIs to verify the identity of the beneficiary of a transfer.

**Criterion 16.15** - Where the required originator information is missing or incomplete, beneficiary FIs are required to either reject the transfer or ask for complete information, and take appropriate follow-up action in cases where this is repeated (Art.9 EU Regulation 1781/2006).

**Criterion 16.16** - In Ireland, MVTS are provided, amongst others, by credit, payment or electronic money institutions authorised to offer this kind of service (see Recommendation 14). The EU Regulation 1781/2006 applies to all of these institutions. Therefore, the Regulation and the relevant AML/CFT provisions apply to payment service providers established in Ireland, regardless of their form, including when they act through intermediate agents, and whatever the service provider's original country. It does not, however, apply to agents operating in Ireland under the EU passporting system.

**Criterion 16.17** -

a) Article 10 of the Regulation requires that a risk-based approach/assessment is employed by the beneficiary financial institution, where in the course of the wire transfer there is missing information or a deficiency of information in relation to the originator. The MVTS as a beneficiary financial institution shall consider missing or complete information on the originator as a factor in assessing whether the wire transfer, or any related transaction, is suspicious, and whether it must be reported as a suspicious transaction.

b) There is no direct requirement to file an STR in any other country. Article 12 of the Regulation places an onus on the intermediary FIs to ensure that all information received on the originator that accompanies a transfer is kept with the transfer.

**Criterion 16.18** - Financial institutions conducting wire transfers are subject to the requirements of the EU regulations as well as any domestic provisions which give effect to UNSCRs 1267, 1373, and successor resolutions. Although such a requirement exists, there are nonetheless some gaps that could adversely affect the ability of FIs to meet their requirements in terms of implementation of targeted financial sanctions (see conclusions with regard to R.6).

### *Weighting and conclusion*

The EU regulation in force does not yet cover beneficiary information and contains limited requirements for intermediate FIs, which affects almost all the criteria in this Recommendation.

**Recommendation 16 is rated partially compliant.**

### *Recommendation 17 – Reliance on third parties*

Recommendation 17 (formerly R.9) was rated NC in the 3<sup>rd</sup> round MER, because of no legally binding obligations governing the identification carried out by third parties. This was greatly resolved through section 40 (3-5) of CJA 2010.

**Criterion 17.1** - If financial institutions rely on third parties to perform CDD measures, the ultimate responsibility remains in the FIs and they must ensure that third parties will make the information required to fulfil the CDD obligations available to them, as soon as practicable (s. 40 of CJA 2010). This is not fully in line with the FATF Recommendation where the FIs should obtain immediately the necessary information and documents related to CDD, notwithstanding that authorities indicated that this is interpreted as documents being forwarded without delay, and this is being verified in agreement letters between FIs and third parties, during inspections. Authorities also review to ensure that there are no conditions imposed on providing information without delay. Financial institutions may rely only on third parties from a set list of potential third parties that can be relied upon, which are regulated and supervised for AML/CFT (i.e. all types of FIs covered by the 3AMLD).

**Criterion 17.2** - Reliance is permitted in most types of FIs and covered by the CJA 2010. It also extends to third parties covered by the AML/CFT legislation of other EU Member States or equivalent third countries (s. 40 of CJA 2010). Reliance on members of the EU is not based on the level of country ML/TF risks, but reflects the presumption that all EU Member States implement harmonised AML/CFT provisions. Inclusion on the list of equivalent third countries takes into account the compliance of local legislation with the principal FATF Recommendations, and the degree of risk related to the scale of criminality to which the country is exposed. Account is therefore taken of risk-related factors, without focussing the analysis on ML/TF risks. This, as explained in Ireland's 11<sup>th</sup> FUR, would have to change and follow a more risk-based approach.

**Criterion 17.3** - The CJA does not distinguish between third party introducers from the same financial group; FIs have to apply the same CDD standards in the CJA (s.33).

*Weighting and conclusion*

Reliance on third parties from members of the EU, is not based on the level of country ML/TF risks but rather the presumption that all EEA Members states implement harmonised AML/CFT provisions.

**Recommendation 17 is rated largely compliant.**

*Recommendation 18 – Internal controls and foreign branches and subsidiaries*

Recommendations 15 and 22, which previously contained the requirements of R.18, were rated LC in the 3<sup>rd</sup> MER, namely due to most of the required measures being contemplated in guidance and not in law.

**Criterion 18.1** - Financial institutions are required to adopt policies and procedures, in relation to the designated person's business and which must include internal policies, procedures and controls to assess and manage risks of money laundering and terrorist financing and internal controls, including internal reporting procedures for the purposes of Chapter 4 of CJA 2010, and ongoing training (s. 54 of CJA 2010). It does not explicitly require the appointment of a compliance officer and an independent audit function to test the system, although it is requested as part of the CBI's authorisation process (for the institutions under its purview). There are no measures regarding screening procedures to ensure high standards, other than fitness and probity requirements which only apply to a limited number of functions (pre-approval controlled functions (PCF) when hiring employees or an ongoing training programme.

**Criterion 18.2** - There is no explicit requirement for FIs which are financial groups (and such groups do exist in Ireland) to implement group-wide programmes.

**Criterion 18.3** - Financial institutions are required to ensure that the measures applied at their branches and subsidiaries located in countries outside the EU apply, at least, to those standards set forth in the relevant AML/CFT provisions on CDD and record-keeping (s. 57(1) CJA) in the 3AMLD. If these cannot be applied, FIs must inform the competent authority and in consultation with such authority, apply mitigation measures to deal with risks arising from the absence of requirements (s. 57(2) of the CJA 2010). The requirements therefore do not cover AML/CFT measures other than CDD and record keeping, or applying the Irish standard within the EU, should the Irish requirements be stronger.

*Weighting and conclusion*

There are numerous shortcomings with respect to reporting entities' internal controls, such as the lack of an explicit requirement for the appointment of a compliance officer and an independent audit function, as well as for all employee's screening before hiring, and their ongoing training. Criterion 18.2 is also relevant in the context of Ireland.

**Recommendation 18 is rated partially compliant.**

### **Recommendation 19 – Higher-risk countries**

Recommendation 21 (which formerly contained the requirements in R.19) was rated PC in the 3rd MER because there was no requirement to examine and monitor transactions from countries who insufficiently apply FATF Recommendations, that have no apparent economic or lawful purpose, or to make findings related to this matter, available to competent authorities.

**Criterion 19.1** - Financial institutions are expected and advised by the authorities (as set out in paragraph 55 of the Financial Services Industry Guidelines (although these are not enforceable) on the prevention of the use of the financial system for the purpose of ML/TF) to include geographic risk as one of the factors to be analysed when determining overall risk of money laundering and terrorist financing for enhanced due diligence purposes. Section 32 of CJA 2010 empowers the Minister of Justice to designate countries outside the EU/EEA, where it is satisfied that they do not have adequate procedures in place for the detection of money laundering or terrorist financing. Following such designation, simplified due diligence is not allowed, but there is no requirement for enhanced measures to be taken. Ireland indicates that section 39 (which calls for enhanced due diligence in higher-risk situations) would apply where a transaction or business relationship involves a country or is linked to a country for which the FATF has called for its member to apply enhanced due diligence. However, there is no direct obligation in this regard (the Guidelines are not enforceable, despite supervisors having them in mind when conducting inspections). While the Irish requirement to designate, explained above, sometimes includes “geographically” riskier countries, or may include those designated by the Minister of Justice, sometimes it will not.

**Criterion 19.2** - Authorities indicated that Ireland is able to apply countermeasures proportionate to risks when called upon by the FATF and independently of any call by the FATF under section 32 of CJA 2010. However, section 32 only refers to the possibility of designating a third party country as a country with inadequate procedures for the detection of money laundering and terrorist financing and there is no requirement for enhanced or additional measures to be taken (Also, EU Members are excluded from the application of s. 32).

**Criterion 19.3** - Ireland advises FIs of AML/CFT concerns through measures contained in paragraph 55 of its core guidance (which refers more to circumstances or criteria that increase risk of a customer, product, service, etc.) and ongoing interactions with all sectors through the PSCF and through the CBI [website](#)<sup>50</sup>. The EU issued on 14 July 2016 a Regulation (Regulation 2016/1675) with a list of high risk third countries including countries which have an action plan with the FATF and countries included in FATF’s Public Statement. The CBI also publishes the FATF public lists on its website [Central Bank of Ireland: Guidance on Risk](#)

### *Weighting and conclusion*

Ireland does not have measures which require applying enhanced due diligence measures, where a transaction or business relationship involves a country or is linked to a country, for which the FATF

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<sup>50</sup> [www.centralbank.ie/regulation/processes/anti-money-laundering/Pages/GuidanceOnRisk.aspx](http://www.centralbank.ie/regulation/processes/anti-money-laundering/Pages/GuidanceOnRisk.aspx) ; consulted on August 3, 2016.

has called for its member to apply enhanced due diligence. Ireland also lacks the ability to impose countermeasures.

**Recommendation 19 is rated non-compliant.**

### ***Recommendation 20 – Reporting of suspicious transactions***

**Recommendation 20 (former R.13 and SR.IV) was rated C in the 3<sup>rd</sup> MER.**

**Criterion 20.1** - Financial institutions who know, suspect or have reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of ML/TF, shall report to the AGS and Revenue that knowledge or suspicion or those reasonable grounds. This report should be done as soon as practicable after acquiring that knowledge or forming that suspicion, or acquiring those reasonable grounds to suspect, that the other person has been or is engaged in ML/TF(s. 42 of CJA 2010). Section 42 refers to the offence of “money laundering”, which is defined as the offence described in Part 2 of the Act. This is a reference the criminalisation of money laundering (analysed in R.3), and covers the proceeds of any criminal activity and all predicate offences under R.3, including terrorist financing. With regard to the timeliness of reporting, authorities explained that it is more a matter of FIs and DNFBPs filing the report “as soon” as they have adequate knowledge of the suspicion.

**Criterion 20.2** - As set out in the criterion 20.1 above, FIs should make a report regardless of the amount. The obligation to report applies “ on the basis of information obtained in the course of carrying on business.” This would therefore include all suspicious transactions, as well as attempted transactions.

### ***Weighting and conclusio***

**Recommendation 20 is rated compliant.**

### ***Recommendation 21 – Tipping-off and confidentiality***

Recommendation 14 (which formerly contained the requirements for R.21) was rated C in the 3<sup>rd</sup> MER.

**Criterion 21.1** - The disclosure of information by a person to the FIU according to Chapter 4 of CJA 2010, will not be treated as a breach of any restriction imposed by any other enactment or rule of law on disclosure by the person (s. 47 CJA 2010).

**Criterion 21.2 is** - Financial Institutions and DNFBPs, as well as any employee or anyone else acting on behalf of the designated person are prohibited from making any disclosure that an STR has been, or is required to be made, and that is likely to prejudice an investigation that may be conducted following the STR, (s. 41 and 49 CJA, paragraph 217 of the CJA (2012) Guidelines).

*Weighting and conclusion:*

**Recommendation 21 is rated compliant.**

### ***Recommendation 22 – DNFBPs: Customer due diligence***

Recommendation 12 (which formerly contained the requirements of R.22) was rated PC in the 3<sup>rd</sup> MER primarily because not all DNFBPs were obliged to undertake CDD and record keeping for AML/CFT purposes as covered by former R. 12. Most of these deficiencies were resolved with amendments to CJA 2010 and the inclusion of sectors not covered by AML/CFT provisions before, such as PMCs.

***Criterion 22.1*** - All DNFBPs are covered for AML/CFT purposes under section 25 of the CJA 2010 (and amendments) and must comply with CDD obligations. See analysis under R. 10.

#### *Casinos (PMCs)*

Casinos are prohibited in Ireland and only included as a designated entity for AML/CFT purposes, to comply with EU provisions, which refers to casinos. In Ireland there are no provisions for establishing casinos in legislation. However, a similar type entity exists in Ireland denominated Private Members' Club (PMC). The CJA 2010 regulates persons who effectively direct a PMC where gaming activities are carried out. Under section 25(1)(g) and (h) of CJA 2010, a person who effectively directs a PMC at which gambling activities are carried on is also covered for AML/CFT purposes. For PMCs, CDD must be carried out where a member engages in a transaction exceeding EUR 2 000 (per definition of "occasional transaction" for PMCs in s. 24 CJA). This is in line with the FATF threshold of EUR 3 000 and represents an improvement from the previous MER, where PMCs were not subject to the CJA (1994) nor subject to AML/CFT provisions.

#### *Real estate agents (PSPs), dealers in precious metal and stones (PSMDs) and other persons trading in goods*

PSPs and PSMDs must also comply with CDD measures, along with persons trading generally in goods, generally referred to as high-value good dealers, but only in respect of transactions involving payments, to persons in cash, of at least EUR 15 000. With regard to PSPs, these are only required to identify the vendors (i.e. realtors) and not the direct purchasers of property. Authorities indicated that because of the amounts transacted, property transactions will normally be done through FIs or legal professionals, which are covered under CJA 2010, and are required to identify their client, who is the purchaser. However, this is not mandatory, leaving a potential CDD gap.

#### *Lawyers, notaries and other independent legal professionals and accountants (when they prepare or carry out certain transactions for their clients)*

Under section 25(1) of the CJA 2010, relevant "independent legal professionals", auditors, external accountants and tax advisors are covered for AML/CFT purposes. "Independent legal professional" is

defined in section 24 of the CJA 2010, as a barrister, solicitor or notary, which provides assistance in the planning or execution of transactions concerning the indicated in the FATF Recommendations. CDD requirements in section 33 of the CJA 2010 apply to independent legal professionals.

However, in practice, barristers and notaries in Ireland, do not perform any of the activities set out in 22.1(d) of the FATF Recommendations, and were therefore not considered for the purposes of this MER. Authorities explained that they were included in the AML/CFT framework, to ensure consistency with the EU directives.

### *Trust and Company Services Providers (TCSP)*

Section 24 of CJA 2010 defines the term TCSP as any person whose business it is to provide any of the services defined in the FATF Recommendations, to which CDD requirements described in s. 33 of CJA 2010 apply.

**Criterion 22.2** - See analysis of R.11, record keeping requirements under section 55 of CJA 2010 and amendments are applicable here.

**Criterion 22.3** - See analysis of R.12, requirements for PEPs under sections 33, 35, 37 and others, of CJA 2010 and amendments (2013) are applicable here.

**Criterion 22.4** - See analysis of R.15, requirements under section 54 of CJA 2010 and amendments are applicable here in terms of risks deriving from new technologies.

**Criterion 22.5** - See analysis of R.17, requirements under section 40 of CJA 2010 are applicable here, on third party reliance.

### *Weighting and conclusion*

There are several deficiencies in provisions related to CDD, record keeping, PEPs and new technologies. PMCs which in practice operate as casinos are only required to be registered and not licensed.

**Recommendation 22 is rated partially compliant.**

### ***Recommendation 23 – DNFBPs: Other measures***

Recommendation 23 (formerly R.16) was rated PC in the 3<sup>rd</sup> MER with some of the deficiencies, such as extending STR obligations, being addressed, according to Ireland’s 11<sup>th</sup> FUR.

**Criterion 23.1** - All DNFBPs are obliged to file STRs. The analysis under R.20 above is also relevant here.

**Criterion 23.2** - Section 54 of the CJA 2010 provides an outline of the obligations on DNFBPs internal policies and procedures, where some elements are missing. See analysis under R.18. The deficiencies with regard to group wide policies and branches and subsidiaries are not applicable here.

**Criterion 23.3** - See analysis under R. 19.

**Criterion 23.4** - All DNFBPs and their employees are protected from a breach of the professional secrecy when reporting suspicions (see R.21 above). In addition, chapter 8 of the Law Society's Guidance Notes also refers to tipping-off requirements.

#### *Weighting and conclusion*

The key requirements to file STRs and tipping-off are present. Ireland does not have the ability to impose the range of counter-measures required under R.19. **Recommendation 23 is rated largely compliant.**

#### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

In its 3<sup>rd</sup> MER, Ireland was rated PC for R.33, which previously contained the requirements for legal persons. The report indicated that at that time competent authorities did not have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control. Since that time, Ireland enacted the Companies Act 2014, which updated and consolidated 17 previous Companies Acts.

**Criterion 24.1** - Ireland has mechanisms that identify the different types, forms and basic features of legal persons in the country, and the processes for creation of those legal persons and for obtaining and recording and obtaining basic information about them. However, there is currently no publicly available information about obtaining beneficial ownership information.

The processes are laid out in the Companies Act 2014. The main types of legal persons are: private companies limited by shares (LTD), designated activity companies limited by shares or by guarantee (DAC), private unlimited companies (ULC); public limited companies (PLC), public unlimited companies with shares (PUC) and without shares (PULC); companies limited by guarantee (GLC), the Societas Europaea (SE), and external companies. Descriptions of these companies and their creation are available on the [website](#) of the Companies Registration Office (CRO).

Although they do not have separate legal personality, Ireland also has general partnerships, investment limited partnerships (both governed by the Partnership Act 1890 and common law), and limited partnerships (governed by the Limited Partnership Act 1907). General partnerships are formed by persons carry on a common interest, and the partners maintain unlimited personal liability.

Limited partnerships must contain at least one general partner (with unlimited personal liability) and up to 20 limited partners, whose liability is limited to their capital contribution to the partnership. Similar to other legal persons, limited partnerships must also register with the CRO, with a business name different from the individual partners' names. A list of all registered limited partnerships, along with information about the requirements for forming and maintaining them, is also on the CRO website.

There are mechanisms (TR1 and TR2, CT1, and DT1 forms) in place to require companies and trustees to file certain information with the Irish Tax Authorities. However, this does not always include beneficial ownership information (although the CT1 form requests it) and the process for obtaining information that these forms contain is not public. These mechanisms were supplemented

on with a new administrative order (S.I. No. 560 of 2016: European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016) that entered into force on 15 November 2016. This obliges all corporate entities to gather, hold and keep up to date information on their beneficial owners. This is described in more detail below.

**Criterion 24.2** - Ireland assesses the ML/TF risks associated with different categories of legal person as follows: as part of Ireland's broader NRA exercise which identifies ML/TF threats, vulnerabilities and consequences generally; through ongoing red flag monitoring of key data repositories for all legal persons i.e. the CRO database interfaced with the systems of Revenue; through case-analysis and typological work, i.e. examination of historic cases in which legal vehicles and structures are known to have been used for the purposes of money-laundering or terrorist financing. While Ireland had conducted some analysis of the ML/TF risks of legal persons, it was not sufficiently comprehensive in that it did not fully identify any unique characteristics of the legal persons or prioritised assigning an ML/TF risk-rating to specific legal persons.

**Criterion 24.3** - In Ireland, a company will not be incorporated unless it appears on the Registrar of Companies<sup>51</sup>. Thus the core process of the CRO is to register new companies as part of the process of incorporating them. The Companies Act 2014 provides for the incorporation of the following company types:

- Private companies limited by shares (LTD), (s.17 - 25)
- Designated activity companies ([DAC](#)), (s.967)
- Public limited companies (PLC), including Societas Europaea (SE), (s.1004)
- Companies limited by guarantee, (s.1176)
- Private unlimited companies, and public unlimited companies with shares (PUC) or without shares (PULC) – s.1236), and
- Investment companies (1386)<sup>52</sup>.
- External companies (Part 21)

The 2014 Act treats the private limited company type, which is the most numerous, as “core” or the model for all other company types, thus the provisions relating to that company type apply also to the other company types, unless “dis-applied”. Thus, sections 22(2)-24 and the associated form A1 form applies throughout. These provisions require that upon registration, the company must supply the company name, legal form, address of the registered office, and particulars of the directors and secretary<sup>53</sup>. The information is publicly available (basic information for free and detailed information for a small fee) on the company search section of CRO.ie or in the case of ICAVs on the registers section of the Central Bank's [website](#).

<sup>51</sup> CRO information leaflet No.1 (para 3.9)

<sup>52</sup> The Irish Collective Asset-management Vehicles Act, 2015 provides for the incorporation of Ireland's only other type of legal person, i.e. ICAVs which are incorporated upon the making of a 'registration order' by the Central Bank of Ireland (s.9(2), part 2)

<sup>53</sup> Basic regulations governing the company are contained in the 2014 Act and apply. The Act affords a degree of flexibility to companies in tailoring their constitution to their activities.

**Criterion 24.4** - All Irish companies as set out in criteria 24.1 and 24.3 are required to maintain the information set out in criterion 24.3. In addition to those requirements, all companies are also required to maintain a register of their members (s.169). This must include their names and addresses and a statement of shares held by each member. Any changes in membership must be recorded in the register within 28 days. This information must also be supplied to the CRO upon registration in the A1 form, and updated annually to the CRO pursuant to section 343(4) and in form B1. The law specifies that companies must keep their registers within Ireland (s.216 subsections 3 and 4). Specifically, the register information must be kept at the registered office of the company; its principal place of business within Ireland, or another place within Ireland.

**Criterion 24.5** - Any company must also maintain a register of its directors and secretaries (s. 149). Any changes must be recorded in its register and notify the CRO within 14 days. Any changes in membership must be recorded in the company's register within 28 days. This information must also be supplied annually to the CRO pursuant to section 343(4) and in form B1. This includes listing the present members, their names and addresses, share classes currently held by them, numbers of shares held by members at the date of filing the last B1 form, and shares transferred by members and particulars of transferees of members' shares.

**Criterion 24.6** -

a) and b) S.I. No. 560 of 15 November 2016 requires all "relevant entities" (defined as corporate or other legal entities incorporated in Ireland) to take reasonable steps to obtain and hold adequate, accurate, and current information in respect of its beneficial owners (Art. 4). This includes the name, date of birth, nationality, address, and a statement of the nature and extent of the interest held by each beneficial owner. The entities shall enter this information in its beneficial ownership register. If no such natural person is identified or there is any doubt that the person is the beneficial owner, the entity shall record the natural person(s) who holds the position of senior managing official. Beneficial owners is defined according to Article 3 point 6 (a) of the 4AMLD. (Note that the indicative-numerical<sup>54</sup> threshold in EU law (4AMLD) is 25%). In order to implement this obligation, relevant entities shall give notice to any natural person whom it has reasonable cause to believe to be a beneficial owner, who must then confirm their particulars (Arts. 5 and 6). The addressee is to comply with the notice within one month. The relevant entity may also give notice to any person where there is reasonable cause to believe that the person has knowledge about a beneficial owner. The beneficial ownership information gathered by corporate entities under this S.I. will be filed centrally and under the 4AMLD will be accessible - from 26 December 2017 - to the FIU, competent authorities and members of the public with a legitimate interest.

All companies resident in Ireland for tax purposes must file must also file a Corporation Tax Return (CT1) each year with Revenue. "Close companies" (i.e. those with five or fewer owners/controllers) must also file beneficial ownership information as part of this form. The Irish authorities indicated that close companies represent about 91% of the total legal entities registered in Ireland.

<sup>54</sup> Article 3(6) however requires obliged entities to examine whether there is 'control via other means' and this more rigorous test is transposed in section 26(b)

c) Irish law requires that all, FIs and DNFBPs identify and take reasonable measures to verify beneficial owners (see Recommendation 10). Therefore, this information would be available to competent authorities upon appropriate authority.

**Criterion 24.7** - S.I. No. 560 requires that, once gathered, information held in the companies registry be kept up-to-date. However, this only applies once the beneficial ownership information is first entered in the register.

**Criterion 24.8** -

a) Directors of Irish companies must be natural persons (s.130), while company secretaries can be other legal persons. The only residence requirement is that at least one director be a resident of the EU or of the EEA. There is no requirement that these be resident in Ireland, as this would conflict with EU law. While beneficial ownership information is not currently filed to CRO, starting on 15 November 2016, legal persons are also required to record beneficial ownership information in their own register. There is no general requirement that the directors or other natural person(s) resident in the country are authorised by the company, and accountable to the authorities, for providing basic and beneficial ownership information and providing other assistance.

b) Where Irish companies have appointed Irish resident DNFBPs, such professional advisors are already fully accountable, under existing laws, to State competent authorities such as AGS, the police FIU, and Revenue. There is currently no requirement that the DNFBP be resident in Ireland, as this may conflict with EU law.

c) To the extent that information is kept, the Companies Act provides adequate arrangements for sharing information with competent authorities.

**Criterion 24.9** - The Companies Act, 2014 provides extensively for the maintenance of accounting and other records and registers during the lifetime of the company (s. 281-286). As regards the duty to retain such records for a period of 6 years, section 285 requires accounting records or information in an annual return to be preserved by the company concerned for a period of at least 6 years after the end of the financial year containing the latest date to which the record, information or return relates. Companies must maintain indefinitely:

- register of members – s169.
- register of directors and secretaries – s.149
- register of directors’ and secretaries’ interests – s.267
- register of debenture holders – s.1121
- minute books – 199
- directors’ service contracts – s. 154
- contracts to purchase own shares – s.112
- individual and group acquisitions share register - 1061

While these record-keeping obligations are comprehensive, they do not apply to the beneficial ownership information *requirements* in S.I. No. 560 of 15 November 2016.

**Criterion 24.10** - Law enforcement and other authorities have access to information that is kept by companies and the CRO. See Recommendation 31. However, this does not necessarily include beneficial ownership information except for close companies (see criterion 24.6 above. Once S.I. No. 560 is fully implemented, a wider range of beneficial ownership information will be recorded and available.

**Criterion 24.11** - The Companies Act 2014 prohibited the issuance of bearer shares and bearer share warrants (s.66(8) to (10)). Previously, these were allowed. *But* pursuant to section 66(10), any bearer share or share warrant previously issued, the shares are deemed not to have been allotted or issued, and the amount subscribed therefore is due as a debt of the company to the purported subscriber.

**Criterion 24.12** - Nominee shareholders and directors are allowed, and there is no requirement for them to be licensed, or for them to disclose their *nominee* status to the company or the CRO. However, S.I. No. 560 mitigates this by effectively forcing disclosures of both nominee directorships and nominee shareholdings where the nominator effectively controls the company through the nominees.

**Criterion 24.13** - There is a range of measures to enforce provisions of the Companies Act and apply sanctions. Sanctions are determined based on the level of seriousness and wilfulness of the breach. For example, failure to file an annual return can result in a *fine* of EUR 100 with a daily penalty of EUR 3 thereafter, up to maximum of EUR 1 200 per return. Continued failures can result in a strike of the register (s.726) or a “category 3 summary offence” (a fine of EUR 5 000 and up to 6 months imprisonment. Negligent failure to update CRO on director details or on shareholders, summary prosecution would be taken and a category 3 offence could apply (a fine up to EUR 5 000 or imprisonment for a term not exceeding 6 months or both). In the case of (more serious) provision of false information to the CRO, regarding directors, shareholders or other matters, such as destroying or falsifying documents, prosecution could be under s. 876, which is a category 2 offences attracting – on summary procedure – 12 months in jail and EUR 5 000 fine, or on indictment, a fine of EUR 50 000 and 5 years’ imprisonment. Similar penalties apply for failure to keep proper accounting records. Given the range of these penalties, these can be considered proportionate and dissuasive.

Failure to comply with the beneficial ownership requirements in S.I. No. 560 can result in a fine up to EUR 5 000. Since this is the only penalty foreseen in the regulations, this is not sufficiently proportionate and dissuasive.

**Criterion 24.14** - Ireland disseminates corporate information on demand through its online CRO search service. The resource can be searched for a fee by anyone, including foreign authorities. Any country may also make a request to Ireland for formal legal assistance where a need for corporate information/beneficial ownership arises in the course of criminal investigations or criminal proceedings. Ireland’s FIU, AGS and Revenue provide timely assistance - within the EU and internationally. While information in the CRO registry does not include beneficial ownership information, Revenue and other LEAs have access to beneficial ownership where this is obtained from Irish companies.

Such international cooperation is conducted (*inter alia*) through its membership of a number of different international and European working groups, namely: the Egmont Group, the FIU-net, the

Europol Network, the Interpol Network, the Global Forum on Transparency and Exchange of Information for Tax Purposes, and the Camden Assets Recovery Interagency Network.

**Criterion 24.15** - Ireland monitors the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. This is standard practice; because such requests are often made with a view to furthering criminal investigations, and therefore a very high level of care is taken to test data received for its probative value.

### *Weighting and conclusion*

Ireland has taken important steps in issuing S.I. No. 560 of 15 November 2016 which creates requirements for companies to obtain and record information on their beneficial owners. Ireland meets or mostly meets a number of criteria in R.24, including 24.1—24.7, 24.9, 24.11, 24.13—24.15. Nevertheless, some shortcomings remain. For example, there has been no comprehensive ML/TF risk assessment of all types of legal persons created in Ireland; the company and CRO registers do not yet include beneficial ownership information, so this information cannot be accessed and shared. Nominee directors and shareholders are also allowed, and there is not a requirement for them to be licensed, or for them to disclose their nominee status to the company or the CRO. However, these gaps are partly overcome by the new overall requirements on beneficial ownership.

**Recommendation 24 is rated largely compliant.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

In its 3<sup>rd</sup> MER, Ireland was rated PC for R.33, which previously contained the requirements for transparency of legal arrangements. The MER concluded that competent authorities had limited powers to have timely access to information on the beneficial ownership and control of trusts.

Ireland has provided trust case law that covers a number of general requirements such as the obligations owed by trustees to beneficiaries to fulfil their duties and to display a high degree of honesty and integrity, and the rights of beneficiaries to seek disclosure of trust documents and inspect documents related to the assets of a trust. The Assessment team did not consider that these judicial decisions created specific enough requirements to sufficiently address the criteria in R.25 below.

#### ***Criterion 25.1*** -

a) Trust and company service providers (when they *inter alia* act or arrange for another to act, as a trustee of a trust), auditors, external accountants, tax advisers, and relevant independent legal professions (barrister, solicitor or notary, who carries out *inter alia* creating, operating or managing trusts or similar structures or arrangements) are obliged or “designated persons” for AML/CFT purposes, under the CJA 2010. In these cases the full range of CDD and record-keeping obligations apply (see R. 22). So this would include information on the customer (normally the settler) and the beneficial owner. In the context of trusts, the CJA 2010 defines beneficial owner as: (a) any individual who is entitled to a vested interest in possession, remainder or reversion, whether or not the

interest is defeasible, in at least 25% of the capital of the trust property; or (b) in the case of a trust other than one that is setup or operates entirely for the benefit of individuals referred to in paragraph (a), the class of individuals in whose main interest the trust is setup or operates. While this should cover any professional who acts as a trustee, it would not cover the cases where a private individual (non-professional) does so.

Trustees must also comply with a number of reporting/filing duties to Revenue in relations to any trusts which generate tax consequences. Any of the following could evidence the generation of a tax consequence for trusts (list is not exhaustive): receipt by the trustees of income or capital gains; disposal of income or capital assets by the trust; upon establishing the trust and vesting of the trusts funds in the case of a discretionary trust; and movement of funds by the trust.

b) There are no specific requirements for trustees to hold basic information on other regulated agents of, and service providers to, the trust. However, it is standard professional practice for lawyers, accountants, trustees, and TCSPs in Ireland to rigorously maintain such data as causes of action in tort, contract, or breach of trust may arise some considerable time after the professional service ceases. To mitigate legal risk, it is firmly established practice for any professional to keep careful records.

c) When a person as a business acts as a trustee or arranges for another to act as a trustee, this person is an obliged person for the Criminal Justice (Money Laundering and Terrorist Financing Act. Therefore in these circumstances the trustee in Ireland must maintain records of all transactions for five years after the end of the customer relationship (s. 55 CJA 2010).

**Criterion 25.2** - There are no overall requirements for information pursuant to this Recommendation be kept accurate and as up-to-date as possible, and is updated on a timely basis. This is only required when a person acts as a professional trustee as indicated above. Once Ireland implements the 4AMLD, requirements in this area will be enhanced.

**Criterion 25.3** - While there is no specific requirement for trustees to disclose their status to FIs and DNFBPs, there is an obligation for FIs and DNFBPs to identify and take reasonable measures to verify beneficial owners (CJA 2010 s.28(2) and s. 33(2)(b) (i and ii).

**Criterion 25.4** - Trustees are not prevented by law or enforceable means from providing competent authorities with any information relating to the trust. In the event a trust instrument contained clauses prohibiting trustees from providing information to competent authorities and law enforcement agencies, they are likely to be unenforceable under Irish law (contrary to public policy) and will certainly be unenforceable when Ireland and other member states transpose article 31(2) of the 4AMLD by means of express provision, either in AML law or elsewhere.

**Criterion 25.5** - Competent authorities have all the powers to obtain information on beneficial ownership, the residence of the trustee, and any assets held or managed by the financial institution or DNFBP, but only to the extent that this information is kept. The 4AMLD (article 31) will facilitate and make more timely competent authorities' access to trust-related information and should also enhance the quality of the information.

**Criterion 25.6** - Ireland is able to provide international cooperation with regard to trusts, but only to the extent that this information is kept and law enforcement authorities are able to obtain timely

access to it. Nevertheless, Ireland was able to provide beneficial ownership in all cases requested from foreign authorities

**Criterion 25.7** - Any professional trustee is liable under the CJA 2010 to a range of criminal and civil sanctions for failure to comply with identification requirements. This however does not cover the cases where a non-professional is acting as a trustee. As indicated in criterion 25.1(a), the trustee also has obligations to file detailed reports with Revenue in cases where the trust confers a tax benefit. All trusts are mandatory e-filers, paying and filing, using Revenue's Online Service (ROS). To note - S 917F (3)(e) Taxes Consolidation Act (TCA) 1997 provides that electronic returns do not need to be prescribed, notwithstanding that paper returns must be.

**Criterion 25.8** - There are only specific requirements on designated credit and financial institutions to have measures to quickly comply with information requests from competent authorities (section 56 CJA 2010.)

### *Weighting and conclusion*

While professional trustees have obligations to obtain and hold information on the settlor, trustee, and beneficiaries, and faces sanctions for failure to comply with the identification requirements, this does not cover the cases where a private individual (non-professional) does so. There are no specific requirements for trustees to hold basic information on other regulated agents of, and service providers to, the trust, or for information pursuant to this Recommendation be kept accurate and as up-to-date as possible, and is updated on a timely basis. Competent authorities have all the powers to obtain information on beneficial ownership, the residence of the trustee, and any assets held or managed by the financial institution or DNFBP, but only to the extent that this information is kept. There are only specific requirements on designated credit and financial institutions to have measures to quickly comply with information requests from competent authorities (section 56 CJA 2010.)

**Recommendation 25 is rated partially compliant.**

### ***Recommendation 26 – Regulation and supervision of financial institutions***

In its 3<sup>rd</sup> MER, Ireland was rated LC for R.23, which contained the previous requirements for R.26. The main deficiencies related to the compliance regime for MVTS providers not being fully in place.

**Criterion 26.1** - The Central Bank of Ireland (CBI) regulates and supervises all persons and entities, both credit and financial institutions, that conduct the financial activities listed under the FATF definition of FIs. The CBI regulates other activities that do not meet the FATF definition of a financial activity and hence are not covered in this MER.<sup>55</sup>

<sup>55</sup> One example are “debt management firms”, which are defined by section 28 of CBA 1997 as entities who provide advisory services with regard to the discharge of a debt and do not involve holding client funds, unless expressly authorised to do so, under a separate license by the CBI (i.e. a Money Services Provider authorised both as a MVTS and a Debt Management Firm).

**Criterion 26.2** - Banks are required to be authorised either by European Central Bank (ECB), since 4 November 2014, or by the CBI, if a bank was licenced prior to that date. All other core principles institutions are licensed by the CBI. If the CBI is satisfied that certain conditions have been complied with, it will propose to the ECB to grant an authorisation, or, if it is not so satisfied, reject the application. CBI also authorises MVTS and money/currency exchange services. Section 9F of the Central Bank Act of 1971, establishes a set of recommendations for the authorisation of FIs and de facto prohibits shell banks. This section requires that institutions meet the following conditions: (a) that it is a body corporate, (b) its registered office and its head office are both located in the State, (c) at least 2 persons effectively direct its business, and (d) the members of its management body meet the requirements of Regulation 79 of the European Union (Capital Requirements) Regulations 2014.

**Criterion 26.3** - The CBI follows an authorisation process which includes a fitness and probity regime applicable to forty seven (47) positions deemed as pre-approval controlled functions (PCF). This includes functions by which a person may exercise a significant influence on the conduct of a regulated financial service provider. Fitness and probity tests normally include vetting by AGS, whenever there are red flags deriving from the background checks (on-line, open sources, and a general and previous employer reference, among others). AGS vetting is done systematically for one-person companies. For non-Irish applicants to Irish FIs, applications include self-declarations and background checks as described above, and include contacting the regulator of the country of the applicant, but no criminal background checks on a systematic basis. This is an area that could be further strengthened. Persons must be competent and able, act ethically and honestly and be financially sound (s. 50 of the Central Bank Reform Act 2010; [Fitness and Probity Standards (Code issued under s. 50 of the Central Bank Reform Act 2010)]).

Moreover, according to Chapter 2 of Part 3 of the European Union (Capital Requirements) Regulations 2014, incorporated in Ireland through S.I. 158 of 2014, a proposed acquirer may not, directly or indirectly, acquire a qualifying holding (10% or more) in a financial institution without having notified the CBI first. The CBI requires some regulated financial service providers to complete a detailed 'Acquiring Transactions Notification' form in the event of a proposed acquisition of, or increase in, a direct or indirect qualifying holding in respect of a credit or financial institution.

**Criterion 26.4** - All core principle and other FIs are "designated persons" for AML/CFT purposes, under the CJA 2010, and are therefore subject to AML/CFT supervision by the CBI, through a special AML Division, which also leverages off the work of prudential and conduct supervisors. AML supervision is carried out on a risk-sensitive basis.

In terms of prudential supervision, core principle institutions are regulated and supervised by the CBI in line with the core principles set by the Basel Committee for Banking Supervision (BCBS), the International Organisation of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). Credit institutions that are deemed to be significant institutions, are subject to prudential supervision by the ECB.

In 2013-2014, the IMF assessed Ireland's compliance with the Basel Committee *Core Principles for Effective Banking Supervision* (BCP) and the implementation of the International Organization of Securities Commissions (IOSCO) *Objectives and Principles of Securities Regulation*. The Report concluded on an overall satisfactory level of compliance with BCP and a high level of implementation

of IOSCO principles, which is relevant for this criterion. Separately, in terms of Insurance, among others, the IMF report (Detailed Assessment of Observance of the Insurance Core Principles, published in May 2015) found that there were opportunities for improvement in supervisory coverage, particularly with respect to retail intermediaries with low impact, to which the country explained that it applied a risk based approach and this was partly accepted. Remarks were also made on the need to have enforceable regulations for Insurance in terms of AML/CFT and issuing statutory guidelines pursuant to section 107 of CJA 2010. This triggered changes and improvements at a supervisory level. Technical Notes on the improvements made on the different areas were published by the IMF in September 2016 (although these do not update the previous assessments's results). One of these reports also mentioned that for Insurance, Ireland had implemented a risk based approach to supervising firms for AML/CFT compliance in line with FATF Recommendations.

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With regard to consolidated group supervision for AML/CFT purposes, there are no specific requirements in law or other enforceable means, that subject FIs to this type of supervision, however, some attention to groups is given by the CBI, following the procedure in its inspection manual (see criterion 18.2).

**Criterion 26.5** - The CBI's AML/CFT supervisory strategy is primarily based on a standalone ML/TF risk assessment and it follows a risk based approach. Resources and on-site/off-site supervisory activities are applied according to ML/TF risks identified. The on-site inspections are the CBI's primary supervisory tool, although the CBI's AMLD also conducts desk-based reviews, supervisory engagement meetings, analysis of Risk Evaluation Questionnaires and an outreach and awareness building programme.

**Criterion 26.6** - The AMLD reviews its ML/TF risk assessments on an ongoing basis and communicates and shares information with prudential supervisors to ensure that the risk profile of FIs or groups is up to date. The AMLD, through its inspection regime and outreach programme (including supervisory engagement meetings) is aware of any major developments or events that occur and inputs these into risk assessments.

### *Weighting and conclusion*

There are minor shortcomings with regard to the lack of consolidated supervision for AML/CFT purposes.

**Recommendation 26 is rated largely compliant.**

### ***Recommendation 27 - Powers of supervisors***

In its 3<sup>rd</sup> MER, Ireland was rated LC for R.29, which contained the previous requirements in this area. The deficiencies related to the regulator's inability to apply a range of administrative sanctions for

<sup>56</sup> See report's details for banking supervision and insurance firms at: [www.imf.org/external/pubs/cat/longres.aspx?sk=44311.0](http://www.imf.org/external/pubs/cat/longres.aspx?sk=44311.0) and [www.imf.org/external/pubs/ft/scr/2016/cr16311.pdf](http://www.imf.org/external/pubs/ft/scr/2016/cr16311.pdf).

AML/CFT breaches. This was also a deficiency under the former Recommendation 17 related to sanctions, and was largely resolved according to Ireland's 11<sup>th</sup> Follow-Up Report with the amendment of the Central Bank Act of 1942, which allowed the regulator to apply administrative sanctions for any breaches to the CJA 2010 or 2013.

**Criterion 27.1** - The CBI has a broad range of powers to supervise, monitor to ensure compliance with AML/CFT requirements contained in part 4 of CJA 2010 and 3 of the Central Bank (S&E) Act 2013 (CBA 2013). This includes the ability to request documentations, issue directions for compliance with requirements, and the ability to enter premises, among others.

**Criterion 27.2** - The CBI has the authority to conduct inspections by appointing its employees, or other suitably qualified persons to be authorised officers pursuant to section 72 of CJA 2010 and 24 of the CBA 2013. The referred sections allow authorised officers to conduct AML/CFT inspections under warrants of appointment. Sections 75 to 78 of CJA 2010 specifically include the following powers for authorised officers:

- (a) inspecting the premises
- (b) requesting persons in charge of records/documents to produce them for inspection
- (c) inspecting documents requested or found on premises
- (d) taking copies of those documents, or any part of them
- (e) requesting persons who have information about documents, or the business, to answer questions
- (f) removing and retaining documents for periods reasonably required for examination
- (g) requesting persons to assist an officer to operate data equipment
- (h) securing, for later inspection, the premises or part of the premises at which, the officer believes records or other documents are located.

*Section 27 of CBA 2013, contains even broader powers.*

**Criterion 27.3** - The CBI has the authority to compel the production and/or provision of any information pertinent to monitoring AML/CFT requirements pursuant to sections 66-68 and 77 of CJA 2010 and 27 of CBA 2013. This includes the ability to request explanations or answers to queries regarding documents provided.

**Criterion 27.4** - The CBI is authorised to impose administrative sanctions following the Administrative Sanctions Procedure derived from Part IIIC from the Central Bank Act of 1942. Administrative sanctions range from a caution or reprimand, monetary penalties, suspension or removal of authorisations of financial services providers, among others.

### *Weighting and conclusion*

**Recommendation 27 is rated compliant.**

**Recommendation 28 – Regulation and supervision of DNFBPs**

In its 3rd MER, Ireland was rated NC for R.24, which contained the previous requirements in this area. The deficiencies related to the fact that almost all DNFBPs were not subject to oversight for AML/CFT purposes. This was largely addressed, at least from a technical compliance point of view, by the appointment of a supervisor for each of the DNFBPs (s. 60 of CJA 2010).

**Criterion 28.1** - As explained under R. 22, casinos are illegal and were only included in the CJA 2010 for consistency with EU provisions. PMCs, where gaming activities take place, are permitted and regulated under CJA 2010, with regard to those activities. PMCs are required to register with (rather than be licensed by) the DoJE for money laundering and terrorist financing purposes, following section 109 of CJA 2010, as amended by section 18 of CJA 2013.

- a) PMCs are subject to a registration requirement, although registration requirements (i.e. to provide name, address, etc.) seem to be less thorough than what a licensing or authorisation process implies since, for instance, there is no requirement to verify the information provided.
- b) The registration process includes a fitness and probity check at the time of registration and at the time of inspection.
- c) The Minister of Justice (DoJE) is the designated competent authority for monitoring and ensuring compliance of PMCs with AML/CFT requirements (s. 60 of CJA 2010 and 13 of CJA 2013).

**Criterion 28.2** - All DNFBPs have a competent authority or a self-regulatory body (designated accountancy bodies) assigned to monitor and ensure they comply with AML/CFT requirements, according to section 60 of the CJA 2010 as follows:

- a) The Law Society of Ireland- where the designated person is a solicitor<sup>57</sup>. Monitoring is done by investigating accountants (inspectors) of the Law society.
- b) Designated Accountancy Body or Bodies – where the designated person is an auditor, external accountant, tax adviser or a trust or company service provider, and a member of an accountancy body, or if the person is not a member of a designated accountancy body and is a body corporate or a body of unincorporated persons, carrying out functions covered. <sup>58</sup>

<sup>57</sup> The Law Society has responsibility over all solicitors' firms, including those that handle client's moneys and are therefore obliged to submit an Accountant's Report. This is the majority of the solicitors' firms with only a small portion (70 out of 2 200) not handling client's moneys and therefore not being monitored by the use of investigating accountants.

<sup>58</sup> Accountants that are members of Designated Accountancy Bodies are monitored by those bodies. The nine Designated Accountancy Bodies are as follows:

- ACCA - Association of Chartered Certified Accountants,
- ICAEW - Institute of Chartered Accountants in England & Wales,
- ICAI or CAI - Institute of Chartered Accountants in Ireland, Chartered Accountants Regulatory Board (CARB) is CAI's supervisory body.
- ICAS - Institute of Chartered Accountants of Scotland,
- ICPA or CPA - Institute of Certified Public Accountants in Ireland,
- IIPA – Institute of Incorporated Public Accountants in Ireland,
- AIA - Association of International Accountants,
- CIMA - Chartered Institute of Management Accountants and
- CIPFA - Chartered Institute of Public Finance & Accountancy.

c) The General Council of the Bar of Ireland-where the designated person is a barrister. Although as also explained under R. 22 above, barristers would not be covered under the definition of DNFBP, as per the FATF Recommendations and Glossary.

d) The DoJE - for all other accountants, tax advisors, notaries, TCSPs (which do not fall under the remit of the CBI or a designated accountancy body) and PSMDs, other than the above 59. Other types of DNFBPs such as car dealers, are also under the remit of the DoJE, following risk considerations at a country level.

e) For the real estate sector, the buying and selling of property requires a license by the Property Service Regulatory Authority (PSRA). On 16 August 2016 the Minister for Justice and Equality with the agreement of the Minister for Finance signed an Order prescribing the PSRA, as the Competent Authority for AML/CFT purposes, in accordance with section 60(3) of the CJA 2010. This Order was effective from 1 September 2016.

**Criterion 28.3** - Other categories of DNFBPs are subject to AML/CFT supervision by different authorities (see above).

**Criterion 28.4** –

(a) Section 63 of CJA 2010 generally provides that competent authorities, such as the DoJE, the Law Society and the Designated Accountancy Bodies, should effectively monitor designated persons for whom they are a competent authority and take measures that are reasonably necessary to ensure compliance. Within its procedures, the CAI, has specific powers of inspection and enforcement (although these are specific for AML/CFT, only as regards to bookkeepers and TCSPs) and similarly other designated accountancy bodies. The Law Society has no specific sanctioning powers for AML/CFT purposes, but can use general disciplinary action to counter AML/CFT breaches.

(b) With regard to preventing criminals or their associates from being professionally accredited or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP, different DNFBPs' authorities apply different processes:

(i) Authorities explained that TCSPs, not falling under the remit of other Competent Authority (i.e. CBI or Designated Accountancy Bodies) must apply to the Department of Justice and Equality for an authorisation to operate as a TCSP. This includes a fitness and probity test, following section 85 of CJA 2010. Fitness and probity are defined as not being convicted of ML, TF, or fraud; being of legal age, and being in good standing with creditors. Authorities

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Although it is not an obligation to belong to at least one of the above to be qualified as an accountant, it is normally required to provide services to the general public. Authorities explained that in the case of Accountants that perform TCSP services, they would be captured under the State Competent Authority (Minister of Justice and Equality, through the DoJE) and that they are actively seeking to identify those that provide these services without due registration. Also, that CAI, ACCA, CIMA and CPA are the largest accountancy bodies, which population accounts for 97.4% of the total). Accountants that may be members of ICAEW and/or ICAS represent 1.3 and 0.2 %, that is 438 and 71 accountants out of the total 34,777 accountants according to the profile of the sector in Ireland as of December 2014 (prepared by IAASA, the Irish Auditing and Accounting Supervisory Authority, which supervises the designated accountancy bodies from a general regulatory perspective).

<sup>59</sup> Authorities explained that “external accountants” are defined in the CJA as “a person who by way of business provides accountancy services (other than when providing such services to the employer of the person) whether or not the person holds accountancy qualifications or is a member of a designated body), however in practice, this refers to those not covered by one of the 9 designated accountancy bodies.

indicated that authorised officers conduct desktop inspections on directors, principals and beneficial owners of TCSPs who would have been subject to the “fitness and probity” test and should there be any reason for suspicion at this stage, or following inspection, the State Competent Authority can submit a report under section 63 of the 2010 Act to AGS and to Revenue for Investigation. They also indicated that desk based checks are carried out on PSMDs, on Tax Advisers/external Accountants and on PMCs, in advance of inspections carried out. Where there are reasons for suspicion during this process, the State Competent Authority can also submit a report under section 63 of the 2010 Act.

(ii) For solicitors, section 40 of the Solicitors (Amendment) Act 1994 contains the requirements for solicitors to be authorised. This includes satisfying the Law Society that he/she is fit and proper. The Law Society can refuse admission and practice certificate to persons wanting to act as solicitors if the person has been sentenced to a term of imprisonment. No solicitor can work without a practice certificate, which means they are all under the remit of the Law Society.

(iii) For accountants, one body has detailed application procedures to ensure suitability of individuals who own or control the firms and these include a fitness and probity declaration, confirmations of financial integrity and reliability, confirmation of no convictions or civil liabilities and affirmation of good reputation and character. Other bodies rely mostly on a self-declaration by applicants.

(iv) For the PSRA, the Property Services (Regulation) Act 2011 refers to ensuring a licensee continues to be fit and proper, to be able to hold the license. As part of the initial application process, the applicant is required to complete the section of the licence application form relating to bankruptcy, civil court judgements and convictions. Each licence applicant is required to make a truthful declaration and advised of possible prosecution and/or penalties for false declarations. However, there are no criminal background checks (i.e. AGS vetting).

(c) With regard to having sanctions available, in line with Recommendation 35:

### *DoJE*

Failure to comply with any request by an Authorised Officer (i.e. the supervisor) is an offence under section 80 of CJA 2010. A person committing such an offence is liable, on summary conviction, to a fine not exceeding EUR 5 000 or imprisonment for a term not exceeding 12 months (or both). The fine can be considered rather low for corporate bodies or legal persons, depending on the nature and size of DNFBP (i.e. high value good dealers), and therefore, not dissuasive. Notwithstanding the above, Authorities indicated that a EUR 5 000 fine could be considered dissuasive in the context of smaller businesses.

In addition:

(i) Under section 71 of the CJA 2010 (as amended by section 14 of CJA 2013), the DoJE can direct a person or class of persons covered by CJA 2010 for AML/CFT purposes, to discontinue or refrain from conducts that constitute a breach of the act, or take specific actions or to establish specific processes or procedures that in the opinion of the authority concerned

constitutes or would constitute a breach of any specified provision. The latter would in principle allow the DoJE to establish its own administrative fines (other than the noted above which imply a matter referred to the AGS and a conviction to be obtained), although this has not been done.

(ii) Under section 94 of the CJA 2010, it is an offence if the holder of a TCSP authorisation fails to comply with conditions or prescribed requirements imposed by the Minister for Justice and Equality (DoJE). A person committing such an offence is liable on summary conviction, to a fine not exceeding EUR 2 000 or, on conviction on indictment to a fine not exceeding EUR 100 000. Section 98 gives the DoJE power to issue a direction to TCSPs not to carry out business other than as directed.

(iii) Under section 97 of CJA 2010, the Minister for Justice and Equality (DoJE) has the power to revoke an Authorisation for TCSPs authorised by it.

### *Law Society of Ireland*

Supervision undertaken by the Law Society's investigating accountants includes AML/CFT matters and disciplinary actions can consequently be applied pursuant to the Solicitors Act and the Solicitors (Money Laundering and Terrorist Financing Regulations) 2016. Remedial action could include being called to the Regulation of Practice Committee for an interview (many solicitors would regard being called to an interview as a type of disciplinary action or even a sanction); being charged or levied with the costs of the investigation, the matter being referred to the Solicitor's Disciplinary Tribunal for a higher sanction to be determined, or the matter being referred to the President of the High Court. Another level of sanction is the possibility to instruct the Registrar with regard to the solicitor's practising certificate for suspension, conditions or restrictions being imposed. There are no monetary penalties or fines available to the Law Society.

### *Accountants (several Designated Accountancy bodies)*

Each designated accountancy body has disciplinary actions which can be used for AML/CFT purposes, given the content of reviews undertaken by these bodies; these can be generally summarised as follows:

- i. Expulsion from membership (this is the most common)
- ii. Withdrawal or Suspension of Practising Certificate or other authorisation/licence
- iii. Fines (in some instances up to EUR 100 000)
- iv. Reprimand
- v. Serious reprimand
- vi. Undertaking or Condition – for example, to complete an External Money Laundering Compliance Review or enforcement visit

### *PSRA*

The Property Services (Regulation) Act 2011 refers to sanctions which may be imposed for "improper conduct", which includes activities that may imply that the licensee is no longer fit and proper, and could therefore include AML/CFT matters. These include the suspension and revocation

of the license, as well as directions to pay the costs of the investigation of a licensee (around EUR 50 000).

Overall, the lack of a sanctions procedure (i.e. administrative fines) for DNFBPs under the remit of the DoJE and the lack of fines for the Law Society, undermine the proportionality of sanctions available in Ireland. The severity of some of the sanctions that are available, such as the withdrawal of licenses or authorisation for practice, can be considered potentially dissuasive.

**Criterion 28.5** - Risk-based supervision of DNFBPs is still nascent. Supervisors use a combination of on-site/off-site or desktop review to monitor compliance.

### *DoJE*

Authorised Officers complete a risk assessment for the entity based on a range of factors unique to each of the sectors e.g. geographic areas, delivery channels, customers, transactions. The outcome of this assessment provides the Authorised Officers with a clear understanding of the ML/TF risks of the entity and ultimately the sector. It also determines the frequency and intensity of AML/CFT supervision for each entity. Authorised Officers give consideration to the size and complexity of each of the entities when assessing the adequacy of the AML/CFT internal controls, policies and procedures.

### *Law Society of Ireland*

Compliance with solicitors's anti-money laundering obligations is supervised as part of the Law Society's solicitor's accounts auditing process. The Society adopts a risk-based approach in planning and scheduling some 400 firm inspections per year, directing its auditing resources to areas it believes are of the greatest risk. Factors taken into account when assessing law firms' risk profiles include previous investigation histories of the firms and compliance by firms with the society's annual reporting requirements.

### *Accountants(several designated accountancy bodies)*

One designated accountancy body applies a risk-based approach to its AML supervision and informs itself of the risks facing their firms are facing from a variety of sources including, feedback from the firms (Annual Returns, Pre-Visit Questionnaires) and information from inspectors who perform on-site visits, helplines and alerts. The assessment of risk is factored into the various stages of its supervision process including desktop monitoring of the Annual Returns (incorporating a risk analysis with factors such as type of clients, handling of client's money and extent of investment business activities). The firms are also asked to confirm compliance with AML/CFT legislation.

The AML/CFT supervisory function is integrated within the Quality Assurance Regime of public practice. Therefore, the monitoring visits will incorporate other areas (for example audit or insolvency in addition to AML/CFT compliance). The current quality assurance regime selects monitoring visits on a cyclical basis with an additional risk based analysis of any additional intelligence received. The cycles may be stipulated by statute or a memorandum of understanding agreed by the designated accountancy body.

Other designated accountancy bodies indicated they conduct risk based supervision based primarily on information contained in Annual Returns, although this is not necessarily AML related. Some indicated they seek to review their entire supervisory population, or follow a pre-established review cycle, which may vary if certain risks require prompt attention.

### *PSRA*

The PSRA was designated as a competent authority 1 September 2016, and indicated it aims to cover the entire supervisory population for the time being (as opposed to following a RBA), as this would be the first time all entities under its remit would be inspected.

### *Weighting and conclusion*

There is no licensing requirement for PMCs which in practice operate as casinos. Risk-based supervision is still nascent.

**Recommendation 28 is rated largely compliant.**

### ***Recommendation 29 – Financial intelligence unit***

Ireland was rated LC for R.26 (the predecessor to R.29) in its 3<sup>rd</sup> MER. The deficiencies identified related mainly to effectiveness, including that the FIU's role and effectiveness was limited due to inadequate resources and that it did not develop strategic analysis.

**Criterion 29.1** - Ireland has a law enforcement-style FIU which is a section within the GNECB of AGS. There are no laws, formal operating procedures or internal guidelines establishing the role of the FIU. The FIU does not have its own website or issue annual reports (it plans to build a new website in 2017, with the roll out of an analytic tool (GoAML)). STRs relevant to Revenue offences are dealt with by the Suspicious Transaction Reports Office (STRO) within Revenue.

**Criterion 29.2** - Relevant reporting entities and competent authorities are obliged to file STRs with the AGS (where the FIU is housed) and Revenue (CJA 2010; s. 42 & s.63). The FIU meets with the Suspicious Transaction Reports Office (STRO) within Revenue bi-monthly to ensure that it is receiving all STRs. In cases of overlapping interests in investigations or intelligence building, the FIU takes priority in developing cases. The FIU maintains data relating to cross-border cash declarations which is provided by the Customs Authority in Revenue (pursuant to EC Regulation 1889/2005). Details relating to all cash seizures by Customs at airports/ports are forwarded to the FIU.

**Criterion 29.3** - The FIU has access to a range of databases but its ability to seek additional information from reporting entities is limited. As the FIU is housed in the AGS, it has access to police databases and has direct access to the CRO database and the Land Registry Database. It also has access to information required from other law enforcement agencies utilising the Disclosure of Certain Information for Taxation and Other Purposes Act 1996 (s. 1) and law enforcement/natural security exceptions in the Data Protection Act 1988 (s. 8(a)-(b)).

Under section 56 of the CJA 2010, credit institutions and financial institutions must have systems in place to enable them to respond fully and promptly to enquiries from the AGS on the existence and

nature of a business relationship with a person; a failure to do so would result in an offence. The Assessment Team was informed that this section could be relied on to seek additional information from reporting entities, but section 56 appears to be a record keeping obligation rather than an FIU power to seek additional information. In any case, it only applies to credit institutions and financial institutions, and to customer information, and not transaction information. The Assessment Team was informed that AGS officers working in the FIU are able to seek additional information to clarify STRs as part of their general powers of enquiry as police officers and that they could also apply for production orders on reporting entities through a court (see analysis of R.31), however this does not capture the full range of information which should be accessible by FIUs under R. 29. Ireland has informed the Assessment Team, that the FIU's ability to seek additional information from designated bodies other than the FIs will be enhanced under a draft Bill which will transpose the 4AMLD.

**Criterion 29.4** - The FIU undertakes analysis on all STRs it receives by cross-referencing them against the AGS' information holdings and previous reports made to the FIU and following the money trail of particular activities/transactions. Under its current IT system, the FIU is limited in its ability to undertake complex operational analysis or strategic analysis. The FIU is currently in the process of enhancing its analytical capacity by upgrading its IT systems and hiring a dedicated forensic accountant.

**Criterion 29.5** - Ireland has not provided any laws, regulations or internal guidelines that indicate that the FIU's ability to disseminate its analysis. However, in practice the FIU disseminates information and the results of its analysis (such as the subject of the STR, related account details and the nature of the suspicion as well any additional information that has been collected) to relevant competent authorities (in various specialist units of the AGS) and international counterparts for intelligence and investigation purposes through secure channels (FIU.net, Egmont Secure Web, Interpol and Europol).

**Criterion 29.6** - The FIU collects both electronic and paper reports, with 40% of STRs received in paper format. No written procedures exist for the handling or confidentiality of information held by the FIU but authorities report that:

- All paper reports are recorded on the FIU database, original copies scanned onto a secure drive and original paper-based STR's destroyed.
- The FIU maintains a standalone database called G-FIN, which is an internal network, and is not accessible by any other unit in the AGS apart from authorised operators from the National Criminal Intelligence Unit who has access to a limited amount of information that does not include details on transactions or the reporting entity.
- The dissemination of any information is to authorised personnel only and via secure networks. Government officials are under a legal obligation to maintain the confidentiality of information (Official Secrets Act 1963, s. 4).
- Physical access to the FIU office is limited to persons working within the FIU itself.

Within Revenue, access to STRs is limited to staff who require such access in their day-to-day work. 1,225 Revenue staff have access to STR information including auditors and investigators who make

use of STR intelligence to conduct enquiries. When an FIU is investigating an STR, this STR is blocked out on the STRO database.

**Criterion 29.7** - Ireland has not clearly demonstrated how the FIU operates independently and autonomously of the AGS. The FIU sits within the GNECB and the Head of the FIU is the Detective Chief Superintendent with the responsibility of managing the GNECB. The FIU shares its budget with the GNECB. There is a Detective Superintendent with the sole responsibility for the day-to-day operations of the FIU. The FIU is made up of AGS officers and civilian staff and AGS officers who theoretically can be redeployed by the AGS Commissioner for operational reasons, although authorities report that this has not happened. The FIU can engage directly with other competent authorities and foreign counterparts, independently of other parts of the AGS and the decision to disseminate FIU information is made internally in the FIU by the Detective Chief Superintendent of the GNECB.

**Criterion 29.8** - Ireland has been a full member of the Egmont Group since 2001.

#### *Weighting and conclusion*

Ireland could not demonstrate that the FIU is, by law or other enforceable means, operationally independent and autonomous from other parts of the AGS. In addition, the FIU has a limited ability to conduct strategic analysis under its current IT system.

**Recommendation 29 is rated as partially compliant.**

#### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

**Ireland was rated C for R.27 (the predecessor to R.30) in its 3<sup>rd</sup> MER.**

**Criterion 30.1** - The Garda have national responsibility for policing all laws within Ireland; including the investigation of both ML and TF. There are two ML investigation teams in the GNECB which investigate ML. TF investigations are conducted by the Special Detective Unit (SDU) with input from the TF Analysts in the FIU. Specialist areas of the AGS, including the Drugs and Organised Crime Bureau, the Counter Terrorism International/Domestic Units within the SDU and the AGS National Immigration Bureau, are all engaged in tackling underlying predicate offences associated with ML/TF and can also conduct parallel ML/TF investigations.

**Criterion 30.2** - Law enforcement authorities are authorised to investigate ML/TF offences during a parallel financial investigation regardless of where the predicate offences occurred. The AGS operates in every region of Ireland.

**Criterion 30.3** - The Criminal Assets Bureau (CAB) is responsible for identifying, tracing, and initiate freezing and seizing of criminal property subject to non-conviction asset confiscation. As set out under the analysis for R.4, the AGS also has a range of powers to temporarily freeze or restrain assets and the DPP is responsible for enforcing the conviction-based asset confiscation provisions in the CJA Act.

**Criterion 30.4** - Only Gardaí are able to undertake a ML or TF investigation. Revenue and the Social Welfare Taskforce are able to refer ML cases to the AGS. Gardaí seconded to the Department of Social Protection are also able to investigate ML/TF.

**Criterion 30.5** - All allegations of corruption and bribery are investigated by the GNECB who also investigate any associated money laundering and have powers to identify, trace, and initiate freezing and seizing of assets.

*Weighting and conclusion*

**Recommendation 30 is rated compliant.**

### **Recommendation 31 – Powers of law enforcement and investigative authorities**

Ireland was rated C for R.28 (the predecessor to R.31) in its 3<sup>rd</sup> MER.

**Criterion 31.1** - Competent authorities investigating ML, associated predicate offences and TF are able to obtain access to all necessary documents and information for use in those investigations, prosecutions and related actions.

- a) *The production of records held by financial institutions, DNFBPs and other natural or legal persons:* Gardai can apply for an order ‘to make material available’ (a production order) to obtain access to material for the purpose of a drug trafficking or money laundering investigation, or confiscation proceeding. The Court must be satisfied that there are reasonable grounds for suspecting that a specified person has been involved in money laundering or benefitted from a profit-generating offence, that the material is likely to be of substantial value to the investigation and there are reasonable grounds for believing that the disclosure is in the public interest (CJA 1994, s. 63). This provision does therefore not allow production orders to be issued pursuant to a TF investigation, unless there were also criminally-generated proceeds involved. The court must also be satisfied that the documents to be disclosed are not subject to legal privilege (s. 63).
- b) *Search of persons and premises:* Search warrants are available where a court is satisfied that there are reasonable grounds for suspecting that evidence relating to an arrestable offence is in a specific place (Criminal Justice (Miscellaneous Provisions) Act 1997, section 10(1)). The warrant applies for the search of a place and any persons found at that place.
- c) *Taking witness statements:* On the basis of a similar test for production orders set out in (a) above, a person can be asked to provide particular information by answering questions or making a statement containing the information or both (Criminal Justice Act 2011; s. 15).
- d) *Seizing and obtaining evidence:* Evidence can be seized under warrant (Criminal Justice (Miscellaneous Provisions) Act 1997, s.10(1)) or during the course of a search or other investigative activities (Criminal Law Act 1976, s. 9).

**Criterion 31.2** - Competent authorities are able to use a wide range of investigative techniques for the investigation of ML, associated predicate offences, and TF.

*Undercover operations:* The *Criminal Justice (Surveillance) Act 2009* authorises officers of AGS, the Defence Force and Revenue to carry out surveillance in accordance with valid authorisation (ss.3, 7-8).

*Intercepting communications:* The *Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993* allows Ireland to intercept communications for national security and law enforcement purposes.

*Accessing computer systems:* The *Criminal Justice (Surveillance) Act 2009* authorises officers to apply for an authorisation to access information, including any data stored electronically (s. 3).

*Controlled delivery:* Controlled deliveries and joint investigations are carried out in accordance with Part 6 of the *Criminal Justice (Mutual Assistance) Act 2008*. An MOU between AGS and Customs and the Operational Protocol under the auspices of the Joint Task Force on drugs interdiction, supports the process.

### **Criterion 31.3 -**

Ireland does not have a central database of bank accounts. Ireland submits that Gardaí are authorised to request information from a credit or financial institution as to whether it has, or had within a period of 6 years, a business relationship with a specified person under section 56 of the CJA 2010, but the legal provision is unclear (see analysis under R29.3). Proposed changes to the 4AMLD will require Ireland to create central registers of bank/payment accounts.

Competent authorities can identify assets without prior notice to the owner as it is an offence for a designated person to make any disclosure that is likely to prejudice an investigation, which includes notifying a property/asset owner of the service of an investigation (CJA 2010, s.49; CJA 1994, s. 58(1)).

**Criterion 31.4 -** Competent authorities conducting investigations of ML, associated predicate offences and TF are able to ask for all relevant information held by the FIU. Information contained in an STR forwarded to the FIU Revenue is allowed to be used in an investigation into ML, TF or any other offence (CJA 2010, s. 45).

### *Weighting and conclusion*

It is not clear if competent authorities have legal authority to identify whether persons hold or control accounts at Irish FIs.

**Recommendation 31 is rated largely compliant.**

### **Recommendation 32 – Cash couriers**

Ireland was rated PC for SR.IX (the predecessor to R.32) in its 3<sup>rd</sup> MER. The main deficiencies included the lack of a declaration or disclosure system and lack of sanctions for false declarations.

**Criterion 32.1 -** Ireland applies the EC Regulation No. 1889/2005 on controls of cash entering or leaving the European community to cross-border transportation of currency and BNIs at its borders with non-EU countries (Switzerland, Liechtenstein, and at airports). Statutory Instrument (S.I.) 281 of 2007 S.I. No. 281/2007 gives effect to the EC Regulation. Ireland does not have a declaration/disclosure system for in place for the movement of cash within the EC and the movement of cash via cargo or mail.

**Criterion 32.2** - According to Art.3 of the EC Regulation No. 1889/2005, all persons making a physical cross border transportation of currency or BNIs are requested to provide a written or oral declaration above a threshold of EUR 10 000. No declaration system exists for movement of funds within the EC or for transportation of cash via mail or cargo.

**Criterion 32.3** - Ireland does not have a disclosure system.

**Criterion 32.4** - Customs officers have the power to question a person or search the person's baggage and means of transport for the purpose of establishing whether or not the person has undeclared cash (European Communities (Controls of Cash Entering or Leaving the Community) Regulations 2007, reg. 5). Under section 38 of the CJA 1994 (as amended by Proceeds of Crime (Amendment) Act 2005), if the customs officer suspects that the cash directly or indirectly represents the proceeds of crime or is intended to be used for criminal conduct, then the customs officer can ask questions about the owner, origin and intended use of the cash.

**Criterion 32.5** - Infringements of the duty to disclose information or for making a false declaration are subject to a fine not exceeding EUR 5 000 upon summary conviction (Statutory Instrument (S.I.) 281 of 2007 S.I. No. 281/2007, regs. 6(2) and 6(3)). This sanction does not appear to be proportionate or dissuasive.

**Criterion 32.6** - As required by Article 5 of the EC Regulation 1889/2005, all information obtained by customs through the EC declaration system is provided to the FIU. There is also a requirement under the Regulation to share information with the FIU when the cash being couriered is less than the threshold but where there are indications of criminal activity but it is not clear if this applies to intra-EU movements of cash. Where cash is seized under section 38 of the CJA 1994 (as amended by the POC (Amendment) Act 2005), Customs shares this information with the FIU.

**Criterion 32.7** - Revenue (encompassing the Customs Service) and the FIU liaise as required on issues concerning STRs and also have a formal bi-monthly meeting to discuss high level issues and strategies. Cash declaration data is exchanged as part of this process. Cash seizure information is provided to the FIU immediately.

**Criterion 32.8** -

(a) The CJA 1994 gives Gardai or customs officers the power to seize and detain 'cash' above the prescribed sum (currently EUR 1 000) where there are reasonable grounds to suspect that it represents the proceeds of crime or is intended for use in any criminal conduct (s.38 as amended by s.20 of the POCA 2005). The 2005 legislation extended the definition of 'cash' to include 'notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bank drafts, bearer bonds and bearer shares'. If the cash needs to be detained for more than two days, an order must be sought from a court to continue to detain that money for up to two years (CJA 1994, s.38).

(b) A customs officer has the power to seize and detain any cash worth not less than EUR 10 000 that is being imported into or exported from the EU contravention of the EU Regulations, including making a false declaration (S.I. No. 281 of 2007, European Communities (Controls of Cash Entering or Leaving The Community) Regulations 2007, s. 5.(1)). The powers outlined in (a) could also be used in situations where there is a false declaration as it would give reasonable grounds of suspicion that that the cash presents the proceeds of crime.

**Criterion 32.9 -**

(a) Cash declarations are retained electronically on a Customs database. Articles 6 and 7 of EC Regulation No. 1889/2005 set out the basis for the exchange of information collected in relation to cash declarations both within the EU and with other countries. Within the EU, the declaration information can be shared when there are indications that the cash is related to any illegal activity (Art. 6). Information can be exchanged with non-EU countries under mutual administrative assistance (Art. 7).

(b) Ireland did not report any cases of false declarations and it is not clear if the EC Regulation No. 1889/2005 requires states to record this information.

(c) Information in relation to suspicions of ML/TF are recorded in the sense that cash suspected of being the proceeds of crime or intended to be used in criminal conduct can be seized and details of seizures are recorded.

**Criterion 32.10 -** Information from Customs is transmitted to the FIU using secure email channels. In general, interventions by Revenue officers are made if specific profiles are satisfied and such interventions do not restrict normal trade payments or capital movements.

**Criterion 32.11 -**

(a) See criterion 32.5 above - only low-level criminal sanctions are available (maximum fine of EUR 5 000).

(b) Where cash is suspected to be linked to criminality, it is possible for the cash (whether or not declared) to be seized, with a view to forfeiture of the cash (CJA 1994, ss.38-39).

*Weighting and conclusion*

The cross-border cash declaration system does not apply to intra-EU movements of cash, where there are significant risks in relation to cross-border movement of cash, nor does it apply to movements of cash via mail or cargo. The penalties for failing to declare are low and not proportionate or dissuasive.

**Recommendation 32 is rated partially compliant.**

**Recommendation 33 – Statistics**

**Criterion 33.1 -** Relevant statistics are kept by various authorities.

(a) The FIU and Revenue keep statistics on STRs, received and disseminated. The FIU maintains information on foreign FIU information requests, Europol and Interpol information requests. Under its current IT infrastructure, the FIU cannot undertake complex analysis/breakdown of data held on STRs and other reporting. Revenue maintains STR related statistics pertaining to the source of the STR (i.e. sector), the volume of STRs collected, the financial value of STRs (euro value grading system), the geographic locations STRs are disseminated to within the Revenue organisation and in specific cases, the tax yield generated from STR intelligence.

(b) There is no centralised source of information on ML investigations and no data on TF investigations. Statistics on investigations carried out by the GNECB are kept with the GNECB, and the DPP also holds prosecution statistics. The AGS was able to provide statistics on the number of ML charges by year. The Central Statistics Office holds statistics of prosecutions and convictions relating to AGS investigations.

(c) Statistics on property frozen, seized and confiscated are kept by individual agencies - CAB, DPP and Revenue (in the case of Customs and Excise offences only). However these statistics are not conclusive as there can be incidents whereby local AGS units seize and confiscate asset and proceeds of criminal conduct but no central register of this data is kept to date.

(d) The Central Authority for Mutual Assistance within the DoJE keeps statistics on the mutual legal assistance requests.

### *Weighting and conclusion*

While most agencies have mechanisms to collect statistics, the AGS does not keep statistics on ML investigations, and the FIU is limited in its ability to break down statistics.

**Recommendation 33 is rated as partially compliant.**

### *Recommendation 34 – Guidance and feedback*

Ireland was rated LC in its 3<sup>rd</sup> MER due to the need to enhance sectoral guides provided and include requirements for ongoing CDD, with particular attention to high risk business relationships as indicated in former Rs. 5 – 9, 11 and 21, as well as a need to improve cooperation between the FIU and Revenue, so as to enhance the provision of information on methods, trends and techniques. Also because guidance provided was not always sufficient or provided to all DNFBPs.

**Criterion 34.1** - Most competent authorities and supervisors have established guidelines and procedures which assist FIs and DNFBPs in applying national AML/CFT measures, and in particular, in detecting and reporting suspicious transactions. Provision is also made at section 107 of CJA 2010 for the Minister for Justice and Equality, in consultation with the Minister for Finance to approve guidelines on the application of Part 4 of the CJA 2010 which contains AML/CFT obligations. Authorities indicated that guidance specifically derived from section 107 has not been issued to date, as matters have been covered through other instruments like the below:

The Department of Finance has published on its website, the following [Guidelines](#) issued by the Financial Services Industry:

- Core Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (on obligations contained in CJA 2010 which include assesment of risk, customer due diligence, third party reliance, among other topics)
- Sectoral Guidance for Credit Unions, in connection with CJA 2010 obligations
- Sectoral Guidance for Life Assurance, in connection with CJA 2010 obligations

- Sectoral Guidance for Investment Funds, in connection with CJA 2010 obligations

The CBI published the following:

- Counter Terrorist Financing Guidance, explaining in simple terms the concept of TF and financial and credit institution's obligations, including monitoring customers and transactions against both EU and UN sanction lists.
- Guidance of Targeted Financial Sanctions

The CBI also provides regular feedback during off-site, on-site interaction with the sector and has published Sectorial Reports containing the CBI's observations on Anti-Money Laundering, Countering the Financing of Terrorism and Financial Sanctions compliance by for instance, the Funds Industry and its regulatory expectations. These have been acknowledged as useful for the purpose of guidance by the sector.

The DoJE issued guidance via booklets relating to other forms of DNFBPs: HVGD [for tax advisors, external accountants (that fall under the remit of the DoJE as explained under R.28), this is still under development], and PMCs. These booklets will need to be updated following the transposition of the 4AMLD, but are already quite comprehensive. The DoJE also populated its [website](#)<sup>60</sup> with the compliance requirements for each of the above mentioned sector, the sanctions that can be imposed for failure to comply with provisions, and the importance of submitting STRs to AGS and Revenue. The website also contains STR forms and samples of for instance, "Customer Notices" regarding cash transactions (and the additional CDD requirements these may entail). Authorities indicated that at each inspection, Authorised Officers reiterate the entity's obligations in respect of their AML/CFT requirements as set out in legislation. Also, following each inspection, the Minister of Justice and Equality issues a letter to the entity providing feedback on the level of their compliance and, where necessary, setting out obligations that need to be met or improved.

### *Lawyers*

The Law Society published its AML Guidance Notes covering AML/CFT, following a question and answer format for ease of reference. The Guidance Notes include, among others, red flags for the legal sector as recognised in the Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, June 2013' Report ('the FATF 2013 Report').

The Law Society also provides guidance through its well resourced [website](#). The "members" area of the Law Society's website hosts a dedicated AML-resource hub for solicitors, where they can easily access dedicated AML guidance, download the Guidance Notes, review international guidance about indicators of suspicion, access EU and international Sanctions Lists, legislation, relevant statutory instruments, and urgent notices about emerging money laundering typologies.

In addition, since 2010, the Law Society has been providing information to firms about risks and indicators of money laundering through "eZines", its electronic alerts or publications and through a

<sup>60</sup> [www.antimoneylaundering.gov.ie/website/aml/amlcuweb.nsf/page/forms\\_&\\_guides-en](http://www.antimoneylaundering.gov.ie/website/aml/amlcuweb.nsf/page/forms_&_guides-en); last access 11 October, 2016, 4:04 am.

monthly Gazette, to ensure that solicitors are reminded of vulnerabilities particular to the sector as well as emerging threats. The Law Society indicated that these measures are under constant review.

The Law Society also published 'A Lawyer's Guide to Detecting and Preventing Money Laundering' – a collaborative publication issued jointly by the International Bar Association, the American Bar Association, and the Council of Bars and Law Associations of Europe in October 2014, to which the Law Society was a contributor. This Guide also included elements of the FATF 2013 Report.

### *Chartered Accountants Ireland (CAI)*

The CAI has a designated AML section in their [website](#). Both the UK and Irish jurisdictions are covered with various forms of support and guidance available on the website.

- The CAI, in conjunction with other Consultative Committee of Accountancy Bodies of Ireland (CAB-I bodies), has issued guidance (referred to as "M42") on Anti-Money Laundering;
- Various Helpsheets explaining the common findings during monitoring visits are also available – these are usually issued to all practising members within the Chartered Accountants Ireland's Regulatory Board Regulatory Bulletin;
- The website also details the reporting obligations of Accountants.

### *Association of Chartered Certified Accountants (ACCA)*

The ACCA requires that members undertake training themselves, and train their staff in AML as required by legislation. Monitoring visits by ACCA's Compliance Officers include a closing meeting with the firm, at which the Compliance Officer explains the findings and provides advice, where appropriate, with the objective of raising standards.

The CAI and the ACCA cover most of the population of Accountants in Ireland.

Other Designated Accountancy Bodies, such as CIMA, ICAEW, and the CPA, also provide outreach or guidance, through a dedicated section in its [website](#) or other means.

### *Property Services Providers*

The PSRA as explained under R.28 was officially appointed 1 September, 2016 and had not yet produced any guidelines for the Real Estate Sector at the time of the on-site visit.

### *The FIU and STRs*

Authorities indicated that the FIU meets with the financial sector on a regular basis, to speak about the rationale behind filing STRs and a Conference was organised by Revenue in 2015 which was attended by financial and credit institutions and where both authorities outlined the purpose of STRs and gave an insight on the outcomes of them. Recent seminars were also organised for TCSPs, PMCs and some HVGs on the importance of filing STRs. Between 2013 and 2015, the FIU gave thirty

six (36) presentations to various FIs and DNFBPs, covering trends, typologies and lessons learned from past investigations. The FIU and CAB, among others, assisted the Irish League of Credit Unions in compiling a “Practical Guide on Suspicious Transaction Reporting” for the sector.

### *Weighting and conclusion*

There is a lack of guidance and feedback for the real estate sector (although it is recognised the supervisory authority was just recently appointed).

**Recommendation 34 is rated largely compliant.**

### ***Recommendation 35 – Sanctions***

In its last MER, Ireland was rated PC for R.17, which contained the previous requirements in this area. The deficiencies related to the lack of a range of sanctions available, proportionate to the severity of the situation and administrative sanctions not being directly available for AML/CFT purposes. They were largely addressed by the issuance of the CJA 2010, as explained in its 11<sup>th</sup> FUR.

#### **Criterion 35.1 -**

##### *Financial Institutions*

Part 4 of CJA 2010 contains a range of sanctions (both criminal and administrative) for failure to comply with the provisions of both CJA 2010 and 2013. These include the possibility of a fine not exceeding EUR 5 000 and from 12 months (for one offence), and up to a maximum of 24 months, for more than one offence. In more serious cases dealt with on indictment, the fine is unlimited and left to the discretion of the court, with a term of imprisonment of up to five (5) years. Additionally, under section 114 (4) of CJA 2010, the CBI is able to impose administrative sanctions for any contravention of part 4 of CJA 2010 (except where the Act explicitly establishes an exemption or simplified requirements in for instance, CDD requirements, or in the case of legal privilege as provided for in sections 34, 36 and 46 of CJA 2010), which covers compliance with AML/CFT requirements of Recommendations 9 to 21. These administrative sanctions are further laid out in part III of the Central Bank Act 1942 and range from a reprimand to a suspension or revocation of an authorisation. The maximum monetary penalty that the CBI can impose is EUR 10 million or 10% of turnover of a given institution, whichever is greater. Institutions subject to the authorisation process of the ECB, would be sanctioned by the CBI for AML/CFT purposes. However, in cases of suspension or revocation of an authorisation, the CBI would submit a proposal, and the ECB would decide on the suspension or revocation.

The CBI may also impose restrictions on persons exercising certain key functions (i.e. PCFs) because of concerns in terms of fitness and probity. The ECB can also remove any member from the management body of an institution that falls under its remit, for fitness and probity reasons.

### *DoJE*

As explained above, part 4 of CJA 2010 contains a range of sanctions (criminal) for failure to comply with the provisions of both CJA 2010 and 2013, which also apply in relation to DNFBPs under the remit of the DoJE, covering obligations established in R. 22 and 23. These include the possibility of a fine not exceeding EUR 5 000, and from 12 months and up to 5 years in prison (section 67 CJA 2010). The fine can be considered rather low for corporate bodies or legal persons, depending on the nature and size of DNFBP (i.e. high value good dealers), and therefore, not dissuasive. Notwithstanding the above, Authorities indicated that a EUR 5 000 fine could be considered dissuasive in the context of smaller businesses. The DoJE can also issue directions and established appropriate processes to ensure compliance as explained in R.28.

In addition to the previous, the following may apply:

### *Law Society and Designated Accountancy Bodies*

Whenever there are a member of the law society or a designated accountancy body, respectively, lawyers and accountants, may be subject to further disciplinary procedures as explained under R. 28.

### *PSRA*

The Property Services (Regulation) Act 2011 refers to sanctions which may be imposed for “improper conduct” as explained under R. 28.

### *Failure to comply with targeted financial sanctions (for both credit and financial institutions and DNFBPs)*

Ireland directly incorporates EU Council Regulations relating to terrorist financing into Irish law by the making of domestic regulations under section 42 of the CJA 2005. According to section 42 of the said Act, a breach of terrorist financing regulations as set out in statutory instruments is subject to the following penalties:

- On summary conviction, to a fine not exceeding EUR 3 000 or imprisonment for a term not exceeding 12 months or both, or
- On conviction on indictment (serious offence), to—
  - a fine not exceeding the greater of EUR 10 000 000 or twice the value of the assets in respect of which the offence was committed;
  - imprisonment for a term not exceeding 20 years, or
  - both such fine and such imprisonment.

Section 42 also provides for the Minister for Finance to issue additional measures to have other sanctions available as necessary, and for increased penalties in case of reincidence or repeated offenders.

*Failure to comply with NPO requirements*

Section 10 of the Charities Act 2009 sets out the financial penalties which can be imposed on those found guilty of an offence under the Act (i.e. for an unregistered charity to carry out activities in the State). A person guilty of an offence shall be liable: on summary conviction, to a fine not exceeding EUR 5 000 or to imprisonment for a term not exceeding 12 months or to both; or on conviction on indictment, to a fine not exceeding EUR 300 000 or to imprisonment for a term not exceeding 10 years or to both. Section 73 of the Act outlines circumstances under which it would be considered reasonable and proportionate to apply intermediate sanctions in place of criminal proceedings for contravention of requirements laid down by various sections of the Act. This includes rectification orders, and removal from the register or publication of particulars of the contravention on the CRA's [website](#). Some aspects will also be included in new accounting regulations, which were still in the drafting stages at the time of the on-site visit. Breaches of these accountant regulations will constitute an offence.

Section 43 of the Act 2009 also provides that when the CRA, following consultation with the AGS, is of the view that a body registered in the register is or has become an excluded body by virtue of its promoting purposes that are in support of terrorism or terrorist activities, among others, then the charity will be removed from the register.

Overall, the lack of a sanctions procedure (i.e. administrative fines) for DNFBPs under the remit of the DoJE and the lack of fines for the Law Society, undermine the proportionality of sanctions available in Ireland. The severity of some of the sanctions that are available, such as the withdrawal of licenses or authorisation for practice, can be considered potentially dissuasive.

**Criterion 35.2** - Section 111 of CJA 2010 provides that both directors and managers can be held accountable and sanctioned, when an offence under the said Act is committed by a body corporate or by a person purporting to act on behalf of the body corporate or on behalf of an incorporated body of persons.

*Weighting and conclusion*

Overall sanctions seem proportionate and dissuasive, except with regard to some DNFBPs. Sanctions apply to both natural and legal persons.

**Recommendation 35 is rated largely compliant.**

*Recommendation 36 – International instruments*

Ireland was rated LC and PC for R.35 and SR.I (the predecessors to R.36) in its 3<sup>rd</sup> MER. Since then, Ireland has made progress to strengthen ML and TF criminalisation in line with the international standards.

**Criterion 36.1** - Ireland has signed and ratified the following international instruments, without any reservations –

Title	Signature Date	Ratification Date
Vienna Convention	14 December 1989	3 September 1996
Palermo Convention	13 December 2000	17 June 2010
Terrorist Financing Convention	15 October 2001	1 July 2005
Mérida Convention	9 December 2003	9 November 2011

**Criterion 36.2** - Ireland has reinforced its compliance with the provisions of the Vienna and Palermo Conventions, in particular participation in a criminal organisation has been criminalised (s. 72 of the CJA 2006 (substituted by the Criminal Law (Amendment) Act 2009) and extended the operation of ML offences to activities that occurred in another state ( CJA 2010; s.8).

### *Weighting and conclusion*

**Recommendation 36 is rated compliant.**

### ***Recommendation 37 – Mutual legal assistance***

Ireland was rated C for R.36 and SR.V (the predecessors to R.37) in its 3<sup>rd</sup> MER.

**Criterion 37.1** - Ireland has a legal basis that allows for the provision of a wide range of MLA in relation to investigations, prosecutions and related proceedings involving ML/TF and associated predicate offences (CJA 2008 and CJA 2013 – see s. 6 regarding requests). A request can be made on the basis of a number of international instruments, including conventions and bilateral or multilateral agreements (s. 2). If there is no treaty or convention that is applicable to a requesting state, the request is made on the basis of reciprocity.

**Criterion 37.2** - Under the CJA 2008, the Minister for Justice and Equality is the Irish Central Authority (s. 8). A unit within the Department of Justice has been designated to carry out the Minister’s functions under the Act, including receiving, transmitting and dealing with requests, as permitted under s. 8(3). The Central Authority has processes in place (i.e. a case management system) for the prioritisation, execution and ongoing monitoring of requests. There are also legislative provisions which require the AGS to transmit evidence to the requesting authority without delay (see for example, s. 12A, in relation to search warrants).

**Criterion 37.3** - MLA is not unduly prohibited in Ireland, but there are some circumstances stipulated in law (CJA 2008, s. 3) where the Minister must not grant assistance, including if the–

- Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (public order),
- Minister has reasonable grounds for believing that, the request was made for the purpose of punishing a person based on their sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation or that the assistance may result in a person being tortured.

- Request is not in accordance with the relevant international instrument, or
- Provision of assistance would prejudice a criminal investigation, or criminal proceedings, in Ireland.

**Criterion 37.4** - In Ireland a request for mutual legal assistance is not refused on the sole grounds that the offence is also considered to involve fiscal matters as the definition of offence under the CJA 2008 specifically states that it includes a revenue offence (s.2). There are no provisions in the legislation that allow a mutual legal assistance to be refused on the grounds of secrecy or confidentiality requirements on either FIs or DNFBPs except where professional legal privilege or professional legal secrecy applies (CJA 2008; s.74(11)).

**Criterion 37.5** - Ireland maintains the confidentiality of mutual legal assistance requests received and the information contained in them. It is an offence for any person who, knowing or suspecting that the investigation is taking place, to make any disclosure which is likely to prejudice the investigation (CJA 2008, s. 100). Defences to this offence include having the lawful authority or reasonable excuse to make the disclosure and not knowing or suspecting that the disclosure was likely to prejudice the investigation concerned (s. 100(3)).

**Criterion 37.6 and 37.7** - A wide range of measures are available where dual criminality is not a requirement. For example, dual criminality is not required in order to obtain a witness statement whereby the witness is summoned to court in order to give evidence under section 63 of the CJA 2008. However, dual criminality is required in relation to requests to obtain search warrants (s. 74 and s. 75). The legislation does not require that both countries place the offence within the same category of offence, or denominate the offence by the same terminology, to meet dual criminality requirements. Authorities note that dual criminality is determined on the basis of the underlying conduct.

**Criterion 37.8** - Power and investigative techniques available to domestic authorities are available for use in response to mutual legal assistance and police-to-police assistance. For example, the production of records held by FIs, DNFBPs and other natural or legal persons can be ordered under the power to search for evidence for use outside the state (CJA 2008; s.75). The definition of 'evidential material' under this section specifically refers to any material relating to assets or proceeds deriving from criminal conduct or their identity or whereabouts. There are special provisions in relation to requests for account information (CJA 2008; ss.13 – 15) and Gardai can apply to the High Court for an account information order or account monitoring order on request (CJA 2008; ss.16 – 17).

### *Weighting and conclusion*

**Recommendation 37 is rated compliant.**

**Recommendation 38 – Mutual legal assistance: freezing and confiscation**

**Ireland was rated C for R.38 in its 3<sup>rd</sup> MER.**

**Criterion 38.1** - Ireland has the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate the laundered property, proceeds from and instrumentalities used (or intended for use) in ML, TF and predicate offences, or property of corresponding value. To expedite the confiscation process, Ireland can recognise and enforce foreign freezing and confiscation orders without conducting a domestic investigation (CJA 2008, ss. 33 – 35). The property that can be frozen includes the proceeds of an offence, or property of equal value, as well as the instrumentalities of crime (CJA 2008, s. 31 – see definition of ‘property’).

**Criterion 38.2** - The CAB can take non-conviction based action on property that is proceeds of foreign crime (see analysis on R.4) at the request of another country (however those assets cannot be shared with the requesting country (see analysis of c.38.4 below)).

**Criterion 38.3** -

(a) Ireland is able to enforce foreign confiscation orders (CJA 2008 Act, as amended by the Criminal Justice (Mutual Assistance) (Amendment) Act 2015, ss. 50-57). The AGS (through DoJE) and CAB can coordinate seizure and confiscation actions with other countries.

(b) There are mechanisms for managing, and when necessary disposing of, property frozen which are similar to domestic confiscation provisions.

**Criterion 38.4** - The asset sharing provision in Irish law deems that assets recovered below the value of EUR 10 000 must be kept by Ireland and with assets recovered over the value EUR 10 000, 50 per cent will be shared with the requesting state (s.53 of the CJA 2008 Act, as amended by s.20 of the Criminal Justice (Mutual Assistance) (Amendment) Act 2015). Assets confiscated upon MLA requests fall under the federal budget of Ireland. Individuals can apply to a court for restitution for the loss they have incurred (CJA 2008, ss. 84-87). There are no provisions for sharing assets forfeited by CAB under non-conviction based asset forfeiture, however, for individuals to apply for restitution of stolen property where they have suffered loss due to the theft (POCA, s. 3).

**Weighting and conclusion**

While the CJA 2008 allows Ireland to take provisional measures to freeze and confiscate the proceeds and instruments of crime at the request of another state, however there are shortcomings in Ireland’s asset sharing regime, particularly in that Ireland cannot share assets with a requesting state under the non-conviction scheme.

**Recommendation 38 is rated largely compliant.**

### **Recommendation 39 – Extradition**

Ireland was rated C for R.39 in its 3<sup>rd</sup> MER.

#### **Criterion 39.1 -**

(a) Both ML and TF are extraditable offences under Irish law. Ireland has different systems in place for extradition requests from EU countries and non-EU-Countries. Extradition between EU members is governed by the European Arrest Warrant (EAW) Framework Decision which has been implemented in Ireland by the European Arrest Warrant Act 2003. The EAW applies to offences of laundering of proceeds of crime with a maximum imprisonment period of at least three years and TF offences if the acts constitute an offence in the requesting and executing countries.

Extradition procedures in Ireland with non-EU countries are governed by the Extradition Act 1965 which provides that Ireland can execute requests from countries that are a party to the European Convention on Extradition 1957<sup>61</sup> or with any nation on a reciprocal basis (Extradition Act 1965, s.8). An extraditable offence is an offence which is punishable by imprisonment for a maximum period of at least one year under the laws of Ireland and of the requesting country (Extradition Act 1965, s. 10). Ireland has existing bilateral extradition treaties with Australia (1985), the United States (1983) and Hong Kong (2007).

(b) The Central Authority has a case management system in place to facilitate the timely execution of extradition requests although Ireland noted that, as it receives a relatively low number of requests for extradition (one request in 2016; eight request in 2015), it deals with extradition requests immediately. If the request fulfils the criteria set out in the Extradition Act 1965 (as amended), the Minister will certify the request and it will be forwarded to the High Court for a warrant to be issued for the arrest of the person sought.

(c) These legal requirements are not unduly restrictive (Extradition Act 1965, s. 29). Under the EAW, there are strict time limits (60 days) for decisions regarding extradition and few grounds for refusal.

**Criterion 39.2 -** Under the Extradition Act 1965, Ireland cannot extradite its citizens unless the relevant extradition provisions otherwise provide (s. 14). Therefore Ireland can only extradite its citizens if (a) the Irish national consents to his/her surrender, (2) there is a bi-lateral agreement in place or (3) the Irish national is sought under the EAW system. Currently, there are only bi-lateral agreements with the US, Australia and Hong Kong. However, if extradition is denied on this ground, Ireland has the ability to investigate and prosecute the offender domestically (Extradition Act 1965, s. 38 (as amended)).

**Criterion 39.3 -** Under the EAW system, there are a list of offences which do not require verification of dual criminality, including laundering the proceeds of crime and terrorism (incorporated into Irish law by Part B of the Schedule to the European Arrest Warrants Act 2003 (i.e. Council Framework Decision 2002/584/JHA)). It is not clear if this applies for TF.

<sup>61</sup> Albania, Aruba, Isle of man, Liechtenstein, Serbia and Montenegro, Turkey, Andorra, Channel Islands, Georgia, Israel, Moldova, South Africa, Ukraine, Armenia, Azerbaijan, Croatia, Netherlands Antilles, Russia, Switzerland, Yugoslavia/Macedonia.

Where dual criminality is requirement for extradition, it is sufficient for the underlying act to constitute an offence in Ireland (Extradition Act 1963, s. 10(3); European Arrest Warrant Act 2003, s.5; also recently confirmed in the High Court Case of *DPP v Gerard O Neill* (2 February 2016)).

**Criterion 39.4** - Ireland does have simplified extradition mechanisms in place, particularly under the EAW system and if a person consents to his/her extradition (Extradition Act 1963, s.33A and European Arrest Warrant Act 2003, s.15(3)).

### *Weighting and conclusion*

**Ireland is compliant with Recommendation 39.**

### ***Recommendation 40 – Other forms of international co-operation***

**Ireland was rated C for R. 40 in its 3<sup>rd</sup> MER.**

**Criterion 40.1** - Irish competent authorities, such as the AGS (including the FIU), Revenue (tax and customs authority), the CBI, and the Department of Social Protection (on transnational social security fraud), can provide a range of information to their foreign counterpart authorities in relation to ML, predicate offences and TF. The majority of cooperation occurs under frameworks established by the EU, Egmont, Europol and Interpol rather than provisions in domestic law. While there are no specific provisions enabling supervisors of DNFBPs to cooperate internationally, Ireland has provided a couple of examples of where cooperation has occurred.

**Criterion 40.2** - The following framework facilitates international co-operation, that is not mutual legal assistance or extradition:

- a) Some agencies have a clear legal basis for providing international cooperation (for the CBI, see 40.12) but other competent authorities, including the FIU in the AGS, rely mostly on informal routes to provide international cooperation outside of an MLA context, particularly when providing assistance to countries outside of the EU.
- b) Nothing prevents the competent authorities from using the most efficient means to cooperate.
- c) Most competent authorities use clear and secure gateways, or have mechanism or channels in place to facilitate and allow for execution of requests. For instance, the FIU uses specialised FIU information channels such as the Egmont Secure Web and FIU.Net, as well as mechanisms available to the AGS such as Interpol and Europol. The AGS and Revenue use secured email networks to exchange information.
- d) Most competent authorities have processes for prioritising and executing requests, including case management systems.
- e) Competent authorities have processes for safeguarding the information received. See analysis of 29.6 for the FIU. The AGS shares information on the basis of non-disclosure to third parties. Tax-related information collected by Revenue can be shared but only for the

purposes set out in relevant agreements, and generally is limited to use for tax purposes. The CBI relies on the confidentiality requirements on their staff to safeguard against improper disclosure or use of confidential information.

**Criterion 40.3** - Competent authorities have a broad network of bilateral and multilateral agreements, MOUs and protocols to facilitate international co-operation with a wide range of foreign counterparts. The FIU can share information with Egmont Members based on the principles set out in the Egmont Charter, without the need for individual bilateral MOUs. However, Ireland has MOUs with certain jurisdictions where those jurisdictions require an MOU to exchange information. The AGS relies on Europol and Interpol principles of information exchange and does not require MOUs to exchange information. Customs information is exchanged within the EU under Council Regulation (EC) 515/97, as amended by Council Regulation (EC) 766/08 and with other countries on the basis of mutual administrative assistance as specified in EU Community Agreements on customs issues.<sup>62</sup> Tax-information is shared within the EC subject to a range of EC Directives and a range of tax agreements exist for the exchange of information with countries outside the EU. While no agreements between Irish DNFBP supervisors and international counterparts exist, authorities noted there is nothing to suggest that such agreements could not be negotiated in a timely manner if the need arose.

**Criterion 40.4** - Relevant authorities can provide feedback in a timely manner if requested by foreign counterparts from whom they have received assistance.

**Criterion 40.5** - Competent authorities normally do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance with foreign counterparts on any of the four grounds listed in this criterion.

**Criterion 40.6** - Ireland has not produced domestic laws or guidelines to ensure that information exchanged by competent authorities is used only for the purpose for which the information was sought or provided. Operational authorities have reported that they rely on guidelines set out by international bodies such as Egmont and Interpol that require confidentiality safeguards to be in place to ensure that information received is used only for the intended purpose, and by the authorities for whom the information was sought. For example, the FIU operates according to the Egmont Charter and Principles, which requires that its members protect confidential information (Egmont Mandate, 3.1(3)). The CBI is under an obligation under domestic legislation to protect the confidentiality of information and if the information received is to be used for other purposes, prior authorisation from the requested authorities is sought - see analysis in relation to criterion 40.16 on the CBI.

**Criterion 40.7** - Competent authorities are required to maintain appropriate confidentiality for any request for co-operation and the information exchanged, consistent with data protection obligations. For example, Gardai (including FIU staff) are under an obligation to maintain the confidentiality of the information (Official Secrets Act 1963, s.4). It is also an offence for Gardai to disclose confidential information (Garda Síochána Act 2005; s. 62). Other civil servants, including the CBI staff, obligation

<sup>62</sup> The European Union has signed customs cooperation and mutual administrative assistance agreements with Korea, Canada, Hong Kong, US, India, China and Japan.

of professional secrecy and are prohibited by law from divulging confidential information. The authorities are able to refuse to provide information if the requesting authority cannot protect the information effectively.

**Criterion 40.8** - Competent authorities including the FIU, AGS, Revenue and the CBI can conduct inquiries on behalf of their foreign counterparts and exchange information that would be obtainable by them if such inquiries were being carried out domestically (see 40.15, 40.18-19; Revenue is also able to obtain information in connection with persons who have or may have a liability to foreign tax – Taxes Consolidation Act 1997; s. 912A). There are some technical limitations to the FIU’s ability to obtain additional information from reporting entities on behalf of their foreign counterparts (see 40.11).

*Exchange of information between FIUs*

**Criterion 40.9** - The FIU does not have a direct legal basis to share information internationally. However, it relies on the AGS’ general police powers to provide co-operation on ML, associated predicate offences and TF with foreign counterparts, which it does within the framework of FIU.Net and the Egmont Secure Web. As part of the AGS, the FIU also exchanges information with other law enforcement agencies within the EU through Europol (Europol Act 2012; s. 8).

**Criterion 40.10** - Albeit in the absence of a legal basis or internal guideline, the FIU will, upon request, provide feedback to their foreign counterparts on the use of the information provided when requested.

**Criterion 40.11** - It is unclear whether the FIU has the power to exchange all relevant information with other FIUs under the auspices of FIU.Net and the Egmont Secure Web. For example, additional information sought from reporting entities cannot be shared with other FIUs without a formal request. As part of the police, the FIU also has access to police powers, but sharing of information based on coercive measures requires a mutual legal assistance process.

*Exchange of information between financial supervisors*

**Criterion 40.12** - The CBI has a legal basis for providing co-operation with authorities that exercise similar supervisory functions (Central Bank Act 1942; s.33AK).

**Criterion 40.13** - The CBI is able to exchange supervisory information that is obtainable domestically with foreign counterparts, if the foreign authority has similar non-disclosure obligations and that the assistance is in a manner proportionate to the foreign authority’s request (Central Bank Act 1942; s.33AK).

**Criterion 40.14** - The CBI indicates it can exchange regulatory and prudential information, including AML/CFT information such as internal AML/CFT procedures and policies of FIs, CDD information, customer files, samples of accounts and transaction information, within the EU under a number of directives including, for example, under article 56 of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. In relation to non-EU states, the CBI can share information with an authority in another jurisdiction

that exercise similar functions and which has obligations in respect of nondisclosure of information similar to the obligations imposed on the CBI under section 33 AK (Central Bank Act 1942; s.33AK(5d)).

**Criterion 40.15** - Officers of the CBI can conduct inquiries on behalf of foreign counterparts (Central Bank Reform Act 2010; s. 54). There may also be scope to appoint supervisors of foreign regulators as authorised officers pursuant to s. 24 of the Central Bank (Supervision and Enforcement) Act 2013 or s. 72 of the CJA 2010 so that a joint inspection could be carried out with CBI supervisors, however, foreign supervisors have not been appointed as authorised officers in the context of AML/CFT supervision.

**Criterion 40.16** - The CBI may only pass on confidential information that it has received from a foreign financial supervisor with its permission (Central Bank Act 1942; s. 33AK(5)(b)). The CBI is under a legal requirement to report any knowledge or suspicion of money laundering or terrorist financing to the AGS and Revenue (CJA 2010; s.63) who may exchange such information in the exercise of their functions in a manner proportionate to the respective needs. In this case, the foreign supervisor is informed and permission is sought to provide the information to the AGS.

#### *Exchange of information between law enforcement authorities*

**Criterion 40.17** - The FIU, the AGS more generally, Revenue (customs) and the CAB are able to exchange domestically available information with counterparts in the EU for intelligence or investigate purposes relating to ML, associated predicate offences or TF, including the identification and tracing of the proceeds and instrumentalities of crime (for police information, Europol Act 2012, s. 8; for customs information, Council Regulation (EC) 515/97, as amended by Council Regulation (EC) 766/08; CAB exchanges information by way of the powers conferred on its police, Revenue officers and social welfare inspectors). While the AGS also exchanges information with non-EU countries through Interpol under the principles of the Interpol Constitution, Ireland has not provided a clear domestic legal basis for sharing law enforcement information with non-EU countries.

**Criterion 40.18** - Basic information exchange can be conducted on the basis of police co-operation on behalf of foreign counterparts and through Egmont, Interpol and Europol channels (Europol Act 2012; s. 8 and on the basis of the Interpol Constitution). The use of coercive powers requires a mutual legal assistance request.

**Criterion 40.19** - While there is a legal impediment to the establishment and full involvement of Ireland in EU Joint Investigation Teams, AGS is able to form joint investigations with EU member states and other countries for the purpose of conducting cooperative investigations, and when necessary, establish bilateral or multilateral arrangements to enable such joint investigations (Criminal Justice (Joint Investigation Teams) Act 2004).

#### *Exchange of information between non-counterparts*

**Criterion 40.20** - While not explicitly stated in law, Irish competent authorities may consider enquiries from non-counterparts, in particular the FIU, can respond to police or FIU enquiries, as it is the point-of-contact for any Europol or Interpol requests relation to ML or TF. Outside of the FIU and

Police, it is not clear if diagonal cooperation is permitted and Irish Authorities note that diagonal cooperation is rare.

**Weighting and conclusion:** The FIU cannot share with its international counterparts all information that is accessible to it domestically, that there are limitations in Ireland's ability to participate in EU Joint Investigations Teams and that there is no framework for supervisors of DNFBPs to share information internationally.

**Recommendation 40 is rated largely compliant.**

## Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>Exemptions from CDD and ongoing monitoring obligations are not based on a risk assessment.</li> <li>There is no explicit requirement for financial institutions and DNFBPs to identify assess and understand their ML/TF risks.</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>A clear link was not established between the major risks identified in the NRA and the actions set out in the Action Plan or in discussions by the AMLSC.</li> <li>There is a lack of formal cooperation mechanisms for operational matters.</li> </ul>
3. Money laundering offence	C	
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>The legislation does not specifically cover the financing of the individual terrorist or two terrorists acting together in the absence of an intended terrorist act.</li> <li>There is also a minor shortcoming in the coverage of financing the travel of individuals to engage in terrorist planning or training.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> <li>Implementation of targeted financial sanctions (TFS), pursuant to UNSCRs 1267/1989 and 1988 does not occur “without delay,” which also compromises the application of sanctions without notice (de facto) to the entities concerned.</li> <li>There is no formal procedure in place for identifying targets for designation, to follow the procedures and standard forms for listing as adopted by the relevant Committee, or to deal with the provision of information.</li> <li>There is no formalised procedure to deal with the provision of information or under which Ireland could ask another country, including other EU countries, to give effect to freezing measures undertaken in Ireland.</li> <li>The EU framework currently does not apply to “EU internals”.</li> </ul>
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> <li>Targeted financial sanctions of UNSCRs 1718 (DPRK) are not implemented without delay, which also compromises the application of sanctions without notice (de facto) to the entities concerned.</li> </ul>
8. Non-profit organisations	PC	<ul style="list-style-type: none"> <li>Beyond the category of charitable organisations Ireland has not identified features and types of NPOs which by virtue of their activities and characteristics, are likely to be at risk of TF abuse.</li> <li>There has also not been specific outreach to NPOs on TF issues or the development of best practices.</li> <li>As of the time of the on-site visit, Ireland did not have in place a programme for monitoring compliance with the requirements of Recommendation 8.</li> </ul>
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>Exemptions from CDD and ongoing monitoring obligations are not based on a risk assessment.</li> <li>There is no specific requirement to verify that any person purporting to act on behalf of the customer is so authorised and to identify and</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		verify the identity of that person (i.e. legal representative). <ul style="list-style-type: none"> <li>• The requirement to identify and verify the identity of customers that are legal persons or legal arrangements is in guidelines and not in law or other enforceable means.</li> <li>• The requirement to identify the beneficial owner does not extend to whoever holds the position of senior managing official as required by criterion 10.10 (c).</li> <li>• There is no specific requirement to obtain the name of a specifically named beneficiary, at the time of the establishment of the relationship, nor to gather adequate information in the case of a class of beneficiaries.</li> <li>• There are no specific requirements to include beneficiaries of life insurance and whenever these are legal persons and arrangements, as heightened risk factors for enhanced CDD purposes.</li> <li>• There is no specific requirement to apply CDD measures to existing clients.</li> <li>• There is no explicit requirement for financial institutions not to pursue CDD and file an STR when they believe that performing the CDD process will tip off the customer.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>• There are is no specific requirement to keep business correspondence or the results of analysis undertaken with regard to complex or unusual transactions for 5 years.</li> <li>• There is no explicit obligation to keep records in a manner that they allow for the reconstruction of individual transaction.</li> </ul>
12. Politically exposed persons	PC	<ul style="list-style-type: none"> <li>• PEP requirements do not apply to foreign PEPs resident in Ireland.</li> <li>• The definition of PEPs does not include domestic or international organisation PEPs.</li> <li>• There is no requirement to determine the beneficial owner of an insurance policy, or to inform senior management before the payout of a policy proceeds. There is also no requirement to consider making an STR.</li> </ul>
13. Correspondent banking	PC	<ul style="list-style-type: none"> <li>• The measures set out in R.13 only apply to the correspondent banks outside the EEA area.</li> </ul>
14. Money or value transfer services	LC	<ul style="list-style-type: none"> <li>• The requirement for the Central Bank to keep a register of those providing MVTs services does not extend to agents.</li> <li>• There are no explicit requirements to include agents in AML/CFT programmes and to monitor them for compliance.</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>• Ireland has not conducted an assessment of ML/TF risks related to new products or technologies.</li> <li>• There is no specific requirement to undertake risk assessments of new products, business practices or technologies, prior to their utilisation.</li> </ul>
16. Wire transfers	PC	<ul style="list-style-type: none"> <li>• The EU regulation in force does not yet cover beneficiary information and contains limited requirements for intermediate financial institutions, which affects almost all the criteria in this Recommendation.</li> <li>• Intermediary financial institutions are not required to take reasonable measures to identify cross-border wire transfers which do not contain the required lack originator or beneficiary information.</li> <li>• Intermediary financial institutions are not required to have risk based policies or procedures for determining when to execute, reject or suspend a wire transfer which lacks originator or beneficiary information, and when to take the appropriate follow-up action.</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>There is no requirement for third parties to make information required to fulfil CDD obligations immediately available to financial institutions (but “as soon as practicable”).</li> <li>Reliance on members of the EU is not based on the level of country ML/TF risks but rather the presumption that all EEA Members states implement harmonised AML/CFT provisions.</li> </ul>
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> <li>There is no explicit requirement to appoint a compliance officer and an independent audit function.</li> <li>There is no screening requirement when hiring employees.</li> <li>There are no group-wide AML/CFT programmes requirements.</li> </ul>
19. Higher-risk countries	NC	<ul style="list-style-type: none"> <li>Enhanced due diligence measures proportionate to risk can only be applied to non-EU Members.</li> <li>There are limited means to apply countermeasures.</li> </ul>
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>PMCs which in practice operate as casinos are only required to be registered and not licensed.</li> <li>Similar deficiencies as identified in R.10, R.11, R.12, R.15 and R.17 are applicable for DNFBPs.</li> <li>PSPS are not required to identify the direct purchasers of property.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>Similar deficiencies as identified in R.18 and R.19 are applicable for DNFBPs.</li> </ul>
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> <li>There is no comprehensive ML/TF risk assessment of all types of legal persons created in Ireland.</li> <li>There is not a general requirement that the directors or other natural person(s) resident in the country are authorised by the company, and accountable to the authorities, for providing basic and beneficial ownership information and providing other assistance.</li> <li>The record-keeping obligations for beneficial ownership information in S.I. No. 560 of 9 November 2016 are not comprehensive.</li> <li>The company and CRO registers do not yet include beneficial ownership information, so this information cannot be accessed and shared.</li> <li>Nominee directors and shareholders are allowed and are not required to be licensed or for them to disclose their nominee status to the company or the CRO, although this will be mitigated once S.I. 560 is fully implemented.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>While professional trustees have obligations to obtain and hold information on the settlor, trustee, and beneficiaries, and faces sanctions for failure to comply with the identification requirements, this does not cover the cases where a private individual (non-professional) does so.</li> <li>There are no specific requirements for trustees to hold basic information on other regulated agents of, and service providers to, the trust, or for information pursuant to this Recommendation be kept accurate and as up-to-date as possible, and is updated on a timely basis.</li> <li>Competent authorities have all the powers to obtain information on beneficial ownership, the residence of the trustee, and any assets held</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		or managed by the financial institution or DNFBP, but only to the extent that this information is kept. <ul style="list-style-type: none"> <li>There are only specific requirements on designated credit and financial institutions to have measures to quickly comply with information requests from competent authorities (s. 56 CJA 2010).</li> </ul>
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> <li>There is no requirement for consolidated group supervision for AML/CFT purposes.</li> </ul>
27. Powers of supervisors	C	
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> <li>PMCs which in practice operate as casinos are only required to register and not licensed.</li> <li>A RBA towards supervision needs to be implemented by the PSRA.</li> </ul>
29. Financial intelligence units	PC	<ul style="list-style-type: none"> <li>There are no laws, formal operating procedures or internal guidelines establishing the role of the FIU and ring-fencing its independence from AGS.</li> <li>The FIU does not have clear legal authority to request additional information from reporting entities.</li> <li>Due to IT issues, the FIU is limited in its capacity to undertake complex operational analysis and strategic analysis.</li> <li>There is a lack of laws, regulations or internal guidelines on a range of issues associated with the FIU including the dissemination of STRs.</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>It is unclear if competent authorities have the legal authority to identify whether natural and legal persons hold or control bank accounts at Irish Financial Institutions.</li> </ul>
32. Cash couriers	PC	<ul style="list-style-type: none"> <li>Ireland has not implemented a system to require declaration or disclosure for physical transportation of cash and BNI through mail and cargo.</li> <li>Ireland has no mechanism to declare or disclose incoming and outgoing cross-border transportation of cash and BNI within the EU.</li> <li>Sanctions for failure to declare are low and not proportionate or dissuasive.</li> </ul>
33. Statistics	PC	<ul style="list-style-type: none"> <li>The statistics related to seizures and confiscations are very limited in terms of breakdown of values, and in the period covered.</li> <li>AGS does not keep statistics on the number of ML investigations.</li> </ul>
34. Guidance and feedback	LC	<ul style="list-style-type: none"> <li>Not all supervisors provide outreach and guidance about the application of AML/CFT measures to entities that they supervise, in particular, the PSRA..</li> </ul>
35. Sanctions	LC	<ul style="list-style-type: none"> <li>Sanctions for legal persons, in particular for DNFBPs are not considered dissuasive.</li> </ul>
36. International instruments	C	
37. Mutual legal assistance	C	
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>Ireland cannot share assets with a requesting state under the non-conviction scheme and can only return a portion of funds under the conviction based scheme.</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
39. Extradition	C	
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• The FIU cannot share all the information that is accessible to it domestically.</li> <li>• There are limitations to the possibility of Ireland conducting/participating in EU Joint Investigation Teams.</li> <li>• There is no framework for supervisors of DNFBPs to share information internationally.</li> <li>• It is not clear if agencies other than the AGS can share information diagonally.</li> </ul>

### *Table of Acronyms*

<b>3AMLD</b>	3rd EU Anti-Money Laundering Directive
<b>4AMLD</b>	4th EU Anti-Money Laundering Directive
<b>ACCA</b>	Association of Chartered Certified Accountants
<b>AGO</b>	Office of the Attorney General
<b>AGS</b>	An Garda Síochána
<b>AIA</b>	Association of International Accountants
<b>AML</b>	Anti-money laundering
<b>AMLCU</b>	Anti-Money Laundering Compliance Unit in the Department of Justice and Equality
<b>AMLD</b>	The Anti-Money Laundering Department in the Central Bank of Ireland
<b>AMLSC</b>	Anti-Money Laundering Steering Committee
<b>ARO</b>	Asset Recovery Offices
<b>BCBS</b>	Basel Committee for Banking Supervision
<b>BCP</b>	Basel Committee <i>Core Principles for Effective Banking Supervision</i>
<b>BNI</b>	Bearer negotiable instruments
<b>BO</b>	Beneficial ownership
<b>CAB</b>	Criminal Assets Bureau
<b>CAI</b>	Chartered Accountants Ireland
<b>CARB</b>	Chartered Accountants Regulatory Board Ireland
<b>CARIN</b>	Camden Asset Recovery International Network
<b>CBA 2013</b>	Central Bank (S&E) Act 2013
<b>CBI</b>	Central Bank of Ireland
<b>CDD</b>	Customer Due Diligence
<b>CDISC</b>	Cross-Departmental International Sanctions Committee
<b>CFT</b>	Counter-financing of terrorism
<b>CIMA</b>	Chartered Institute of Management Accountants
<b>CJA</b>	Criminal Justice Act
<b>CJA 1994</b>	Criminal Justice Act 1994
<b>CJA 2005</b>	Criminal Justice (Terrorist Offences) Act 2005 as amended by the Criminal

	Justice (Terrorist Offences Amendments) Act 2015
<b>CJA 2008</b>	Criminal Justice (Mutual Assistance) Act 2008 as amended by the Criminal Justice (Mutual Assistance) (Amendment) Act 2015
<b>CJA 2010</b>	Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2013
<b>CJA 2013</b>	Criminal Justice (Money Laundering and Terrorist Financing) Act 2013
<b>CPA</b>	Institute of Certified Public Accountants
<b>CRA</b>	Charities Regulatory Authority
<b>CRO</b>	Companies Registration Office
<b>DAC</b>	Designated activity companies limited by shares or by guarantee
<b>DFAT</b>	Department of Foreign Affairs and Trade
<b>DNFBP</b>	Designated non-financial businesses and professionals
<b>DoJEI</b>	Department of Jobs, Enterprise and Innovation
<b>DoJE</b>	Department of Justice and Equality
<b>DPP</b>	Director of Public Prosecutions
<b>DPRK</b>	Democratic People's Republic of Korea
<b>EAW</b>	European Arrest Warrant
<b>EC</b>	European Commission
<b>ECB</b>	European Central Bank
<b>EDD</b>	Enhanced due diligence
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>EUR</b>	Euro
<b>FATF</b>	Financial Action Task Force
<b>FBI</b>	United States Federal Bureau of Investigation
<b>FIU</b>	Financial Intelligence Unit
<b>FTF</b>	Foreign terrorist fighter
<b>FUR</b>	Follow-up report
<b>GDP</b>	Gross domestic product
<b>GFIN</b>	FIU's current IT program

<b>GLC</b>	Companies limited by guarantee
<b>GNDOCB</b>	Garda National Drugs and Organised Crime Bureau
<b>GNECB</b>	An Garda Síochána National Economic Crime Bureau
<b>GNIB</b>	Garda National Immigration Bureau
<b>GNPSB</b>	Garda National Protective Services Bureau
<b>GoAML</b>	UNODC software for FIUs
<b>HVGD</b>	High-value goods dealers
<b>ICAEW</b>	Institute of Chartered Accountants in England & Wales
<b>IMF</b>	International Monetary Fund
<b>IOSCO</b>	International Organisation of Securities Commissions
<b>IRA</b>	Irish Republican Army
<b>ISIL</b>	Islamic State of Iraq and the Levant
<b>ISP</b>	Internet service provider
<b>LTD</b>	Private companies limited by shares
<b>MER</b>	Mutual evaluation report
<b>ML</b>	Money laundering
<b>MLA</b>	Mutual legal assistance
<b>MLIU</b>	Money laundering investigation unit (within the GNECB)
<b>MLRO</b>	Money laundering reporting officer
<b>MOU</b>	Memorandum of understanding
<b>MVTS</b>	Money-value transfer services
<b>NCB</b>	Non-conviction based asset confiscation
<b>NCIU</b>	An Garda Síochána National Criminal Intelligence Unit
<b>NPO</b>	Non-profit organisation
<b>NRA</b>	National risk assessment
<b>OCG</b>	Organised crime groups
<b>ODA</b>	Official Development Assistance
<b>ODCE</b>	Office of the Director of Corporate Enforcement
<b>PCF</b>	Pre-approval controlled functions
<b>PEP</b>	Politically exposed person

<b>PF</b>	Proliferation financing
<b>PLC</b>	Public limited companies
<b>PMCs</b>	Private members' clubs
<b>POCA 1996</b>	Proceeds of Crime Act 1996
<b>POCA 2006</b>	Proceeds of Crime Act 2006
<b>PSCF</b>	Private Sector Consultative Forum
<b>PSMDs</b>	Dealers in precious metals and dealers in precious stones
<b>PSPs</b>	Real Estate Sector Property Services Providers
<b>PSRA</b>	Property Service Regulatory Authority
<b>PUC</b>	Public unlimited companies with shares
<b>PULC</b>	Public unlimited companies without shares
<b>PULSE</b>	National police database
<b>RBA</b>	Risk-based approach
<b>REAP</b>	Risk Evaluation, Analysis and Profiling system used by Revenue
<b>RELEX</b>	EU's Working Party of Foreign Relations Counsellors
<b>Revenue</b>	Office of the Revenue Commissioners
<b>SDU</b>	Special Detective Unit
<b>SME</b>	Small to medium size enterprises
<b>SRB</b>	Self-regulating body
<b>STR</b>	Suspicious transaction report
<b>STRO</b>	Suspicious Transaction Reports Office in Revenue
<b>TCA 1997</b>	Taxes Consolidation Act (TCA) 1997
<b>TCSP</b>	Trust or Company Service Providers
<b>TF</b>	Terrorist financing
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TFIU</b>	Terrorist financing intelligence unit
<b>TFS</b>	Targeted financial sanctions
<b>UCITS</b>	Undertaking for Collective Investment in Transferable Securities
<b>UK</b>	United Kingdom
<b>ULC</b>	Private unlimited companies







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September 2017

## **Anti-money laundering and counter-terrorist financing measures - Ireland**

### ***Fourth Round Mutual Evaluation Report***

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Ireland as at the time of the on-site visit on 3-17 November 2016.

The report analyses the level of effectiveness of Ireland's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.