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ANNEX 7

ANNEX

IRELAND

to the

EU Anti-Corruption Report

IRELAND

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. The Government is following an ambitious programme of political and legislative reform aimed at enhancing openness, transparency, accountability and anti-corruption standards.¹ It has responded to a number of shortcomings identified as a result of the investigations into several large-scale cases where politicians and industry players colluded either in an illegal and corrupt manner or legally but in an improper or unethical manner.² As part of this reform, the Government has taken up the recommendations of the Mahon Tribunal of Inquiry and is in the process of implementing or considering the majority.³ A number of additional legislative measures have already been passed or are in preparation, such as those concerning parliamentary inquiries, privileges and procedures, strengthening the sanctioning regime for corruption offences, whistleblower protection and lobbying.⁴

Legal framework. Ireland has recently ratified the United Nations Convention against Corruption (UNCAC). In 2011, it introduced a Criminal Justice Act that increases the investigative powers of law enforcement when dealing with white-collar crime. As confirmed by the Council of Europe's Group of States against Corruption (GRECO) in December 2013, criminal legislation is largely compliant with the requirements of the Council of Europe instruments and in line with the vast majority of GRECO recommendations.⁵ Furthermore, a broad anti-corruption legislative reform programme is being implemented. Ireland has tightened rules on the financing of political parties and promoted greater transparency as regards party accounts.⁶ It is currently reviewing a draft law to consolidate the seven overlapping anti-corruption statutes and create a set of new offences, including trading in influence, and strengthening the penalties for corruption, including removal from or ban on holding public office.⁷ The Houses of the Oireachtas (Inquiries, Privilege & Procedures) Act 2013 seeks to establish a comprehensive statutory framework to conduct inquiries, clarifying the role of the Houses in securing accountability through investigations into matters of significant public importance and providing protection for confidential communication from members of the public who wish to bring wrongdoing to the attention of the Members of the Houses without having their identity disclosed.⁸ An (Amendment) Bill was signed into law in October 2012⁹ to extend the remit of the Ombudsman.¹⁰ The Government also submitted a Freedom of Information Bill aimed at further removing obstacles to freedom of information and

1 Merrion Street, Irish Government News Service (2012) Programme for Government: <http://www.merrionstreet.ie/index.php/about/programme-for-government/>; Department of Public Expenditure and Reform (2012) Progress on the implementation of the Government's Public Service Reform Plan:

2 <http://per.gov.ie/2012/09/06/progress-on-the-implementation-of-the-governments-public-service-reform-plan/>
3 http://www.citizensinformation.ie/en/government_in_ireland/national_government/tribunals_and_investigations/tribunals_of_inquiry.html.

3 According to the *Government Response to Mahon Recommendations*, almost half have been or are being implemented partly or fully, while most of the rest will be implemented through new planned initiatives or are under consideration.

4 For more details see the paragraph on legal framework, whistleblowing and lobbying below.

5 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)10_Second_Ireland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)10_Second_Ireland_EN.pdf).

6 Irish Statute Book (2012) Electoral (Amendment) (Political Funding) Act 2012, <http://www.irishstatutebook.ie/pdf/2012/en.act.2012.0036.pdf>.

7 Department of Justice and Equality (2012) Criminal Justice (Corruption) Bill 2012 - General Scheme: <http://www.iustice.ie/en/JELR/Pages/WP12000178>.

8 Houses of the Oireachtas (2013) Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill 2013, from: <http://www.oireachtas.ie/viewdoc.asp?DocID=23499&&CatID=59>.

9 <http://www.oireachtas.ie/documents/bills28/acts/2012/a3812d.pdf>.

10 From May 2013, over 180 additional publicly funded organisations are subject to independent oversight by the Ombudsman.

strengthening the necessary safeguards for the disclosure of information in the public interest.¹¹ Moreover, it has committed itself to overhauling the existing statutory framework for ethics and for strengthening civil service accountability.¹² In January 2014, the Department of Public Expenditure and Reform published a consultation paper on strengthening civil service accountability and performance.¹³

Institutional framework. The competence to prevent, detect, investigate and prosecute corruption and white-collar crime is spread across a number of agencies with a mandate to tackle corruption such as tribunals of inquiry, commissions of inquiry, high court inspectors, the Financial Regulator, the Standards in Public Office Commission (SIPO), local authorities, the Ombudsman, parliamentary committees on members' interests, the Garda Bureau of Fraud Investigation within the police, the Criminal Assets Bureau (CAB), the Office of the Director of Corporate Enforcement (ODCE), the Comptroller and Auditor-General, the Public Accounts Committee and the Director of Public Prosecutions (responsible for all criminal prosecutions of the most serious cases).

Opinion polling

Perception surveys. According to the 2013 Special Eurobarometer on Corruption,¹⁴ 27% of the Irish respondents consider that they are affected by corruption in their daily lives (EU average: 26%), while 81% believe that corruption is widespread in their country (EU average: 76%).

Experience of corruption. In the 2013 Special Eurobarometer on Corruption, Ireland has among the lowest percentages of respondents who say that they personally know someone who takes or has taken bribes (8%, as compared with an EU average of 12%). Likewise, only 3% of the Irish respondents admitted that over the previous 12 months they were asked or expected to pay a bribe for services (EU average: 4%).

Business surveys. According to the 2013 Eurobarometer survey on businesses, only 16% of businesses in Ireland (among the four lowest percentages in the EU) claim that corruption is an obstacle to doing business in their country (EU average: 43%).¹⁵ However, 74% of the Irish business respondents say that favouritism and corruption hamper business competition (EU average: 73%), while 61% state that bribery and the use of connections is often the easiest way to obtain certain public services (EU average: 69%). 28% of the respondents (EU average: 32%) say that corruption has prevented them or their company from winning a public tender or a public procurement contract. 39% of the respondents considered that corruption is widespread in public procurement managed by national authorities and that managed by regional and local authorities.

Background issues

Economic context. As noted in the 2011 Economic Adjustment Programme for Ireland, the country experienced strong growth from the early 1990s onwards, after decades of poor economic performance.¹⁶ Amid intense competition for profits in the booming economy and property market, the pace of credit expansion accelerated sharply. By the autumn of 2010, the loss of investor confidence in Ireland triggered a crisis. Deposit outflows from the banking sector

11 <http://per.gov.ie/wp-content/uploads/Freedom-of-Info-Bill-13.pdf>.

12 Department of Public Expenditure and Reform (2012) Minister for Public Expenditure and Reform, Brendan Howlin TD, Response to Policy Recommendations - Mahon Report: <http://per.gov.ie/2012/07/19/minister-for-public-expenditure-and-reform-brendan-howlin-td-response-to-policy-recommendations-mahon-report> ; <http://per.gov.ie/civil-service-accountability/>.

13 <http://per.gov.ie/wp-content/uploads/Consultation-Paper-Strengthening-Civil-Service-Accountability-and-Performance.pdf>

14 2013 Special Eurobarometer 397.

15 2013 Flash Eurobarometer 374.

16 http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp76_en.pdf

accelerated and the cost of government borrowing reached unsustainable highs. The credibility and effectiveness of government guarantees in the banking sector faded. These challenges led the Irish authorities in November 2010 to request financial assistance from the EU, the euro-area Member States and the International Monetary Fund (IMF); they complied in a satisfactory manner with their commitments to 2013. Lengthy investigations that have not yet led to court decisions regarding financial institutions at the heart of the banking crisis in Ireland have contributed to a general climate of mistrust in the transparency and accountability of the financial sector in the country, and in the capacity of corporate oversight and enforcement. For instance, the investigation of the alleged irregularities concerning the Anglo Irish Bank lasted nearly four years before an indictment was issued against its former CEO, who is facing 12 charges in connection with financial irregularities.

Private sector. Ireland correctly transposed the provisions of Framework Decision 2003/568/JHA concerning the definition of active and passive corruption in the private sector, as well as those regarding penalties applicable to natural and legal persons and liability of legal persons.¹⁷ In relation to foreign bribery, in its 2013 progress report on the implementation of the OECD Anti-Bribery Convention Transparency International placed Ireland within the cluster of countries where no enforcement could be noted and no investigations had recently commenced, were underway or had been concluded.¹⁸ In December 2013, the OECD raised concerns about the fact that Ireland has not prosecuted any foreign bribery cases in 12 years, though it is currently investigating one case and assessing three.¹⁹ The OECD stressed that Ireland has taken an insufficiently proactive approach to the investigation of foreign bribery, mainly due to a lack of adequate resources, and recommended a review of the legislation on corporate liability for foreign bribery.

Public procurement. Public works, goods and services in Ireland accounted for 14.6% of GDP in 2011.²⁰ The National Public Procurement Policy Unit (NPPPU) attached to the Department of Finance is responsible for procurement policy in Ireland. The NPPPU published public procurement guidelines²¹ that make contracting authorities responsible for guarding against corrupt or collusive practices.²² The Government Contracts Committee and the NPPPU also published general ethics in public procurement guidelines to help public-sector buyers conduct purchasing operations in line with probity and accountability standards.²³ These contain detailed provisions on the disclosure of conflicts of interest and acceptance of gifts and hospitality by those involved in public procurement.

Conflict of interests and asset disclosure. Ireland has put in place a (legal and institutional) ethics framework for public offices covering disclosure of interests and assets, codes of conduct, tax clearance obligations and the Standards in Public Office Commission (SIPO).²⁴ A large number of recommendations by the Mahon Tribunal of Inquiry concerned conflicts of interests, described by the Tribunal as the 'root cause of corruption'.²⁵ Codes of conduct for public officials

17 COM(2011) 309 final, Second Implementation Report of FD 2003/568/JHA of 6 June 2011: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf

18 http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd

19 Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Ireland: <http://www.oecd.org/daf/anti-bribery/IrelandPhase3ReportEN.pdf>

20 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf

21 National Public Procurement Policy Unit (2004) Public Procurement Guidelines - Competitive Process: <http://www.enviro.ie/en/Publications/LocalGovernment/ProcurementModernisation/FileDownload,15592,en.pdf>

22 Directorate for Financial and Enterprise Affairs (2010) Collusion and Corruption in Public Procurement: Contribution from Ireland. Paris: OECD, DAF/COMP/GF/WD(2010)30.

23 National Public Procurement Policy Unit (2005) Ethics in Public Procurement: <http://etenders.gov.ie/generalprocguide.aspx>.

24 Ethics in Public Office Act 1995, Standards in Public Office Act 2001 and Part 15 of the Local Government Act 2011.

25 <http://www.planningtribunal.ie/images/finalReport.pdf>

caution against, but do not prohibit, seeking or taking up employment in the private sector within a cooling-off period. Nevertheless, former senior civil servants and senior local authority officials in certain sensitive areas must observe a 12-month moratorium before taking jobs in the private sector. Moreover, the 2013 General Scheme of the Lobbying Regulation Bill lays the basis for further provisions on revolving-door practices.²⁶ More recently, mainstream political parties made ending cronyism in Irish political life part of their political programmes. The transparency and accountability system for ministerial appointments to the boards of, or to other positions in, public bodies appears to require further consideration, as analysis of the network of persons involved within these boards revealed risks relating to favouritism, cronyism and patronage.²⁷ The Department of Public Expenditure and Reform has started a project to review the legal framework on ethics and undertake a reform of the current system in order to develop a single, comprehensive piece of legislation.

Whistleblowing. The Protected Disclosures Bill was published in July 2013 and is expected to be adopted into law soon. The Bill establishes a comprehensive far-reaching legal framework for the protection of whistleblowers across the public and private sectors against reprisals for sharing information relating to wrongdoing, cover-ups and other harm to the public interest which comes to their attention in the workplace.²⁸ The Bill provides for a wide definition of wrongdoing and the safeguards provided in the legislation are extended to a wide definition of 'workers'. Whistleblowers will benefit from civil immunity from actions for damages and a qualified privilege under defamation law.²⁹ The Bill seeks to ensure that the worker is encouraged to raise any concern with his or her employer in the first instance by establishing the simple requirement that the whistleblower reasonably believes that the information being disclosed shows or tends to show wrongdoing. It also seeks as much as possible to ensure protection of the identity of a whistleblower. Special arrangements are put in place for disclosures relating to law enforcement matters and those that could adversely affect Ireland's security, defence or international relations.

Transparency of lobbying. As yet, Ireland has no legislation on lobbying. In spring 2013, the General Scheme of the Lobbying Regulation Bill was approved by the Government, setting out the policy approach to the drafting of legislation in this area.³⁰ The Bill provides for a mandatory register of lobbying to make information available to the public on the identity of those communicating on specific policy and legislative matters or prospective decisions with designated public officials or office-holders. It also provides for a framework for holding those engaged in lobbying accountable for the manner in which they conduct the activity. The General Scheme of the Lobbying Regulation Bill 2013 lays down restrictions and conditions, applicable for a specified period of time, on designated officials and office-holders taking up certain posts where a possible conflict of interest arises. Overall, the focus of the Bill appears to be on the responsibilities of lobbyists and to a lesser extent on the public officials.

Media. The Irish media plays an important role in exposing and following corruption allegations. However, some concerns have emerged over time with regard to the consolidation of ownership. The Minister of Communications, Energy and National Resources has noted that there is a growing consolidation of media ownership, also stressing that the 'government's commitment in

26 General Scheme of the Lobbying Regulation Bill 2013: <http://per.gov.ie/the-general-scheme/>.

27 A Study entitled 'Mapping out the Golden Circle' conducted by Think Tank for Action on Social Change (TASC) found that 'a network of 39 individuals held powerful positions in 33 of 40 top public organisations and private Irish businesses in three of the critical Celtic Tiger years (2005-07), and held more than 93 directorships between them in these companies during this period; as well as an average of ten directorships each in other companies.' More recently, appointments to the Heritage Council and the Department of Health allegedly without formal merit-based procedures caught the public attention.

28 Protected Disclosures Bill 2013: <http://www.oireachtas.ie/viewdoc.asp?DocID=23966&&CatID=59>.

29 Making a protected disclosure or reasonably believing a disclosure is protected is a defence against any charge of breaching provisions prohibiting or restricting the disclosure of information.

30 General Scheme of the Lobbying Regulation Bill 2013: <http://per.gov.ie/the-general-scheme/>

respect of ensuring that there is both diversity of content and diversity of ownership in the media remains in place'. In her report on Ireland, the United Nations Special Rapporteur on Human Rights noted that the reported use of litigation and threatened litigation intimidate journalists. She underlined 'the importance of the Press Ombudsman and the Press Council, established to safeguard and promote professional and ethical standards in Irish printed media, and which can resolve complaints about the accuracy and fairness of coverage'.³¹

2. ISSUES IN FOCUS

Prosecution of corruption

The Criminal Justice Act 2011 has enhanced the powers of the Office of the Director of Corporate Enforcement (ODCE), including as regards gathering of evidence in relation to witnesses, who may now be compelled to provide certain documents and information. It also identifies new categories of white-collar crime, so that more corrupt practices are covered. However, since February 2009, the ODCE's efforts have been largely focused on the investigation into the Anglo Irish Bank, which has been at the centre of the Irish banking crisis. The investigations in that complex case have proved to be rather lengthy.

The overall ability of the oversight agencies to impose dissuasive sanctions on those identified as having engaged in corrupt practices or ethical breaches appears limited. The number of indictments and convictions in such cases is rather low and dissuasive sanctions are scarce. Statistics show that convictions for white-collar crime fell substantially between 2003 and 2010, even though the number of cases increased.³²

The Standards in Public Office Commission (SIPO) has a mandate to oversee political finance regulations and to enforce the Ethics Acts, which regulate conflicts of interest at national level, mainly through disclosure rules. However, as SIPO itself has highlighted, since 2004, its position is weakened as it has no right to initiate investigations but depends on a complaint having been made.³³ It has repeatedly called on the authorities to increase its powers.³⁴ Furthermore, the Mahon Tribunal of Inquiry recommended introducing a simplified complaints procedure, allowing anonymous complaints and extending SIPO's role to the local and regional levels, including in relation to conflicts of interest. The same Tribunal openly criticised the police's failure adequately to investigate persons implicated in the period under review by the Tribunal and its general 'hands-off' approach when members of the political establishment were involved.³⁵

Tribunals of inquiry are set up in accordance with the Tribunals of Inquiry (Evidence) Act 2005, with specific terms of reference to investigate certain matters of public importance, and are usually chaired by judges or senior lawyers.³⁶ At the end of the investigation, the tribunal submits a report to Parliament which may contain recommendations. The Tribunals of inquiry do not have the power to assign criminal or civil liability and therefore cannot penalise individuals or companies. The tribunals have examined various matters, including major disasters involving loss of life, and allegations of corruption, including wrongdoing in the land development and planning process.

31 Sekaggya, M. (2013) "Report of the Special Rapporteur on the situation of human rights defenders" Available from: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-3_en.pdf

32 Central Statistics Office: the number of convictions for white-collar crime fell to 178 in 2010 compared with 579 in 2003.

33 i.e. it cannot start investigations ex officio, but only following the reporting of an alleged crime.

34 SIPO Annual Report 2011 op cit 49-52.

35 It criticised the failure to investigate one former local councillor who also happened to be a Member of Parliament and was found by the Tribunal to have engaged in corrupt behaviour.

36 The Mahon Tribunal report notes that the 'origin of a Tribunal of Inquiry can usually be traced to serious public disquiet regarding a matter' and 'typically used as a last resort, when other agencies of investigation have failed to work or are unlikely to work ...'; p.22, para 1.84 of the Mahon Tribunal Final Report.

The Tribunals of inquiry with specific terms of reference to investigate corruption allegations have been at the forefront of efforts to expose corruption in Ireland. The multitude of evidence produced and testimonies heard by the tribunals over the years have revealed corrupt practices in various strands of public life and exposed collusion between politicians and business persons.

The two most recent tribunals (known as the Moriarty and Mahon Tribunals after the names of the judges who chaired them) have dominated the attention of the media and the public in the past decade.³⁷ Although some of the facts examined by the tribunals date back more than a decade, their recently published findings have been a crucial catalyst for change, with profound implications for anti-corruption policy in Ireland.

The Moriarty Tribunal focused on the circumstances surrounding the award of Ireland's biggest procurement award at the time. Its final report was published in March 2011, centred on the circumstances in which the then Minister for Transport, Energy and Communications awarded the second mobile phone licence to a company in 1996. The licence was the largest single procurement award in the history of Ireland. The Tribunal found that the Minister's influence, including bypassing considerations of his cabinet colleagues, was such that he had 'irregular interactions with interested parties at its most sensitive stage [...] and thereby not only influenced, but delivered, the result' that allowed the company in question to win the evaluation process.³⁸ The Tribunal concluded it was 'beyond doubt' that the Minister gave 'substantive information to the CEO of the company of significant value and assistance to him in securing the licence'. According to the Tribunal, the company's CEO gave the Minister loan support and payments in 'clandestine circumstances'. These came in three separate instalments that 'were demonstrably referable to the acts and conduct of [the Minister] in regard to the GSM process that inured to the benefit of [the CEO's] winning consortium'. The same CEO also made very substantial donations to the Minister's political party which happened to come, according to the Tribunal, 'during the currency of the GSM competition and subsequent licensing negotiations'. The Tribunal also found that the Minister had sought to influence the outcome of an arbitration in relation to the rent payable by a state-owned company for property owned and controlled by another high-profile businessman. The hike in rents agreed by the Minister's department led to millions in gains for the businessman. The Minister was criticised for abuse of office and his refusal to acknowledge the impropriety of his financial arrangements with both businessmen. He was expelled from the party he belonged to at the time of the facts in 1996 but remains an independent Member of Parliament.

The Government promised a robust response saying it would not remain passive in the face of the Tribunal's findings. There was however a perception that, following the findings of the Moriarty Tribunal, the Government did not properly distance itself from the persons involved in the case.³⁹ No criminal action was taken against the businessmen in question.

The Mahon Tribunal investigated corruption allegations surrounding planning permissions and land re-zoning, but its findings went further due to connections with other areas of public life. The Tribunal investigated concerns regarding corruption in the planning process from the late 1980s to the late 1990s. The 2012 final report concluded that those concerns were well-founded. According to the Tribunal, '[...] corruption affected every level of Irish political life [and] those with the power to stop it were frequently implicated in it'.⁴⁰ It made findings of corruption against 11 county councillors. These local politicians were found to have received bribes to ensure that

37 The Moriarty Tribunal lasted eight years and the Mahon Tribunal lasted 15 years, the latter being the longest inquiry in the history of Ireland.

38 The Moriarty Tribunal of Inquiry (2011) *The Tribunal Report into Payments to Politicians and Related Matters Part II*, Volume 1, Dublin. Available from: <http://www.moriarty-tribunal.ie/>

39 Seven months after the publication of the report, the CEO in question was a guest of the Government at the Global Ireland Forum. A year after the report was published, he accompanied the Prime Minister when he opened the New York Stock Exchange to mark St Patrick's Day in March 2012.

40 <http://www.planningtribunal.ie/images/finalReport.pdf>.

certain planning decisions were taken. The Tribunal criticised the involvement of senior cabinet members in seeking financial contributions from a businessman at a time when he was lobbying government to support a commercial venture. It found that a former Prime Minister had failed to 'truthfully account for the origins of specific cash lodgements' and that 'an abuse of political power and government authority' had occurred when he, while Minister of Finance, had, together with the then Prime Minister, put pressure on a developer to give a party donation.⁴¹ Another politician was found to have sought a donation from a developer which was then used for personal benefit. The Mahon Tribunal issued 64 recommendations to improve transparency and accountability in various policy areas.⁴²

In July 2012, the Government published its response to the recommendations of the Final Report of the Mahon Tribunal.⁴³ A 2012 General Scheme for a Criminal Justice (Corruption) Bill, endorsed by the Government, incorporates several of the Mahon recommendations, including the creation of a new offence of bribing through an intermediary, corporate liability for corruption offences, the presumption that public officials who have accepted gifts or undisclosed donations have acted corruptly and the possibility for courts to remove public officials from office if they are convicted of a corruption offence and to bar them from seeking office again for a period of up to 10 years.⁴⁴

A tribunal of inquiry follows an inquisitorial process, rather than an adversarial judicial procedure. It is not a court of law and its activity does not constitute the administration of justice. Consequently, it can only investigate facts and make recommendations, rather than assign criminal or civil liability.⁴⁵ Evidence given by a person before a tribunal cannot subsequently be used against that person in criminal proceedings.⁴⁶ Although the findings of the tribunals of inquiry have played a critical role in driving further legislative and institutional reforms, they have led only to a limited number of prosecutions. Moreover, the long duration of the proceedings of the tribunals of inquiry and the considerable costs involved have been subject of public debates. In the wake of the publication of the Mahon Report, only one person named in the report has faced corruption-related charges and received a prison sentence. However, some of the senior politicians involved resigned from their party. Concern about excessive dependency on the system of tribunals of inquiry is reflected in a recent recommendation by the Irish Law Reform Commission, when reviewing the Tribunals Act. It stated that, in view of the nature of tribunals, 'those charged with the power to establish inquiries should give careful consideration to the public interest in the matter under examination before deciding to establish an inquiry'.⁴⁷

The length of time it takes for inquiries to finish may also influence the eventual criminal or civil proceedings. When the unsuccessful bidders for the procurement contract that the Moriarty Tribunal found to be affected by corruption brought a case against the Irish State, the latter

41 <http://www.planningtribunal.ie/images/finalReport.pdf>.

42 *Idem*.

43 <http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,30749.en.pdf>.

44 Criminal Justice (Corruption) Bill 2012: www.justice.ie/en/JELR/Pages/PB12000183.

45 Section 5 of the Tribunal of Inquiry (Evidence) (Amendment) Act 1979. Supreme Court Judge, Justice Adrian Hardiman argued that the evidence gathered by the Tribunal is "devoid of legal consequences" and could not be used in legal proceedings as either a weapon or a shield. *Bovale Developments DCE v Bailey & anor* [2011] IESC 2.

46 In *Goodman v Hamilton* [1992] 2 IR 542 Finlay CJ held as follows: 'With regard to the suggestion that the findings of the Tribunal, if not an impermissible administration of justice by anybody other than a court, is a usurpation of the activities of courts in cases where either civil cases are pending or may be instituted, it seems to me that again this submission arises from a total misunderstanding of the function of the Tribunal. A finding by this Tribunal, either of the truth or falsity of any particular allegation which may be the subject matter of existing or potential litigation, forms no part of the material which a court which has to decide that litigation could rely on. It cannot either be used as a weapon of attack or defence by a litigant who in relation to the same matter is disputing with another party rights arising from some allegation of breach of contract or illegal contract or malpractice.' (at p. 590).

47 Report on Public Inquiries Including Tribunals of Inquiry (LRC 73-2005), Summary of Recommendations, p.169; available at http://www.lawreform.ie/_fileupload/Reports/rPublicInquiries.pdf

attempted to use the length of time argument in its defence. The Irish Supreme Court rejected this, however, and ruled that the bidders should still be allowed to seek damages from the State since it was obvious that the plaintiffs were waiting for the outcome of the Tribunal's inquiry and also since 'it is a matter of public interest as to whether a minister of government corrupted a State process'.⁴⁸ Even if criminal proceedings are not time-barred, there is a risk of them being weakened by waiting for the conclusion of the inquiry tribunals.

A comprehensive reform and consolidation of the legislation relating to tribunals of inquiry is in the pipeline. The Tribunals of Inquiry Bill 2005 is currently before the Irish Parliament.⁴⁹ The reform aims at putting in place a modern statutory framework governing all aspects of the operation of a tribunal, from the time of its establishment to the publication of its final report. It sets out detailed procedures of operation and reporting and for the suspension and dissolution of a tribunal. The Bill took into account the 2005 Law Reform Commission of Ireland's Report on Public Enquiries including Tribunals of Inquiry and the recommendations of the Comptroller and Auditor-General's 2009 Report into Tribunals. In regard to admissibility of reports in further proceedings, the reform proposed that a tribunal's final, interim or divisional report should be admissible in certain civil proceedings.⁵⁰ This proposal is now being examined in the light of more recent case-law in which the Supreme Court found that extracts from the interim reports of the Mahon Tribunal may not be admitted in evidence by the Director of the Office of Corporate Enforcement.⁵¹

Financing of political parties

Since the 1990s, Ireland has been developing its system of regulation on the financing of political parties, with important changes with regard to both public and private funding. Until recently, it was difficult to draw a complete picture of the sources of political funding in Ireland, since political parties' annual accounts were only partially disclosed. Due to high disclosure thresholds for political donations, only a small proportion of the parties' income in the last two elections was disclosed.⁵²

Good practice: tighter rules on political party financing

Through the adoption of the Electoral (Amendment) (Political Funding) Act 2012,⁵³ Ireland has made significant progress in the area and complied with GRECO's 2009 recommendations to reduce the disclosure threshold and to submit independently audited accounts. In December 2013, GRECO concluded that the majority of its recommendations in this area have been implemented

48 *Bovale Developments DCE v Bailey & anor* [2011] IESC 2: “ the subject matter of this litigation is truly exceptional, indeed unique [...] If the plaintiffs have indeed been damnified by corruption at the highest levels of government and public administration, it is clearly a requirement of basic commutative justice that they be compensated—if they can make out their case. In doing this the findings of the Moriarty Tribunal are inadmissible. But the evidence developed over nine years is not irrelevant and is publicly available to the plaintiffs as to any other citizen and to the state itself. The state does not appear to have rejected or criticised that evidence.” [2012]IESC 50.

49 <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2005/3305/document1.htm> .

50 as evidence of the findings of facts by the tribunal set out in the report without further proof unless the contrary is shown, and of the opinion of the tribunal in relation to any matter contained in the report

51 *ODCE v Bovale* case on 14 July, 2011

52 For instance, of the EUR 10.1 million spent by parties and candidates in the 2007 general elections, only EUR 1.3 million was disclosed with no information available as to the origin of the remaining EUR 8.8 million. At the 2011 general election, EUR 9.28 million was spent yet just EUR 30 997 was disclosed in donations. Fianna Fáil, Fine Gael and Labour disclosed a zero return in disclosed donations for 2009, the year that all three parties ran substantial local, European, by-election campaigns and a Lisbon Treaty referendum. Fine Gael and Labour did not disclose any donations for 2011, while Fianna Fáil and Sinn Féin disclosed EUR 6 348 and EUR 12 000 respectively. This suggests that the main source of political funding originated from donations below the then threshold limit of EUR 5 078.95.

53 Electoral (Amendment) (Political Funding) Act 2012, Number 36 of 2012: <http://www.irishstatutebook.ie/pdf/2012/en.act.2012.0036.pdf> .

*satisfactorily or dealt with in a satisfactory manner and gave a positive assessment of the efforts made by Ireland to enhance the transparency of party funding and strengthen the financial discipline of political parties.*⁵⁴

Corporate donations above EUR 200 can be made only by companies listed in the register of corporate donors or if a statement is made to the oversight agency (SIPO) showing the recipient that the corporate donor has approved the donation. Membership fees paid to a political party are treated as donations in line with the Mahon Tribunal recommendations to extend the definition of 'donation' to 'any contribution given, used or received for political purposes'. Anonymous donations are accepted only if they do not exceed EUR 100. The cap on donations to political parties has been reduced (from EUR 6 349 to EUR 2 500), as has the cap on donations to an individual electoral candidate or elected representative (from EUR 2 539 to EUR 1 000). Furthermore, the threshold above which political parties must publicly declare donations and disclose them to SIPO has been reduced considerably (from EUR 5 080 to EUR 200).

*All political parties are now required to submit an independently audited statement of accounts to SIPO by 30 June each year. These accounts should include details of income from public and private sources and expenditure by the political party concerned and will be available on the SIPO website.*⁵⁵ *The auditor's report is also published. The relevant sections of the 2012 Act dealing with political party accounts came into force in September 2012.*

Parties which do not comply with these requirements will lose their State funding. Where audited accounts are not furnished, SIPO has the power to appoint its own auditor to undertake this task and to levy the cost from the political party concerned. Electoral candidates or elected representatives are not required to submit accounts, however. Furthermore, the Criminal Justice (Corruption) Bill 2012 provides for a presumption of corruption when a donation is received that is prohibited under the electoral legislation.

*The new Political Funding Act also provides for the development of guidelines on how to present political party accounts. SIPO published the draft guidelines in June 2013 and submitted them to public consultation.*⁵⁶ *The public consultations were concluded in autumn 2013.*⁵⁷

Despite these positive changes, some challenges still remain. The Mahon Tribunal report highlighted ways in which the new thresholds could be circumvented and noted that there is nothing to prevent an individual donor from giving a donation to a political party and to each individual member of the same party.⁵⁸ This could lead to a significant amount of money, capable of giving rise to corruption or the appearance of corruption. Furthermore, the new legislation does not set specific time-frames within which political parties are to discharge their disclosure obligations. This is a significant shortcoming since it is more difficult to identify potential links between a donation and a kickback if a considerable period of time has passed from the receipt of the donation to its disclosure.⁵⁹

54 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)10_Second_Ireland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)10_Second_Ireland_EN.pdf)

55 In 2013, political parties disclosed donations worth in total EUR 33 606 for 2012 to the Standards in Public Office Commission. Donations disclosed by the Socialist Party amounted to EUR 24 600; Sinn Féin disclosed EUR 6 000 and Comhar Chríostaí - The Christian Solidarity Party disclosed EUR 3 006. No other party disclosed any donations in 2012, including the coalition partners, Fine Gael and Labour and the main opposition party, Fianna Fail. Donations exceeding EUR 5 078.95 in value received by them during 2012 were required to be disclosed. The maximum value of donations which a political party could accept from the same donor in the same year was EUR 6 348.69: <http://www.sipo.gov.ie/en/About-Us/News/Press-Releases/2013-Press-Releases/Political-parties-disclose-donations-received-in-2012.html> .

56 <http://www.sipo.gov.ie/en/Guidelines/Draft-Political-Party-Account-Guidelines/>.

57 <http://www.sipo.gov.ie/en/guidelines/draft-political-party-account-guidelines/submissions-received/>

58 <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2005/3305/document1.htm>

59 National Integrity Systems, Country Study Addendum, 2012, p.23. http://www.transparency.org/whatwedo/pub/nis_ireland_2012 .

In its December 2013 report GRECO stressed that there is still room for improvement as regards the transparency in local branch and third party accounts, and called for further efforts to strengthen the sanctioning regime for breaches of party funding rules.⁶⁰

There is no legislation to regulate the funding of referendum campaigns, even though referenda are quite frequent in Ireland. The 2012 Annual Report of the Standards Commission highlighted its ongoing difficulties in supervising the provisions of the electoral legislation relating to accounting units which are requested to furnish a certificate of monetary donations and bank statement.⁶¹ SIPO requested that 'third parties' and political parties be required to disclose details of expenditure on referenda campaigns for the purpose of providing more transparency. It also requested that information be made available on the sources of funding available to both third parties and political parties.⁶² The Irish authorities are currently working on legislative solutions to close this legal gap.

Urban development

The construction and planning sectors were found to be vulnerable to corruption by the Mahon Tribunal whose hearings exposed failings in the public administration system.⁶³

Since most planning decisions are taken by elected local councillors, conflicts of interest are a notable risk factor, hence the need to monitor that disclosure obligations are functioning, that they are correctly adhered to and enforced. According to the Mahon Tribunal, this appeared not to have been the case. Tribunal also revealed the extent to which elected local members or more senior politicians in central government are exposed to an increased risk of corruption involving developers seeking the re-zoning of areas in which they want to invest in order to increase the value of their land.⁶⁴ The Tribunal found that 11 local government councillors received corrupt payments of this type. Earlier on in 2007, the chair of the planning appeals board commented that 'sometimes zoning decisions seem to have more to do with pressure from local developers rather than sustainable development'. In addition, the major banks supported re-zoning as a precondition of the property construction boom they financed. The Mahon Tribunal issued a number of recommendations aimed at increasing transparency and accountability and reducing the incentives and opportunities to engage in corrupt practices.⁶⁵

In response to these concerns, safeguards have been introduced to make the planning system more resilient to corruption. In May 2013, the Government approved proposals for the preparation of a Planning and Development Bill to establish a new Office of the Planning Regulator in line with the most significant planning recommendation contained in the Final Report of the Mahon Tribunal, that would ensure enhanced independent supervision of the urban planning process.⁶⁶ The Department of the Environment, Community and Local Government is currently preparing this General Scheme.

60 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)10_Second_Ireland_EN.pdf..](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)10_Second_Ireland_EN.pdf..)

61 Standards in Public Office Commission (2013) Standards in Public Office Commission Annual Report, Available from: http://www.sipo.gov.ie/en/Reports/Annual-Reports/2012-Annual-Report/AnnualReport2012/media/sipoc_ar_2012_english.pdf

62 Ibid.

63 Mahon Tribunal Final Report p.15.

64 The first public representative in the history of the Irish State was convicted for corruption in 2012. A former town councillor was convicted for receiving corrupt payments totalling EUR 80 000 from a property developer who was seeking to rezone agricultural land for residential and industrial use in Waterford. He received a six-year sentence.

65 <http://www.planningtribunal.ie/images/finalReport.pdf>.

66 Electoral, Local Government and Planning and Development Bill 2013: <http://www.environ.ie/en/Legislation/DevelopmentandHousing/Planning/FileDownload,33584,en.pdf>.

In view of the scale and extent of corruption in the past, the effort to reduce incentives for corruption in matters relating to re-zoning of land should be sustained. Furthermore, the Mahon Tribunal found that the 'self-regulatory approach to enforcement of conflict of interest provisions is a matter for concern' and lacks independence, credibility and effectiveness, and called for a 'radical overhaul' of the system for enforcing conflict-of-interest measures in local government. Currently, local authorities are primarily responsible for supervising and enforcing conflict-of-interest provisions as part of their ethics framework. According to Transparency International, as of July 2012 only five of the 34 local authorities had published their councillors' declarations of interest online.⁶⁷ Moreover, revolving-door practices pose particular risks in this area.

3. FUTURE STEPS

In recent years, the Irish Government has undertaken comprehensive reforms at both legislative and policy levels to address many of the issues that have come to light in tribunals of inquiry amid growing public concern about corruption and related issues of transparency, accountability and integrity. Considerable steps have been taken to improve the framework for the supervision and transparency of political party funding. More consideration could be given to ensuring dissuasive sanctioning of corrupt behaviour and the more timely adjudication of large-scale corruption cases. Corruption-related risks associated with close ties between politicians and industry continue to be a cause for concern. More determined action could be taken to address the risk of conflicts of interest effectively, notably at local level and in vulnerable sectors such as urban development.

The following points require further attention:

- Improving the track record of successful **prosecutions** and **dissuasive sanctions** in corruption cases handled by the Standards in Public Office Commission (SIPO), the Office of the Director of Corporate Enforcement (ODCE) and the police. Enhancing the power of all investigating authorities to start inquiries on their own initiative and extending their remit with regard to the enforcement of conflict of interest provisions to the regional and local levels. Pursuing the reform for the consolidation of the legal framework of the tribunals of inquiry so as to ensure speedier proceedings and more effective follow-up.
- Placing an overall limit on the amount an individual may give to a **political party and electoral candidates** or elected representatives who are members of that party, in line with the Mahon Tribunal recommendation. Imposing a reasonably short time-limit for political parties to discharge their financial disclosure obligations. Regulating financing of referendum campaigns.
- Ensuring that planning enforcement powers are vested in an independent **urban planning regulator** with capacity and powers to investigate systemic problems. Ensuring that local authorities implement plans for the prevention of fraud and corruption. Ensuring the effective prevention and detection of conflicts of interest, notably at local level.

⁶⁷ National Integrity Systems, Country Study Addendum, 2012:
<http://transparency.ie/sites/default/files/TI%20Country%20Study%20Addendum2012.pdf>