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**AN BILLE UM CHEARTAS COIRIÚIL (CIONTA
GADAÍOCHTA AGUS CALAOISE), 2000
CRIMINAL JUSTICE (THEFT AND FRAUD OFFENCES)
BILL, 2000**

*Mar a tionscnaíodh
As initiated*

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Acts Referred to

Continental Shelf Act, 1968	1968, No. 14
Criminal Evidence Act, 1992	1992, No. 12
Criminal Justice Act, 1994	1994, No. 15
Criminal Justice (Miscellaneous Provisions) Act, 1997	1997, No. 4
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Criminal Law (Jurisdiction) Act, 1976	1976, No. 14
Criminal Procedure Act, 1967	1967, No. 12
Defence Act, 1954	1954, No. 18
Ethics in Public Office Act, 1995	1995, No. 22
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Larceny Act, 1916	6 & 7 Geo. 5 c. 50
Larceny Act, 1990	1990, No. 9
Married Women's Status Act, 1957	1957, No. 5
Police (Property) Act, 1897	Ch. 30
Road Traffic Act, 1961	1961, No. 24
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AN BILLE UM CHEARTAS COIRIÚIL (CIONTA
GADAÍOCHTA AGUS CALAOISE), 2000
CRIMINAL JUSTICE (THEFT AND FRAUD OFFENCES)
BILL, 2000

BILL

entitled

AN ACT TO AMEND THE LAW RELATING TO STEALING
AND RELATED OFFENCES AND THEIR INVESTI-
GATION AND TRIAL; TO GIVE THE FORCE OF LAW
TO PROVISIONS OF THE CONVENTION ON THE PRO-
TECTION OF THE EUROPEAN COMMUNITIES' FINAN-
CIAL INTERESTS DONE AT BRUSSELS ON 26 JULY 1995
AND THE THREE PROTOCOLS TO THAT CONVEN-
TION; AND TO PROVIDE FOR CONSEQUENTIAL AND
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary

1.—(1) This Act may be cited as the Criminal Justice (Theft and
Fraud Offences) Act, 2000. Short title and
commencement.

(2) This Act shall come into operation on such day or days as may
be appointed by order or orders made by the Minister, either gener-
ally or with reference to any particular purpose or provision, and
different days may be so appointed for different purposes and differ-
ent provisions of this Act.

2.—(1) In this Act— Interpretation
(general).

“appropriates” has the meaning given to it by *section 4(4)*;

“computer” includes any electronic device capable of performing
logical or arithmetical operations on data in accordance with a set of
instructions;

“deception” has the meaning given to it by *subsection (2)*;

“dishonestly” means without a claim of right made in good faith;

“document” includes—

(a) a map, plan, graph, drawing, photograph or record, or

- (b) a reproduction in permanent legible form, by a computer or other means (including enlarging), of information in non-legible form;
- “gain” and “loss” have the meanings given to them by *subsection (3)*; 5
- “information in non-legible form” means information which is kept (by electronic means or otherwise) on microfilm, microfiche, magnetic tape or disk or in any other non-legible form;
- “owner” and “ownership”, in relation to property, have the meanings given to them by *subsection (4)*; 10
- “premises” includes a vehicle, vessel, aircraft or hovercraft or an installation in the territorial seas or in a designated area (within the meaning of the Continental Shelf Act, 1968) or a tent, caravan or other temporary or movable structure;
- “property” means money and all other property, real or personal, including things in action and other intangible property; 15
- “record” includes any information in non-legible form which is capable of being reproduced in permanent legible form;
- “stealing” means committing an offence under *section 4*, and cognate words shall be construed accordingly; 20
- “stolen property” includes property which has been unlawfully obtained otherwise than by stealing, and cognate words shall be construed accordingly;
- “theft” has the meaning given to it by *section 4(1)*;
- “unlawfully obtained” means obtained in circumstances constituting an offence, and cognate words shall be construed accordingly. 25
- (2) For the purposes of this Act a person deceives if he or she—
- (a) creates or reinforces a false impression, including a false impression as to law, value or intention or other state of mind, 30
- (b) prevents another person from acquiring information which would affect that person’s judgement of a transaction, or
- (c) fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom he or she stands in a fiduciary or confidential relationship, 35
- and references to deception shall be construed accordingly.
- (3) For the purposes of this Act—
- (a) “gain” and “loss” are to be construed as extending only to gain or loss in money or other property, whether any such gain or loss is temporary or permanent, 40
- (b) “gain” includes a gain by keeping what one has, as well as a gain by getting what one has not, and

(c) “loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has.

(4) For the purposes of this Act—

5 (a) a person shall be regarded as owning property if he or she has possession or control of it, or has in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest);

10 (b) where property is subject to a trust, the persons who own it shall be regarded as including any person having a right to enforce the trust, and an intention to defeat the trust shall be regarded accordingly as an intention to deprive of the property any person having that right;

15 (c) where a person receives property from or on behalf of another, and is under an obligation to that other person to retain and deal with that property or its proceeds in a particular way, that other person shall be regarded (as against the first-mentioned person) as the owner of the property;

20 (d) where a person gets property by another’s mistake and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then the person entitled to restoration shall to the extent of that obligation be regarded (as against the first-mentioned person) as the owner of the property or its proceeds or an amount equivalent to its value, and an intention not to make restoration shall be regarded accordingly as an intention to deprive that person of the property, proceeds or such amount;

30 (e) property of a corporation sole shall be regarded as belonging to the corporation notwithstanding a vacancy in the corporation,

and references to “owner” and “ownership” shall be construed accordingly.

35 (5) (a) A reference in this Act to a Part, section or Schedule is a reference to a Part, section or Schedule of this Act unless it is indicated that a reference to some other Act is intended.

40 (b) A reference in this Act to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended.

45 (c) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended, adapted or extended, whether before or after the passing of this Act, by or under any subsequent enactment.

3.—(1) Subject to *section 62*, the Acts specified in *Schedule 1* are repealed to the extent specified in the third column of that Schedule. Repeals, etc.

(2) Any offence at common law of larceny, burglary, robbery, cheating (except in relation to the public revenue), extortion under colour of office and forgery is abolished.

(3) The abolition of a common law offence mentioned in *subsection (2)* shall not affect proceedings for any such offence committed before its abolition.

PART 2

Theft and related offences

Theft. **4—**(1) Subject to *section 5*, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it.

(2) For the purposes of this section a person does not appropriate property without the consent of its owner if—

- (a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or
- (b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,

but consent obtained by deception or intimidation is not consent for those purposes.

(3) (a) This subsection applies to a person who in the course of business holds property in trust for, or on behalf of, more than one owner.

(b) Where a person to whom this subsection applies appropriates some of the property so held to his or her own use or benefit, the person shall, for the purposes of *subsection (1)* but subject to *subsection (2)*, be deemed to have appropriated the property or, as the case may be, a sum representing it without the consent of its owner or owners.

(c) If in any proceedings against a person to whom this subsection applies for theft of some or all of the property so held by him or her it is proved that—

- (i) there is a deficiency in the property or a sum representing it, and
- (ii) the person has failed to provide a satisfactory explanation for the whole or any part of the deficiency,

it shall be presumed, until the contrary is proved, for the purposes of *subsection (1)* but subject to *subsection (2)*, that the person appropriated, without the consent of its owner or owners, the whole or that part of the deficiency.

(4) If at the trial of a person for theft the court or jury, as the case may be, has to consider whether the person believed—

- (a) that he or she had not acted dishonestly, or
- (b) that the owner of the property concerned had consented or would have consented to its appropriation, or
- (c) that the owner could not be discovered by taking reasonable steps,

the presence or absence of reasonable grounds for such a belief is a matter to which the court or jury shall have regard, in conjunction with any other relevant matters, in considering whether the person so believed.

(5) In this section—

“appropriates”, in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property;
“depriving” means temporarily or permanently depriving.

(6) A person guilty of theft is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

5.—(1) Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by that person of rights which that person believes himself or herself to be acquiring shall, by reason of any defect in the transferor’s title, amount to theft of the property.

(2) A person cannot steal land, or things forming part of land and severed from it by or under his or her directions, except where the person—

- (a) being a trustee, personal representative or other person authorised by power of attorney or as liquidator of a company or otherwise to sell or dispose of land owned by another, appropriates the land or anything forming part of it by dealing with it in breach of the confidence reposed in him or her, or
- (b) not being in possession of the land, appropriates anything forming part of the land by severing it or causing it to be severed, or after it has been severed, or
- (c) being in possession of the land under a tenancy or licence, appropriates the whole or part of any fixture or structure let or licensed to be used with the land.

(3) For the purposes of subsection (2)—

- (a) “land” does not include incorporeal hereditaments,
“tenancy” means a tenancy for years or any less period and includes an agreement for such a tenancy,
“licence” includes an agreement for a licence,
and
- (b) a person who after the expiration of a tenancy or licence remains in possession of land shall be treated as having

possession under the tenancy or licence, and “let” and “licensed” shall be construed accordingly.

(4) A person who picks mushrooms or any other fungus growing wild on any land, or who picks flowers, fruit or foliage from a plant (including any shrub or tree) growing wild on any land, does not (although not in possession of the land) steal what is picked, unless he or she does it for reward or for sale or other commercial purpose. 5

(5) Wild creatures, tamed or untamed, shall be regarded as property; but a person cannot steal a wild creature not tamed or ordinarily kept in captivity, or the carcase of any such creature, unless it has been reduced into possession by or on behalf of another person and possession of it has not since been lost or abandoned, or another person is in course of reducing it into possession. 10

Making gain or causing loss by deception.

6.—(1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, induces another to do or refrain from doing an act is guilty of an offence. 15

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both. 20

Obtaining services by deception.

7.—(1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception obtains services from another is guilty of an offence.

(2) For the purposes of this section a person obtains services from another where the other is induced to confer a benefit on some person by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for. 25

(3) Without prejudice to the generality of *subsection (2)*, a person obtains services where the other is induced to make a loan, or to cause or permit a loan to be made, on the understanding that any payment (whether by way of interest or otherwise) will be or has been made in respect of the loan. 30

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both. 35

Making off without payment.

8.—(1) Subject to *subsection (2)*, a person who, knowing that payment on the spot for any goods obtained or any service done is required or expected, dishonestly makes off without having paid as required or expected and with the intention of avoiding payment on the spot is guilty of an offence. 40

(2) *Subsection (1)* shall not apply where the supply of the goods or the doing of the service is contrary to law or where the service done is such that payment is not legally enforceable.

(3) Subject to *subsections (5) and (6)*, any person may arrest without warrant anyone who is or whom he or she, with reasonable cause, suspects to be in the act of committing an offence under this section. 45

- (4) Where a member of the Garda Síochána, with reasonable cause, suspects that an offence under this section has been committed, he or she may arrest without warrant any person whom the member, with reasonable cause, suspects to be guilty of the offence.
- 5 (5) An arrest other than by a member of the Garda Síochána may be effected by a person under *subsection (3)* only where the person, with reasonable cause, suspects that the person to be arrested by him or her would otherwise attempt to avoid, or is avoiding, arrest by a member of the Garda Síochána.
- 10 (6) A person who is arrested pursuant to this section by a person other than a member of the Garda Síochána shall be transferred by that person into the custody of the Garda Síochána as soon as practicable.
- 15 (7) A person guilty of an offence under this section is liable on conviction on indictment to a fine not exceeding £3,000 or imprisonment for a term not exceeding 2 years or both.
- 20 **9.**—(1) A person who dishonestly, whether within or outside the State, operates or causes to be operated a computer within the State with the intention of making a gain for himself or herself or another, or of causing loss to another, is guilty of an offence. Unlawful use of computer.
- (2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.
- 25 **10.**—(1) A person is guilty of an offence if he or she dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another— False accounting.
- (a) destroys, defaces, conceals or falsifies any account or any document made or required for any accounting purpose,
- 30 (b) fails to make or complete any account or any such document, or
- (c) in furnishing information for any purpose produces or makes use of any account, or any such document, which to his or her knowledge is or may be misleading, false or deceptive in a material particular.
- 35 (2) For the purposes of this section a person shall be treated as falsifying an account or other document if he or she—
- (a) makes or concurs in making therein an entry which is or may be misleading, false or deceptive in a material particular, or
- 40 (b) omits or concurs in omitting a material particular therefrom.
- (3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.
- 45 **11.**—(1) A person is guilty of an offence if he or she dishonestly, with the intention of making a gain for himself or herself or another, Suppression, etc., of documents.

or of causing loss to another, destroys, defaces or conceals any valuable security, any will or other testamentary document or any original document of or belonging to, or filed or deposited in, any court or any government department or office.

- (2) (a) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception procures the execution of a valuable security is guilty of an offence. 5
- (b) *Paragraph (a)* shall apply in relation to—
- (i) the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and 10
- (ii) the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security, 15
- as if that were the execution of a valuable security.
- (3) In this section, “valuable security” means any document—
- (a) creating, transferring, surrendering or releasing any right to, in or over property,
- (b) authorising the payment of money or delivery of any property, or 20
- (c) evidencing the creation, transfer, surrender or release of any such right, the payment of money or delivery of any property or the satisfaction of any obligation.
- (4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both. 25

Burglary.

- 12.—**(1) A person is guilty of burglary if he or she—
- (a) enters any building or part of a building as a trespasser and with intent to commit an arrestable offence, or 30
- (b) having entered any building or part of a building as a trespasser, commits or attempts to commit any such offence therein.
- (2) References in *subsection (1)* to a building shall apply also to an inhabited vehicle or vessel and to any other inhabited temporary or movable structure, and shall apply to any such vehicle, vessel or structure at times when the person having a habitation in it is not there as well as at times when the person is there. 35
- (3) A person guilty of burglary is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 14 years or both. 40
- (4) In this section, “arrestable offence” means an offence for which a person of full age and not previously convicted may be punished by imprisonment for a term of five years or by a more severe penalty. 45

13.—(1) A person is guilty of aggravated burglary if he or she commits any burglary and at the time has with him or her any firearm or imitation firearm, any weapon of offence or any explosive. Aggravated burglary.

(2) In *subsection (1)*—

5 “explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended by the person having it with him or her for that purpose;

“firearm” means:

10 (a) a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged,

(b) an air gun (which expression includes an air rifle and an air pistol) or any other weapon incorporating a barrel from which metal or other slugs can be discharged,

15 (c) a crossbow,

(d) any type of stun gun or other weapon for causing any shock or other disablement to a person by means of electricity or any other kind of energy emission;

20 “imitation firearm” means anything which is not a firearm but has the appearance of being one;

“weapon of offence” means:

(a) any article which has a blade or sharp point,

25 (b) any other article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him or her for such use or for threatening such use,

(c) any weapon of whatever description designed for the discharge of any noxious liquid, noxious gas or other noxious thing.

30 (3) A person guilty of aggravated burglary is liable on conviction on indictment to imprisonment for life.

14.—(1) A person is guilty of robbery if he or she steals, and immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force. Robbery.

(2) A person guilty of robbery is liable on conviction on indictment to imprisonment for life.

15.—(1) A person who is, when not at his or her place of residence, in possession of any article with the intention that it be used in the course of or in connection with— Possession of certain articles.

40 (a) theft or burglary,

(b) an offence under *section 6* or *7*,

- (c) an offence under *section 17* (blackmail, extortion, demanding money with menaces) of the Criminal Justice (Public Order) Act, 1994, or
- (d) an offence under *section 112* (taking a vehicle without lawful authority) of the Road Traffic Act, 1961, 5

is guilty of an offence.

(2) A person who, without lawful authority or reasonable excuse, is in possession of any article made or adapted for use in the course of or in connection with the commission of an offence referred to in *paragraphs (a) to (d) of subsection (1)* is guilty of an offence. 10

(3) Where a person is convicted of an offence under this section, the court may order that any article for the possession of which he or she was so convicted shall be forfeited and either destroyed or disposed of in such manner as the court may determine.

(4) An order under *subsection (3)* shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired. 15

(5) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both. 20

PART 3

Handling, etc. stolen property and other proceeds of crime

Interpretation
(*Part 3*).

16.—(1) In this Part “principal offender”, for the purposes of *sections 17 and 18*, means the person who has stolen or otherwise unlawfully obtained the property alleged to have been handled or possessed, and cognate words shall be construed accordingly. 25

(2) For the purposes of this Part, a person is reckless if he or she disregards a substantial risk that the property handled is stolen, and for those purposes “substantial risk” means a risk of such a nature and degree that, having regard to the circumstances in which the person acquired the property and the extent of the information then available to him or her, its disregard involves culpability of a high degree. 30 35

(3) This Part is without prejudice to *section 31* (inserted by *section 21* of this Act) of the Criminal Justice Act, 1994.

Handling stolen
property.

17.—(1) A person is guilty of handling stolen property if (otherwise than in the course of the stealing) he or she, knowing that the property was stolen or being reckless as to whether it was stolen, dishonestly— 40

- (a) receives or arranges to receive it, or
- (b) undertakes, or assists in, its retention, removal, disposal or realisation by or for the benefit of another person, or arranges to do so. 45

(2) Where a person—

(a) receives or arranges to receive property, or

(b) undertakes, or assists in, its retention, removal, disposal or
realisation by or for the benefit of another person, or
arranges to do so,

in such circumstances that it is reasonable to conclude that the person either knew that the property was stolen or was reckless as to whether it was stolen, he or she shall be taken for the purposes of this section to have so known or to have been so reckless, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or was so reckless.

(3) A person to whom this section applies may be tried and convicted whether the principal offender has or has not been previously convicted or is or is not amenable to justice.

(4) A person guilty of handling stolen property is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both, but is not liable to a higher fine or longer term of imprisonment than that which applies to the principal offence.

18.—(1) A person who, without lawful authority or excuse, possesses stolen property (otherwise than in the course of the stealing), knowing that the property was stolen or being reckless as to whether it was stolen, is guilty of an offence.

Possession of stolen property.

(2) Where a person has in his or her possession stolen property in such circumstances (including purchase of the property at a price below its market value) that it is reasonable to conclude that the person either knew that the property was stolen or was reckless as to whether it was stolen, he or she shall be taken for the purposes of this section to have so known or to have been so reckless, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or was so reckless.

(3) A person to whom this section applies may be tried and convicted whether the principal offender has or has not been previously convicted or is or is not amenable to justice.

(4) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both, but is not liable to a higher fine or longer term of imprisonment than that which applies to the principal offence.

19.—(1) Where a member of the Garda Síochána—

(a) has reasonable grounds for believing that an offence consisting of stealing property or of handling stolen property has been committed,

(b) finds any person in possession of any property,

(c) has reasonable grounds for believing that the property referred to in *paragraph (b)* includes, or may include,

Withholding information regarding stolen property.

property referred to in *paragraph (a)* or part of it, or the whole or any part of the proceeds of that property or part, and

(d) informs the person of his or her belief,

the member may require the person to give an account of how he or she came by the property. 5

(2) If the person fails or refuses, without reasonable excuse, to give such account or gives information that the person knows to be false or misleading, he or she is guilty of an offence and is liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both. 10

(3) *Subsection (2)* shall not have effect unless the person when required to give the account was told in ordinary language by the member of the Garda Síochána what the effect of the failure or refusal might be. 15

(4) Any information given by a person in compliance with a requirement under *subsection (1)* shall not be admissible in evidence against that person or his or her spouse in any criminal proceedings, other than proceedings for an offence under *subsection (2)*.

Scope of offences relating to stolen property.

20.—(1) The provisions of this Part relating to property which has been stolen apply— 20

(a) whether the stealing occurred before or after the commencement of this Act, and

(b) to stealing outside the State if the stealing constituted an offence where and at the time when the property was stolen, 25

and references to stolen property shall be construed accordingly.

(2) For the purposes of those provisions references to stolen property include, in addition to the property originally stolen and parts of it (whether in their original state or not)— 30

(a) any property which directly or indirectly represents, or has at any time represented, the stolen property in the hands of the person who stole the property as being the proceeds of any disposal or realisation of the whole or part of the stolen property or of property so representing the stolen property, and 35

(b) any property which directly or indirectly represents, or has at any time represented, the stolen property in the hands of a handler or possessor of the stolen property or any part of it as being the proceeds of any disposal or realisation of the whole or part of the stolen property handled or possessed by him or her or of property so representing it. 40

(3) However, property shall not be regarded as having continued to be stolen property after it has been restored to the person from whom it was stolen or to other lawful possession or custody, or after that person and any other person claiming through him or her have otherwise ceased, as regards that property, to have any right to restitution in respect of the stealing. 45

21.—The Criminal Justice Act, 1994, is hereby amended by the substitution of the following section for section 31 (money laundering, etc.):

Amendment of
section 31 of
Criminal Justice
Act, 1994.

“31. (1) A person is guilty of money laundering if, knowing or believing that property is or represents the proceeds of criminal conduct or being reckless as to whether it is or represents such proceeds, the person, without lawful authority or excuse (the proof of which shall lie on him or her)—

(a) converts, transfers or handles the property, or removes it from the State, with the intention of—

(i) concealing or disguising its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or

(ii) assisting another person to avoid prosecution for the criminal conduct concerned, or

(iii) avoiding the making of a confiscation order or a confiscation co-operation order (within the meaning of section 46 of this Act) or frustrating its enforcement against that person or another person,

(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it,

or

(c) acquires, possesses or uses the property.

(2) A person guilty of money laundering is liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 14 years or to both.

(3) Where a person—

(a) converts, transfers, handles or removes from the State any property which is or represents the proceeds of criminal conduct,

(b) conceals or disguises its true nature, source, location, disposition, movement or ownership or any rights with respect to it, or

(c) acquires, possesses or uses it,

in such circumstances that it is reasonable to conclude that the person—

(i) knew or believed that the property was or represented the proceeds of criminal conduct, or

(ii) was reckless as to whether it was or represented such proceeds,

the person shall be taken to have so known or believed or to have been so reckless, unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or believed or was so reckless. 5

(4) Where a person first referred to in subsection (1) of this section does an act referred to in paragraph (a) of that subsection in such circumstances that it is reasonable to conclude that the act was done with an intention specified in that paragraph, the person shall be taken to have done the act with that intention unless the court or jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person did it with that intention. 10

(5) This section does not apply to a person in respect of anything done by that person in connection with the enforcement of any law. 15

(6) This Part shall apply whether the criminal conduct in question occurred before or after the commencement of this section and whether it was or is attributable to the person first mentioned in *subsection (1)* or another. 20

(7) (a) In this section—

(i) ‘criminal conduct’ means conduct which—

(I) constitutes an indictable offence, or

(II) where the conduct occurs outside the State, would constitute such an offence if it occurred within the State and also constitutes an offence under the law of the country or territorial unit in which it occurs, 25

and includes participation in such conduct;

(ii) ‘reckless’ shall be construed in accordance with *section 16(2) of the Criminal Justice (Theft and Fraud Offences) Act, 2000*; 30

(iii) references to converting, transferring, handling or removing any property include references to the provision of any advice or assistance in relation to converting, transferring, handling or removing it; 35

(iv) references to believing that any property is or represents the proceeds of criminal conduct include references to thinking that the property was probably, or probably represented, such proceeds; 40

(v) references to any property representing the proceeds of criminal conduct include references to the property representing those proceeds in whole or in part directly or indirectly, and cognate references shall be construed accordingly. 45

(b) For the purposes of this section a person handles property if he or she, without a claim of right made in good faith— 50

- (i) receives it, or
 - (ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or
 - 5 (iii) arranges to do any of the things specified in *subparagraph (i)* or *(ii)*.
- (c) For the purposes of *paragraph (a)(i)(II)*—
- 10 (i) a document purporting to be signed by a lawyer practising in the state or territorial unit in which the criminal conduct concerned is alleged to have occurred and stating that such conduct is an offence under the law of that state or territorial unit, and
 - 15 (ii) a document purporting to be a translation of a document mentioned in *subparagraph (i)* and to be certified as correct by a person appearing to be competent to so certify,
- shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents.”.
- 20

22.—Section 56A (inserted by section 15 of the Criminal Justice (Miscellaneous Provisions) Act, 1997), which deals with revenue offences, of the Criminal Justice Act, 1994, is hereby amended by the substitution, for “Part VII”, of “Part IV or this Part”.

Amendment of section 56A of Criminal Justice Act, 1994.

25

PART 4

Forgery

- 23.**—In this Part—
- “false” and “making”, in relation to an instrument, have the meanings assigned to these words by *section 29*,
- 30 “instrument” means:
- (a) any document, whether of a formal or informal character (other than a currency note within the meaning of *Part 5*,
 - 35 (b) any disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means,
 - (c) any postage stamp issued or sold by An Post or any mark denoting payment of postage which is authorised by An Post to be used instead of an adhesive stamp,
 - 40 (d) any stamp of the Revenue Commissioners denoting any stamp duty or fee, whether it is an adhesive stamp or a stamp impressed by means of a die,
 - (e) any social services card,

Interpretation
(*Part 4*).

- (f) any charge card, cheque card, credit card, debit card or any card combining two or more of the functions performed by such cards,
- (g) any ticket of admission to an event to which members of the public may be admitted on payment of a fee; 5

“prejudice” and “induce”, in relation to a person, have the meanings assigned to those words by *section 30*.

Forgery. **24.**—(1) A person is guilty of forgery if he or she makes a false instrument with the intention that it shall be used to induce another person to accept it as genuine and, by reason of so accepting it, to do some act, or to make some omission, to the prejudice of that person or any other person. 10

(2) A person guilty of forgery is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

Using false instrument. **25.**—(1) A person who uses an instrument which is, and which he or she knows or believes to be, a false instrument, with the intention of inducing another person to accept it as genuine and, by reason of so accepting it, to do some act, or to make some omission, or to provide some service, to the prejudice of that person or any other person is guilty of an offence. 15 20

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

Copying false instrument. **26.**—(1) A person who makes a copy of an instrument which is, and which he or she knows or believes to be, a false instrument with the intention that it shall be used to induce another person to accept it as a copy of a genuine instrument and, by reason of so accepting it, to do some act, or to make some omission, or to provide some service, to the prejudice of that person or any other person is guilty of an offence. 25 30

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

Using copy of false instrument. **27.**—(1) A person who uses a copy of an instrument which is, and which he or she knows or believes to be, a false instrument with the intention of inducing another person to accept it as a copy of a genuine instrument and, by reason of so accepting it, to do some act, or to make some omission, or to provide some service, to the prejudice of that person or another person is guilty of an offence. 35

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both. 40

Custody or control of certain false instruments, etc. **28.**—(1) A person who has in his or her custody or under his or her control an instrument—
 (a) to which this section applies, and 45

(b) which is, and which he or she knows or believes to be, a false instrument,

5 with the intention that it shall be used to induce another person to accept it as genuine and, by reason of so accepting it, to do some act, or to make some omission, or to provide some service, to the prejudice of that person or any other person is guilty of an offence.

(2) A person who, without lawful authority or excuse, has in his or her custody or under his or her control an instrument to which paragraphs (a) and (b) of subsection (1) apply is guilty of an offence.

10 (3) A person who makes or has in his or her custody or under his or her control a machine or implement, or paper or any other material, which to his or her knowledge is or has been specially designed or adapted for the making of an instrument to which this section applies with the intention—

15 (a) that it would be used in the making of an instrument to which this section applies and which is false, and

(b) that the instrument so made would be used to induce another person to accept it as genuine and, by reason of so accepting it, to do some act, or to make some omission,
20 or to provide some service, to the prejudice of that person or any other person,

is guilty of an offence.

(4) A person who, without lawful authority or excuse, makes or has in his or her custody or under his or her control any machine,
25 implement, paper or material referred to in subsection (3) is guilty of an offence.

(5) In subsections (3) and (4) references to a machine include references to any disk, tape, drive or other device on or in which a program is recorded or stored by mechanical, electronic or other
30 means, being a program designed or adapted to enable an instrument to which this section applies to be made or to assist in its making, and those subsections shall apply and have effect accordingly.

(6) This section applies to any of the following instruments—

(a) money orders,

35 (b) postal orders,

(c) postage stamps issued or sold by An Post or any marks denoting payment of postage which are authorised by An Post to be used instead of adhesive stamps,

40 (d) stamps of the Revenue Commissioners denoting any stamp duty or fee, whether they are adhesive stamps or stamps impressed by means of a die,

(e) licences or certificates issued by the Revenue Commissioners,

(f) cheques, including travellers' cheques,

45 (g) charge cards, cheque cards, credit cards, debit cards or any card combining two or more of the functions performed by such cards,

- (h) share certificates,
- (i) certified copies, issued by or on behalf of an tArd-Chláraitheoir, of entries in any register of births, stillbirths, marriages or deaths or in the Adopted Children Register,
- (j) certificates relating to such entries, 5
- (k) passports or documents which can be used instead of passports,
- (l) social services cards,
- (m) tickets of admission to events to which members of the public may be admitted on payment of a fee. 10

(7) In *subsection (6)(h)*, “share certificates” means instruments entitling or evidencing the title of persons to a share or interest—

- (a) in any public stock, annuity, fund or debt of the Government or the State or of any government or state, including a state which forms part of another state, or 15
- (b) in any stock, fund or debt of a body (whether corporate or unincorporated) wherever established.

(8) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding— 20

- (a) in the case of an offence under *subsection (2)* or *(4)*, 5 years,
- (b) in the case of an offence under *subsection (1)* or *(3)*, 10 years,

or both.

Meaning of “false” and “making”.

29.—(1) An instrument is false for the purposes of this Part if it purports— 25

- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form,
- (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form, 30
- (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms,
- (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms, 35
- (e) to have been altered in any respect by a person who did not in fact alter it in that respect,
- (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect, 40

(g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered, or

(h) to have been made or altered by an existing person where that person did not in fact exist.

(2) A person shall be treated for the purposes of this Part as making a false instrument if he or she alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

30.—(1) Subject to *subsections (2) and (4)*, for the purposes of this Part an act or omission intended to be induced shall be to a person's prejudice if, and only if, it is one which, if it occurs—

Meaning of "prejudice" and "induce".

(a) will result, as respects that person—

(i) in temporary or permanent loss of property,

(ii) in deprivation of an opportunity to earn remuneration or greater remuneration, or

(iii) in deprivation of an opportunity to gain a financial advantage otherwise than by way of remuneration,

or

(b) will result in another person being given an opportunity—

(i) to earn remuneration or greater remuneration from him or her, or

(ii) to gain a financial advantage from him or her otherwise than by way of remuneration,

or

(c) will be the result of his or her having accepted any false instrument as genuine, or any copy of it as a copy of a genuine instrument, in connection with his or her performance of any duty.

(2) An act which a person has an enforceable duty to do and an omission to do an act which a person is not entitled to do shall be disregarded for the purposes of this Part.

(3) In this Part references to inducing a person to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, include references to inducing a machine to respond to the instrument or copy as if it were a genuine instrument or copy of a genuine one.

(4) Where *subsection (3)* applies, the act or omission intended to be induced by the machine responding to the instrument or copy shall be treated as an act or omission to a person's prejudice.

PART 5

Counterfeiting

Interpretation
(Part 5).

31.—(1) In this Part—

“currency note” and “coin” mean, respectively, a currency note and coin lawfully issued or customarily used as money in the State or in any other state or a territorial unit within it and include a note denominated in the euro unit and a coin denominated in euro or in cent, whether issued or not. 5

(2) For the purposes of this Part a thing is a counterfeit of a currency note or coin— 10

- (a) if it is not a currency note or coin but resembles a currency note or coin (whether on one side only or on both) to such an extent that it is reasonably capable of passing for a currency note or coin of that description, or
- (b) if it is a currency note or coin which has been so altered that it is reasonably capable of passing for a note or coin of some other description. 15

(3) For the purposes of this Part—

- (a) a thing consisting of or containing a representation of one side only of a currency note, with or without the addition of other material, is capable of being a counterfeit of such a currency note, and 20
- (b) a thing consisting—
 - (i) of parts of two or more currency notes, or
 - (ii) of parts of a currency note, or of parts of two or more currency notes, with the addition of other material, 25

is capable of being a counterfeit of a currency note.

Counterfeiting
currency notes and
coins.

32.—(1) A person who makes a counterfeit of a currency note or coin, with the intention that he or she or another shall pass or tender it as genuine, is guilty of an offence. 30

(2) A person who outside the State makes a counterfeit of a currency note or coin, with the intention that he or she or another shall pass or tender it in any member state of the European Union as genuine, is guilty of an offence.

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both. 35

Passing, etc.
counterfeit currency
notes or coins.

33.—(1) A person who—

- (a) passes or tenders as genuine any thing which is, and which he or she knows or believes to be, a counterfeit of a currency note or coin, or 40

(b) delivers any such thing to another person with the intention that that person or any other person shall pass or tender it as genuine,

is guilty of an offence.

5 (2) A person who, without lawful authority or excuse, delivers to another person anything which is, and which he or she knows or believes to be, a counterfeit of a currency note or coin is guilty of an offence.

10 (3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding—

(a) in the case of an offence under *subsection (1)*, 10 years, or

(b) in the case of an offence under *subsection (2)*, 5 years,

or both.

15 **34.—**(1) A person who has in his or her custody or under his or her control any thing which is, and which he or she knows or believes to be, a counterfeit of a currency note or coin, intending either— Custody or control of counterfeit currency notes and coins.

(a) to pass or tender it as genuine, or

20 (b) to deliver it to another with the intention that that person or any other person shall pass or tender it as genuine,

is guilty of an offence.

(2) A person who, without lawful authority or excuse, has in his or her custody or under his or her control any thing which is, and which he or she knows or believes to be, a counterfeit of a currency
25 note or coin is guilty of an offence.

(3) A person guilty of an offence under this section is liable on conviction or indictment to a fine or imprisonment for a term not exceeding—

(a) in the case of an offence under *subsection (1)*, 10 years, or

30 (b) in the case of an offence under *subsection (2)*, 5 years,

or both.

35.—(1) A person who makes, or has in his or her custody or under his or her control, any thing which he or she intends to use, or to permit any other person to use, for the purpose of making a counterfeit of a currency note or coin with the intention that it be
35 passed or tendered as genuine is guilty of an offence. Materials and implements for counterfeiting.

(2) A person who, without lawful authority or excuse, has in his or her custody or under his or her control any thing which is or has been specially designed or adapted for making a counterfeit of a
40 currency note or coin is guilty of an offence.

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding—

- (a) in the case of an offence under *subsection (1)*, 10 years, or
- (b) in the case of an offence under *subsection (2)*, 5 years, or both.

Import and export
of counterfeits.

36.—(1) A person who without lawful authority or excuse imports into, or exports from, a member state of the European Union a counterfeit of a currency note or coin is guilty of an offence. 5

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

PART 6 10

Convention on Protection of European Communities' Financial Interests

Interpretation
(*Part 6*).

37.—(1) In this Part—

“active corruption” has the meaning given to it by Article 3.1 of the First Protocol; 15

“Community official” has the meaning given to it by Article 1.1(*b*) of the First Protocol;

“Convention” means the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests done at Brussels on 26 July 1995; 20

“First Protocol” means the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests done at Brussels on 27 September 1996; 25

“fraud affecting the European Communities' financial interests” has the meaning given to it by Article 1.1 of the Convention;

“money laundering” has the meaning given to it by section 31 (inserted by *section 21* of this Act) of the Criminal Justice Act, 1994;

“national official”, for the purposes of the application in the State of Article 1.1(*c*) of the First Protocol, means any one of the following persons: 30

- (a) a Minister of the Government or Minister of State;
- (b) an Attorney General who is not a member of Dáil Éireann or Seanad Éireann; 35
- (c) the Comptroller and Auditor General;
- (d) a member of Dáil Éireann or Seanad Éireann;
- (e) a judge of a court in the State;
- (f) the Director of Public Prosecutions;

(g) any other holder of an office who is remunerated wholly or partly out of moneys provided by the Oireachtas;

(h) any person employed by a person referred to in any of *paragraphs (d) to (g)* in the performance of that person's official functions; and

(i) a director of, or an occupier of a position of employment in, a public body as defined in the Ethics in Public Office Act, 1995;

and, for the purposes of the application in the State of Article 4.2 of the First Protocol, any one of the following persons shall be treated as a national official:

(i) a member of the Commission of the European Communities;

(ii) a member of the European Parliament;

(iii) a member of the Court of Justice of the European Communities;

(iv) a member of the Court of Auditors of the European Communities;

“official” has the meaning given to it by Article 1.1(a) of the First Protocol;

“passive corruption” has the meaning given to it by Article 2.1 of the First Protocol;

“Protocol on Interpretation” means the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities’ financial interests done at Brussels on 29 November 1996; and

“Second Protocol” means the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities’ financial interests done at Brussels on 19 June 1997.

(2) For the purposes of *sections 39(c)* and *42(1)(a)*—

(a) a person benefits from fraud or money laundering if he or she obtains property as a result of or in connection with the commission of an offence under either of those provisions, and

(b) a person derives a pecuniary advantage from fraud or money laundering if he or she obtains a sum of money as a result of or in connection with the commission of such an offence.

38.—(1) Subject to the provisions of this Part, the Convention (other than Article 7.2), the First Protocol, the Protocol on Interpretation (other than Article 2(b)) and the Second Protocol (other than Articles 8 and 9) shall have the force of law in the State and judicial notice shall be taken of them.

Convention and
Protocols to have
force of law.

(2) Judicial notice shall also be taken of any ruling or decision of, or expression of opinion by, the Court of Justice of the European Communities on any question as to the meaning or effect of any

provision of the Convention, the First Protocol, the Protocol on Interpretation and the Second Protocol.

(3) For convenience of reference there are set out in *Schedules 2 to 9* respectively—

- (a) the text in the English language of the Convention; 5
- (b) the text in the Irish language of the Convention;
- (c) the text in the English language of the First Protocol;
- (d) the text in the Irish language of the First Protocol;
- (e) the text in the English language of the Protocol on Interpretation; 10
- (f) the text in the Irish language of the Protocol on Interpretation;
- (g) the text in the English language of the Second Protocol;
- (h) the text in the Irish language of the Second Protocol.

Fraud affecting
European
Communities’
financial interests.

- 39.**—A person who— 15
- (a) commits in whole or in part any fraud affecting the European Communities’ financial interests,
 - (b) participates in, instigates or attempts any such fraud, or
 - (c) obtains the benefit of, or derives any pecuniary advantage from, any such fraud, 20

is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

Active corruption.

- 40.**—A person who commits active corruption is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both. 25

Passive corruption.

- 41.**—An official who commits passive corruption is guilty of an offence and is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

Extra—territorial
jurisdiction in case
of certain offences.

- 42.**—(1) It is an offence for a person to commit fraud affecting the Communities’ financial interests or to commit the offence of money laundering, or to participate in, instigate or attempt any such fraud or offence, outside the State if— 30
- (a) the benefit of the fraud or offence is obtained, or a pecuniary advantage is derived from it, by a person within the State, or 35
 - (b) a person within the State knowingly assists or induces the commission of the fraud or offence, or

(c) the offender is an Irish citizen, a national official or a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the State.

(2) Active or passive corruption committed by a person outside the State is an offence if—

(a) the offender is an Irish citizen, a national official or a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters within the State, or

(b) in the case of active corruption, it is directed against an official, or a member of one of the institutions mentioned in *paragraphs (i) to (iv)* of the definition of “national official” in *section 37*, who is an Irish citizen.

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

43.—(1) Where a person is charged with an offence under *section 42*, no further proceedings (other than a remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

Restriction on certain proceedings.

(2) Where the Director of Public Prosecutions considers that another member state of the European Union has jurisdiction to try a person charged with an offence under *section 42*, the Director shall cooperate with the appropriate authorities in the member state concerned with a view to centralising the prosecution of the person in a single member state where possible.

(3) Proceedings for an offence to which this section applies may be taken in any place in the State, and the offence may for all incidental purposes be treated as having been committed in that place.

(4) Proceedings shall not be taken under *section 38* of the Extradition Act, 1965, in respect of an act that is an offence under both of that section and *section 42* of this Act.

44.—For the purposes of the application in the State of Article 5.3 of the Convention, as applied by Article 12.1 of the Second Protocol, extradition for the offence of fraud against the European Communities’ financial interests or money laundering shall not be refused, notwithstanding *section 13* of the Extradition Act, 1965, solely on the ground that the offence constitutes a revenue offence as defined in that Act.

Extradition for revenue offences.

PART 7

Investigation of offences

45.—(1) This section applies to an offence under any provision of this Act for which a person of full age and capacity and not previously convicted may be punished by imprisonment for a term of

Search warrants.

five years or by a more severe penalty and to an attempt to commit any such offence.

(2) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of, or relating to the commission of, an offence to which this section applies is to be found in any place, issue a warrant for the search of that place and any persons found there. 5

(3) A warrant under this section shall be expressed and shall operate to authorise a named member of the Garda Síochána, alone or accompanied by such other persons as may be necessary— 10

- (a) to enter, within 7 days from the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant,
- (b) to search it and any persons found there, 15
- (c) to examine, seize and retain any thing found there, or in the possession of a person present there at the time of the search, which the member reasonably believes to be evidence of or relating to the commission of an offence to which this section applies, and 20
- (d) to take any other steps which may appear to the member to be necessary for preserving any such thing and preventing interference with it.

(4) The authority conferred by *subsection (3)(c)* to seize and retain any thing includes, in the case of a document or record, authority— 25

- (a) to make and retain a copy of the document or record, and
- (b) where necessary, to seize and, for as long as necessary, retain any computer or other storage medium in which any record is kept. 30

(5) A member of the Garda Síochána acting under the authority of a warrant under this section may—

- (a) operate any computer at the place which is being searched or cause any such computer to be operated by a person accompanying the member for that purpose, and 35
- (b) require any person at that place who appears to the member to have lawful access to the information in any such computer—
 - (i) to give to the member any password necessary to operate it, 40
 - (ii) otherwise to enable the member to examine the information accessible by the computer in a form in which the information is visible and legible, or
 - (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible. 45

5 (6) Where a member of the Garda Síochána has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(7) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

10 (8) In this section, unless the context otherwise requires—

“commission”, in relation to an offence, includes an attempt to commit the offence;

15 “computer at the place which is being searched” includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer;

“place” includes a dwelling;

“thing” includes an instrument (within the meaning of *Part 4*), a copy of such instrument, a document or a record.

46.—(1) A person who—

20 (a) obstructs or attempts to obstruct a member of the Garda Síochána acting under the authority of a warrant issued under this Part, or

25 (b) is found in or at the place named in the warrant by a member of the Garda Síochána so acting and fails or refuses to give the member his or her name and address when required by the member to do so or gives the member a name and address that is false or misleading, or

(c) fails without lawful authority or excuse to comply with a requirement under *paragraph (b)* or *section 45(5)(b)*,

30 is guilty of an offence and is liable on summary conviction to a fine not exceeding £500 or imprisonment for a term not exceeding 6 months or both.

Obstruction of
Garda acting on
warrant.

35 (2) A member of the Garda Síochána may arrest without warrant any person who is committing an offence under this section or whom the member suspects, with reasonable cause, of having done so.

47.—(1) This section applies to any thing which has been seized by a member of the Garda Síochána (whether the seizure was effected by virtue of a warrant under *section 45* or otherwise) and which the member suspects to be—

Forfeiture of seized
property.

40 (a) any thing used (whether before or after the commencement of this section), or intended to be used, for the making of any false instrument, or any copy of a false instrument, in contravention of *section 24* or *26* respectively,

45 (b) any false instrument or any copy of a false instrument used (whether before or after the commencement of this

section), or intended to be so used, in contravention of *section 25* or *27* respectively,

(c) any thing the custody or control of which, without lawful authority or excuse, is an offence under *section 28*,

(d) any thing which is a counterfeit of a currency note or coin, 5

(e) any thing used, whether before or after the commencement of this section, or intended to be used, for the making of any such counterfeit.

(2) A member of the Garda Síochána may, at any time after the seizure of any thing to which this section applies, apply to the judge of the District Court for the time being assigned to the district in which the seizure was effected for an order under this subsection with respect to it; and the judge may, if satisfied both that the thing is one to which this section applies and that it is in the public interest to do so, subject to *subsection (4)*, make such order as the judge thinks fit for its forfeiture and subsequent destruction or disposal. 10 15

(3) Subject to *subsection (4)*, the court by or before which a person is convicted of an offence under *Part 4* or *5* may order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order. 20

(4) The court shall not order any thing to be forfeited under *subsection (3)* or *(4)* where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to the person to show cause why the order should not be made. 25

Concealing facts disclosed by documents.

48.—(1) Any person who—

(a) knows or suspects that an investigation by the Garda Síochána into an offence under this Act is being or is likely to be carried out, and 30

(b) falsifies, conceals, destroys or otherwise disposes of a document or record which he or she knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal,

is guilty of an offence. 35

(2) Where a person—

(a) falsifies, conceals, destroys or otherwise disposes of a document, or

(b) causes or permits its falsification, concealment, destruction or disposal, 40

in such circumstances that it is reasonable to conclude that the person knew or suspected—

(i) that an investigation by the Garda Síochána into an offence under this Act was being or was likely to be carried out, and 45

(ii) that the document was or would be relevant to the investigation,

he or she shall be taken for the purposes of this section to have so known or suspected, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he or she so knew or suspected.

(3) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

10 **49.**—(1) This section applies to any offence under this Act which is punishable by imprisonment for a term of five years or by a more severe penalty. Order to produce evidential material.

15 (2) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, may, if he or she is satisfied that—

(a) the Garda Síochána are investigating an offence to which this section applies,

(b) a person has possession or control of particular material or material of a particular description, and

20 (c) there are reasonable grounds for suspecting that the material constitutes evidence of or relating to the commission of the offence,

order that the person shall—

25 (i) produce the material to a member of the Garda Síochána for the member to take away, or

(ii) give such a member access to it,

either immediately or within such period as the order may specify.

30 (3) Where the material consists of or includes information contained in a computer, the order shall have effect as an order to produce the information, or to give access to it, in a form in which it is visible and legible and in which it can be taken away.

(4) An order under this section—

35 (a) in so far as it may empower a member of the Garda Síochána to take away a document, or to be given access to it, shall also have effect as an order empowering the member to take away a copy of the document (and for that purpose the member may, if necessary, make a copy of the document),

40 (b) shall not confer any right to production of, or access to, any document subject to legal privilege, and

(c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(5) Any material taken away by a member of the Garda Síochána, under this section may be retained by the member for use as evidence in any criminal proceedings.

(6) (a) Information contained in a document which was produced to a member of the Garda Síochána, or to which such a member was given access, in accordance with an order under this section shall be admissible in any criminal proceedings as evidence of any fact therein of which direct oral evidence would be admissible unless the information— 10

(i) is privileged from disclosure in such proceedings,

(ii) was supplied by a person who would not be compellable to give evidence at the instance of the prosecution,

(iii) was compiled for the purposes or in contemplation of any— 15

(I) criminal investigation,

(II) investigation or inquiry carried out pursuant to or under any enactment,

(III) civil or criminal proceedings, or 20

(IV) proceedings of a disciplinary nature,

or unless the requirements of the provisions mentioned in *paragraph (b)* are not complied with.

(b) References in sections 7 (notice of documentary evidence to be served on accused), 8 (admission and weight of documentary evidence) and 9 (admissibility of evidence as to credibility of supplier of information) of the Criminal Evidence Act, 1992, to a document or information contained in it shall be construed as including references to a document mentioned in *paragraph (a)* and the information contained in it, and those provisions shall have effect accordingly with any necessary modifications. 25 30

(c) The Criminal Procedure Act, 1967, is amended both in section 6(1)(e) (as amended by section 10 of the Criminal Evidence Act, 1992) and in section 11 (as so amended) 35 by the insertion, after “1992”, of “or *section 49(6)(b)* of the *Criminal Justice (Theft and Fraud Offences) Act, 2000*,”.

(7) A judge of the District Court may, on the application of any person to whom an order under this section relates or a member of the Garda Síochána, vary or discharge the order. 40

(8) A person who without reasonable excuse fails or refuses to comply with an order under this section is guilty of an offence and liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both. 45

PART 8

Trial of Offences

50.—The District Court may try summarily a person charged with an indictable offence under this Act if—

Summary trial of
indictable offences.

- 5 (a) the Court is of opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily,
- (b) the accused, on being informed by the Court of his or her right to be tried with a jury, does not object to being tried summarily, and
- 10 (c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.

51.—(1) In any proceedings for an offence or attempted offence under any of *sections 6 and 7* and *sections 9 to 11* it shall not be necessary to prove an intention dishonestly to cause a loss to, or make a gain at the expense of, a particular person, and it shall be sufficient to prove that the accused did the act charged dishonestly with the intention of causing such a loss or making such a gain.

Trial procedure.

15 (2) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled or possessed all or any of the stolen property, and the persons so charged may be tried together.

20 (3) Any person who—

 (a) is a member of a partnership or is one of two or more beneficial owners of any property, and

25 (b) steals any property of or belonging to the partnership or such beneficial owners,

is liable to be dealt with, tried and punished as if he or she had not been or was not a member of the partnership or one of such beneficial owners.

30 (4) If on the trial of a person for stealing any property it appears that the property alleged to have been stolen at one time was taken at different times, the separate takings may be tried together, to a number not exceeding 3, provided that not more than 6 months elapsed between the first and the last of the takings.

35 (5) Charges of stealing, handling or possessing any property or any part thereof may be included in separate counts of the same indictment and such counts may be tried together.

 (6) Any person or persons charged in separate counts of the same indictment with stealing any property or any part thereof may be severally found guilty of stealing, handling or possessing the property or any part thereof.

40 (7) On the trial of two or more persons indicted for jointly handling or possessing any stolen property the court or jury, as the case may be, may find any of the accused guilty if satisfied that he or she handled or possessed all or any part of such property, whether or

45 not he or she did so jointly with the other accused or any of them.

Alternative verdicts. **52.**—(1) If, on the trial of a person for theft or for unlawfully obtaining property otherwise, it is proved that the person handled or possessed the property in such circumstances as to constitute an offence under *section 17* or *18*, he or she may be convicted of that offence. 5

(2) If, on the trial of a person for an offence under *section 17* or *18* of handling or possessing stolen or otherwise unlawfully obtained property, it is proved that the person stole or otherwise unlawfully obtained the property, he or she may be convicted of the theft of the property or of the offence consisting of unlawfully obtaining the property. 10

Orders for restitution. **53.**—(1) Where property has been stolen and either—
(a) a person is convicted of an offence with reference to the theft (whether or not the stealing is the essential ingredient of the offence), or 15
(b) a person is convicted of any other offence but the first-mentioned offence is taken into consideration in determining his or her sentence,

the court by or before which the person is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred)— 20

- (i) order anyone having possession or control of the property to restore it to any person entitled to recover it from the convicted person,
- (ii) on the application of a person entitled to recover from the convicted person any other property directly or indirectly representing the first-mentioned property (as being the proceeds of any disposal or realisation of the whole or part of it or of property so representing it), order that other property to be delivered or transferred to the applicant, or 25 30
- (iii) order that a sum not exceeding the value of the first-mentioned property shall be paid, out of any money of the convicted person which was taken out of his or her possession when arrested, to any person who, if that property were in the possession of the convicted person, would be entitled to recover it from him or her. 35

(2) Where the court has power on a person's conviction to make an order against him or her under both *paragraph (ii)* and *paragraph (iii)* of *subsection (1)* with reference to the stealing of the same property, the court may make orders under both paragraphs, if the person in whose favour the orders are made does not thereby recover more than the value of that property. 40

- (3) Where—
- (a) the court makes an order under *subsection (1)(i)* for the restoration of any property, and 45
 - (b) it appears to the court that the convicted person has sold the property to a person acting in good faith or has borrowed money on the security of it from a person so acting,

then, on the application of the purchaser or lender the court may order that there shall be paid to the applicant, out of any money of the convicted person which was taken out of his or her possession when arrested, a sum not exceeding the amount paid for the purchase by the applicant or, as the case may be, the amount owed to the applicant in respect of the loan.

(4) (a) The court shall not exercise the powers conferred by this section unless in its opinion the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers.

(b) In *paragraph (a)* “available documents” means—

(i) any written statements or admissions which were made for use, and would have been admissible in evidence, at the trial,

(ii) any depositions taken in any proceedings before the trial, and

(iii) any written statements or admissions used as evidence at the trial or in any such proceedings.

(5) The provisions of *section 20* in relation to property which has been stolen shall have effect also in relation to the property referred to in this section.

(6) This section is without prejudice to the Police (Property) Act, 1897 (disposal of property in the possession of the Garda Síochána).

54.—(1) In a trial on indictment of an offence under this Act, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate: Provision of information to juries.

(a) any document admitted in evidence at the trial,

(b) the transcript of the opening speeches of counsel,

(c) any charts, diagrams, graphics, schedules or summaries of evidence produced at the trial,

(d) the transcript of the whole or any part of the evidence given at the trial,

(e) the transcript of the trial judge’s charge to the jury,

(f) any other document that in the opinion of the trial judge would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons which are relevant to the offence.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in *subsection (1)(f)* shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application,

the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit mentioned in *subsection (1)(f)* shall be given to the jury, he or she may in an appropriate case, with a view to further assisting the jury in its deliberations, require the accountant who prepared such an affidavit to explain to the jury any relevant accounting procedures or principles. 5

PART 9

Miscellaneous 10

Dishonest use of assumed name. 55.—(1) A person who uses an assumed name with the intention that it be used in the course of or in connection with the commission of an offence under this Act is guilty of an offence.

(2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years or both. 15

Liability for offences by bodies corporate and unincorporated. 56.—(1) Where—
(a) an offence under this Act has been committed by a body corporate, and
(b) the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, a person who was either— 20
(i) a director, manager, secretary or other officer of the body corporate, or
(ii) a person purporting to act in any such capacity, 25

that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if he or she were a director or manager of the body corporate. 30

(3) The foregoing provisions shall apply, with the necessary modifications, in relation to offences under this Act committed by an unincorporated body. 35

Reporting of offences. 57.—(1) In this section—
“firm” means a partnership, a corporate or unincorporated body or a self-employed individual;
“relevant person” means a person— 40
(a) who audits the accounts of a firm, or

(b) who otherwise with a view to reward assists or advises a firm in the preparation or delivery of any information, or of any declaration, return, account or other document, which the person knows will be, or is likely to be, used for the purpose of keeping or auditing the accounts of the firm,

but does not include an employee of a firm who—

(i) in that capacity so assists or advises the firm, and

(ii) whose income from so doing consists solely of emoluments chargeable to income tax under Schedule E, as defined in section 19 of the Taxes Consolidation Act, 1997.

(2) Where the accounts of a firm, or as the case may be any information, document mentioned in *subsection (1)(b)*, indicate that—

(a) an offence under this Act (other than *sections 8, 12 to 15, 46(1) and 49(8)*) may have been committed by the firm concerned, or

(b) such an offence may have been committed in relation to its affairs by a partner in the firm or, in the case of a corporate or unincorporated body, by a director, manager, secretary or other employee thereof, or by the self-employed individual concerned,

the relevant person shall, notwithstanding any professional obligations of privilege or confidentiality, report that fact to a member of the Garda Síochána.

(3) A person who fails, without reasonable excuse, to comply with the duty imposed by *subsection (2)* is guilty of an offence and is liable on summary conviction to a fine not exceeding £1,500 or imprisonment for a term not exceeding 12 months or both.

58.—(1) For the purposes of any provision of this Act relating to specified conduct outside the State—

Evidence in proceedings.

(a) a document purporting to be signed by a lawyer practising in the state or territorial unit where the conduct is alleged to have occurred and stating that the conduct is an offence under the law of that state or territorial unit, and

(b) a document purporting to be a translation of a document mentioned in *paragraph (a)* and to be certified as correct by a person appearing to be competent to so certify,

shall be admissible in any proceedings, without further proof, as evidence of the matters mentioned in those documents.

(2) For the purposes of *section 42* a document purporting to be signed by an officer of the Department of Foreign Affairs and stating that a passport was issued by the Department to a specified person on a specified date and that, to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen shall be admissible in any proceedings, without further proof, as evidence that the person was an Irish citizen on the date on which the offence under that section with which the person is charged was committed.

Jurisdiction of District Court in certain proceedings.

59.—For the purposes of the exercise of jurisdiction by a judge of the District Court in proceedings for an offence under this Act committed on a vessel or hovercraft or on an installation in the territorial seas or in a designated area (within the meaning of the Continental Shelf Act, 1968) the offence may be treated as having been committed in any place in the State. 5

Amendment of section 9 of Married Women's Status Act, 1957.

60.—Section 9 of the Married Women's Status Act, 1957, is hereby amended by the substitution for subsection (3) of the following subsection:
“(3) No criminal proceedings referred to in subsection (1) or (2) shall be taken by a spouse against the other spouse except by or with the consent of the Director of Public Prosecutions.”. 10

Amendment of Defence Act, 1954.

61.—The Defence Act, 1954, is hereby amended by the substitution for section 156 (as substituted by the Larceny Act, 1990) of the following section: 15

- “156. (1) Every person subject to military law who—
- (a) steals or otherwise unlawfully obtains any property belonging to a person subject to military law or any public service property or service property, or
 - (b) handles or possesses (within the meaning of *section 17 or 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2000*) any such property,

is guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment or any less punishment awardable by a court martial. 25

(2) The said *sections 17 and 18* shall apply to the offences of handling and possessing under subsection (1)(b) of this section as they apply to the offences of handling and possessing stolen or otherwise unlawfully obtained property.”.

Effect of Act and transitional provisions.

62.—(1) This Act, save as otherwise provided by it, shall, as regards offences under any of its provisions, have effect only in relation to offences wholly or partly committed on or after the commencement of any such provision. 30

(2) No repeal or amendment by this Act of any enactment relating to procedure or evidence or to the jurisdiction or powers of any court or to the effect of a conviction shall affect the operation of the enactment in relation to offences committed before the commencement of this Act or to proceedings for any such offence. 35

- (3) If—
- (a) a person is charged in the alternative with having committed an offence under a statute or rule of law in force immediately before the commencement of this Act and an offence under this Act, and 40
 - (b) it is proved that the person did acts which would constitute either of the offences charged, but it is not proved whether those acts were done before or after such commencement, 45

the person may be convicted of the first-mentioned offence but shall not be liable to a penalty greater than the lesser of the maximum penalties provided for the two offences with which the person was charged.

5 (4) Except as regards offences committed before the commencement of this Act and except where the context otherwise requires—

10 (a) references in any enactment passed before this Act to an offence abolished by this Act shall, subject to any express amendment or repeal made by this Act, have effect as references to the corresponding offence under this Act, and

15 (b) without prejudice to *paragraph (a)*, references, however expressed, in any enactment, whenever passed, to theft or stealing (including references to stolen goods) or related offences, and references to robbery, burglary, aggravated burglary, receiving or handling stolen property, forgery or counterfeiting shall be construed in accordance with the provisions of this Act, and any such enactment shall have effect accordingly, with any necessary modifications.

20 (5) (a) The repeal by *section 3(1)* of sections 23 (robbery), 23A (burglary) and 23B (aggravated burglary) of the Larceny Act, 1916, shall not affect the operation of those sections for the purposes of section 2 of, and paragraph 9 of the Schedule to, the Criminal Law (Jurisdiction) Act, 1976, and accordingly that section and that paragraph shall have effect as if *section 3(1)* had not been enacted.

25 (b) References in *paragraph (a)* to sections 23, 23A and 23B of the Larceny Act, 1916, are to those sections as substituted, or as the case may be inserted, by sections 5 to 7 of the Criminal Law (Jurisdiction) Act, 1976.

30 (6) On the commencement of this subsection—

 (a) *subsection (5)* shall cease to have effect,

 (b) sections 5 to 7 of the Criminal Law (Jurisdiction) Act, 1976, shall be repealed, and

35 (c) the following paragraph shall be substituted for paragraph 9 of the Schedule to the Criminal Law (Jurisdiction) Act, 1976:

 “*Robbery and burglary*

40 9. Any offence under the following provisions of the *Criminal Justice (Theft and Fraud Offences) Act, 2000*:

 (a) *section 13* (aggravated burglary);

 (b) *section 14* (robbery).”.

Section 3.

SCHEDULE 1
Enactments Repealed

Session & Chapter or Number & Year (1)	Short Title (2)	Extent of repeal (3)	
24 & 25 Vict., c. 96	Larceny Act, 1861	The whole Act, except sections 12 to 16 and 24 and 25	5
24 & 25 Vict., c. 98	Forgery Act, 1861	The whole Act	
24 & 25 Vict., c. 99	Coinage Offences Act, 1861	The whole Act	10
24 & 25 Vict., c. 50	Summary Jurisdiction (Ireland) Act, 1862	Sections 4 to 8	
35 & 36 Vict., c. 57	Debtors (Ireland) Act, 1872	Section 13	
38 & 39 Vict., c. 24	Falsification of Accounts Act, 1875	The whole Act	15
56 & 57 Vict., c. 71	Sale of Goods Act, 1893	Section 24	
3 & 4 Geo. 5, c. 27	Forgery Act, 1913	The whole Act	
6 & 7 Geo. 5, c. 50	Larceny Act, 1916	The whole Act	
No. 2 of 1951	Criminal Justice Act, 1951	Sections 10 and 13 and ref. nos. 8, 11, 14, 15 and 20 of First Schedule	20
No. 2 of 1956	Gaming and Lotteries Act, 1956	Section 11	
No. 22 of 1984	Criminal Justice Act, 1984	Section 16	
No. 9 of 1990	Larceny Act, 1990	The whole Act	25

Section 38.

SCHEDULE 2

Text in the English language of the Convention drawn up on
the basis of Article K.3 of the Treaty on European Union, on
the protection of the European Communities' financial interests
done at Brussels on 26 July 1995 30

CONVENTION

**Drawn up on the basis of Article K.3 of the Treaty on European
Union, on the protection of the European Communities' financial
interests**

THE HIGH CONTRACTING PARTIES to this Convention, Mem- 35
ber States of the European Union,

REFERRING to the Act of the Council of the European Union of
26 July 1995;

DESIRING to ensure that their criminal laws contribute effectively
to the protection of the financial interests of the European Com- 40
munities;

NOTING that fraud affecting Community revenue and expenditure in many cases is not confined to a single country and is often committed by organized criminal networks;

5 CONVINCED that protection of the European Communities' financial interests calls for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition;

10 CONVINCED of the need to make such conduct punishable with effective, proportionate and dissuasive criminal penalties, without prejudice to the possibility of applying other penalties in appropriate cases, and of the need, at least in serious cases, to make such conduct punishable with deprivation of liberty which can give rise to extradition;

15 RECOGNIZING that businesses play an important role in the areas financed by the European Communities and that those with decision-making powers in business should not escape criminal responsibility in appropriate circumstances;

20 DETERMINED to combat together fraud affecting the European Communities' financial interests by undertaking obligations concerning jurisdiction, extradition, and mutual cooperation,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

General provisions

25 1. For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

(a) in respect of expenditure, any intentional act or omission relating to:

30 — the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

35 — non-disclosure of information in violation of a specific obligation, with the same effect,

— the misapplication of such funds for purposes other than those for which they were originally granted;

(b) in respect of revenue, any intentional act or omission relating to:

40 — the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect.

2. Subject to Article 2 (2), each Member State shall take the necessary and appropriate measures to transpose paragraph 1 into their national criminal law in such a way that the conduct referred to therein constitutes criminal offences. 5

3. Subject to Article 2 (2), each Member State shall also take the necessary measures to ensure that the intentional preparation or supply of false, incorrect or incomplete statements or documents having the effect described in paragraph 1 constitutes a criminal offence if it is not already punishable as a principal offence or as participation in, instigation of, or attempt to commit, fraud as defined in paragraph 1. 10 15

4. The intentional nature of an act or omission as referred to in paragraphs 1 and 3 may be inferred from objective, factual circumstances.

Article 2

Penalties 20

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1 (1), are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in cases of serious fraud, penalties involving deprivation of liberty which can give rise to extradition, it being understood that serious fraud shall be considered to be fraud involving a minimum amount to be set in each Member State. This minimum amount may not be set at a sum exceeding ECU 50 000. 25

2. However in cases of minor fraud involving a total amount of less than ECU 4 000 and not involving particularly serious circumstances under its laws, a Member State may provide for penalties of a different type from those laid down in paragraph 1. 30

3. The Council of the European Union, acting unanimously, may alter the amount referred to in paragraph 2. 35

Article 3

Criminal liability of heads of businesses

Each Member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud affecting the European Community's financial interests, as referred to in Article 1, by a person under their authority acting on behalf of the business. 40

Article 4

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance
5 with Article 1 and 2 (1) when:

- fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory,
- 10 — a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State,
- the offender is a national of the Member State concerned, provided that the law of that Member State may require the
15 conduct to be punishable also in the country where it occurred.

2. Each Member State may declare, when giving the notification referred to in Article 11 (2), that it will not apply the rule laid down in the third indent of paragraph 1 of this Article.

20 *Article 5*

Extradition and prosecution

1. Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with
25 Articles 1 and 2 (1), when committed by its own nationals outside its territory.

2. Each Member State shall, when one of its nationals is alleged to have committed in another Member State a criminal offence involving the conduct described in Articles 1 and 2 (1), and it does
30 not extradite that person to that other Member State solely on the ground of his or her nationality, submit the case to its competent authorities for the purpose of prosecution if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the
35 procedures laid down in Article 6 of the European Convention on Extradition. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

3. A Member State may not refuse extradition in the event of fraud affecting the European Communities' financial interests for the
40 sole reason that it concerns a tax or customs duty offence.

4. For the purposes of this Article, a Member State's own nationals shall be construed in accordance with any declaration made by it under Article 6 (1) (b) of the European Convention on Extradition and with paragraph 1 (c) of the Article.

Article 6

Cooperation

1. If a fraud as defined in Article 1 constitutes a criminal offence and concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State. 5

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible. 10

Article 7

Ne bis in idem 15

1. Member States shall apply in their national criminal laws the 'ne bis in idem' rule, under which a person whose trial has been finally disposed of in a Member State may not be prosecuted in another Member State in respect of the same facts, provided that if a penalty was imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing State. 20

2. A Member State may, when giving the notification referred to in Article 11 (2), declare that it shall not be bound by paragraph 1 of this Article in one or more of the following cases: 25

(a) if the facts which were the subject of the judgement rendered abroad took place on its own territory either in whole or in part; in the latter case this exception shall not apply if those facts took place partly on the territory of the Member State where the judgement was rendered; 30

(b) if the facts which were the subject of the judgment rendered abroad constitute an offence directed against the security or other equally essential interests of that Member State;

(c) if the facts which were the subject of the judgment rendered abroad were committed by an official of the Member State contrary to the duties of his office. 35

3. The exceptions which may be the subject of a declaration under paragraph 2 shall not apply if the Member State concerned in respect of the same facts requested the other Member State to bring the prosecution or granted extradition of the person concerned. 40

4. Relevant bilateral or multilateral agreements concluded between Member States and relevant declarations shall remain unaffected by this Article.

Article 8

Court of Justice 45

1. Any dispute between Member States on the interpretation or application of this Convention must in an initial stage be examined

by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution.

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute.

2. Any dispute between one or more Member States and the Commission of the European Communities concerning the application of Article 1 or 10 of this Convention which it has proved impossible to settle through negotiation may be submitted to the Court of Justice.

Article 9

Internal provisions

No provision in this Convention shall prevent Member States from adopting internal legal provisions which go beyond the obligations deriving from this Convention.

Article 10

Transmission

1. Member States shall transmit to the Commission of the European Communities the text of the provisions transposing into their domestic law the obligations imposed on them under the provisions of this Convention.

2. For the purposes of implementing this Convention, the High Contracting Parties shall determine, within the Council of the European Union, the information to be communicated or exchanged between the Member States or between the Member States and the Commission, and also the arrangements for doing so.

Article 11

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of their constitutional requirements for adopting this Convention.

3. This Convention shall enter into force 90 days after the notification, referred to in paragraph 2, by the last Member State to fulfil that formality.

Article 12

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the said period 90 days.

Article 13 10

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations, and also any other notification concerning this Convention.

Section 38.

SCHEDULE 3

Text in the Irish language of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests done at Brussels on 26 July 1995

COINBHINSIÚN

arna dhreachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Choinbhinsiún seo, Ballstáit den Aontas Eorpach,

AG TAGAIRT DÓIBH do Ghníomh ó Chomhairle an Aontais Eorpaigh an 29 Meitheamh 1995;

ÓS MIAN LEO a áirithiú go gcuidíonn a ndlíthe coiriúla go héifeachtach le leasanna airgeadais na gComhphobal Eorpach a chosaint;

AG TABHAIRT DÁ nAIRE DÓIBH nach bhfuil calaois a dhéanann difear d'ioncam agus do chaiteachas an Chomhphobail teoranta do thír amháin i mórán cásanna, agus gur minic gur gréasáin choiriúla eagraithe údar na calaoise sin;

ÓS DEIMHIN LEO go n-éilfonn cosaint leasanna airgeadais na gComhphobal Eorpach go ndéanfar iompar calaoiseach a dhéanann díobháil do na leasanna sin a ionchúiseamh agus gur gá chun na críche sin sainmhíniú coiteann a ghlacadh;

ÓS DEIMHIN LEO gur gá iompar den sórt sin a dhéanamh inphionóis le pionóis choiriúla atá éifeachtach, comhréireach agus athchomhairleach, gan dochar don fhéidearthacht pionóis eile a chur i bhfeidhm i gcásanna iomchuí, agus gur gá ar a laghad i gcásanna

tromchúiseacha iompar den sórt sin a dhéanamh inphionóis le cailleadh saoirse a bhféadfaidh eiseachadh teacht as;

5 AG AITHINT DÓIBH go bhfuil ról tábhachtach ag gnóthais i réimsí arna maoiniú ag na Comhphobail Eorpacha agus nár chóir go n-éalóidís siúd a bhfuil cumhachtaí cinnteoireachta i ngnóthais acu óna bhfreagracht choiriúil in imthosca iomchuí;

10 ÓS É A RÚN DAINGEAN calaois a dhéanann díobháil do leasanna airgeadais na gComhphobal Eorpach a chomhrac le chéile trí oibleagáidí a ghlacadh ar láimh maidir le dlínse, eiseachadh agus comhar frithpháirteach,

TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A LEANAS:

Airteagal 1

Forálacha ginearálta

15 1. Chun críocha an Choinbhinsiúin seo, is éard é calaois a dhéanann díobháil do leasanna airgeadais na gComhphobal Eorpach:

(a) maidir le caiteachas, aon ghníomh nó neamhghníomh intinneach a bhaineann:

20 — le húsáid nó tíolacadh ráiteas nó doiciméad atá bréagach, neamhbheacht nó neamhiomlán, arb é a n-éifeacht mídhílsíú nó coinneáil éagórach cistí as buiséad ginearálta na gComhphobal Eorpach nó as buiséid arna mbainisteoireacht ag na Comhphobail Eorpacha nó thar a gceann,

25 — le neamhnochtadh faisnéise de shárú ar oibleagáid shonrach ar a bhfuil an éifeacht chéanna,

— le sraonadh cistí den sórt sin chun críocha eile seachas na críocha ar deonaíodh i dtosach báire chucu iad;

30 (b) maidir le hioncam, aon ghníomh nó neamhghníomh intinneach a bhaineann:

35 — le húsáid nó tíolacadh ráiteas nó doiciméad atá bréagach, neamhbheacht nó neamhiomlán, arb é a n-éifeacht acmhainní bhuiséad ginearálta na gComhphobal Eorpach nó buiséad arna mbainisteoireacht ag na Comhphobail Eorpacha nó thar a gceann a laghdú go neamhdhíthiúil,

— le neamhnochtadh faisnéise de shárú ar oibleagáid shonrach ar a bhfuil an éifeacht chéanna,

40 — le sraonadh sochair arna fháil go dlíthiúil ar a bhfuil an éifeacht chéanna.

2. Faoi réir Airteagal 2(2), glacfaidh gach Ballstát na bearta is gá agus is iomchuí chun forálacha mhír 1 a thrasú ina dhlí coiriúil inmheánach ar dhóigh go ndéanfar cionta coiriúla den iompar dá dtagraítear sna forálacha sin.

45 3. Faoi réir Airteagal 2(2), glacfaidh gach Ballstát freisin na bearta is gá chun a áirithiú go ndéanfar cionta coiriúla de tharraingt suas

nó soláthar intinneach ráiteas nó doiciméad breagach, neamhbheacht nó neamhiomlán ar a bhfuil an éifeacht atá luaite i mír 1 mura bhfuil siad inphionóis cheana mar phríomhchion nó mar rannpháirteachas i gcalaois, gríosú chuici nó iarracht uirthi, mar atá calaois sainmhínithe i mír 1. 5

4. Féadfar cineál intinneach gnímh nó neamhghnímh dá dtagraítear i míreanna 1 agus 3 a infheiriú ó imthosca fíorasacha oibiachtúla.

Airteagal 2

Pionóis

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbeidh an t-iompar dá dtagraítear in Airteagal 1, maille le rannpháirteachas san iompar dá dtagraítear in Airteagal 1(1), gríosú chuige nó iarracht air, inphionóis le pionóis atá éifeachtach, comhréireach agus athchomhairleach lena n-áirítear, ar a laghad i gcásanna tromchúiseacha calaoise, pionóis lena mbaineann cailleadh saoirse a bhféadfaidh eiseachadadh teacht astu, ar an mbun tuisceana nach foláir a mheas mar chalaois thromchúiseach gach calaois a bhaineann le híosmhéid a shocrófar i ngach Ballstát. Ní fhéadfar an t-íosmhéid a shocrú ag méid is mó ná ECU 50 000. 10 15

2. Ar a shon sin, i gcásanna mionchalaoise a bhaineann le méid iomlán nach mó ná ECU 4 000 agus nach bhfuil imthosca tromchúiseacha ar leith i gceist iontu de réir a dhlíthe, féadfaidh Ballstát foráil do phionóis de chineál eile seachas na pionóis dá bhforáiltear i mír 1. 20

3. Féadfaidh Comhairle an Aontais Eorpaigh, ag gníomhú di d'aon toil, an méid dá dtagraítear i mír 2 a athrú. 25

Airteagal 3

Dlíteanas coiriúil ceannairí gnóthas

Glacfaidh gach Ballstát na bearta is gá chun gur féidir a dhearbhu, i gcomhréir leis na príonsabail atá sainmhínithe ina dhlí náisiúnta, go bhfuil ceannairí gnóthas nó aon daoine a bhfuil cumhacht chinnteoireachta nó rialaithe acu laistigh de ghnóthas faoi dhlíteanas coiriúil i gcásanna calaoise a dhéanann díobháil do leasanna airgeadais na gComhphobal Eorpach, dá dtagraítear in Airteagal 1, arna déanamh ag duine faoina n-údarás thar ceann an ghnóthais. 30 35

Airteagal 4

Dlíinse

1. Glacfaidh gach Ballstát na bearta is gá chun a dhlínse a bhunú i leith na gcionta atá bunaithe aige de réir Airteagal 1 agus 2(1):

- nuair is ar a chríoch a dhéantar, go hiomlán nó go páirteach, calaois, rannpháirteachas inti nó iarracht uirthi a dhéanann díobháil do leasanna airgeadais na gComhphobal Eorpach, lena n-áirítear calaois a bhfuarthas a sochar ar an gcríoch sin, 40
- nuair a chuidíonn duine ar a chríoch go feasach le calaois a dhéanamh ar chríoch aon Stáit eile nó nuair a aslaíonn sé go feasach é, 45

- nuair is náisiúnach den Bhallstát i dtrácht an ciontóir, ar chuntar go bhféadfaidh dlí an Bhallstáit sin foráil go bhfuil an t-iompar inphionóis freisin sa tír inar tharla sé.

2. Tráth an fhógra dá dtagraítear in Airteagal 11(2) a thabhairt, féadfaidh gach Ballstát a dhearbhuí nach ndéanfaidh sé an riail á bhforáiltear sa tríú fleasc de mhír 1 den Airteagal seo a chur i bhfeidhm.

Airteagal 5

Eiseachadadh agus ionchúiseamh

1. Aon Bhallstát nach ndéanann a chuid náisiúnach a eiseachadadh faoina dhlí náisiúnta, glacfaidh sé na bearta is gá chun a dhlínse a bhunú i leith na gcionta atá bunaithe aige i gcomhréir le hAirteagail 1 agus 2(1) nuair a dhéanann a chuid náisiúnach iad lasmuigh dá chríoch.

2. Déanfaidh gach Ballstát, nuair a liomhnaítear go ndearna duine dá náisiúnaigh i mBallstát eile cion coiriúil lena mbaineann an t-iompar atá tuairiscithe in Airteagail 1 agus 2(1) agus nuair nach n-eiseachadann sé an duine sin chuig an mBallstát eile de bhíthin a náisiúntachta amháin, an cás a chur faoi bhráid a n-údarás inniúil chun críocha ionchúisimh, más iomchuí. Chun gur féidir an t-ionchúiseamh a thabhairt ar aghaidh, seolfar na comhaid, an fhaisnéis agus ábhar eile a bhaineann leis an gcion de réir na nósanna imeachta dá bhforáiltear in Airteagal 6 den Choinbhinsiún Eorpach um Eiseachadadh. Coinneofar an Ballstát iarrthach ar an eolas faoin ionchúiseamh a thionscnaítear agus faoin toradh atá air.

3. Ní fhéadfaidh Ballstát an t-eiseachadadh a dhiúltú i gcás calaoise a dhéanann díobháil do leasanna airgeadais na gComhphobal Eorpach toisc amháin gur cion é a bhaineann le cánacha nó dleachtanna custaim.

4. Chun críocha an Airteagail seo, forléireofar ‘náisiúnaigh Bhallstáit’ i gcomhréir le haon dearbhú arna dhéanamh aige faoi Airteagal 6(1)(b) den Choinbhinsiún Eorpach um Eiseachadadh agus le mír 1(c) den Airteagal sin.

Airteagal 6

Comhar

1. Má tá calaois mar atá sainmhínithe in Airteagal 1 ina cion coiriúil agus go mbaineann sí le dhá Bhallstát ar a laghad, comhoibreoidh na Ballstáit sin go héifeachtach san imscrúdú, san ionchúiseamh agus i bhforghníomhú an phionóis, mar shampla trí chúnaimh dlíthiúil frithpháirteach, eiseachadadh, imeachtaí a aistriú nó pianbhreitheanna arna dtabhairt i mBallstát eile a fhorghníomhú.

2. Nuair atá dlínse ag níos mó ná Ballstát amháin agus caoi acu ionchúiseamh éifeachtach a dhéanamh arna bhunú ar na fíorais chéanna, comhoibreoidh na Ballstáit i dtrácht chun a chinneadh cé acu Ballstát a dhéanfaidh an ciontóir nó na ciontóirí a ionchúiseamh chun an t-ionchúiseamh a lárú i mBallstát amháin más féidir.

Airteagal 7

Ne bis in idem

1. Cuirfidh na Ballstáit an riail '*ne bis in idem*' i bhfeidhm ina ndlíthe coiriúla náisiúnta; faoin riail sin, ní fhéadfar duine a bhfuil a thriail críochnaithe faoi dheireadh i mBallstát amháin a ionchúiseamh i mBallstát eile i leith na bhfioras céanna, ar chuntar gur forghníomhaíodh aon phionós a gearradh, go bhfuil sé á fhorghníomhú fós nó nach féidir é a fhorghníomhú a thuilleadh faoi dhlíthe Bhallstát a ghearrtha. 5

2. Féadfaidh Ballstát, tráth an fhógra dá dtagraítear in Airteagal 11(2) a thabhairt, a dhearbhu nach mbeidh sé faoi cheangal ag mír 1 in aon chás amháin nó níos mó de na cásanna seo a leanas: 10

(a) más ar a chríoch féin, go hiomlán nó go páirteach, a tharla na fíorais ab ábhar don bhreithiúnas a tugadh ar an gcoigríoch. Más go páirteach áfach, ní bheidh an eisceacht sin infheidhme má tharla na fíorais sin go páirteach ar chríoch an Bhallstáit inar tugadh an breithiúnas; 15

(b) más é atá sna fíorais ab ábhar don bhreithiúnas a tugadh ar an gcoigríoch cion in éadan shlándaíl an Bhallstáit sin nó in éadan leasa chomhriachtanaigh eile dá chuid; 20

(c) más oifigeach den Bhallstát sin a rinne, de shárú ar dhualgais a oifige, na fíorais ab ábhar don bhreithiúnas a tugadh ar an gcoigríoch.

3. Ní bheidh na heisceachtaí is ábhar do dhearbhu faoi mhír 2 infheidhme más rud é go ndearna an Ballstát i dtrácht, i leith na bhfioras céanna, a iarraidh ar an mBallstát eile an t-ionchúiseamh a thionscnamh nó go ndearna sé eiseachadadh an duine lena mbaineann a dheonú. 25

4. Ní dhéanfaidh an tAirteagal seo difear do chomhaontuithe ábhartha déthaobhacha nó iltaobhacha atá curtha i gcrích idir Bhallstáit ná do dhearbhuithe ábhartha. 30

Airteagal 8

An Chúirt Bhreithiúnais

1. Ní foláir don Chomhairle aon díospóidí idir na Ballstáit maidir le léiriú nó cur i bhfeidhm an Choinbhinsiúin seo a phlé mar chéad chéim i gcomhréir leis an nós imeachta atá leagtha amach i dTeideal VI den Chonradh ar an Aontas Eorpach d'fhonn teacht ar réiteach. 35

Mura mbeidh réiteach faighte laistigh de thréimhse sé mhí, féadfaidh páirtí sa díospóid í a chur faoi bhráid Chúirt Bhreithiúnais na gComhphobal Eorpach. 40

2. Féadfar aon díospóid maidir le hAirteagal 1 nó 10 idir Ballstát amháin nó níos mó agus Coimisiún na gComhphobal Eorpach nárbh fhéidir a réiteach trí chaibidlíocht a chur faoi bhráid na Cúirte Breithiúnais.

Airteagal 9

Forálacha inmheánacha

Ní choiscfidh aon fhoráil sa Choinbhinsiún seo na Ballstáit ar fhorálacha dlíthiúla inmheánacha a ghlacadh a théann thar na hoibleagáidí a leanann ón gCoinbhinsiún seo.

Airteagal 10

Páirtiú

1. Páirteoidh na Ballstáit le Coimisiún na gComhphobal Eorpach téacs na bhforálacha ag trasuí ina ndlí inmheánach na n-oibleagáidí a thiteann orthu de bhun fhorálacha an Choinbhinsiúin seo.

2. D'fhonn an Coinbhinsiún seo a chur i bhfeidhm, déanfaidh na hArdpháirtithe Conarthacha i gComhairle an Aontais Eorpaigh, an fhaisnéis nach mór a pháirtiú nó a mhalartú idir na Ballstáit nó idir na Ballstáit agus an Coimisiún agus rialacha mionsonraithe a páirti-the a shainiú.

Airteagal 11

Teacht i bhfeidhm

1. Beidh an Coinbhinsiún seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl d'Ardrúnaí Chomhairle an Aontais Eorpaigh go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Coinbhinsiún seo a ghlacadh comhlíonta acu.

3. Tiocfaidh an Coinbhinsiún seo i bhfeidhm 90 lá tar éis don fhógra dá dtagraítear i mir 2 a bheith tugtha ag an mBallstát is déanaí a dhéanfaidh sin.

Airteagal 12

Aontachas

1. Beidh aontachas leis an gCoinbhinsiún seo ar oscailt d'aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach.

2. Is téacs údarásach téacs an Choinbhinsiúin seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh.

3. Taiscfear na hionstraimí aontachais leis an taiscí.

4. Tiocfaidh an Coinbhinsiún seo i bhfeidhm maidir le Stát aontach 90 lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Choinbhinsiúin a theacht i bhfeidhm mura bhfuil sé tagtha i bhfeidhm fós tráth na tréimhse 90 lá sin a dhul in éag.

Airteagal 13

Taiscí

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Choinbhinsiúin seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an gCoinbhinsiún seo a ghlacadh agus aontachais leis, na dearbhuithe, na forchoimeádais agus gach fógra eile a bhaineann leis an gCoinbhinsiún seo. 5

Section 38.

SCHEDULE 4

Text in the English language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests done at Brussels on 27 September 1996 10

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests 15

THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 27 September 1996, 20

DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 for combating fraud affecting Community revenue and expenditure; 25

AWARE that the financial interests of the European Communities may be damaged or threatened by other criminal offences, particularly acts of corruption by or against national and Community officials, responsible for the collection, management or disbursement of Community funds under their control; 30

CONSIDERING that people of different nationalities, employed by different public agencies or bodies, may be involved in such corruption and that, in the interests of effective action against such corruption with international ramifications, it is important for their reprehensible nature to be perceived in a similar manner under Member States' criminal laws; 35

NOTING that several Member States' criminal law on crime linked to the exercise of public duties in general and concerning corruption in particular covers only acts committed by or against their national officials and does not cover, or covers only in exceptional cases, conduct involving Community officials or officials of other Member States; 40

CONVINCED of the need for national law to be adapted where it does not penalize acts of corruption that damage or are likely to 45

damage the financial interests of the European Communities involving Community officials or officials of other Member States;

5 CONVINCED also that such adaptation of national law should not be confined, in respect of Community officials, to acts of active or passive corruption, but should be extended to other crimes affecting or likely to affect the revenue or expenditure of the European Communities, including crimes committed by or against persons in whom the highest responsibilities are vested;

10 CONSIDERING that appropriate rules should also be laid down on jurisdiction and mutual cooperation, without prejudice to the legal conditions under which they are to apply in specific cases, including waiver of immunity where appropriate;

15 CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to the criminal acts covered by this Protocol,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

Definitions

20 For the purposes of this Protocol:

1. (a) 'official' shall mean any 'Community' or 'national' official, including any national official of another Member State;

(b) the term 'Community official' shall mean:

25 — any person who is an official or other contracted employee within the meaning of the Staff Regulations of officials of the European Communities or the Conditions of employment of other servants of the European Communities,

30 — any person seconded to the European Communities by the Member States or by any public or private body, who carries out functions equivalent to those performed by European Community officials or other servants.

35 Members of bodies set up in accordance with the Treaties establishing the European Communities and the staff of such bodies shall be treated as Community officials, inasmuch as the Staff Regulations of the European Communities or the Conditions of employment of other servants of the European Communities do not apply to them;

40 (c) the term 'national official' shall be understood by reference to the definition of 'official' or 'public officer' in the national law of the Member State in which the person in question performs that function for the purposes of application of the criminal law of that Member State.

45 Nevertheless, in the case of proceedings involving a Member State's official initiated by another Member State the latter shall not be bound to apply the definition

of 'national official' except in so far as that definition is compatible with its national law;

2. 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, of 26 July 1995⁽¹⁾. 5

Article 2

Passive corruption

1. For the purposes of this Protocol, the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute passive corruption. 10 15

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence.

Article 3

Active corruption 20

1. For the purposes of this Protocol, the deliberate action of whoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption. 25

2. Each Member State shall take the necessary measures to ensure that conduct of the type referred to in paragraph 1 is made a criminal offence. 30

Article 4

Assimilation

1. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences constituting conduct of the type referred to in Article 1 of the Convention committed by its national officials in the exercise of their functions apply similarly in cases where such offences are committed by Community officials in the exercise of their duties. 35

2. Each Member State shall take the necessary measures to ensure that in its criminal law the descriptions of the offences referred to in paragraph 1 of this Article and in Articles 2 and 3 committed by or against its Government Ministers, elected members of its parliamentary chambers, the members of its highest Courts or the members of 40

⁽¹⁾ OJ No C 316, 27. 11. 1995, p. 49.

its Court of Auditors in the exercise of their functions apply similarly in cases where such offences are committed by or against members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities respectively in the exercise of their duties.

3. Where a Member State has enacted special legislation concerning acts or omissions for which Government Ministers are responsible by reason of their special political position in that Member State, paragraph 2 of this Article may not apply to such legislation, provided that the Member State ensures that Members of the Commission of the European Community are covered by the criminal legislation implementing Articles 2 and 3 and paragraph 1 of this Article.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the provisions applicable in each Member State concerning criminal proceedings and the determination of the competent court.

5. This Protocol shall apply in full accordance with the relevant provisions of the Treaties establishing the European Communities, the Protocol on the Privileges and Immunities of the European Communities, the Statutes of the Court of Justice and the texts adopted for the purpose of their implementation, as regards the withdrawal of immunity.

Article 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, are punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

2. Paragraph 1 shall be without prejudice to the exercise of disciplinary powers by the competent authorities against national officials or Community officials. In determining the penalty to be imposed, the national criminal courts may, in accordance with the principles of their national law, take into account any disciplinary penalty already imposed on the same person for the same conduct.

Article 6

Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction over the offences it has established in accordance with Articles 2, 3 and 4 where:

- (a) the offence is committed in whole or in part within its territory;
- (b) the offender is one of its nationals or one of its officials;

- (c) the offence is committed against one of the persons referred to in Article 1 or a member of one of the institutions referred to in Article 4 (2) who is one of its nationals;
- (d) the offender is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State concerned. 5

2. Each Member State may declare when giving the notification provided for in Article 9 (2) that it will not apply or will apply only in specific cases or conditions one or more of the jurisdiction rules laid down in paragraph 1 (b), (c), and (d). 10

Article 7

Relation to the Convention

1. Articles 3, 5 (1), (2) and (4) and Article 6 of the Convention shall apply as if there were a reference to the conduct referred to in Articles 2, 3 and 4 of this Protocol. 15

2. The following provisions of the Convention shall also apply to this Protocol:

- Article 7, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 9 (2) of this Protocol, any declaration within the meaning of Article 7 (2) of the Convention shall also apply to this Protocol, 20
- Article 9, 25
- Article 10.

Article 8

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. 30

If no solution is found within six months, the matter may be referred to the Court of Justice of the European Communities by a party to the dispute. 35

2. Any dispute between one or more Member States and the Commission of the European Communities concerning Article 1, with the exception of point 1 (c), or Articles 2, 3 and 4, or the third indent of Article 7 (2) of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice of the European Communities. 40

Article 9

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
- 5 2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures required under their respective constitutional rules for adopting this Protocol.
- 10 3. This Protocol shall enter into force 90 days after the notification provided for in paragraph 2 has been given by the State which, being a Member of the European Union at the time of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which
15 the Convention enters into force.

Article 10

Accession of new Member States

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.
- 20 2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. Instruments of accession shall be deposited with the depositary.
- 25 4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of 90 days.

Article 11

Reservations

- 30 1. No reservation shall be authorized with the exception of those provided for in Article 6 (2).
2. Any Member State which has entered a reservation may withdraw it at any time in whole or in part by notifying the depositary. Withdrawal shall take effect on the date on which the depositary
35 receives the notification.

Article 12

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.
- 40 2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol.

SCHEDULE 5

Text in the Irish language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests done at Brussels on 27 September 1996 5

PRÓTACAL

arna dhréachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach, a ghabhann leis an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Phrótacal seo, 10
Ballstáit den Aontas Eorpach,

AG TAGAIRT DÓIBH do Ghníomh ó Chomhairle an Aontais Eorpaigh 27 Meán Fómhair 1996,

ÓS MIAN LEO a áirithiú go gcuidíonn a ndlíthe coiriúla go héifeachtach le leasanna airgeadais na gComhphobal Eorpach a chosaint; 15

AG AITHINT DÓIBH thábhacht Choinbhinsiún an 26 Iúil 1995 maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint a mhéid a bhaineann le calaois a dhéanann difear d'ioncam agus caiteachas Comhphobail a chomhrac; 20

ÓS FIOS DÓIBH go bhféadfaidh cionta coiriúla eile díobháil a dhéanamh do leasanna airgeadais na gComhphobal Eorpach nó bheith ina mbagairt orthu, go háirithe gníomhartha éillitheacha arna ndéanamh ag oifigigh náisiúnta agus oifigigh Chomhphobail atá freagrach as cistí Comhphobail atá á rialú acu a bhailiú, a bhainisteoireacht nó a foc amach, nó gníomhartha éillitheacha arna ndéanamh ina gcoinne; 25

DE BHRÍ go bhféadfaidh daoine de náisiúntachtaí éagsúla atá fostaíthe ag gníomhaireachtaí nó comhlachtaí poiblí éagsúla bheith i dtreis san éilliú sin agus go bhfuil sé tábhachtach, ar mhaithe le gníomhaíocht éifeachtach i gcoinne an éillithe sin a bhfuil craobhacha idirnáisiúnta aige, dearcadh comhchosúil ar a gcineál incháinte a bheith ann i ndlíthe coiriúla na mBallstát; 30

AG TABHAIRT DÁ nAIRE DÓIBH nach gcuimsíonn dlí coiriúil roinnt de na Ballstáit maidir le coirpeacht atá bainteach le feidhmeanna poiblí a fheidhmiú i gcoitinne agus maidir le héilliú, ach go háirithe, ach gníomhartha i gcoinne a n-oifigeach náisiúnta nó arna ndéanamh acu agus nach gcuimsíonn sé iompar a bhfuil oifigigh Chomhphobail nó oifigigh Bhallstát eile i dtreis ann nó go gcuimsíonn sé é i gcásanna eisceachtúla amháin; 35 40

ÓS DEIMHIN LEO gur gá an dlí náisiúnta a oiriúnú nuair nach bpionósaíonn sé gníomhartha éillitheacha a bhfuil oifigigh Chomhphobail nó oifigigh Bhallstát eile i dtreis iontu a dhéanann díobháil, nó ar dóigh dóibh díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach; 45

ÓS DEIMHIN LEO freisin nár chóir oiriúnú den sórt sin ar an dlí náisiúnta a theorannú, i leith oifigeach Comhphobail, do gníomhartha éillitheacha gníomhacha nó neamhghníomhacha ach gur chóir é a chur i mbaint le coireanna eile a dhéanann difear, nó ar dóigh dóibh difear a dhéanamh, d'ioncam nó do chaiteachas na gComhpho- 50

bal Eorpach, lena n-áirítear coireanna arna ndéanamh ag daoine a ndílsítear na freagrachtaí is airde dóibh nó coireanna arna ndéanamh ina gcoinne;

5 DE BHRÍ gur chóir freisin rialacha iomchuí a leagan síos maidir le dlínse agus comhar frithpháirteach, gan dochar do na coinníollacha dlíthiúla faoina mbeidh siad infheidhme i gcásanna sonracha, lena n-áirítear díolúine a tharscaoileadh nuair is iomchuí;

10 DE BHRÍ, ar deireadh, gur chóir forálacha ábhartha Choinbhinsiún an 26 Iúil 1995 maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint a chur i bhfeidhm ar na gníomhartha coiriúla atá folaithe sa Phrótacal seo,

TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A LEANAS:

Airteagal 1

15 **Sainmhínithe**

Chun críocha an Phrótacail seo:

(1) (a) ciallaíonn ‘oifigeach’ aon oifigeach Comhphobail nó náisiúnta, lena n-áirítear aon oifigeach náisiúnta de chuid Ballstáit eile;

20 (b) ciallaíonn ‘oifigeach Comhphobail’:

— aon duine ar oifigeach nó fostaí eile ar conradh é de réir bhrí Rialachán Foirne oifigigh na gComhphobal Eorpach nó Choinníollacha Fostaíochta sheirbhísigh eile na gComhphobal Eorpach;

25 — aon duine atá tugtha ar iasacht do na Comhphobail Eorpacha ag na Ballstáit nó ag aon chomhlacht poiblí nó príobháideach agus a fheidhmíonn feidhmeanna is coibhéiseach le feidhmeanna a fheidhmíonn oifigigh nó seirbhísigh eile na gComhphobal Eorpach.

30 Déileálfar le comhaltaí comhlachtaí arna mbunú i gcomhréir leis na Conarthaí ag bunú na gComhphobal Eorpach agus le foireann na gcomhlachtaí sin mar oifigigh Chomhphobail a mhéid nach bhfuil Rialachán Foirne oifigigh na gComhphobal Eorpach ná Coinníollacha Fostaíochta sheirbhísigh eile na gComhphobal Eorpach infheidhme orthu.

35 (c) léirítear ‘oifigeach náisiúnta’ i gcomhréir leis an sainmhíniú ar ‘oifigeach’ nó ‘oifigeach poiblí’ atá i ndlí náisiúnta an Bhallstáit ina bhfuil an fheidhm sin á feidhmiú ag an duine i dtrácht chun críocha dlí coiriúil an Bhallstáit sin a chur i bhfeidhm.

45 Ar a shon sin, i gcás imeachtaí a bhfuil oifigeach de chuid Ballstáit i dtreis iontu agus a thionscain Ballstát eile, ní bheidh de cheangal ar an mBallstát eile sin an sainmhíniú ar “oifigeach náisiúnta” a chur i bhfeidhm ach sa mhéid go bhfuil an sainmhíniú sin ag luí lena dhlí náisiúnta féin.

(2) ciallaíonn “Coinbhinsiún” Coinbhinsiún an 26 Iúil 1995, arna dhréachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach, maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint⁽¹⁾.

Airteagal 2 5

Éilliú neamhghníomhach

1. Chun críocha an Phrótacail seo, is éard é éilliú neamhghníomhach gníomh intinneach oifigeach a iarrann nó a fhaigheann, go díreach nó trí idirghabhálaí, buntáistí de chineál ar bith dó féin nó do thríú páirtí, nó a ghlacann gealltanas buntáiste den sórt sin, chun gníomh a dhéanamh nó staonadh ó ghníomh a dhéanamh i gcomhréir lena fheidhmeanna nó i bhfeidhmiú a fheidhmeanna de shárú ar a dhualgais oifigiúla ar dhóigh a dhéanann díobháil, nó ar dóigh di díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach. 10 15

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéanfar cion coiriúil den iompar dá dtagraítear i mír 1.

Airteagal 3

Éilliú gníomhach

1. Chun críocha an Phrótacail seo, is éard é éilliú gníomhach gníomh intinneach aon duine a gheallann nó a thugann, go díreach nó trí idirghabhálaí, buntáiste de chineál ar bith d'oifigeach, dó féin nó do thríú páirtí, chun gníomh a dhéanamh nó staonadh ó ghníomh a dhéanamh i gcomhréir lena fheidhmeanna nó i bhfeidhmiú a fheidhmeanna de shárú ar a dhualgais oifigiúla ar dhóigh a dhéanann díobháil, nó ar dóigh di díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach. 20 25

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go ndéanfar cion coiriúil den iompar dá dtagraítear i mír 1.

Airteagal 4 30

Comhshamhlú

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbeidh tuairiscí na gcionta ina dhlí coiriúil arb éard iad iompar den saghas dá dtagraítear in Airteagal 1 den Choinbhinsiún arna ndéanamh ag a oifigigh náisiúnta i bhfeidhmiú a bhfeidhmeanna infheidhme ar an dóigh chéanna ar chásanna ina ndéanann oifigigh Chomhphobail na cionta sin i bhfeidhmiú a bhfeidhmeanna. 35

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbeidh tuairiscí na gcionta ina dhlí coiriúil dá dtagraítear i mír 1 den Airteagal seo agus in Airteagail 2 agus 3 arna ndéanamh ag a Airí Rialtais, comhaltaí tofa a sheomraí parlaiminteacha, comhaltaí a chúirteanna is airde nó comhaltaí a chúirte iniúchóirí i bhfeidhmiú a bhfeidhmeanna, nó arna ndéanamh ina gcoinne, infheidhme ar an dóigh chéanna ar chásanna ina ndéanann comhaltaí de Choimisiún na gComhphobal Eorpach, de Pharlaimint na hEorpa, de Chúirt Bhreithiúnais nó de Chúirt Iniúchóirí na gComhphobal Eorpach, faoi 40 45

⁽¹⁾ IO Uimh. C 316, 27.11.1995, lch. 49.

seach, na cionta sin i bhfeidhmiú a bhfeidhmeanna agus ar chásanna ina ndéantar ina gcoinne iad.

3. Nuair atá reachtaíocht speisialta aachtaithe ag Ballstát maidir le gníomhartha nó neamhghníomhartha a bhfuil Airí Rialtais freagrach astu de bharr a staide polaitiúla speisialta sa Bhallstát sin, féadfar gan mír 2 den Airteagal seo a chur i bhfeidhm ar an reachtaíocht sin, ar chuntar go n-áirithíonn an Ballstát go bhfuil comhaltaí Choimisiún na gComhphobal Eorpach folaithe sa reachtaíocht choiriúil a chuireann Airteagail 2 agus 3 agus mír 1 den Airteagal seo chun feidhme.

4. Beidh míreanna 1, 2 agus 3 gan dochar do na forálacha is infheidhme i ngach Ballstát maidir le himeachtaí coiriúla agus maidir leis an gcúirt a bhfuil dlínse aici a chinneadh.

5. Cuirfear an Prótacal seo i bhfeidhm agus lánurraim á tabhairt d'fhorálacha ábhartha na gConarthaí ag bunú na gComhphobal Eorpach, an Phrótacail ar Phribhléidí agus Díolúintí na gComhphobal Eorpach, Reachtanna na Cúirte Breithiúnais agus na dtéacsanna arna nglacadh chun iad a chur chun feidhme, maidir le díolúine a tharscaoileadh.

Airteagal 5

Pionóis

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbuidh an t-iompar dá dtagraítear in Airteagail 2 agus 3, maille le rannpháirteachas ann nó griosú chuige, inphionóis le pionóis choiriúla atá éifeachtach, comhréireach agus athchomhairleach lena n-áirítear, ar a laghad i gcásanna tromchúiseacha, pionóis lena mbaineann cailleadh saoirse a bhféadfaidh eiseachadadh teacht astu.

2. Beidh mír 1 gan dochar d'fheidhmiú cumhachtaí araíonachta ag na húdaráis inniúla i leith oifigeach náisiúnta nó oifigeach Comhphobail. Agus an pionós atá le forchur á chinneadh acu, féadfaidh na cúirteanna coiriúla náisiúnta, i gcomhréir le prionsabail a ndlí náisiúnta, aonphionós araíonachta arna fhorchur cheana ar an duine céanna i leith an iompair chéanna a chur san áireamh.

Airteagal 6

Dlínse

1. Glacfaidh gach Ballstát na bearta is gá chun a dhlínse a bhunú i leith na gcionta atá bunaithe aige i gcomhréir le hAirteagail 2, 3 agus 4:

(a) nuair is ar a chríoch a dhéantar an cion, go hiomlán nó go páirteach;

(b) nuair is náisiúnach nó oifigeach dá chuid an ciontóir;

(c) nuair a dhéantar an cion i duine de na daoine dá dtagraítear in Airteagal 1 nó i gcoinne comhalta de cheann de na hinstiitúidí dá dtagraítear in Airteagal 4(2) ar náisiúnach dá chuid é;

- (d) nuair is oifigeach Comhphobail atá ag obair d'institiúid de chuid na gComhphobal Eorpach nó do chomhlacht arna bhunú i gcomhréir leis na Conarthaí ag bunú na gComhphobal Eorpach a bhfuil a shuíomh aige sa Bhallstát i dtrácht an ciontóir. 5

2. Féadfaidh gach Ballstát, agus an fógra dá bhforáiltear in Airteagal 9(2) á thabhairt aige, a dhearbhu nach ndéanfaidh sé ceann amháin nó níos mó de na rialacha dlínse atá leagtha síos i bpointí (b), (c) agus (d) de mhír 1 a chur i bhfeidhm nó nach gcuirfidh sé i bhfeidhm é nó iad ach i gcásanna nó imthosca sonracha. 10

Airteagal 7

Gaol leis an gCoinbhinsiún

1. Beidh Airteagail 3, 5(1), (2) agus (4) agus 6 den Choinbhinsiún infheidhme amháin is dá mbeadh tagairt iontu don iompar dá dtagraítear in Airteagail 2, 3 agus 4 den Phrótocal seo. 15

2. Beidh na forálacha seo a leanas den Choinbhinsiún infheidhme ar an bPrótocal seo freisin:

- Airteagal 7, ar é a bheith le tuiscint go mbeidh aon dearbhú de réir bhrí Airteagal 7(2) den Choinbhinsiún infheidhme ar an bPrótocal seo freisin mura sonrófar a mhalairt tráth an fhógra dá bhforáiltear in Airteagal 9(2) den Phrótocal seo a thabhairt, 20
- Airteagal 9,
- Airteagal 10.

Airteagal 8 25

An Chúirt Bhreithiúnais

1. Ní foláir don Chomhairle aon díospóidí idir na Ballstáit maidir le léiriú nó cur i bhfeidhm an Phrótacail seo a phlé mar chéad chéim i gcomhréir leis an nós imeachta atá leagtha amach i dTeideal VI den Chonradh ar an Aontas Eorpach d'fhonn teacht ar réiteach. 30

Mura mbeidh réiteach faighte laistigh de thréimhse sé mhí féadfaidh páirtí sa díospóid í a chur faoi bhráid Chúirt Bhreithiúnais na gComhphobal Eorpach.

2. Féadfar aon díospóid maidir le hAirteagal 1, seachas pointe 1(c) de, nó maidir le hAirteagail 2, 3 agus 4 nó Airteagal 7(2), tríú fleasc, den Phrótocal seo idir Ballstát amháin nó níos mó agus Coimisiún na gComhphobal Eorpach nárbh fhéidir a réiteach trí chaibidlíocht a chur faoi bhráid Chúirt Bhreithiúnais na gComhphobal Eorpach. 35

Airteagal 9

Teacht i bhfeidhm

1. Beidh an Prótacal seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

5 2. Cuirfidh na Ballstáit in iúl d'Ardrúnaí Chomhairle an Aontais Eorpaigh go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Prótacal seo a ghlacadh comhlíonta acu.

10 3. Tiocfaidh an Prótacal seo i bhfeidhm 90 lá tar éis don fhógra dá bhforáiltear i mír 2 a bheith tugtha ag an Stát is Ballstát den Aontas Eorpach an tráth a ghlacfaidh an Chomhairle an Gníomh ag dréachtú an Phrótacail seo is déanaí a dhéanfaidh an beart sin. Mura mbeidh an Coinbhinsiún tagtha i bhfeidhm ar an dáta sin áfach, tiocfaidh an Prótacal seo i bhfeidhm ar an dáta a thiocfaidh an Coinbhinsiún i bhfeidhm.

15

Airteagal 10

Aontachas Ballstát nua

1. Beidh an Prótacal seo ar oscailt d'aontachas aon Stáit a thiocfaidh chun bheith ina Bhallstát den Aontas Eorpach.

20 2. Is téacs údarásach téacs an Phrótacail seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh.

3. Déanfar na hionstraimí aontachais a thaisceadh leis an taiscí.

25 4. Tiocfaidh an Prótacal seo i bhfeidhm i leith aon Stáit a aontaíonn dó 90 lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Phrótacail seo a theacht i bhfeidhm mura mbeidh sé tagtha i bhfeidhm fós tráth na tréimhse thuasluaite 90 lá a dhul in éag.

Airteagal 11

Forchoimeádais

1. Ní cheadófar aon fhorchoimeádas seachas na cinn dá bhforáiltear in Airteagal 6(2).

30 2. Féadfaidh aon Bhallstát a bhfuil forchoimeádas déanta aige é a tharraingt siar go hiomlán nó go páirteach tráth ar bith trí fhógra a chur chuig an taiscí. Gabhfaidh éifeacht leis an tarraingt siar ar an dáta a fhaigheann an taiscí an fógra.

Airteagal 12

35

Taiscí

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taisc an Phrótacail seo.

40 2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an bPrótacal seo a ghlacadh agus aontachais leis, na dearbhuithe, na forchoimeádais agus gach fógra eile a bhaineann leis an bPrótacal seo.

SCHEDULE 6

Text in the English language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests
done at Brussels on 29 November 1996 5

PROTOCOL

drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests 10

THE HIGH CONTRACTING PARTIES,

HAVE AGREED on the following provisions, which shall be annexed to the Convention: 15

Article 1

The Court of Justice of the European Communities shall have jurisdiction, pursuant to the conditions laid down in this Protocol, to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the Protocol to that Convention drawn up on 27 September 1996⁽¹⁾, hereinafter referred to as 'the first Protocol'. 20

Article 2

1. By a declaration made at the time of the signing of this Protocol or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice of the European Communities to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol to that Convention pursuant to the conditions specified in either paragraph 2 (a) or paragraph 2 (b). 30

2. A Member State making a declaration pursuant to paragraph 1 may specify that either:

(a) any court or tribunal of that State against whose decisions there is no judicial remedy under national law may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, or 35

(b) any court or tribunal of that State may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention on the protection of the European Communities' financial 45

⁽¹⁾ OJ No C 313, 23.10.1996, p. 1.

interests and the first Protocol thereto if that court or tribunal considers that a decision on the question is necessary to enable it to give judgment.

Article 3

5 1. The Protocol on the Statute of the Court of Justice of the European Communities and the Rules of Procedure of that Court of Justice shall apply.

10 2. In accordance with the Statute of the Court of Justice of the European Communities, any Member State, whether or not it has made a declaration pursuant to Article 2, shall be entitled to submit statements of case or written observations to the Court of Justice of the European Communities in cases which arise pursuant to Article 1.

Article 4

15 1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

20 2. Member States shall notify the depositary of the completion of their respective constitutional requirements for adopting this Protocol and communicate to him any declaration made pursuant to Article 2.

25 3. This Protocol shall enter into force 90 days after the notification, referred to in paragraph 2, by the Member State which, being a member of the European Union on the date of adoption by the Council of the Act drawing up this Protocol, is the last to fulfil that formality. However, it shall at the earliest enter into force at the same time as the Convention on the protection of the European Communities' financial interests.

Article 5

30 1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

2. Instruments of accession shall be deposited with the depositary.

3. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

35 4. This Protocol shall enter into force with respect to any State that accedes to it 90 days after the date of deposit of its instrument of accession, or on the date of the entry into force of this Protocol if the latter has not yet come into force when the said period of 90 days expires.

Article 6

40 Any State that becomes a member of the European Union and accedes to the Convention on the protection of the European Communities' financial interests in accordance with Article 12 thereof shall accept the provisions of this Protocol.

Article 7

1. Amendments to this Protocol may be proposed by any Member State, being a High Contracting Party. Any proposal for an amendment shall be sent to the depositary, who shall forward it to the Council. 5

2. Amendments shall be established by the Council, which shall recommend that they be adopted by the Member States in accordance with their respective constitutional requirements.

3. Amendments thus established shall enter into force in accordance with the provisions of Article 4. 10

Article 8

1. The Secretary-General of the Council of the European Union shall act depositary of this Protocol.

2. The depositary shall publish in the Official Journal of the European Communities the notifications, instruments or communications 15 concerning this Protocol.

Text in the Irish language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of
 5 Justice of the European Communities of the Convention on the protection of the European Communities' financial interests done at Brussels on 29 November 1996

PRÓTACAL

arna dhréachtú ar bhonn Airteagal K.3 den chonradh ar an Aontas
 10 **Eorpach, maidir le léiriú, trí réamhrialú, ag cúirt bhreithiúnais na**
gComhphobal Eorpach ar an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint

TÁ NA hARDPHÁIRTITHE CONARTHACHA,

TAR ÉIS COMHAONTÚ ar na forálacha seo a leanas a chuirfear
 15 i gceangal leis an gCoinbhinsiún:

Airteagal 1

Beidh dlínse ag Cúirt Bhreithiúnais na gComhphobal Eorpach, faoi na coinníollacha atá leagtha síos sa Phrótacal seo, chun réamhrialuithe a thabhairt ar léiriú ar an gCoinbhinsiún maidir le leasanna
 20 airgeadais na gComhphobal Eorpach a chosaint agus ar an bPrótacal a ghabhann leis an gCoinbhinsiún sin agus a dréachtaíodh ar an 27 Meán Fómhair 1996⁽¹⁾, dá ngairtear “an chéad Phrótacal” anseo feasta.

Airteagal 2

25 1. Féadfaidh aon Bhallstát, trí dhearbhu a dhéanamh tráth sinithe an Phrótacail seo nó aon tráth eile ina dhiaidh sin, glacadh le dlínse Chúirt Bhreithiúnais na gComhphobal Eorpach chun réamhrialuithe a thabhairt ar léiriú ar an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint agus ar an gcéad Phrótacal
 30 a ghabhann leis an gCoinbhinsiún sin faoi na coinníollacha atá sonraithe i bpointe(a) nó (b) de mhír 2.

2. Féadfaidh Ballstát a dhéanann dearbhu faoi mhír 1 a shonrú:

(a) go bhféadfaidh aon cheann de chúirteanna nó binsí an Bhallstáit sin nach bhfuil leigheas breithiúnach faoin dlí náisiúnta in aghaidh a bhreitheanna a iarraidh ar Chúirt Bhreithiúnais na gComhphobal Eorpach réamhrialú a thabhairt ar cheist a ardaítear i gcás atá ar feitheamh os a chomhair agus a bhaineann le léiriú ar an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach
 40 a chosaint agus ar an gcéad Phrótacal a ghabhann leis má mheasann an chúirt nó an binse sin gur gá breith a thabhairt ar an gceist ionas go bhféadfaidh sé breithiúnas a thabhairt; nó

(b) go bhféadfaidh aon cheann de chúirteanna nó binsí an Bhallstáit sin a iarraidh ar Chúirt Bhreithiúnais na gComhphobal Eorpach réamhrialú a thabhairt ar cheist a ardaítear i gcás atá ar feitheamh os a chomhair agus a
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⁽¹⁾ IO Uimh. C 313, 23.10.1996, I ch.1.

bhaineann le léiriú ar an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint agus ar an gcéad Phrótacal a ghabhann leis má mheasann an chúirt nó an binse sin gur gá breith a thabhairt ar an gceist ionas go bhféadfaidh sé breithiúnas a thabhairt. 5

Airteagal 3

1. Beidh an Prótacal ar Reacht Chúirt Bhreithiúnais na gComhphobal Eorpach agus Rialacha Nós Imeachta na Cúirte Breithiúnais sin infheidhme.

2. I gcomhréir le Reacht Chúirt Bhreithiúnais na gComhphobal Eorpach, beidh gach Ballstát, bíodh nó ná bíodh dearbhú de bhun Airteagal 2 déanta aige, i dteideal ráitis cháis nó barúlacha i scríbhinn a thíolacadh do Chúirt Bhreithiúnais na gComhphobal Eorpach i gcásanna a thagann chun cinn faoi Airteagal 1. 10

Airteagal 4

15

1. Beidh an Prótacal seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl don taiscí go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Prótacal seo a ghlacadh comhlionta acu, agus cuirfidh siad in iúl dó freisin aon dearbhú arna dhéanamh de bhun Airteagal 2. 20

3. Tiocfaidh an Prótacal seo i bhfeidhm 90 tar éis don fhógra dá dtagraítear i mír 2 a bheith tugtha ag an Stát, is Ballstát den Aontas Eorpach tráth na Comhairle do ghlacadh an Ghnímh ag dréachtú an Phrótacail seo, is déanaí a dhéanfaidh an beart sin. Ar a shon sin, tiocfaidh sé i bhfeidhm ar a luaithe san am céanna leis an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint. 25

Airteagal 5

1. Beidh aontachas leis an bPrótacal seo ar oscailt d'aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach. 30

2. Taiscfear na hionstraimí aontachais leis an taiscí.

3. Is téacs údarásach téacs an Phrótacail seo i dteanga an Stáit aontaigh, arna dhreachtú ag Comhairle an Aontais Eorpaigh.

4. Tiocfaidh an Prótacal seo i bhfeidhm i leith aon Stáit aontaigh 90 lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Phrótacail seo a theacht i bhfeidhm mura mbeidh sé tagtha i bhfeidhm fós tráth na tréimhse 90 lá thuasluaite a dhul in éag. 35

Airteagal 6

Aon Stát a thagann chun bheith ina Bhallstát den Aontas Eorpach agus a aontaíonn don Choinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint i gcomhréir le hAirteagal 12 de, glacfaidh sé le forálacha an Phrótacail seo. 40

Airteagal 7

1. Féadfaidh gach Ballstát is Ardpháirtí Conarthach leasuithe ar an bPrótacal seo a mholadh. Cuirfear gach togra do leasú chuig an taiscí agus cuirfidh seisean in iúl don Chomhairle é.

5 2. Glacfaidh an Chomhairle na leasuithe agus molfaidh sí iad lena nglacadh ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

3. Tiocfaidh na leasuithe arna nglacadh amhlaidh i bhfeidhm i gcomhréir le hAirteagal 4.

10 *Airteagal 8*

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Phrótacail seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach fógraí, ionstraimí agus cumarsáidí a bhaineann leis an bPrótacal seo.

15 SCHEDULE 8

Section 38.

Text in the English language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities' financial interests done at Brussels on 19 June 1997

20 SECOND PROTOCOL

drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests

25 THE HIGH CONTRACTING PARTIES to this Protocol, Member States of the European Union,

REFERRING to the Act of the Council of the European Union of 19 June 1997;

30 DESIRING to ensure that their criminal laws contribute effectively to the protection of the financial interests of the European Communities;

RECOGNIZING the importance of the Convention on the protection of the European Communities' financial interests of 26 July 1995 in combating fraud affecting Community revenue and expenditure;

35 RECOGNIZING the importance of the Protocol of 27 September 1996 to the said Convention in the fight against corruption damaging or likely to damage the European Communities' financial interests;

AWARE that the financial interests of the European Communities may be damaged or threatened by acts committed on behalf of legal persons and acts involving money laundering;

40 CONVINCED of the need for national law to be adapted, where necessary, to provide that legal persons can be held liable in cases of fraud or active corruption and money laundering committed for their benefit that damage or are likely to damage the European Communities' financial interests;

CONVINCED of the need for national law to be adapted, where necessary, to penalize acts of laundering of proceeds of fraud or corruption that damage or are likely to damage the European Communities' financial interests and to make it possible to confiscate proceeds of such fraud and corruption; 5

CONVINCED of the need for national law to be adapted, where necessary, in order to prevent the refusal of mutual assistance solely because offences covered by this Protocol concern or are considered as tax or customs duty offences;

NOTING that cooperation between Member States is already covered by the Convention on the protection of the European Communities' financial interests of 26 July 1995, but that there is a need, without prejudice to obligations under Community law, for appropriate provision also to be made for cooperation between Member States and the Commission to ensure effective action against fraud, active and passive corruption and related money laundering damaging or likely to damage the European Communities' financial interests, including exchange of information between the Member States and the Commission; 10 15

CONSIDERING that, in order to encourage and facilitate the exchange of information, it is necessary to ensure adequate protection of personal data; 20

CONSIDERING that the exchange of information should not hinder ongoing investigations and that it is therefore necessary to provide for the protection of investigation secrecy; 25

CONSIDERING that appropriate provisions have to be drawn up on the competence of the Court of Justice of the European Communities;

CONSIDERING finally that the relevant provisions of the Convention on the protection of the European Communities' financial interests of 26 July 1995 should be made applicable to certain acts covered by this Protocol, 30

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1

Definitions 35

For the purposes of this Protocol:

- (a) 'Convention' shall mean the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests, of 26 July 1995⁽¹⁾; 40
- (b) 'fraud' shall mean the conduct referred to in Article 1 of the Convention;
- (c) — 'passive corruption' shall mean the conduct referred to in Article 2 of the Protocol drawn up on the basis of

⁽¹⁾ OJ No C 316, 27.11.1995, p. 49.

Article K.3 of the Treaty on European Union to the convention on the protection of the European Communities' financial interests, of 27 September 1996⁽¹⁾,

— 'active corruption' shall mean the conduct referred to in Article 3 of the same Protocol;

(d) 'legal person' shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organizations;

(e) 'money laundering' shall mean the conduct as defined in the third indent of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering⁽²⁾, related to the proceeds of fraud, at least in serious cases, and of active and passive corruption.

Article 2

Money laundering

Each Member State shall take the necessary measures to establish money laundering as a criminal offence.

Article 3

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on

— a power of representation of the legal person, or

— an authority to take decisions on behalf of the legal person, or

— an authority to exercise control within the legal person,

as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud.

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.

⁽¹⁾ OJ No C 313, 23.10.1996, p. 2.

⁽²⁾ OJ NO L 166, 28. 6.1991, p. 77.

Article 4

Sanctions for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as: 5

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities; 10
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (2) is punishable by effective, proportionate and dissuasive sanctions or measures. 15

Article 5

Confiscation

Each Member State shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the Member State in accordance with its national law. 20
25

Article 6

Cooperation with the Commission of the European Communities

A Member State may not refuse to provide mutual assistance in respect of fraud, active and passive corruption and money laundering for the sole reason that it concerns or is considered as a tax or customs duty offence. 30

Article 7

Cooperation with the Commission of the European Communities

1. The Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money laundering. 35

To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations.

2. The competent authorities in the Member States may exchange information with the Commission so as to make it easier to establish 40

the facts and to ensure effective action against fraud, active and passive corruption and money laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection. To that end, a Member State, when supplying information to the Commission, may set specific conditions covering the use of information, whether by the Commission or by another Member State to which that information may be passed.

Article 8

Data protection responsibility for the Commission

The Commission shall ensure that, in the context of the exchange of information under Article 7 (2), it shall observe, as regards the processing of personal data, a level of protection equivalent to the level of protection set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾.

Article 9

Publication of data protection rules

The rules adopted concerning the obligations under Article 8 shall be published in the Official Journal of the European Communities.

Article 10

Transfer of data to other Member States and third countries

1. Subject to any conditions referred to in Article 7 (2), the Commission may transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any other Member State. The Commission shall inform the Member State which supplied the information of its intention to make such as transfer.

2. The Commission may, under the same conditions, transfer personal data obtained from a Member State in the performance of its functions under Article 7 to any third country provided that the Member State which supplied the information has agreed to such transfer.

Article 11

Supervisory authority

Any authority designated or created for the purpose of exercising the function of independent data protection supervision over personal data held by the Commission pursuant to its functions under the Treaty establishing the European Community, shall be competent to exercise the same function with respect to personal data held by the Commission by virtue of this Protocol.

⁽¹⁾ OJ NO. L 281, 23.11.1995, p. 31.

Article 12

Relation to the Convention

1. The provisions of Articles 3, 5 and 6 of the Convention shall also apply to the conduct referred to in Article 2 of this Protocol.
2. The following provisions of the Convention shall also apply to this Protocol:
 - Article 4, on the understanding that, unless otherwise indicated at the time of the notification provided for in Article 16 (2) of this Protocol, any declaration within the meaning of Article 4 (2) of the Convention, shall also apply to this Protocol,
 - Article 7, on the understanding that the *ne bis in idem* principle also applies to legal persons, and that, unless otherwise indicated at the time the notification provided for in Article 16 (2) of this Protocol is being given, any declaration within the meaning of Article 7 (2), of the Convention shall also apply to this Protocol,
 - Article 9,
 - Article 10.

Article 13

20

Court of Justice

1. Any dispute between Member States on the interpretation or application of this Protocol must in an initial stage be examined by the Council in accordance with the procedure set out in Title VI of the Treaty on European Union with a view to reaching a solution. 25
- If no solution is found within six months, the matter may be referred to the Court of Justice by a party to the dispute.
2. Any dispute between one or more Member States and the Commission concerning the application of Article 2 in relation to Article 1 (e), and Article 7, 8, 10 and 12 (2), fourth indent of this Protocol which it has proved impossible to settle through negotiation may be submitted to the Court of Justice, after the expiry of a period of six months from the date on which one of the parties has notified the other of the existence of a dispute. 30
3. The Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, of 29 November 1996⁽¹⁾, shall apply to this Protocol, on the understanding that a declaration made by a Member State pursuant to Article 2 of that Protocol is also valid regarding this Protocol unless the Member State concerned makes a declaration to the contrary when giving the notification provided for in Article 16 (2) of this Protocol. 35 40

⁽¹⁾ IO Uimh. C 151, 20.5.1997, Ich. 1.

Article 14

Non-contractual liability

5 For the purposes of this Protocol, the non-contractual liability of the Community shall be governed by the second paragraph of Article 215 of the Treaty establishing the European Community. Article 178 of the same Treaty shall apply.

Article 15

Judicial control

10 1. The Court of Justice shall have jurisdiction in proceedings instituted by any natural or legal person against a decision of the Commission addressed to that person or which is of direct and individual concern to that person, on ground of infringement of Article 8 or any rule adopted pursuant thereto, or misuse of powers.

15 2. Articles 168 a (1) and (2), 173, fifth paragraph, 174, first paragraph, 176, first and second paragraphs, 185 and 186 of the Treaty establishing the European Community, as well as the Statute of the Court of Justice of the European Community, shall apply, *mutatis mutandis*.

Article 16

Entry into force

1. This Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

25 2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures required under their respective constitutional rules for adopting this Protocol.

30 3. This Protocol shall enter into force ninety days after the notification provided for in paragraph 2, by the State which, being a member of the European Union on the date of the adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. If, however, the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.

35 4. However, the application of Article 7 (2) shall be suspended if, and for so long as, the relevant institution of the European Communities has not complied with its obligation to publish the data protection rules pursuant to Article 9 or the terms of Article 11 concerning the supervisory authority have not been complied with.

Article 17

Accession of new Member States

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.

2. The text of this Protocol in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. Instruments of accession shall be deposited with the depositary.

4. This Protocol shall enter into force with respect to any State that accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not yet entered into force at the time of expiry of the said period of ninety days. 5

Article 18

Reservations

1. Each Member State may reserve the right to establish the money laundering related to the proceeds of active and passive corruption as a criminal offence only in serious cases of active and passive corruption. Any Member State making such a reservation shall inform the depositary, giving details of the scope of the reservation, when giving the notification provided for in Article 16 (2). Such a reservation shall be valid for a period of five years after the said notification. It may be renewed once for a further period of five years. 10 15

2. The Republic of Austria may, when giving its notification referred to in Article 16 (2), declare that it will not be bound by Articles 3 and 4. Such a declaration shall cease to have effect five years after the date of the adoption of the act drawing up this Protocol. 20

3. No other reservations shall be authorized, with the exception of those provided for in Article 12 (2), first and second indent.

Article 19

25

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.

2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, declarations and reservations and any other notification concerning this Protocol. 30

Section 38.

SCHEDULE 9

Text in the Irish language of the Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention on the protection of the European Communities financial interests done at Brussels on 19 June 1997 35

AN DARA PRÓTACAL

arna dhreachtú ar bhonn Airteagal K.3 den chonradh ar an Aontas Eorpach, a ghabhann leis an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint 40

TÁ NA hARDPHÁIRTITHE CONARTHACHA sa Phrótacal seo, Ballstáit den Aontas Eorpach,

AG TAGAIRT DÓIBH do Ghníomh ó Chomhairle an Aontais Eorpaigh an 19 Meitheamh 1997;

ÓS MIAN LEO a áirithiú go gcuidíonn a ndlíthe coiriúla go héifeachtúil le leasanna airgeadais na gComhphobal Eorpach a chosaint;

- 5 AG AITHINT DÓIBH thábhacht Choinbhinsiún an 26 Iúil 1995 maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint chun calaois a dhéanann dochar d'ioncam agus caiteachas na gComhphobal a chomhrac;

- 10 AG AITHINT DÓIBH thábhacht Phrótacal an 27 Meán Fómhair 1996 a ghabhann leis an gCoinbhinsiún sin sa chomhrac i gcoinne éilliú a dhéanann díobháil, nó ar dóigh dó díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach;

- 15 ÓS FIOS DÓIBH go bhféadfaidh gníomhartha arna ndéanamh thar ceann daoine dlítheanacha agus gníomhartha a bhfuil sciúradh airgid i dtreis iontu díobháil a dhéanamh do leasanna airgeadais na gComhphobal Eorpach nó bheith ina mbagairt orthu;

- 20 ÓS DEIMHIN LEO gur gá an dlí náisiúnta a oiriúnú, nuair is gá, chun a fhoráil go bhféadfar daoine dlítheanacha a chur faoi dhliteanas i gcásanna calaoise nó éillithe ghníomhaigh agus sciúrtha airgid a dhéanann díobháil, nó ar dóigh dóibh díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach;

- 25 ÓS DEIMHIN LEO gur gá an dlí náisiúnta a oiriúnú, nuair is gá, chun gníomhartha a phionósú lena ndéantar fáлтаis ón gcálaois nó ón éilliú a sciúradh a dhéanann díobháil, nó ar dóigh dóibh díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach agus chun gur féidir fáлтаis ó chalaois agus éilliú den sórt sin a choigistiú;

- 30 ÓS DEIMHIN LEO gur gá an dlí náisiúnta a oiriúnú, nuair is gá, d'fhonn a chosc go ndéanfar cúnamh frithpháirteach a dhiúltú toisc amháin go bhfuil baint ag na cionta atá folaithe sa Phrótacal seo le cionta a bhaineann le cánacha nó dleachtanna custaim nó go meastar gur cionta den saghas sin iad;

- 35 AG TABHAIRT DÁ nAIRE DÓIBH go bhfuil an comhar idir na Ballstáit folaithe cheana i gCoinbhinsiún an 26 Iúil 1995 maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint ach gur gá, gan dochar d'oibleagáidí faoin dlí Comhphobail, a fhoráil go hiomchuí freisin do chomhar idir na Ballstáit agus an Coimisiún d'fhonn gníomhaíocht éifeachtúil a áirithiú i gcoinne na calaoise, an éillithe ghníomhaigh agus neamhghníomhaigh agus sciúradh airgid gaolmhar a dhéanann díobháil, nó ar dóigh dóibh díobháil a dhéanamh, do leasanna airgeadais na gComhphobal Eorpach, lena n-áirítear malartú faisnéise idir na Ballstáit agus an Coimisiún;

DE BHRÍ gur gá, d'fhonn malartú faisnéise a chothú agus a éascú, cosaint leormhaith a áirithiú do shonraí pearsanta;

- 45 DE BHRÍ nár chóir go mbeadh an malartú faisnéise ina bhac ar imscrúduithe atá faoi shiúl agus gur gá dá bhri sin a fhoráil go gcosnófar rúndacht an imscrúdaithe;

DE BHRÍ gur chóir freisin forálacha iomchuí a leagan síos maidir le dlínse Chúirt Bhreithiúnais na gComhphobal Eorpach;

DE BHRÍ, ar deireadh, gur chóir forálacha ábhartha Choinbhinsiún an 26 Iúil 1995 maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint a chur i bhfeidhm ar ghníomhartha áirithe atá folaithe sa Phrótacal seo,

TAR ÉIS COMHAONTÚ AR NA FORÁLACHA SEO A 5
LEANAS:

Airteagal 1

Sainmhínithe

Chun críoch an Phrótacail seo:

- (a) ciallaíonn “an Coinbhinsiún” Coinbhinsiún an 26 Iúil 1995, 10
arna dhréachtú ar bhonn Airteagal K.3 den Chonradh
ar an Aontas Eorpach, maidir le leasanna airgeadais na
gComhphobal Eorpach a chosaint⁽¹⁾;
- (b) ciallaíonn “calaois” an t-iompar dá dtagraítear in Airteagal 15
1 den Choinbhinsiún;
- (c) — ciallaíonn “éilliú neamhghníomhach” an t-iompar dá
dtagraítear in Airteagal 2 de Phrótacal an 27 Meán
Fómhair 1996, arna dhréachtú ar bhonn Airteagal K.3
den Chonradh ar an Aontas Eorpach, a ghabhann leis an
gCoinbhinsiún maidir le leasanna airgeadais na 20
gComhphobal Eorpach a chosaint (2);
— ciallaíonn “éilliú gníomhach” an t-iompar dá dtagraítear
in Airteagal 3 den Phrótacal céanna;
- (d) ciallaíonn “duine dlítheanach” aon eintiteas a bhfuil stádas 25
den sórt sin aige faoin dlí náisiúnta is infheidhme, amach
ó Stáit nó comhlachtaí poiblí eile i bhfeidhmiú údarás an
Stáit agus ó eagraíochtaí idirnáisiúnta poiblí;
- (e) ciallaíonn “sciúradh airgid” an t-iompar atá sainithe sa tríú 30
fleasc d’Airteagal 1 de Threoir 91/308/CEE ón gCom-
hairle an 10 Meitheamh 1991 maidir le húsáid an chórais
airgeadais chun críche sciúradh airgid a chosc⁽³⁾, a bhaine-
ann le fáiltais ón gcalaois, ar a laghad i gcásanna tromchú-
iseacha calaoise, agus ón éilliú gníomhach agus
neamhghníomhach.

Airteagal 2 35

Sciúradh airgid

Glacfaidh gach Ballstát na bearta is gá chun sciúradh airgid a bhunú mar chion coiriúil.

Airteagal 3

Dlíteanas daoine dlítheanacha 40

1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhféadfar daoine dlítheanacha a chur faoi dhlíteanas don chalaos, don éilliú gníomhach agus do sciúradh airgid arna ndéanamh ar mhaithe leo

⁽¹⁾ IO Uimh. C 316, 27.11.1995, lch. 49.

⁽²⁾ IO Uimh. C 313, 23.10.1996, lch. 2.

⁽³⁾ IO Uimh. L 166, 28. 6.1991, lch. 77.

ag aon duine, ag gníomhú dó ina aonar nó mar bhall d'orgán de chuid an duine dhlítheanaigh, a bhfuil ardseasmh aige laistigh den duine dlítheanach atá bunaithe:

- ar chumhacht ionadaíochta don duine dlítheanach, nó
- 5 — ar údarás chun cinntí a ghlacadh thar ceann an duine dhlítheanaigh, nó
- ar údarás chun rialú a fheidhmiú laistigh den duine dlítheanach,

10 agus freisin faoi dhlítheanas do bheith i dtreis mar chúlpháirtithe nó mar ghriósóirí i gcalaois, in éilliú gníomhach nó i sciúradh airgid den sórt sin nó in iarracht ar chalaois den sórt sin a dhéanamh.

2. Amach ó na cásanna dá bhforáiltear cheana i mír 1, glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhféadfar duine dlítheanach a chur faoi dhlítheanas nuair is é an easpa maoirseachta
15 nó rialaithe de chuid duine dá dtagraítear i mír 1 ba chúis gurbh fhéidir le duine faoina údarás calaois nó gníomh éillithe ghníomhaigh nó sciúradh airgid a dhéanamh ar mhaithe leis an duine dlítheanach sin.

3. Ní eisíafaídh dlítheanas duine dhlítheanaigh faoi mhíreanna 1
20 agus 2 imeachtaí coiriúla i gcoinne daoine nádúrtha is údair nó griósóirí na calaoise, an éillithe ghníomhaigh nó an sciúrtha airgid nó is cúlpháirtithe iontu.

Airteagal 4

Smachtbhannaí do dhaoine dlítheanacha

25 1. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbeidh duine dlítheanach arna chur faoi dhlítheanas de bhun Airteagal 3(1) inphionóis le smachtbhannaí atá éifeachtúil, comhréireach agus athchomhairleach a chuimseoidh fineálacha coiriúla nó neamhchoiriúla agus a fhéadfaidh smachtbhannaí eile a chuimsiú
30 amhail:

- (a) eisiaimh ón teideal chun sochar poiblí nó cúnaimh;
- (b) dícháiliú sealadach nó buan chun gníomhaíochtaí tráchtála a chleachtadh;
- (c) cur faoi mhaoirseacht bhreithiúnach;
- 35 (d) ordú foirceanta breithiúnach.

2. Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go mbeidh duine dlítheanach arna chur faoi dhlítheanas de bhun Airteagal 3(2) inphionóis le smachtbhannaí nó bearta atá éifeachtúil, comhréireach agus athchomhairleach.

40 *Airteagal 5*

Coigistiú

Glacfaidh gach Ballstát na bearta is gá chun a áirithiú go bhféadfar ionstraimí na calaoise, an éillithe ghníomhaigh agus neamhghníomhaigh agus an sciúrtha airgid, agus fáltais uathu nó maoin a bhfreagraíonn a luach d'fháltais den sórt sin, a urghabháil agus, gan dochar do chearta tríú páirtithe *bona fide*, a choigistiú nó a aistriú. Déil-
45 eálfaidh an Ballstát, i gcomhréir lena dhlí náisiúnta, le haon ionstraimí, fáltais nó maoin eile arna n-urghabháil nó arna gcoigistiú.

Airteagal 6

Cionta a bhaineann le cánacha agus dleachtanna custaim

Ní fhéadfaidh Ballstát diúltú cúnamh frithpháirteach a sholáthar i ndáil leis an gcalaois, an éilliú gníomhach agus neamhghníomhach agus an sciúradh airgid toisc amháin go bhfuil baint aige le cion a bhaineann le cánacha nó dleachtanna custaim nó go meastar gur cion den saghas sin é. 5

Airteagal 7

Comhar le Coimisiún na gComhphobal Eorpach

1. Comhoibreoidh na Ballstáit agus Coimisiún na gComhphobal Eorpach le chéile chun an chalaóis, an t-éilliú gníomhach agus neamhghníomhach agus sciúradh airgid a chomhrac. 10

Chuirge sin, soláthróidh an Coimisiún aon chúnamh teicniúil agus oibríochtúil a fhéadfaidh a bheith ag teastáil ó na húdaráis náisiúnta inniúla chun comhordú a n-imscrúduithe a éascú. 15

2. Féadfaidh na húdaráis inniúla sna Ballstáit faisnéis a mhalartú leis an gCoimisiún chun gur fusa na fíoraí a shuíomh agus gníomhaíocht éifeachtúil a áirithiú i gcoinne na calaoise, an éillithe ghníomhaigh agus neamhghníomhaigh agus an sciúrtha airgid. Cuirfidh an Coimisiún agus na húdaráis náisiúnta inniúla san áireamh, i ngach cás sonrach, riachtanais rúndacht na n-imscrúduithe agus chosaint na sonraí. Chuirge sin, féadfaidh Ballstát, tráth na faisnéise a sholáthar don Choimisiún, coinníollacha sonracha a leagan síos a fholaíonn úsáid na faisnéise ag an gCoimisiún nó ag Ballstát eile a bhféadfar an fhaisnéis sin a chur chuige. 20 25

Airteagal 8

Freagracht an Choimisiúin as sonraí a chosaint

Áiríteoidh an Coimisiún, i gcomhthéacs faisnéis a mhalartú faoi Airteagal 7(2), go n-urramóidh sé, i ndáil le próiseáil sonraí pearsanta, leibhéal cosanta is coibhéiseach leis an leibhéal cosanta atá leagtha amach i dTreoir 95/46/CE ó Pharlaimint na hEorpa agus ón gComhairle an 24 Deireadh Fómhair 1995 maidir le daoine aonair a chosaint i dtaca le próiseáil sonraí pearsanta agus saorghluaiseacht sonraí den sórt sin⁽¹⁾. 30

Airteagal 9

35

Rialacha cosanta sonraí a fhoilsiú

Déanfar na rialacha a ghlacfar maidir leis na hoibleagáidí faoi Airteagal 8 a fhoilsiú in Iris Oifigiúil na gComhphobal Eorpach.

Airteagal 10

Sonraí a aistriú chuig Ballstáit eile agus chuig tríú tíortha 40

1. Faoi réir aon choinníollacha dá dtagraítear in Airteagal 7(2), féadfaidh an Coimisiún sonraí pearsanta a fhaightear ó Ballstát i bhfeidhmiú a fheidhmeanna faoi Airteagal 7 a aistriú chuig aon Bhallstát eile. Cuirfidh an Coimisiún in iúl don Bhallstát a sholáthair an fhaisnéis go bhfuil sé ar intinn aige an t-aistriú sin a dhéanamh. 45

⁽¹⁾ IO Uimh. L 281, 23.11.1995, lch. 31.

2. Féadfaidh an Coimisiún, faoi na coinníollacha céanna, sonraí pearsanta a fhaightear ó Bhallstát i bhfeidhmiú a fheidhmeanna faoi Airteagal 7 a aistriú chuig aon tríú tír ar chuntar go bhfuil an Ballstát a sholáthair an fhaisnéis tar éis comhaontú leis an aistriú sin.

5

Airteagal 11

Údarás maoirseachta

Aon údarás arna cheapadh nó arna chruthú d'fhonn feidhm na maoirseachta neamhspleáiche ar chosaint sonraí a fheidhmiú maidir le sonraí pearsanta arna sealbhú ag an gCoimisiún de bhun a fheidhmeanna faoin gConradh ag bunú an Chomhphobail Eorpaigh, beidh sé inniúil chun an fheidhm chéanna a fheidhmiú i leith sonraí pearsanta arna sealbhú ag an gCoimisiún de bhua an Phrótacail seo.

Airteagal 12

Gaol leis an gCoinbhinsiún

15 1. Beidh forálacha Airteagail 3, 5 agus 6 den Choinbhinsiún infheidhme freisin ar an iompar dá dtagraítear in Airteagal 2 den Phrótacal seo.

2. Beidh na forálacha seo a leanas den Choinbhinsiún infheidhme freisin ar an bPrótacal seo:

20 — Airteagal 4, ar é a bheith le tuiscint go mbeidh aon dearbhú de réir bhrí Airteagal 4(2) den Choinbhinsiún infheidhme freisin ar an bPrótacal seo mura sonrófar a mhalairt tráth an fhógra dá bhforáiltear in Airteagal 16(2) den Phrótacal seo a thabhairt,

25 — Airteagal 7, ar é a bheith le tuiscint go mbeidh prionsabal “ne bis in idem” infheidhme freisin ar dhaoine dlítheanacha agus go mbeidh aon dearbhú de réir bhrí Airteagal 7(2) den Choinbhinsiún infheidhme freisin ar an bPrótacal seo mura sonrófar a mhalairt tráth an fhógra dá bhforáiltear in Airteagal 16(2) den Phrótacal seo a thabhairt,

30

— Airteagal 9,

— Airteagal 10.

Airteagal 13

An Chúirt Bhreithiúnais

35 1. Ní foláir don Chomhairle aon díospóid idir na Ballstáit maidir le léiriú nó cur i bhfeidhm an Phrótacail seo a phlé mar chéad chéim i gcomhréir leis an nós imeachta atá leagtha amach i dTeideal VI den Chonradh ar an Aontas Eorpach d'fhonn teacht ar réiteach.

40 Mura mbeidh réiteach faighte laistigh de thréimhse sé mhí, féadfaidh páirtí sa díospóid í a chur faoi bhráid na Cúirte Breithiúnais.

2. Aon díospóid idir Ballstát amháin nó níos mó agus an Coimisiún maidir le hAirteagal 2, i ndáil le pointe (e) d'Airteagal 1, agus le hAirteagail 7, 8 agus 10 agus leis an gceathrú fleasc d'Airteagal 12(2) den Phrótacal seo a chur i bhfeidhm nárbh fhéidir a réiteach trí chaidlíocht, féadfar í a chur faoi bhráid na Cúirte Breithiúnais tar éis do thréimhse sé mhí ón dáta a thug ceann de na páirtithe fógra don pháirtí eile go raibh díospóid ann dul in éag.

45

3. Beidh Prótacal an 29 Samhain 1996, arna dhréachtú ar bhonn Airteagal K.3 den Chonradh ar an Aontas Eorpach, maidir le léiriú, trí réamhrialú, ag Cúirt Bhreithiúnais na gComhphobal Eorpach ar an gCoinbhinsiún maidir le leasanna airgeadais na gComhphobal Eorpach a chosaint⁽¹⁾, infheidhme ar an bPrótacal seo, ar é a bheith le tuiscint go mbeidh dearbhú arna dhéanamh ag Ballstát de bhun Airteagal 2 den Phrótacal sin bailí freisin i leith an Phrótacail seo mura ndéanfaidh an Ballstát i dtrácht dearbhú dá mhalairt tráth an fhógra dá bhforáiltear in Airteagal 16(2) den Phrótacal seo a thabhairt.

Airteagal 14

Dliteanas neamhchonarthach

Chun críoch an Phrótacail seo, beidh dliteanas neamhchonarthach an Chomhphobail faoi rialú ag an dara mír d'Airteagal 215 den Chonradh ag bunú an Chomhphobail Eorpaigh. Beidh Airteagal 178 den Chonradh céanna infheidhme.

Airteagal 15

Rialú breithiúnach

1. Beidh dlínse ag an gCúirt Bhreithiúnais in imeachtaí arna dtionscnamh ag aon duine nádúrtha nó dlítheanach in aghaidh cinneadh ón gCoimisiún a díriodh chuig an duine sin nó is dá chúram go díreach agus go leithleach, mar gheall ar shárú Airteagal 8 nó aon riail arna glacadh dá bhun nó mar gheall ar mhí-úsáid cumhachtaí.

2. Beidh Airteagail 168a(1) agus (2), an cúigiú mír d'Airteagal 173, an chéad mhír d'Airteagal 174, an chéad mhír agus an dara mír d'Airteagal 176, agus Airteagail 185 agus 186 den Chonradh ag bunú an Chomhphobail Eorpaigh, maille le Reacht Chúirt Bhreithiúnais na gComhphobal Eorpach, infheidhme *mutatis mutandis*.

Airteagal 16

Teacht i bhfeidhm

1. Beidh an Prótacal seo faoi réir a ghlactha ag na Ballstáit i gcomhréir lena rialacha bunreachtúla faoi seach.

2. Cuirfidh na Ballstáit in iúl d'Ardrúnaí Chomhairle an Aontais Eorpaigh go bhfuil na nósanna imeachta is gá faoina rialacha bunreachtúla faoi seach chun an Prótacal seo a ghlacadh comhlíonta acu.

3. Tiocfaidh an Prótacal seo i bhfeidhm 90 lá tar éis don fhógra dá bhforáiltear i mír 2 a bheith tugtha ag an Stát is Ballstát den Aontas Eorpach ar an dáta a ghlac an Chomhairle an Gníomh ag dréachtú an Phrótacail seo is déanaí a dhéanfaidh an beart sin. Mura mbeidh an Coinbhinsiún tagtha i bhfeidhm ar an dáta sin áfach, tiocfaidh an Prótacal seo i bhfeidhm ar an dáta a thiocfaidh an Choinbhinsiún i bhfeidhm.

4. Ar a shon sin, déanfar cuir i bhfeidhm Airteagal 7(2) a fhionraí mura mbeidh, agus fad nach mbeidh, an institiúid ábhartha de chuid na gComhphobal Eorpach tar éis a hoibleagáid na rialacha cosanta

⁽¹⁾ IO Uimh. C 151, 20.5.1997, lch. 1.

sonraí a fhoilsiú de bhun Airteagal 9 a chomhlíonadh nó murambefear, agus fad nach mbeifear, tar éis téarmaí Airteagal 11 maidir leis an údarás maoirseachta a chomhlíonadh.

Airteagal 17

5

Aontachas Ballstát nua

1. Beidh an Prótacal seo ar oscailt d'aontachas aon Stát a thiocfaidh chun bheith ina Bhallstát den Aontas Eorpach.

2. Is téacs údarásach téacs an Phrótacail seo i dteanga an Stáit aontaigh, arna dhréachtú ag Comhairle an Aontais Eorpaigh.

10 3. Déanfar ionstraimí aontachais a thaisceadh leis an taiscí.

4. Tiocfaidh an Prótacal seo i bhfeidhm i leith aon Stát a aontaíonn dó 90 lá tar éis dó a ionstraim aontachais a thaisceadh nó ar dháta an Phrótacail seo a theacht i bhfeidhm mura mbeidh sé tagtha i bhfeidhm fós tráth na tréimhse thuasluaite 90 lá a dhul in éag.

15

Airteagal 18

Forchoimeádais

1. Féadfaidh gach Ballstát an ceart a fhorchoimeád gan sciúradh airgid a bhaineann leis na fáлтаis ón éilliú gníomhach agus neamhghníomhach a bhunú mar chion coiriúil ach i gcásanna tromchúiseacha éillithe ghníomhaigh agus neamhghníomhaigh. Aon Bhallstát a dhéanann forchoimeádas den sórt sin, cuirfidh sé an taiscí ar an eolas tráth an fhógra dá bhforáiltear in Airteagal 16(2) a thabhairt, agus tabharfaidh sé na mionsonraí dó maidir le raon feidhme an fhorchoimeádais. Beidh forchoimeádas den sórt sin bailí go ceann tréimhse cúig bliana ón bhfógra sin. Féadfar é a athnuachan uair amháin go ceann tréimhse eile cúig bliana.

2. Féadfaidh Poblacht na hOstaire a dhearbhu, tráth an fhógra dá dtagraítear in Airteagal 16(2) a thabhairt, nach mbeidh sí faoi cheangal ag Airteagail 3 agus 4. Scoirfidh dearbhú den sórt sin d'éifeacht a bheith leis cúig bliana tar éis dháta glactha an Ghnímh ag dréachtú an Phrótacail seo.

3. Ní cheadófar aon fhorchoimeádas eile amach ó na cinn dá bhforáiltear sa chéad fhleasc agus sa dara fleasc d'Airteagal 12(2).

Airteagal 19

35

Taiscí

1. Is é Ardrúnaí Chomhairle an Aontais Eorpaigh taiscí an Phrótacail seo.

2. Foilseoidh an taiscí in Iris Oifigiúil na gComhphobal Eorpach faisnéis maidir leis an bPrótacal seo a ghlacadh agus aontachais leis, na dearbhuithe, na forchoimeádais agus gach fógra eile a bhaineann leis an bPrótacal seo.

40



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**AN BILLE UM CHEARTAS COIRIÚIL (CIONTA
GADAÍOCHTA AGUS CALAOISE), 2000
CRIMINAL JUSTICE (THEFT AND FRAUD OFFENCES)
BILL, 2000**

EXPLANATORY MEMORANDUM

Introduction

The primary purpose of the Bill is to update and consolidate the law relating to dishonesty and fraud. The provisions of the Bill are based in part on two reports: the Law Reform Commission Report on The Law Relating to Dishonesty (LRC 43 — 1992) and the Report of the Government Advisory Committee on Fraud (published in 1993).

The present law on dishonesty is found mainly in the common law and in the Larceny Acts of 1861, 1916 and 1990. In general these cover adequately the more serious offences of dishonesty, but there have been difficulties caused by the fact that a number of different offences exist to describe similar dishonest behaviour. Equally, the existing law does not always deal adequately with some forms of dishonesty, such as false statements as to future intentions. The Bill aims to bring the law up to date and sets out various offences which amount to dishonest behaviour. The Bill also deals with offences of forgery and counterfeiting and, as with the other offences of dishonesty, it consolidates the law in these areas.

Changes are also being made in the law relating to the investigation of offences under the Bill and to trial procedures. The Bill also includes measures designed for the protection of the European Communities' financial interests from fraud and corruption and the protection of the euro.

Overview

Part 1 is introductory. Part 2 sets out the main offences of theft and dishonesty. Apart from stealing, these include deceiving another person or using a computer unlawfully such that one makes a gain or receives a benefit or causes another to suffer a loss, failing to pay for goods or services, false accounting, burglary, robbery and possessing articles for use in committing certain offences. Part 3 relates mainly to offences of handling or possessing stolen property and withholding information regarding stolen property.

Part 4 amends the law on forgery and replaces the existing statutory offences contained in the Forgery Acts of 1861 and 1913. It sets out the various offences relating to forgery and the copying and use of false instruments for the purpose of inducing a person to accept these as genuine with consequent prejudice to that person. Part 5 contains provisions against counterfeiting of currency notes and coins, including euro notes and coins, even before these have been

issued. Part 6 contains measures to counter fraud affecting the European Communities financial interests as well as corruption of or by officials.

Part 7 deals with the investigation of offences under the Bill, including the granting of search warrants, forfeiture of property and orders to produce evidential material. Part 8, relating to the trial of offences, provides for summary trial of offences under the Bill and for alternative verdicts concerning offences of stealing, handling or possessing stolen or unlawfully obtained property. It also provides for the restitution of property to the true owner and for the provision of documents to juries to assist them in their deliberations. Part 9 deals with miscellaneous matters, including the use of an assumed name to commit an offence under the Bill, the liability of bodies corporate, admissibility of certain documents as evidence and amendments to certain acts.

PART 1

Preliminary

Section 1 (Short title and commencement)

This is a standard provision which sets out the short title and provides that the Act or sections of it may be brought into operation by order or orders made by the Minister.

Section 2 (Interpretation (general))

Section 2 contains definitions of words and phrases used in the Bill or specifies particular sections where such words and phrases are defined. Among the words and phrases defined in this section for the purposes of the Act are dishonesty, property, stolen property, unlawfully obtained, deception, owner and ownership.

Section 3 (Repeals, etc.)

Section 3 provides that the Acts specified in the First Schedule are repealed to the extent set out there. It also states that the common law offences of larceny, burglary, robbery, cheating, extortion under colour of office and forgery are abolished.

PART 2

Theft and Related Offences

Section 4 (Theft)

Under *subsection (1)* a person will be guilty of the offence of theft where he or she dishonestly (i.e. without a claim of right made in good faith) appropriates property with the intention of depriving the owner of it. By virtue of *subsection (2)* no appropriation without consent occurs where the person believes he or she had consent (excluding consent obtained by deception) or where he or she believes the true owner could not reasonably be discovered. *Subsection (3)* applies to situations where property is held on trust for or on behalf of more than one person by another person acting in the course of business and where some of the property is appropriated for the latter's benefit without the consent of the owner or owners. *Subsection (4)* relates to the trial for an offence under this section and the matter of reasonable grounds for the person's belief that his or her actions do not amount to theft. *Subsection (5)* defines the words appropriates (i.e. usurps or adversely interferes with the owner's proprietary rights) and depriving (i.e. either temporarily or

permanently) for the purposes of the section. The maximum penalty which the court may impose on a person found guilty of theft will be an unlimited fine or up to 10 years in prison or both (*subsection (6)*).

Section 5 (Exceptions to theft)

There are a number of exceptions to the offence of theft. The first of these is contained in *subsection (1)* of this section, whereby a transfer of property will not amount to theft in circumstances where a person has obtained the property for value and in good faith but it subsequently transpires that the property had been stolen. Other exceptions are set out in *subsection (2)*, e.g. it is not possible to steal land or things forming part of land and severed from it. However, a person may be guilty of theft where, for example, being a trustee or company liquidator, he or she sells or disposes of land or appropriates it for personal benefit, or where a person who is not in possession of the land appropriates anything forming part of it by severing it or where a tenant or licensee appropriates anything in breach of the tenancy or licence. *Subsection (3)* defines, for the purpose of the section, what is meant by land, tenancy and licence. *Subsections (4)* and *(5)* also exempt the picking of wild flowers, fruit etc., and the taking of wild creatures not already in another's possession, from the offence of theft.

Section 6 (Making gain or causing loss by deception)

This section makes it an offence for a person to dishonestly induce another person to do or not to do some act with the intention of making a gain for oneself or some other person or causing a loss to another. The maximum penalty for conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 7 (Obtaining services by deception)

Section 7 makes it an offence for a person, by any deception, to dishonestly obtain services (including a loan) with the intention of making a gain, either personally or for another, or causing loss to any person. Obtaining services from another arises where that other is induced to confer a benefit on the understanding that it will be paid for. The maximum penalty for conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 8 (making off without payment)

Under *subsection (1)* of *section 8* it will be an offence for a person, knowing that payment on the spot is required or expected, to dishonestly make off without paying for the goods or services with the intention of avoiding payment on the spot, except in such circumstances where, according to *subsection (2)*, the payment would not be legally enforceable. *Subsection (3)* permits any person to arrest without warrant anyone in the act of committing the offence of making off without payment. A Garda is permitted to arrest without warrant a person whom he, with reasonable cause, suspects is guilty of such an offence (*subsection (4)*). Under *subsections (5)* and *(6)* where an arrest under this section is effected by a person other than a Garda there must be reasonable cause to suspect that the arrested person is attempting to avoid or avoiding arrest by a Garda and that the arrest is for the purpose of handing the person over to the Gardaí as soon as practicable. Under *subsection (7)* the maximum penalty for conviction on indictment will be a fine of up to £3,000 or up to 2 years in prison or both.

Section 9 (Unlawful use of computer)

Section 9 makes it an offence to dishonestly, within the State or outside the State, operate or cause to be operated a computer within the State with the intention of making a gain for oneself or for another or causing a loss to another. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 10 (False accounting)

False accounting will be an offence and will be committed where a person, intending to make a gain for oneself or another or to cause loss to another, does any one of the following: destroys or otherwise falsifies accounts or documents for accounts; fails to complete accounts or documents; furnishes false or misleading accounts or documents. Falsifying accounts or documents arises where misleading or false entries are made or where relevant particulars are omitted. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 11 (Suppression, etc., of documents)

This section is concerned with the dishonest use of valuable securities and other documents for the purpose of realising a benefit or causing loss. *Subsection (1)* makes it an offence dishonestly to destroy, deface or conceal certain documents, including valuable securities, wills etc., with the intention of making a gain for oneself or another or causing a loss to another. Similarly it will be an offence to dishonestly by any deception procure the execution of a valuable security with the like intention (*subsection (2)*). *Subsection (3)* defines what is meant by valuable security, including a document transferring a right in or over land or authorising the payment of money. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both (*subsection (4)*).

Section 12 (Burglary)

Section 12 provides that a person will be guilty of burglary if he or she enters a building (which includes inhabited vehicles or vessels or other structures) as a trespasser intending to commit an arrestable offence (i.e. an offence carrying a penalty of at least 5 years in prison upon conviction) or, being present as a trespasser, commits or attempts to commit such an offence. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 14 years in prison or both.

Section 13 (Aggravated burglary)

Aggravated burglary consists of burglary committed in circumstances where the perpetrator has with him or her at the time a firearm, imitation firearm, weapon of offence or explosive (which are defined in the section). The maximum penalty upon conviction on indictment will be imprisonment for up to life.

Section 14 (Robbery)

A person who steals will be guilty of robbery if, at the time or immediately before the stealing and in order to do so, he or she uses force or threatens force on any person. The maximum penalty upon conviction on indictment will be imprisonment for up to life.

Section 15 (Possession of certain articles)

Subsection (1) of *section 15* makes it an offence for a person to have in his possession, when not at his or her own residence, any article intending to use it in connection with certain offences, for

example theft, burglary, certain offences involving deception, blackmail, extortion and unauthorised taking of a vehicle. Under *subsection (2)* it is also an offence to possess, without lawful authority or excuse, any article made or adapted for use in the commission of any of the above offences. There is provision for the forfeiture and destruction of such articles following conviction or following final appeal or the expiry of the time for appeal (*subsections (3) and (4)*). Under *subsection (5)* the maximum penalty upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

PART 3

Handling etc. Stolen Property and Other Proceeds of Crime

Section 16 (Interpretation (Part 3))

Section 16 sets out some definitions used in this Part. These are principal offender, reckless and substantial risk in regard to handling stolen property.

Section 17 (Handling stolen property)

Subsection (1) of this section provides that the offence of handling stolen property consists of doing any of the following other than in the course of stealing: dishonestly receiving, arranging to receive, undertaking or assisting in, its retention, removal etc. knowing it was stolen or being reckless as to whether it was stolen. For the purposes of this section, *subsection (2)* provides that where a person does any of the above in relation to property in such circumstances that it is reasonable to conclude the person knew, or was reckless as to whether, it was stolen he or she will be taken to have known or to have been reckless unless the court is satisfied that there is a reasonable doubt on this. *Subsection (3)* provides that a person may be charged and convicted of handling even if the principal offender (i.e. the thief) has not been previously convicted. Under *subsection (4)* the maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both, but subject to the proviso that the person will not be liable to a penalty greater than that permitted for the principal offence.

Section 18 (Possessing stolen property)

Subsection (1) makes it an offence for a person without lawful authority or excuse to possess stolen property, other than in the course of stealing, knowing, or being reckless as to whether, it was stolen. Under *subsection (2)* a person who has stolen property in his or her possession in such circumstances that it is reasonable to conclude that he or she knew or was reckless as to whether it was stolen will be taken to have known or been reckless, unless the court or jury is satisfied that there is a reasonable doubt on this matter. *Subsection (3)* provides that a person may be charged and convicted of possessing stolen property even if the principal offender has not been previously convicted. Under *subsection (4)* the maximum penalty upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both, subject to the proviso that the person will not be liable to a penalty greater than that permitted for the principal offence.

Section 19 (Withholding information regarding stolen property)

Under *subsection (1)* the Gardaí are given power to require any person to account for property in his or her possession where there are reasonable grounds for believing that an offence of theft or handling stolen property has been committed and where the person is

found in possession of such property and the Gardai inform the person of their belief concerning the property. *Subsection (2)* provides that failure or refusal, without reasonable excuse, to give such an account will be an offence carrying a penalty on summary conviction of a fine up to £1,500 or up to 12 months in prison or both, but this will only apply where the person was told in ordinary language of the consequences of failure to provide the account (*subsection (3)*). *Subsection (4)* states that information given on foot of a demand under this section will not be admissible in evidence against the person providing it or the spouse of the person in any criminal proceedings except in relation to the offence of failure or refusal to give the account when requested.

Section 20 (Scope of offences relating to stolen property)

This section provides that the provisions of Part 3 of the Bill apply whether the stealing occurred before or after the Bill commences and to stealing outside the State and for this purpose stolen property also includes the proceeds of the disposal of stolen property. Property which has been returned to its rightful owner will no longer be considered as stolen.

Section 21 (Amendment of section 31 of the Criminal Justice Act, 1994)

This section substitutes a new section for section 31 of the 1994 Act which deals with money laundering. The new section 31 makes it an offence for a person to do any of a number of things in relation to the property knowing or believing, or being reckless as to whether, that property is or represents the proceeds of criminal conduct. This includes converting, transferring, handling or removing the property from the State intending to conceal etc. its true nature, assisting another to avoid prosecution for criminal conduct or avoiding the making of a confiscation order. Other offences covered include concealing or disguising its true nature, or acquiring or possessing the property. The maximum penalty provided is an unlimited fine or up to 14 years in prison or both. Other provisions in the new section 31 relate to knowledge or recklessness as to the source of the property, assumptions about the intention of persons with regard to the property, definitions of words and phrases used in the section and the proof of foreign law where criminal conduct occurred outside the State.

Section 22 (Amendment of section 56A of the Criminal Justice Act, 1994)

This is a technical amendment consequent on the new section 31 providing that in relation to an offence under the law of a country or territory other than the State, references in Part IV of the 1994 Act (dealing with money laundering) to an offence shall be construed as including references to a revenue offence.

PART 4

Forgery

Section 23 (Interpretation (Part 4))

This section sets out definitions of words used in Part 4. In particular it defines instrument as including any document, disc, tape, postage stamp, revenue stamp, social services card, cheque card, credit card and admission tickets.

Section 24 (Forgery)

Section 24 provides that a person who makes a false instrument intending it to be accepted as genuine resulting in prejudice to the person accepting it will be guilty of forgery. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 25 (Using false instrument)

Under this section it will be an offence to use a false instrument, knowing or believing it to be false, intending to induce a person to accept it as genuine and thereby cause that person to suffer some loss. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 26 (Copying false instrument)

Section 26 makes it an offence for a person to make a copy of an instrument, knowing or believing it to be a false instrument, intending that it should pass as genuine and thereby cause loss to any person accepting it as genuine. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 27 (Using copy of false instrument)

Section 27 makes it an offence for a person to use a copy of a false instrument, knowing or believing it to be false, intending to pass it as genuine and thereby cause loss to another. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 28 (Custody or control of certain false instruments, etc.)

Subsection (1) makes it an offence to have custody or control of certain false instruments intending to pass them as genuine thereby causing loss to another. It will also be an offence to have custody or control of such instruments without lawful authority or excuse (*subsection (2)*). Custody or control of a machine etc. for making false instruments intending to make such instruments will be an offence (*subsection (3)*) as well as having custody or control of such machine etc. without lawful authority or excuse (*subsection (4)*). *Subsection (5)* sets out what is meant by machine and *subsection (6)* sets out the instruments to which the section applies including money and postal orders, postage stamps, revenue stamps and licences, cheques, cheque cards, credit cards, share certificates (defined in *subsection (7)*), birth certificates, passports, social services cards and admission tickets. *Subsection (8)* provides that the maximum penalties for offences under the section will be an unlimited fine or up to 5 years in prison or both for offences under *subsection (2)* or *(4)* and an unlimited fine or up to 10 years in prison or both for offences under *subsection (1)* or *(3)*.

Section 29 (Meaning of “false” and “making”)

Section 29 defines what is a false instrument for the purposes of Part 4. A false instrument is one that purports to be something which it is not because, for example, it was not authorised by the person who had authority to authorise it. It also provides that a person will be treated as making a false instrument if that person alters an instrument so as to make it false.

Section 30 (Meaning of “prejudice” and “induce”)

Prejudice occurs where a person loses property, is deprived of an opportunity to earn remuneration, where another is given the opportunity to earn remuneration or gain financial advantage or where a

person accepts a false instrument as genuine. Inducing includes inducing a machine to respond to the instrument as if it was genuine.

PART 5

Counterfeiting

Section 31 (Interpretation (Part 5))

Section 30 defines currency note and coin to mean those lawfully issued or customarily used as money in the State or any other state, including euro notes and coins, whether issued or not. A counterfeit includes things which resemble currency notes and coins. Things representing one side only of a currency note or of parts of currency notes are also counterfeits.

Section 32 (Counterfeiting currency notes and coins)

This section makes it an offence to make a counterfeit currency note or coin intending that it pass as genuine. It is also an offence for a person outside the State to make a counterfeit note or coin with the intention that it pass as genuine in any member state of the EU. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

Section 33 (Passing, etc. counterfeit currency notes or coins)

Under *section 33* it will be an offence for a person to pass or tender as genuine a counterfeit or deliver a counterfeit to another intending it to be passed as genuine as will such delivery of counterfeit notes or coins without lawful authority or excuse. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both for an offence under *subsection (1)* and an unlimited fine or up to 5 years in prison or both for an offence under *subsection (2)*.

Section 34 (Custody or control of counterfeit currency notes and coins)

Section 34 makes it an offence to have custody or control of a counterfeit note or coin intending to pass it as genuine or to deliver it to another to pass as genuine. Custody or control of such a counterfeit without lawful authority or excuse will also be an offence. The maximum penalty for conviction on indictment will be an unlimited fine or up to 10 years in prison or both for an offence under *subsection (1)* and an unlimited fine or up to 5 years in prison or both for an offence under *subsection (2)*.

Section 35 (Materials and implements for counterfeiting)

It will be an offence under *section 35* to make or have in one's custody or control anything intending to use it or to permit another to use it to make a counterfeit of a currency note or coin intending it to be passed as genuine. It will also be an offence to have custody or control, without lawful authority or excuse, of anything designed or adapted for making a counterfeit of a currency note or coin. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both for an offence under *subsection (1)* and an unlimited fine or up to 5 years in prison or both for an offence under *subsection (2)*.

Section 36 (Import and export of counterfeits)

Section 36 makes it an offence for a person, without lawful authority or excuse, to import into or export from a member state of the EU a counterfeit of a currency note or coin. The maximum penalty

upon conviction on indictment will be an unlimited fine or up to 10 years in prison or both.

PART 6

Convention on Protection of European Communities' Financial Interests

Section 37 (Interpretation (Part 6))

Subsection (1) sets out the definitions of words and phrases used in Part 6. These include active corruption, passive corruption, community official, national official (e.g. Government Minister, Attorney General, member of Dáil or Seanad, a judge etc.), and official. *Subsection (2)* sets out the circumstances in which a person will be deemed to have benefited from or derived pecuniary advantage from fraud or money laundering.

Section 38 (Convention and Protocols to have force of law)

Section 38 provides that the Convention and Protocols, with the exception of certain articles, will have the force of law in the State and that judicial notice will be taken of them. Judicial notice will also be taken of rulings and decisions and opinions of the Court of Justice of the European Communities on the meaning or effect of the Convention and Protocols.

Section 39 (Fraud affecting European Communities' financial interests)

Under *section 39* it will be an offence to commit, participate in or obtain benefit or advantage from a fraud affecting the Communities' financial interests. The maximum penalty provided for will be an unlimited fine or up to 5 years in prison or both.

Section 40 (Active corruption)

Active corruption (i.e. promising or giving an advantage to an official for him or her to act or refrain from acting in accordance with his or her duty or to exercise his or her functions in breach of duty which is damaging to or likely to damage the Communities' financial interests) will be an offence, the maximum penalty for which upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 41 (Passive corruption)

Passive corruption (i.e. an action of an official requesting or receiving advantage or accepting a promise of advantage to act or refrain from acting in accordance with his or her duty or to exercise his or her functions in breach of duty which is damaging to or likely to damage the Communities' financial interests) will be an offence, the maximum penalty for which upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 42 (Extra-territorial jurisdiction in case of certain offences)

Section 42 makes it an offence to commit, participate in or instigate any fraud affecting the Communities' financial interests or an offence of money laundering outside the State where a benefit is obtained by a person in the State, or where assistance in their commission is rendered by a person within the State or where the offender is an Irish citizen or a national or Community official. Active or passive corruption committed outside the State is also an offence where the offender is an Irish citizen or a national or Community official. The

maximum penalty upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 43 (Restriction on certain proceedings)

Proceedings for an offence under *section 42* may only be taken by or with the consent of the DPP. The DPP will be permitted to co-operate with the appropriate authorities in another member state with a view to deciding which country is the more appropriate one in which to prosecute a person for such an offence. Proceedings may be taken anywhere in the State for the offence. Where the offence is also an offence under section 38 of the Extradition Act, 1965 (re. offences committed abroad by Irish citizens) proceedings will not be taken under section 38.

Section 44 (Extradition for revenue offences)

This section provides that extradition for fraud against the Communities' financial interests or money laundering will not be refused solely on the ground that the offence constitutes a revenue offence as defined in the 1965 Act.

PART 7

Investigation of Offences

Section 45 (Search warrants)

Search warrants under *section 45* will only be granted in the case of offences under the Act which carry a penalty of at least 5 years in prison. A District Judge may grant a search warrant where evidence is given on oath by a Garda that there are reasonable grounds to suspect that evidence relating to such an offence is to be found in any place. Such a warrant will authorise the Gardaí to enter, within 7 days of its issue, to search the place and any persons found there and to examine or seize anything reasonably believed to be evidence relating to the offence. It also authorises the copying of documents or records, the seizure of computers containing records and the operation of a computer by the Gardaí including the provision to the Gardaí of passwords and copies of records etc. However, items subject to legal privilege may not be seized. The power to issue search warrants under this section is in addition to any other power to issue such warrants.

Section 46 (Obstruction of Garda acting on warrant)

It will be an offence for a person to obstruct a Garda executing a search warrant, to refuse to identify oneself to the Garda if found on premises being searched or to fail to provide computer passwords or computer records when requested. The maximum penalty upon summary conviction is a fine of up to £500 or up to 6 months in prison or both. A Garda may arrest without warrant any person for an offence under the section.

Section 47 (Forfeiture of seized property)

Section 47 applies to property seized by the Gardaí which they suspect is being used in connection with forgery or counterfeiting. Where such property has been seized the Gardaí can apply to a District Judge for an order for the forfeiture and destruction of the property. Where a person has been convicted of an offence of forgery or counterfeiting the court may order the forfeiture and destruction of property used in the commission of the offence. However, before

making an order for the forfeiture of property under this section the Judge may hear submissions from the owner of the property.

Section 48 (Concealing facts disclosed by documents)

Section 48 makes it an offence for a person, knowing or suspecting that the Gardaí are investigating an offence under the Act, to falsify, conceal or destroy any document relevant to the investigation. Where a person falsifies etc. a document in circumstances where it is reasonable to conclude that he or she knew or suspected an investigation was being carried out and that the document was relevant to it, the person will be taken to have known or suspected the investigation was being carried out unless the court or jury having considered the evidence is satisfied otherwise. The maximum penalty upon conviction on indictment will be an unlimited fine or up to 5 years in prison or both.

Section 49 (Order to produce evidential material)

Section 49 applies to offences under the Act which carry a penalty of at least 5 years in prison (*subsection (1)*). Under *subsection (2)* where a Garda gives evidence on oath and the District Judge is satisfied that the Gardaí are investigating an offence, that a person has possession or control of particular material and there are reasonable grounds for suspecting that it is evidence of the offence, he may order that the material be produced to the Gardaí. Material contained on computer must be provided in legible form (*subsection (3)*). Under *subsection (4)* an order under this section also empowers the Gardaí to take copies of documents, but there is no right to produce documents which are subject to legal privilege and *subsection (5)* provides that material taken away following a production order may be used in evidence in any criminal proceedings. *Subsection (6)* concerns the use of such documents in criminal proceedings, but excludes their use where the document is subject to legal privilege or was provided by a person who may not be compelled by the prosecution to give evidence or was compiled for the purpose of or in contemplation of court or other proceedings. Under *subsection (7)* an order to produce material may be varied by the District Judge. The penalty for failure to comply with a production order will be a fine of up to £1,500 or up to 12 months in prison or both.

PART 8

Trial of Offences

Section 50 (Summary trial of indictable offences)

This section provides that any of the indictable offences under the Bill may be tried summarily by the District Court where the Court considers that the facts disclose a minor offence fit to be tried summarily, the accused agrees to summary disposal and the DPP consents.

Section 51 (Trial procedure)

Subsection (1) states that in proceedings for offences under *sections 6, 7, 9, 10 and 11* it will be sufficient for the prosecution to prove that the accused acted dishonestly with the intention of causing loss or making a gain. *Subsection (2)* provides that any number of persons may be charged in the same indictment with handling or possessing stolen property either at the same or at different times. Under *subsection (3)* a partner or part beneficial owner of property may be charged with stealing where he or she steals any property belonging to the partnership or other beneficial owners. Where a

person is charged with stealing property and it appears that the property was stolen at different times, *subsection (4)* permits up to three separate takings to be tried together provided those takings occurred within a 6 month period. *Subsection (5)* provides that stealing, handling or possession may be included in separate counts on the same indictment but may be tried together and *subsection (6)* provides that any person or persons charged in the same indictment with separate counts of stealing may be found guilty of stealing, handling or possession. Where more than one person is charged with jointly handling or possessing stolen property, *subsection (7)* allows any of them to be found guilty of handling or possession.

Section 52 (Alternative verdicts)

This section provides that a person charged with theft may be found guilty of handling or possession if the facts prove the latter and if charged with handling or possession, may be found guilty of theft if the facts prove theft.

Section 53 (Orders for restitution)

Section 53 provides that where a person is convicted of an offence related to the theft of property the court may order restoration of the stolen property to the rightful owner or the delivery to the person of property representing the proceeds of the stolen property or the payment of a sum representing the value of the stolen property, but so that the person does not recover more than the value of the stolen property. Where a person has bought the stolen property in good faith or has lent money on the security of it in good faith the court may order that the purchaser or lender shall be entitled to recover the sums paid or lent. An order under this section will only be made where the court is of the opinion that the evidence at the trial warrants it.

Section 54 (Provision of information to juries)

Where a person is charged on indictment with an offence under the Bill the trial judge may order that the jury be provided with certain documents including any document admitted in evidence, transcripts of statements or evidence, charts, diagrams and any other document which the judge considers would be of assistance to the jury in its deliberations. Where an affidavit sworn by an accountant is to be made available the person who swore it may be required to explain to the jury any relevant accounting procedures or principles.

PART 9

Miscellaneous

Section 55 (Dishonest use of assumed name)

This section makes it an offence for a person to use an assumed name intending to commit an offence under the Bill. The maximum penalty provided for this offence will be an unlimited fine or up to 2 years in prison or both.

Section 56 (Liability for offences by bodies corporate and unincorporated)

Under this section where an offence under the Bill is committed by a body corporate or unincorporated, with the consent or connivance of a director, manager etc. of the body, the person as well as the body will be guilty of the offence. Similar provisions apply where the affairs of a body corporate are managed by its members.

Section 57 (Reporting of Offences)

The section sets out the definition of firm and relevant person (e.g. an auditor) for the purpose of the section and provides that a relevant person shall report to the Gardaí any suspected offence by the firm or a partner, director, manager etc. indicated by the firm's accounts. Failure to do so will render the person liable, on summary conviction, to a fine of up to £1,500 or up to 12 months in prison or both.

Section 58 (Evidence in proceedings)

Section 58 makes provision for the use in proceedings of a document (and translation of such a document) provided by a lawyer practicing in another state about comparable offences under the law of that state. In relation to proceedings under *section 42*, evidence that a person is an Irish citizen may be provided in a document signed by an officer of the Department of Foreign Affairs.

Section 59 (Jurisdiction of District Court in certain proceedings)

This section provides that for the purpose of the exercise of jurisdiction by the District Court in cases where an offence was committed aboard a vessel in the territorial seas, the offence can be treated as having been committed in any place in the State.

Section 60 (Amendment of section 9 of Married Women's Status Act, 1957)

Section 60 will extend section 9 of the Married Women's Status Act, 1957 to the effect that the offence of theft will apply to all cases of theft by one spouse from another. At present it only applies where the spouses are living apart or where property was taken wrongfully when one spouse was leaving or deserting.

Section 61 (Amendment of Defence Act, 1954)

Since the Bill repeals earlier larceny legislation and creates new offences it is necessary to substitute a new section for section 156 of the Defence Act, 1954 dealing with larceny etc. by persons subject to military law. The new section 156 provides that it will be an offence, triable before court-martial, for such a person to steal or handle or possess stolen property belonging to another such person or any public service property.

Section 62 (Effect of Act and transitional provisions)

This section deals with the arrangements to apply when the Bill's provisions come into operation. It provides that it will only apply to offences committed wholly or partly after the appropriate provisions are commenced and that proceedings in being before such commencement will be unaffected by that commencement. It also provides that where an indictment charges, in the alternative, offences under the law existing before the Bill's provisions are commenced and offences under the Bill after commencement, the person may be convicted of the first mentioned offence. There is also provision concerning the correspondence of offences for the purposes of the Criminal Law (Jurisdiction) Act, 1976.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Meitheamh, 2000.