



BUNREACT NA ÉIREANN  
CONSTITUTION OF IRELAND



Tithe an  
Oireachtais  
Houses of the  
Oireachtas

**An Comhchoiste um Airgeadas, Caiteachas Poiblí agus  
Athchóiriú, agus an Taoiseach**

Tuarascáil maidir le Daoine atá faoi Riteacht Pholaitiúil  
Nollaig 2023

**Joint Committee on Finance, Public Expenditure and  
Reform, and Taoiseach**

Report on Politically Exposed Persons  
December 2023










## Membership of the Joint Committee

### Deputies

CATHAOIRLEACH	LEAS-CHATHAOIRLEACH			
				
John McGuinness Fianna Fáil	Bernard Durkan Fine Gael	Richard Boyd Barrett People Before Profit-Solidarity	Rose Conway-Walsh Sinn Féin	Pearse Doherty Sinn Féin
				
Damien English Fine Gael	Steven Matthews Green Party	Jim O'Callaghan Fianna Fáil	Peadar Tóibín Aontú	

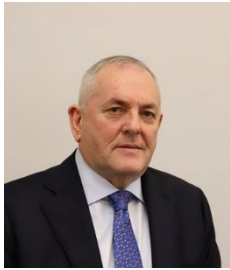
### Senators

				
Maria Byrne Fine Gael	Pat Casey Fianna Fáil	Aidan Davitt Fianna Fáil	Alice-Mary Higgins Independent	Marie Sherlock Labour Party

### Membership History:

- Mick Barry, Sep 2020 – May 2023
- Michael D'Arcy, Sep 2020 – Sep 2020
- Mairéad Farrell, Sep 2020 – April 2023
- Neale Richmond, Sep 2020 – Jan 2023

## Cathaoirleach's Foreword



On behalf of the Joint Committee, I thank the officials from the Department of Finance and the Department of Justice for engaging on this topic and the Oireachtas Library and Research Service for their assistance with briefing material. I also thank the members of the Joint Committee for their engagement throughout.

Anti-Money Laundering measures remain an essential tool in combatting fraud and the illegal use of the financial system. The Committee on Finance supports these efforts and believes that such measures are essential for the integrity of a transparent and effective financial system.

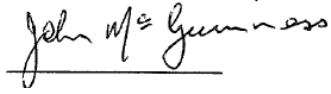
Politically Exposed Persons, also known as PEPs, are individuals with prominent public functions and are subject to additional enhanced due diligence. The Committee, as politicians, accept the necessity of such measures. However, it is essential that any enhanced due diligence measures undertaken by financial services against PEPs, their close associates or their family members are balanced, appropriate and fair.

The Joint Committee notes the growing concerns that the application of such measures is impacting individuals significantly and unfairly. The Joint Committee heard evidence that anti-money laundering measures will impact an increasing number of individuals, and will eventually include all who use the banking services.

Therefore, it is important that a balance is struck in ensuring that PEPs, close associates or family members, with little or no involvement in politics or other public functions are not treated in a manner so differently as to prevent routine day-to-day banking services. Furthermore, such measures should not become a barrier to persons that wish to partake in politics or in other careers that are deemed as undertaking a 'prominent public function'.

Far greater scrutiny is needed at EU level to ensure that balance and fairness is achieved in whatever legislation or regulation is proposed. The Irish Parliament should strengthen its oversight processes of all EU directives from the date that each one is suggested to the date of completion. In this regard members of the EU Parliament need

to be more accountable to Dáil Éireann. This report details some of the key issues and I recommend that the report allows for a greater debate on the matter.

A handwritten signature in black ink, reading "John McGuinness", written over a horizontal line.

---

John McGuinness T.D.

Cathaoirleach

13 Nollaig 2023

## Table of Contents

<b>Membership of the Joint Committee .....</b>	<b>1</b>
<b>Cathaoirleach's Foreword .....</b>	<b>2</b>
<b>Executive Summary .....</b>	<b>6</b>
<b>Recommendations .....</b>	<b>9</b>
<b>1. Introduction.....</b>	<b>12</b>
1.1 Evidence Received .....	12
<b>2. Background.....</b>	<b>13</b>
2.1 Politically Exposed Persons .....	14
2.2 Enhanced Due Diligence .....	15
<b>3. Anti-Money Laundering Measures .....</b>	<b>16</b>
3.1 The Financial Action Task Force .....	16
3.1.1 Financial Action Task Force Engagements .....	17
3.1.2 FATF Decision-making .....	17
3.2 European Union Directives .....	18
3.2.1 EU Commission Expert Group Meetings .....	18
3.2.2 EU Council Working Party Meetings .....	19
3.2.3 Trilogue .....	20
3.3 Ireland .....	21
3.3.1 The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 .....	21
3.3.2 Competent Authorities for Anti-Money Laundering Measures.....	22
<b>4. Stakeholder evidence .....</b>	<b>25</b>
4.1 Department of Justice and Department of Finance .....	25
Risk Based Approach .....	25
4.2 Submission from MEPs .....	26
4.3 Central Bank .....	27
<b>5. Latest Developments.....</b>	<b>29</b>
5.1 Developments in the European Union .....	29
The European Anti-Money Laundering Authority .....	29
5.2 Developments in the United Kingdom .....	30

5.3 Developments in Ireland .....31

**6. Key Issues ..... 33**

6.1 Excessiveness of Enhanced Due Diligence Measures .....33

6.1.1 Enhanced Due Diligence of Politically Exposed Persons.....33

6.1.2 Enhanced Due Diligence of Close Associates and Family Members.....34

6.2 Political Oversight .....36

6.3 Definition of ‘Prominent Public Functions’ .....37

6.4 Beneficial Ownership of Trusts, Shell Companies and Section 110s .....40

6.5 Crypto Transfers .....41

**Conclusion..... 42**

**Appendices ..... 43**

Appendix 1: Meeting Details .....43

Appendix 2: Additional Written Submissions .....44

Appendix 3:..... MEP Submissions

45

Appendix 4: Transcript of Meeting.....46

Appendix 5:.....Terms of Reference

25



## Executive Summary

Politically Exposed Persons, also known as a PEPs, are defined as individuals who have been entrusted with a prominent public function.<sup>1</sup> Due to risks associated with PEPs, such individuals are subject to additional anti-money laundering measures, which in effect, involves a financial service undertaking additional checks and balances when the individual is undertaking financial transactions.

The Joint Committee supports anti-money laundering measures that are intended to combat against anti-money laundering and anti-terrorism financing and prevent the illegal misuse of the financial system. This support is evident in the Committee's work in examining other topics such as EU Proposals on the Regulation of the Market in Crypto-Assets, Authorised Push Payment Fraud and legislation such as the Regulation of Lobbying (Amendment) Bill<sup>2</sup> and the Central Bank (Individual Accountability Framework) Bill.<sup>3</sup>

The purpose of this report is to examine the current anti-money laundering measures and specifically, their impact on politically exposed persons, their family members and their close associates. The regime is dynamic with additional measures recently transposed into Irish legislation and further changes due to be implemented. The report is intended to allow for a better implementation of these changes that allow for an effective but also fair and appropriate system.

The Joint Committee met with officials from the Department of Finance and the Department of Justice to discuss Politically Exposed Persons on 5 October 2022. In addition, this report considers written evidence for a variety of sources including submissions from Irish Members of the European Parliament (MEPS) and further written responses from the Departments.

---

<sup>1</sup> [FATF Guidance: Politically Exposed Persons \(Recommendations 12 and 22\) \(fatf-gafi.org\)](https://www.fatf-gafi.org/publications/fatfrecommendations/documents/FATF-RGPG-2016-01-PolPEPs.pdf)

<sup>2</sup> [Oireachtas - Report on the Pre-Legislative Scrutiny of the General Scheme of the Regulation of Lobbying \(Amendment\) Bill 2022](#)

<sup>3</sup> [Joint Committee on Finance, Public Expenditure and Reform and Taoiseach – Report on Pre-Legislative Scrutiny of the General Scheme of the Central Bank \(Individual Accountability Framework\) Bill 2021 \(oireachtas.ie\)](#)

The Joint Committee has made five recommendations which aim to better meet the requirement to balance effective and appropriate anti-money laundering and counter terrorism measures with fairness and appropriateness.

The report examines the context to the most recent anti-money launderings measures (Section 2), including the need to combat anti-money laundering, the definition of a Politically Exposed Person and the requirement of enhanced due diligence.

Section 3 of this report examines how recommendations from the Financial Action Task Force are drafted and agreed, and how those recommendations are transposed into European Union Directives and then national law.

Section 4 of the report examines the evidence received by the Joint Committee, from the Department of Justice, the Department of Finance, Irish Members of the European Parliament and the Central Bank.

Section 5 of the report summarises developments that have occurred in relation to Politically Exposed Persons, with regard to events in the European Union, the UK and Ireland.

Finally, Section 6 of the report highlights specific key issues which were raised by the Joint Committee. For example, section 6.1 examines enhanced due diligence measures and how they are applied to both PEPs and their close associates and family members. Members of the Joint Committee have received many examples from PEPs that measures were significantly impacting them and their ability to undertake routine banking transactions. Such events were also being experienced by family members, many of whom have no involvement in politics or with any prominent public functions.

Section 6.3 discusses the recently published guidelines particularly in terms of individuals who are deemed to hold a 'prominent public position'. The Committee notes its concerns that the definition, which is anchored in the salary of an individual, but may preclude individuals with a prominent role but who does not meet the salary threshold. The Committee believes that further consideration of this matter is required to ensure a more consistent and appropriate approach.

Section 6.4 of the report examines key issues related to the use of shell companies, section 110s and Trusts, and the difficulty in applying AML measures when there is complexity in establishing beneficial ownership. The report also references the crypto industry (section 6.4) and the high risk and difficulty in applying AML measures.

The Joint Committee acknowledges the importance of Anti-Money Laundering and Counter Terrorism Measures in combating illegal finance activity. However, the Joint Committee notes that the enhanced customer due diligence requirement is likely to impact an ever-increasing number of citizens and, as such, this measure must be consistent and fair in its application.

## Recommendations

### Recommendation 1 - Enhanced Due Diligence

1. The Joint Committee recommends that a review should be undertaken to examine anti-money laundering measures including the impact of enhanced due diligence measures against Politically Exposed Persons, family members and close associates. The review:
  - should be undertaken by the Department of Finance and the Department of Justice and should invite and consider submissions from the Central Bank, financial services and individuals who may be deemed as PEPs.
  - examine the number of cases in which individuals deemed as PEPs have been refused/ delayed from undertaking routine banking transactions.
  - examine the time taken to undertake enhanced due diligence measures against individuals and to reach a decision on whether to authorise a transaction.
  - examine the impact on close associate or family members of PEPs who have no 'prominent public functions'.
  - should be published to allow for consideration by the Joint Committee and the Oireachtas.

## Recommendation 2 – Political Oversight

2. The Joint Committee recommends that the Minister for Finance should provide an annual report to the Joint Committee detailing the work undertaken by the Financial Action Task Force (FATF) including:
- Any new proposed recommendation by the FATF
  - The views of the Department on the potential impact of such proposals.

This report will allow the Joint Committee the opportunity, if required, to undertake its own scrutiny, to seek the views of external stakeholders and to provide its own feedback and contribution to the Minister.

## Recommendation 3 - Political Oversight

3. The Joint Committee recommends that all significant directives emanating from the EU must be discussed by a Committee of the Dáil before final acceptance due to the lack of political input at the various stages.

## Recommendation 4 – Prominent Public Functions

4. The Joint Committee recommends that the Department of Finance and the Department of Justice re-assess the guidelines in defining persons with a 'prominent public function'. The Joint Committee has concerns that the current definitions remain ambiguous and that some individuals, who undertake such functions, may remain outside

of the current parameters or to the salary thresholds within the current guidelines.

### **Recommendation 5 – Trusts, Shell Companies and Section 110s**

5. The Joint Committee recommends that the Department of Justice and the Department of Finance provide an annual report to the Joint Committee:
  - on ongoing work undertaken at a national and EU level in relating to applying effective anti-money laundering measures against Trusts, Shell Companies and Section 110s and
  - on any proposals for further guidelines and advice on the matter.

### **Recommendation 6 – Crypto Assets**

6. The Joint Committee acknowledges the high risk of crypto transfer and the difficulties in applying anti-money laundering and counter terrorism measures in such transfers. The Joint Committee welcomes the Markets in Crypto-Assets (MiCA) Regulations in this regard and will continue to examine the area of Crypto.

## 1. Introduction

In early 2022, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, hereafter referred to as the Joint Committee, considered a package of European Union Proposals (COM [2021] 420-423) relating to the proposed Regulation of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the purpose of money laundering and terrorist financing.

In its consideration, the Joint Committee committed to further examining the area of Politically Exposed Persons, the implementation of provisions relating to anti-money laundering and anti-corruption provisions (under Department of Justice legislation) by banks, and the impact on what are termed “Politically Exposed Persons” and their associates and families.

### 1.1 Evidence Received

The Committee met with officials from the Department of Justice and the Department of Finance to discuss Politically Exposed Persons in public session on 5 October 2022. Full details of the meeting are detailed in Appendix 1 and the transcript of the meeting is available in Appendix 4.

The Department of Finance also provided a supplementary briefing note following on a number of items that were raised during the public engagement.

In addition, the Committee wrote to Irish Members of the European Parliament (MEPS) and requested further information regarding anti-money laundering (AML) proposals and MEPs’ interaction with them. The responses are discussed in Section 4.2 and a link to the responses is available in Appendix 2.

## 2. Background

Money laundering and terrorist financing is a significant and costly global threat. The United Nations Office on Drugs and Crime estimate that illegal money worth between 2% and 5% of global GDP (approximately between US\$800 billion to US\$2 trillion) is laundered throughout the world each year.<sup>4</sup>

In response to these increased risks, several steps have been taken at both a global and European level to mitigate against the threat of money laundering and terrorist financing.

The Financial Action Task Force (FATF), an inter-governmental body was established in July 1989 by the G7, initially to examine and develop measures to combat money laundering. Since then, the FATF has expanded its mandate to develop the FATF Recommendations, which are globally endorsed international standards for implementing anti-money laundering measures. The FATF also monitors and ensures compliance of the more than 200 countries and jurisdictions who have committed to implementing the recommendations. The FATF, and how its recommendations have been implemented into European Union (EU) legislation, is further discussed in Section 3.

In 1990, the EU adopted the first Anti-Money Laundering Directive to prevent the misuse of the financial system for money laundering. This Directive introduced customer due diligence requirements for certain entities when entering a business relationship. Member States were obligated to transpose these provisions into national legislation.

Since then, legislation has been continually revised and updated to keep abreast of developments. In 2015, the EU adopted a modernised regulatory framework encompassing the 4th Anti-Money Laundering Directive (4AMLD) and a Regulation making fund transfers more transparent, helping authorities to track down criminals and terrorists. The framework took account of the 2012 FATF recommendations and in some instances, provides even greater protection.

---

<sup>4</sup> [Overview \(unodc.org\)https://www.unodc.org/unodc/en/money-laundering/overview.html](https://www.unodc.org/unodc/en/money-laundering/overview.html)



In Ireland, the primary legislation underpinning the regulation of anti-money laundering is provided in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended (the 2010 Act). It transposes the requirements of the 3rd AML Directive and the 4<sup>th</sup> AML Directive into Irish law. Some of the key features of the 2010 Act include:

- the definition of a designated person,
- the ‘customer due diligence’ (CDD) requirements which designated persons are required to apply, and
- the requirement of identification of politically exposed persons (PEPs) and their families or close associates.

## 2.1 Politically Exposed Persons

A Politically Exposed Person, also known as a PEP, is an *“individual who is or has been entrusted with a prominent public function”* and *“due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing”*.

Individuals who are treated as PEPs include:

- a head of state, head of government, government minister or deputy or assistant government minister,
- a member of a parliament or of a similar legislative body,
- a member of the governing body of a political party,
- a member of a supreme court, constitutional court or other high level judicial body whose decisions, other than in exceptional circumstances, are not subject to further appeal,
- a member of a court of auditors or of the board of a central bank,
- an ambassador, chargé d’affaires or high-ranking officer in the armed forces,
- a director, deputy director or member of the board of, or person performing the equivalent function in relation to, an international organisation.

## 2.2 Enhanced Due Diligence

Anti-Money Laundering Measures have highlighted the risk of PEPs as individuals who could potentially abuse their positions for private gain and use the financial system to launder the proceeds.

Financial services, such as banks, are now obliged to undertake enhanced security of PEPs. Recent additional measures now obligate banks to also carry out further enhanced security against family members and close associates of PEPs.

### 3. Anti-Money Laundering Measures

In its public meeting with officials from the Department of Finance and the Department of Justice, the Joint Committee examined the Financial Action Task Force and how its recommendations are transcribed into EU and Irish Law.

#### 3.1 The Financial Action Task Force

The Financial Action Task Force (FATF) is an independent, inter-governmental body that develops and promotes policies that protect the global finance system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.<sup>5</sup> It is closely linked with the Organisation for Economic Co-operation and Development (OECD) and its recommendations have strong influence on international and domestic legislation.

The FATF was established by the G-7 in 1989. Membership of the FATF originally included the G7 countries, the European Commission and eight other countries. Today the FATF has 39 members, with Ireland joining in 1991. In addition to its membership, the FATF has a large number of observers and associate members and in total, over 200 countries have committed to implementing FATF standards.<sup>6</sup>

Officials from the Department of Justice noted that *“as the EU Commission is a member of the FATF it is therefore bound by the obligations that arise from that, it is a condition of FATF Membership that members endorse and support the FATF Recommendations and Methodology. Both the Recommendations and Methodology are revised by the Members as the need arises”*.<sup>7</sup>

#### Anti-Money Laundering & Counter Financing Terrorism Framework

The Anti-Money Laundering / Counter Financing Terrorism (AML/CFT) Framework relates to a set of measures that are intended to stop criminals and terrorists from abusing finance systems. The FATF identified [11 key goals](#) for an effective framework and states that each country must *“enforce the measures and ensure that the operational, law enforcement and legal components of an AML/CFT system work together effectively to deliver results”*.

<sup>5</sup> Link

<sup>6</sup> Full

<sup>7</sup> Department briefing note

### 3.1.1 Financial Action Task Force Engagements

#### *Plenary Sessions*

The Plenary is the decision-making body of the Financial Action Task Force (FATF), and it meets three times a year, in February, June and October. The outcome of each plenary is published at the conclusion of each meeting.<sup>8</sup>

The Irish delegation consists of senior officials from the Department of Finance, the Department of Justice, the Central Bank and the Financial Intelligence Unit of An Garda Síochána and is mandated by the Minister for Finance. Officials from the Department of Finance noted that while the Minister may attend meetings of the FATF, there is no political representation on the Irish delegation to the FATF. Officials from the Department of Finance explained that while major decisions are made at ministerial level, day to day administration is undertaken by the delegation.

Plenary meetings mostly involve assessing the anti-money laundering framework of individual countries. These meetings may also include the drafting of FATF recommendations and new proposals.

#### *Ministerial Sessions*

The Ministers of each FATF members meet every two years.<sup>9</sup> In addition, the Minister for Finance attends the International Monetary Fund (IMF) and World Bank meetings in Washington DC, USA annually to further discuss anti-money laundering measures and to agree FATF Strategy for next 5 years.

### 3.1.2 FATF Decision-making

Recommendations proposed by the delegations are submitted to each Minister. These recommendations are examined by the Minister who then, upon consideration, provides approval. Formal approval is then declared at the Ministerial sessions. Upon questioning by the Joint Committee, officials from the Department of Finance noted that they are not aware of any occasion when a Minister has not approved a proposal but further explained that most of them are not very controversial measures.

<sup>8</sup> [Outcomes of meetings \(fatf-gafi.org\)](https://www.fatf-gafi.org/en/publications/Outcomes_of_meetings.html)

<sup>9</sup> [Ministerial Declarations \(fatf-gafi.org\)](https://www.fatf-gafi.org/en/publications/Ministerial_Declarations.html)

## 3.2 European Union Directives

Officials from the Department of Finance told the Joint Committee that the recommendations of the Financial Action Task Force are considered as the global standard setter on Anti-Money laundering measures and the European Union takes into account any recommendation or findings of the FATF when developing a directive. Officials noted that:

“the EU Commission, when developing legislative proposals for Directives or Regulations pertaining to Anti-Money Laundering/Counter the Financing of Terrorism, does so with an understanding that it and all members of FATF, including Ireland and most other EU Member States, must adhere to FATF recommendations and standards. In practice, the same officials (Commission, various Government Departments within EU Member States) who are developing proposals within FATF - often based on evidence and experience arising on foot of FATF consultations that have input from experts and the public - are those who are negotiating on new or amended EU AML/CFT Directives and Regulations. So although there is no mandatory link between FATF recommendations and EU legislation, the reality is that to ensure a global, coordinated response to ML/TF issues, the EU legislation is heavily, if not entirely influenced by FATF standards”.

### 3.2.1 EU Commission Expert Group Meetings

A Commission expert group is a consultative body set up by the EU Commission or its departments to provide advice and expertise. It is composed of public and/or private sector members. The Group examine the potential economic, social and environmental impact of proposals.

The Group also advises the Commission in relation to

- the preparation of legislative proposals and policy initiatives,
- the preparation of delegated acts,
- the implementation of EU legislation, programmes and policies, including coordination and cooperation with Member States and stakeholders in that regard, and

- where necessary, the preparation of implementing acts at an early stage, before they are submitted to the committee (in accordance with Regulation (EU) No 182/2011).

Members of a Commission expert group include:

- **individuals appointed in a personal capacity**, acting independently, and expressing their own personal views.
- **individuals appointed to represent a common interest** shared by stakeholder organisations in a particular policy area. They do not represent individual stakeholders, but a particular policy orientation common to different stakeholder organisations. They may be proposed by stakeholder organisations.
- **organisations** in the broad sense of the word including companies, associations, NGOs, trade unions, universities, research institutes, law firms and consultancies.
- **Member States' authorities** - national, regional or local.
- **other public entities**, such as authorities from non-EU countries (including candidate countries), EU bodies, offices or agencies, and international organisations.

Draft proposals for Directives are developed in 'expert group' meetings. The Minutes of the experts group meetings on Money Laundering and Terrorist Financing are published online.<sup>10</sup>

### 3.2.2 EU Council Working Party Meetings

The draft legislative proposals are then examined by EU Council Working Party meetings. Officials from the Department of Justice noted that these are considered in forensic detail and that the process can take considerable time.

The Working Party on Combating Fraud deals with questions related to “*the protection of the financial interests of the EU and the fight against fraud and other illegal activities affecting those interests*”. It is also responsible for the examination of proposals for

---

<sup>10</sup> [Register of Commission expert groups and other similar entities \(europa.eu\)](https://ec.europa.eu/euipo/legislation/minutes)

legislation on combating fraud and on activities relating to issues concerning the European Anti-Fraud Office (OLAF) and its supervisory committee.<sup>11</sup>

### 3.2.3 Trilogue

The next step involved in implementing directives such as the anti-money laundering Directive, is the consideration, amendment and approval by the EU Trilogues i.e., the European Commission, the European Parliament and the European Council.

#### *EU Commission*

Following examination by the EU Working Party, an updated and agreed version of the draft legislation is prepared by the European Commission. The proposals are published and these proposals (also referred to as EU COMs) are then examined by Member States.

In Ireland, EU proposals are issued to the Department of Foreign Affairs who then subsequently assign a lead department, and these are then scrutinised by the relevant Oireachtas Committees. EU proposals relating to anti-money laundering (AML) measures (COMs [2021] 420 to 423) were assigned to the Department of Finance and subsequently scrutinised by the Committee on Finance, Public Expenditure and Reform. Member States can formally express reservations if they think that the proposal would be better dealt at a national rather than EU level, i.e. whether they believe there are subsidiarity or proportionality issues.

#### *EU Parliament and EU Council*

Upon approval, the proposals will then be examined by the European Parliament (EP) and European Council. When issued to the EU Parliament, the relevant EP Committees will examine the proposals. In relation to anti-money laundering proposals, the ECON (Economic and Monetary Affairs) and LIBE (Civil Liberties, Justice and Home Affairs) Committees of the European Parliament, provided scrutiny. Upon examination, EP Committee will report their findings to the Parliament. It is at this stage when MEPs will formally vote upon the proposals. There are currently 705 Members of the European Parliament (MEPs) of which 13 are Irish MEPs.<sup>12</sup>

---

<sup>11</sup> [Working Party on Combating Fraud - Consilium \(europa.eu\)](https://ec.europa.eu/working-party-on-combating-fraud/)

<sup>12</sup> Ireland will be represented by 14 MEPs following the 2024 European Parliament elections.

The European Council is composed of the heads of states or government of each member state, the President of the European Council and the President of the European Parliament.

Both the Council and the Parliament can propose further amendment. When the Parliament and the Council agree on the amendments, the proposal is adopted and written into law when the Parliament and Council agree on a joint text.

### 3.3 Ireland

#### 3.3.1 The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

The provisions of the Anti-Money Laundering Directives are transposed into Irish legislation through the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The Act requires the identification of politically exposed persons (PEPs) i.e., persons holding a prominent public position and their families or close associates.<sup>13</sup>

The Act has been amended as required with each additional Anti-Money Laundering Directive. The 2010 Act currently transposes the EU's Third Money Laundering Directive and the Fourth Money Laundering Directive into Irish domestic Law. The 2010 Act:

- defines broadly the offence of money laundering,
- defines "designated persons" and "beneficial owners" that come under the provisions of the 2010 Act,
- sets out the "customer due diligence" (CDD) requirements which designated persons are required to apply, and the instances when they must be applied,
- establishes the requirements for designated persons to embed a risk-based approach to AML/CFT, including the requirement for designated persons to complete both a business level risk assessment and customer / transaction level risk assessments,
- obliges designated persons to identify the "beneficial owner" behind a customer who is not a natural person, requiring the designated person to take measures to understand the ownership and control structure of the customer,

---

<sup>13</sup> Regulation: Anti-Money Laundering and Countering the Financing of Terrorism Legislation in Ireland, Central Bank of Ireland, available [here](#)



- requires the identification of politically exposed persons (PEPs) i.e., persons holding a prominent public position and their families or close associates,
- sets out the reporting, internal policies and procedures, training and record keeping requirements of designated persons, and
- provides for the monitoring and supervision of designated persons.

### 3.3.2 Competent Authorities for Anti-Money Laundering Measures

The Department of Finance note that:

*Designated persons are people or entities required, under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended, to apply measures to prevent their businesses from being misused for the purposes of money laundering or terrorist financing. The Act also establishes a number of competent authorities that supervise designated persons and work to ensure compliance with the requirements of the Act:<sup>14</sup>*

These authorities include:

- The [Central Bank of Ireland](#) for credit or financial institutions, including Virtual Asset Service Providers and Trust and Company Service Providers that are subsidiaries of a credit or financial institution.
- Designated Accountancy Bodies for auditors, external accountants, tax advisers, and some Trust and Company Service Providers.
- the [Law Society of Ireland](#) for solicitors.<sup>15</sup>
- the [Bar Council](#) and the [Legal Services Regulatory Authority](#) for barristers.
- the [Property Services Regulatory Authority](#) for property service providers.
- The Minister for Justice for any other designated person under the Act, these duties being [administered by the Anti-Money Laundering Compliance Unit of the Department of Justice](#) .

<sup>14</sup> [gov.ie - Anti-Money Laundering and Countering the Financing of Terrorism \(www.gov.ie\)](#)

<sup>15</sup> [Anti Money Laundering \(lawsociety.ie\)](#)



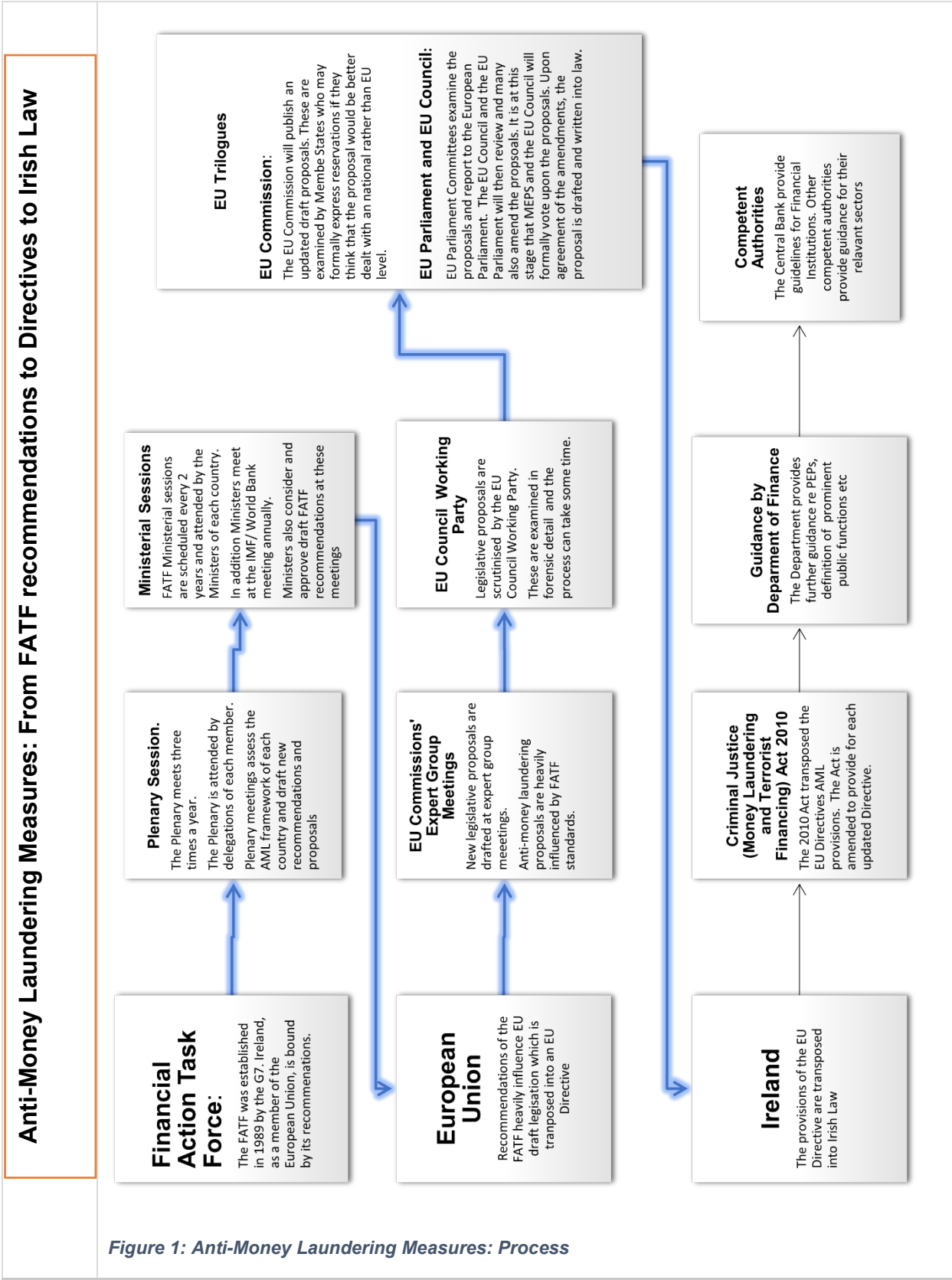


Figure 1: Anti-Money Laundering Measures: Process

## 4. Stakeholder evidence

### 4.1 Department of Justice and Department of Finance

The Department of Justice and the Department of Finance made a joint opening statement when presenting to the Joint Committee on Politically Exposed Persons. In the opening statement, officials from the Department of Justice told the Joint Committee that the Financial Action Task Force has recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing. However, the officials emphasised that a PEP status is intended to apply higher vigilance, rather than suggesting that individuals are involved in suspicious activity.

The officials also noted that the Directive provides several categories when defining a PEP, however the definition is open, and while the categories specified in the Directive must be included, other persons may be considered a PEP on the basis of them holding a prominent public function.

#### Risk Based Approach

In their submission to the Committee on the COM Proposals, the Department of Justice outlined their risk-based approach (RBA) to Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) policy. The submission asserts that the aim of the Proposals *is to ensure “that measures to prevent or mitigate Money Laundering or Terrorist Financing (ML/TF) are commensurate to the risks identified”*. The RBA is central to the effective national implementation of the FATF Standards.<sup>16</sup>

The RBA has two high-level elements;

- designated persons assessing and mitigating ML/FT risks arising from their business and being supervised by competent authorities to ensure they are doing so; and
- risk assessment and mitigation by national authorities.

<sup>16</sup> Dept. of Justice, Submission on COM (2021) 420-423, available [here](#).

## 4.2 Submission from MEPs

The Joint Committee wrote to all sitting Irish Members of the European Parliament (MEPs) on 17 October 2022 requesting further information on their involvement with the AML proposals. Six MEPs issued a response.<sup>17</sup>

The proposals amending the anti-money laundering directive were assigned to the ECON (Economic and Monetary Affairs) and LIBE (Civil Liberties, Justice and Home Affairs) Committees of the European Parliament, who have been jointly responsible for this issue in the European Parliament. Their recommendation to the Parliament following the trilogue process was to support the agreement. At the time of receipt of submissions from MEPs, the current revision of the Directive on the prevention of money laundering had yet to come before the European Parliament's plenary and the previous revision was completed in the last European Parliament.

MEPs noted that AML measures have been primarily examined by the European Parliament's (EP) ECON committee, on which no Irish MEP currently sits. Ms. Clare Daly, MEP informed the Joint Committee that she is a member of the EP LIBE Committee which had examined data protection aspects rather than economic aspects of AML measures.

Ms. Clare Daly, MEP further highlighted the work of the Transparency International and the Tax Justice Network, who recommend that the EU should go further to monitor PEPs<sup>18</sup>. Mr. Billy Kelleher, MEP noted that he has spoken in the parliament in support of the Commission's proposals, urging the EU to '*strengthen the measures, close loopholes, and improve transparency*'<sup>19</sup>

All the MEPs who were eligible to vote (through their membership or substitution in the ECON and LIBE Committees), voted in favour of the proposals at trilogue stage and welcomed the regulations in regard to Politically Exposed Persons. They expressed

<sup>17</sup> Responses available from [Mr. Chris McManus MEP](#), [Ms. Grace O'Sullivan MEP](#), [Mr. Ciaran Cuffe MEP](#), [Ms. Clare Daly MEP](#), [Mr. Billy Kelleher MEP](#) and [Ms. Deirdre Clune MEP](#)

<sup>18</sup> [How to improve the EU's Anti-Money Laundering \(AML\) Package on beneficial ownership registration - Tax Justice Network](#)

<sup>19</sup> Submission from Mr. Billy Kelleher, received 28 October 2022 available [here](#)

that in agreeing with AML/CFT measures, they were in support of the measures in relation to Politically Exposed Persons.

### 4.3 Central Bank

The Central Bank publishes guidance on PEPs for financial institutions. Firms are responsible for the verification of wealth and the sources of funds with those their customers. The Central Bank recommends that they should consider the activities that have generated the total net worth of the customer and the origins and the means of transfer for funds that are involved in the transaction.<sup>20</sup> The Central Bank advocates for a risk-averse approach that does not leave firms vulnerable to handling the proceeds of corruption or other criminal activity.

Firms are advised to undertake regular and on-going screening of their customer base and the customers' beneficial owners (where relevant), to ensure that they have identified all PEPs.<sup>21</sup> Financial institutions and other relevant entities are obliged to:

- have in place appropriate procedures to determine whether the customer or the beneficial owner of the customer is a PEP, and
- apply enhanced due diligence to business relationships with PEPs including :
  - obtaining senior management approval for establishing or continuing business relationships,
  - taking adequate measures to establish the source of wealth and source of funds involved in relationships or transactions, and
  - conducting ongoing monitoring of those business relationships.<sup>22</sup>
- These measures apply to family members or persons known to be close associates of politically exposed persons.

Ireland's authorities are also obliged to conduct or update a National Risk Assessment (NRA)<sup>23</sup>, which aims to provide a broad assessment of the money laundering/ anti-terrorism risks presented by each sector of the economy in order to enhance understanding and develop strategies to address them.<sup>24</sup> This is required both by the Financial Action Task Force Standards and the EU's Anti-Money Laundering Directives (Article 8 of the draft

<sup>20</sup> JCFPERT Transcript, 5 October 2022, available [here](#).

<sup>21</sup> Central Bank of Ireland, Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector, available [here](#)

<sup>22</sup> JCFPERT Transcript, 5 October 2022, available [here](#).

<sup>23</sup> Dept. of Justice, Submission on COM (2021) 420-423, available [here](#).

<sup>24</sup> All risk assessments are available at <https://www.gov.ie/en/publication/e21f7b-national-risk-assessment-money-laundering-and-terrorist-financing/>

Directive continues this requirement). As well as informing national anti-money laundering and counter-terrorism financing policy and strategy, the NRA also acts as guidance for firms when doing business with customers from assessed sectors and when preparing their own risk assessments.

## 5. Latest Developments

Since the Joint Committee's public meeting in October 2022, a number of developments relating to PEPs have occurred both at an international and national level.

### 5.1 Developments in the European Union

Under Article 20a of the newly drafted directive, Member States must legislate for the elaboration of lists of Politically Exposed Persons resident in their territory and take all appropriate measures to prevent the trade of information for commercial purposes of such persons. Based on the data collected, the EU Commission must assemble a list of PEPs in the EU, which is accessible to competent authorities and to obliged entities.

#### The European Anti-Money Laundering Authority

In 2023, a new European Anti-Money Laundering Authority (AMLA) was proposed to be established. It will be the central authority coordinating national authorities to ensure the private sector correctly and consistently applies EU rules.

The Authority will be tasked with issuing guidelines on assessing the level of risks associated with a particular category of politically exposed persons, their family members or persons known to be close associates. The obliged entity should ensure that, where an outsourced service provider is involved for the purposes of remote customer identification, the risk-based approach is respected.<sup>25</sup> The AMLA will be responsible for, amongst other items, the guidelines on assessing the level of risks associated with a particular category of politically exposed persons, their family members or persons known to be close associates.

The AMLA will be a significant EU institution, tasked with supervision – either directly or jointly with national supervisors – of entities in the financial services sector in the first instance, but eventually also in the non-financial sector. The supervision will be in respect of the entities' compliance with anti-money laundering and countering financing of terrorism rules and standards (AML/CFT). The institution is due to be established in 2024, although it is not expected to be fully operational until 2026/ 2027.

<sup>25</sup> Dept. of Justice, Submission on COM (2021) 420-423, available [here](#).



The Minister for Finance issued a press release on 28 March 2023 confirming that a new EU Agency, the Anti-Money Laundering Authority is to be established and announced Ireland's interest in hosting the new Authority.<sup>26</sup>

The process for selection of the country that will host AMLA has not yet been finalised. Nine other EU Member States have already declared an interest in hosting AMLA – Austria, Belgium, France, Germany, Italy, Latvia, Lithuania, Luxembourg and Spain. It is currently expected that the matter will be progressed during the current Swedish EU Presidency with an expectation that the final decision, which will be a co-decision between the EU Council and the European Parliament, will be made later this year.

## 5.2 Developments in the United Kingdom

The House of Commons Research Briefing Paper on the Politically Exposed Person's Regime noted a growing number of politically exposed persons, including UK Members of Parliament (MPs), have criticised the current PEPs regime and its application, arguing that it results in excessive due diligence requirements being imposed on them, their families or their close associates by banks and other financial institutions.

The Financial Conduct Authority guidance, published in July 2017, sought to address these issues and published guidance stating that UK PEPs should be treated as lower risk than foreign PEPs unless other risk factors applied. FATF first issued requirements covering foreign PEPs and their family members and close associates in 2003. In 2012 the FATF expanded the requirements to domestic PEPs in line with the United Nations Convention against Corruption.

However, in November 2021, UK MPs further raised concerns that firms were still imposing disproportionate due diligence requirements on them and their families.<sup>27</sup> As a result of these concerns, the UK Government undertook a review of the UK's Anti-Money Laundering regulatory and supervisory regime. The review concluded that while there was continued improvement to the regime, some weaknesses in supervision

---

<sup>26</sup> Dept. of Finance, Press Release, 28 March 2023, available [here](#)

<sup>27</sup> [House of Lords: Politically Exposed Persons - Hansard - UK Parliament](#)

needed to be addressed. The review set out four possible models for a supervisory system and is currently in an open consultation process.<sup>28</sup>

Further difficulties were recently reported when the UK Chancellor, Jeremy Hunt MP, believed that he had been refused a bank account due to his status as a PEP. He noted the potential and broader impact of such measures:

*“If the price of going into public life is that you find it really hard to set up a bank account, then we need to make sure that we remove barriers where we can. I think that’s why I was declined by Monzo for an account last year.”<sup>29</sup>*

Additional UK Members of Parliament have since revealed similar situations which have resulted in the closure of their bank accounts.<sup>30</sup>

### 5.3 Developments in Ireland

In the public meeting with the officials from the Department of Finance and the Department of Justice, members of the Joint Committee highlighted alleged reports that some UK banks were imposing charges on customers who are PEPs. The officials followed up on this query in a briefing note issued in December 2022 and noted that:

*Officials are not in a position to confirm whether UK banks are imposing charges on customers who are PEPs. However, in order to be of some assistance to the Committee, we draw attention to guidance issued by the UK Solicitors Regulation Authority which states that Customer Due Diligence costs may be passed on to the customer: <https://www.sra.org.uk/solicitors/resources/money-laundering/guidance-support/aml-questions-answers/>*

Furthermore, the officials differentiated the current environment in Ireland and highlighted that:

*this is not the case for financial institutions in Ireland. Section 149 of the Consumer Credit Act 1995 sets out the rules for customer charges that banks may*

<sup>28</sup> [Reforming anti-money laundering and counter-terrorism financing supervision - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision)

<sup>29</sup> [Jeremy Hunt says online bank Monzo rejected his account application | Financial Times \(ft.com\)](https://www.ft.com/content/2022-12-15/jeremy-hunt-says-online-bank-monzo-rejected-his-account-application)

<sup>30</sup> [Many MPs falling foul of bank rules on ‘politically exposed persons’, says Philip | Banking | The Guardian](https://www.theguardian.com/business/2022/dec/15/many-mps-falling-foul-of-bank-rules-on-politically-exposed-persons-says-philip)

*impose. The creation of any new charge must be approved by the Central Bank of Ireland.*

Officials from the Department of Finance wrote to the Committee in December 2022 and noted that:

*Department of Finance officials who attended at the Committee hearing on 5 October have raised the concerns noted by the Committee Chairperson and members, with colleagues in the Department's Credit Unions section and with Banking Division, suggesting that consideration needs to be given by financial institutions, to the appropriate balance between application of AML/CFT rules and customer care. However, the Department of Finance has no role or authority in the day-to-day operations of banks and credit unions, and it is for those entities, in any case, to set their own risk appetite when it comes to transactions with their customers.*

In January 2023, the Minister for Justice published the Definition of 'Prominent Public Functions'<sup>31</sup>, this document serves as the authority for the Central Bank and Law Society of Ireland to assert who is a Politically Exposed Person. Key Issues relating to the definition of a 'prominent public function' is further discussed in section 6.3.

---

<sup>31</sup> Dept. of Justice, Definition of 'prominent public functions' Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 - Issued to competent authorities on 20 January 2023, available [here](#)

## 6. Key Issues

As previously noted, the Joint Committee strongly supports measures that are intended to prevent money-laundering and terrorist financing. This support has been evident in the Joint Committee's previous work relating to Crypto-Assets, Authorised Push Payment Fraud and other economic fraud.

However, there is an important balance to consider when establishing measures to prevent money laundering and ensuring that such measures are applied in a fair and appropriate manner to PEPs and their family members. In its public meeting on PEPs, the Joint Committee highlighted a number of additional areas with those which it believes require further consideration.

### 6.1 Excessiveness of Enhanced Due Diligence Measures

The Joint Committee has concerns that enhanced due diligence of politically exposed persons may, at times, be applied in manner that unfairly restricts or prevents individuals from taking part in ordinary day-to-day banking and business.

#### 6.1.1 Enhanced Due Diligence of Politically Exposed Persons

Members of the Joint Committee emphasised the many examples brought to them by individuals deemed as PEPs and notes the recent media reports in Ireland and the UK that highlight the impactful nature of such measures.

While supporting the need for strong anti-money laundering measures, there is concern that overly robust measures are being applied to low-risk individuals. There is also a concern that excessive requirements and obligation of financial services may, potentially, dissuade institutions from dealing with politically exposed persons. Furthermore, there is a concern that excessive restrictions may become an obstruction for persons who wish to engage in a role with a 'prominent public function'.

The Joint Committee is of the opinion that a review is required that objectively examines the impact of enhanced due diligence of politically exposed persons, their close associates, and their family members. The review should be provided to the Joint Committee for consideration.

### 6.1.2 Enhanced Due Diligence of Close Associates and Family Members

Members of the Committee also highlighted cases brought to them by parliamentarians and staff of Oireachtas parliamentarians who reported the difficulties that their family members have had in relation to day-to-day banking. Many of the individuals impacted are not involved in politics and do not carry out any public functions. Additionally, members of the Committee noted cases in which additional anti-money laundering checks led to significant delays of money transfers, resulting in a missed deadline for investment, payments etc.

Recent media reports<sup>32</sup> highlighted additional AML checks on family members of PEPs and the difficulties experienced which can lead to accounts being frozen.<sup>33</sup> While acknowledging the need of enhanced due diligence for PEPs, one of the main issues appears to be a non-standard approach among various finance bodies. In addition, the lack of definition in relation to an “immediate family member” may lead to uncertainty on who may be applicable to additional diligence.

Officials from the Department of Finance noted that the regulation:

*reaffirms that the requirements relating to PEPs and their family members and close associates are of a preventative, not criminal, nature and should not be interpreted as stigmatising PEPs as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of his or her being identified as a PEP would clearly be contrary to the spirit of the regime.*

However, as noted in the many cases highlighted by individual Committee members, additional checks by financial organisations, in following the current AML guidelines, were having a significant impact on many individuals, who are not considered as PEPs, and these measures were impeding their ability to conduct day-to-day banking. TDs have spoken about family members who had to wait months for a bank loan or who were refused access to buy a saving product with a savings agency as they were

<sup>32</sup> [Revolut user in a spin after being asked if he was related to Eamon Ryan – The Irish Times](#)

<sup>33</sup> [Revolut asks user if she is related to former county councillor – The Irish Times](#)

considered as politically exposed.<sup>34</sup> Such actions appear to be preventative and contrary to the spirit of the PEPs regime.

Officials from the Department of Justice noted that these issues have been raised by the Department in EU meetings and that such issues have also been raised by every Member State.

Officials further noted that Ireland is a small country and because the framework for PEPs also includes associates of PEPs, a significant increased number of people may be impacted by AML measures. The Joint Committee highlighted concerns that measures against close associates may therefore be overly strict and without consistency in how they are applied.

### Recommendation

1. The Joint Committee recommends that a review should be undertaken to examine anti-money laundering measures including the impact of enhanced due diligence measures against Politically Exposed Persons, family members and close associates. The review:
  - should be undertaken by the Department of Finance and the Department of Justice and should consider evidence from the Central Bank and other financial providers as well as be open to submissions from individuals who may be deemed as PEPs,
  - examine the number of cases in which individuals have been refused/ delayed from undertaking routine banking transactions,
  - examine the time taken to undertake enhanced due diligence measures against individuals and to reach a decision on whether to authorise a transaction,
  - examine the impact on close associates or family members of PEPs who have no 'prominent public functions',

<sup>34</sup> [Irish Bank Resolution Corporation Commission of Investigation Report: Statements – Dáil Éireann \(33rd Dáil\) – Wednesday, 14 Sep 2022 – Houses of the Oireachtas](#)

- should be published to allow for consideration by the Joint Committee and the Oireachtas.

## 6.2 Political Oversight

One area of concern highlighted by the Joint Committee related to the lack of involvement of public representatives (i.e., Ministers, MEPs or TDs) in relation to the process of establishing recommendations and enacting those recommendations into proposed legislation. The Committee noted that while there is involvement at a high-level, there is a deficiency of political input in the main discussions when establishing recommendations.

For example, MEPs on the ECON or LIBE EP Committees will provide its initial considerations of anti-money laundering measures at a later point in the process of establishing the proposals <sup>35</sup> and MEPs will only formally vote upon the proposals at the final stages of consideration. Furthermore, this first interaction with Irish parliamentarians is most likely to be during consideration of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act, which is after a Directive has been implemented and after a requirement for its provisions to be implemented into national legislation.

The Joint Committee believes that greater political discussion and oversight at an earlier stage would provide greater representation in the debate and would assist in developing measures that balance robust but fair measures. Deputy John McGuinness, Cathaoirleach, highlighted the benefits of greater interaction noting that:

*“When you are sitting at a table with officials and politicians you tend to be able to find an area the officials have perhaps overlooked or maybe one of the politicians do not understand and out of the conversation comes clarity”.*

The Joint Committee believes that, given the highly impactful nature of anti-money measures, greater political interaction should be integrated into the process of

<sup>35</sup> See Figure 1, page 21

establishing measures within the anti-money laundering framework with a view to create a more robust, representative, and fairer approach to anti-money laundering measures.

### Recommendation

2. The Joint Committee recommends that the Minister for Finance should provide an annual report to the Joint Committee detailing the work undertaken by the Financial Action Task Force including:
  - Any new proposed recommendation by the FATF.
  - The views of the Department on the potential impact of such proposals.

This report will allow the Joint Committee the opportunity, if required, to undertake its own scrutiny, to seek the views of external stakeholders and to provide its own feedback and contribution to the Minister.

### Recommendation

3. The Joint Committee recommends that all significant directives emanating from the EU must be discussed by a Committee of the Dáil before final acceptance due to the lack of political input at the various stages.

## 6.3 Definition of ‘Prominent Public Functions’

One of the main issues that arose during the Committee’s public meeting was in relation to various definitions and how those definitions, or lack of, have potential to create ambiguity with regard to how Anti-Money Laundering (AML) measures and enhanced customer due diligence is applied.



A Politically Exposed Person (PEP) is defined by Financial Action Task Force (FATF) as an individual who is or has been entrusted with a prominent public function.<sup>36</sup> The FATF assert the following in relation to PEPs:

*Many PEPs hold positions that can be abused for the purpose of laundering illicit funds or other predicate offences such as corruption or bribery. Because of the risks associated with PEPs, the FATF Recommendations require the application of additional AML/CFT measures to business relationships with PEPs. These requirements are preventive (not criminal) in nature and should not be interpreted as meaning that all PEPs are involved in criminal activity.*

Officials from the Department of Justice highlighted examples of positions that are deemed as PEPs including Heads of State, Members of Parliaments, members of the governing bodies of political parties, Supreme Court judges and ambassadors.

Officials also noted that other persons may be included as PEPs on the basis of holding a prominent public function. At the time of the meeting, the Joint Committee highlighted a lack of clarity in relation to several definitions including “a prominent public function”.

In January 2023, the Department of Justice published guidelines which provided a further definition of ‘prominent public functions,’ stating that:

*“in respect of such functions within the State, and where not otherwise specified, shall be an office or other employment in a public body in respect of which the remuneration is not less than the lowest remuneration in relation to the position of Deputy Secretary General in the Civil Service.”<sup>37</sup>*

While recent guidelines indicate that individuals in a ‘prominent public function’ relates to individuals on “not less than the lowest remuneration in relation to the position of Deputy Secretary General”, the guidelines also acknowledge that pay scales are

---

<sup>36</sup> FATF Guidance: Politically Exposed Persons (Recommendations 12 and 22), available [here](#)

<sup>37</sup> Dept. of Justice, Definition of ‘prominent public functions’ Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 - Issued to competent authorities on 20 January 2023, available [here](#)

subject to change and the most up-to-date pay scale should be used to identify persons entrusted with a prominent public function.

However, as highlighted by the Joint Committee, some civil servants or individuals who carry out a public function, could be, due to their specific role, considered as potential PEPs but remain outside these parameters. Board members, for example, could be considered as having a prominent public function, but may have a pay scale under that prescribed in the guidelines.

Officials from the Department of Finance noted that *“if a person is holding a position which is, by nature, high risk, then there is an obligation on a bank to take appropriate and proportionate steps in response to that.”*

However, it is noted that such individuals are not automatically considered as PEPs and therefore, this ambiguity may lead to an inconsistency in how such measures are applied.

### Recommendation

4. The Joint Committee recommends that the Department of Finance and the Department of Justice re-assess the guidelines in defining persons with a ‘prominent public function’. The Joint Committee has concerns that the current definitions remain ambiguous and that some individuals, who undertake such functions, may remain outside of the current parameters or to the salary thresholds within the current guidelines.

## 6.4 Beneficial Ownership of Trusts, Shell Companies and Section 110s

Beneficial ownership plays a central role in financial transparency and oversight. The Joint Committee discussed the risk of money laundering and terrorism financing being facilitated through the misuse of legal entities such as Trusts, Shell Companies and Section 110's.

Officials from the Department of Justice confirmed that it was cognisant of the difficulties of applying AML measures to such groups due to complexities in establishing and defining their beneficial ownership.

Trusts are more commonplace in Ireland than many EU Member States due to its Common Law based legal system. Officials from the Department of Finance concurred with the Joint Committee that there was a potential weakness in the system in establishing the beneficial owner as a Trust. Officials from the Department of Finance noted that this issue as a potential flaw in the system had been flagged and that they had had *“multiple negotiations and discussion over the past two years with the Commission about trusts and about that the fact that, by their very nature, it is difficult to get to the beneficial ownership of trusts”*.

The Committee also noted the use of Shell Companies and Section 110s and how the use of nominee shareholders and nominee directors can, potentially, circumvent transparency of beneficial ownership. Officials noted that it was also a matter repeatedly raised by the Department of Finance at an EU level. The officials added that a definition of beneficial owners of trusts was due to be drafted.

However, the officials emphasised the importance of 'know-your-customer' obligations that are applied to financial services and that such measures counter and flag potential risks. Officials stated that in cases where there was large scale corruption or money laundering, such transactions would often involve large amounts of money which would be flagged within financial services.

### Recommendation

5. The Joint Committee recommends that the Department of Justice and the Department of Finance provide an annual report to the Joint Committee:
  - on ongoing work undertaken at a national and EU level in relating to applying effective anti-money laundering measures against Trusts, Shell Companies and Section 110s.
  - on any proposals for further guidelines and advice on the matter.

## 6.5 Crypto Transfers

Officials in the Department of Justice acknowledged the Committee's concerns regarding the potential higher risk for money laundering in crypto transfers. The officials acknowledged the difficulty in screening adequately for crypto transfers and noted that it was a matter it had raised repeatedly at EU level. Officials further noted, at the time of the meeting, a Market in Crypto-Asset (MiCA) Regulation was in trilogue and due to be adopted. The MiCA regulation is intended to set out a supervisory regime for the transfer of crypto assets.

The Joint Committee supports the Department's attempts to establish an adequate supervisory regime of crypto transfer to ensure effective AML due diligence.

### Recommendation

6. The Joint Committee acknowledges the high risk of crypto transfer and the difficulties in applying anti-money laundering and counter terrorism measures in such transfers. The Joint Committee welcomes the Markets in Crypto-Assets (MiCA) Regulations in this regard and will continue to examine the area of Crypto.

## Conclusion

Anti-Money Laundering and Counter Terrorism Financing measures remain an integral technique in maintaining a transparent and legal financial system. The Joint Committee continues to support measures which are intended to provide appropriate safeguards to the financial systems.

The Joint Committee recognises the risk posed by Politically Exposed Persons and the need for enhanced due diligence when such individuals are undertaking financial transactions.

However, the Joint Committee believes that any such measures should be balanced and fair and should be appropriate to the risk involved. The Joint Committee has concerns that some measures are resulting in a system that is preventing PEPs, their close associates and family members from undertaking routine banking transactions.

The Joint Committee notes that these discussions are being undertaken across Europe and other Member States.

The Joint Committee believes that a review should be undertaken by the Department of Finance and the Department of Justice to examine the effectiveness of current anti-money laundering measures and the application of enhanced due diligence measures. In addition, the Joint Committee believes that further assessment should be undertaken with regard to defining a person with a 'prominent public function'. Furthermore, the Joint Committee notes that further consideration should be given to the application of measures against Trusts, Shell Companies and Section 110s in order to assure measures are being robustly adhered to. The Joint Committee also acknowledge the growing influence of Crypto-Assets and the increased necessity to apply anti-money laundering measures in this sector.

The purpose of this report is to highlight these issues and to allow for a robust but fair and appropriate PEPs regime and the Joint Committee recommend that this report allows for further debate and review of the regime.

## Appendices

### Appendix 1: Meeting Details

Date	Opening Statements and Transcript	Witness
<b>Wed, 5 October 2022,</b>	Department of Finance and Department of Justice,  Joint opening statement - <a href="#">Click here</a>	Department of Finance  Department of Justice

## Appendix 2: Additional Written Submissions

The following written submissions provided further evidence:

Stakeholder	Response
Department of Justice	<ul style="list-style-type: none"> <li>• Note on Politically Exposed Person, 17/11/21</li> <li>• Note on Risk Based Approach</li> <li>• Note on Politically Exposed Persons</li> <li>• Note on Post adoption aspects of AML package</li> </ul>
Central Bank of Ireland	<ul style="list-style-type: none"> <li>• Note on Central Bank of Ireland</li> </ul>

### Appendix 3: MEP Submissions

The Joint Committee wrote to all Irish MEPs requesting further information. This is available [here](#).

Stakeholder	Response
Department of Justice	<ul style="list-style-type: none"> <li>• <a href="#">Mr. Chris McManus MEP</a>,</li> <li>• <a href="#">Ms. Grace O’Sullivan MEP</a>,</li> <li>• <a href="#">Mr. Ciaran Cuffe MEP</a>,</li> <li>• <a href="#">Ms. Clare Daly MEP</a>,</li> <li>• <a href="#">Mr. Billy Kelleher MEP</a></li> <li>• <a href="#">Ms. Deirdre Clune MEP</a></li> </ul>

[The responses can be viewed here.](#)

- Note from Department of Justice for Department of Public Expenditure and Reform, received 17 November 2021 (Ministerial Briefing), available [here](#)
- Dept. of Justice, Submission on COM (2021) 420-423, available [here](#).



## Appendix 4: Transcript of Meeting

### DÁIL ÉIREANN

---

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ,  
AGUS AN TAOISEACH

**JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM,  
AND TAOISEACH**

---

*Dé Céadaoin, 5 Deireadh Fómhair 2022*

*Wednesday, 5 October 2022*

---

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Bernard J. Durkan,	Aidan Davitt.
Mairéad Farrell,	
Jim O’Callaghan.	

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

## Politically Exposed Persons: Discussion

**Chairman:** We will commence our discussion on politically exposed persons with the Departments of Finance and Justice.

Before we do so, I wish to acknowledge that we agreed the minutes of the joint committee meeting of Wednesday, 21 September 2022, at an earlier private meeting.

The format for today's meeting will be that we will have a statement from the Department of Justice after which we can get into a discussion on the general topic of politically exposed persons. I welcome our witnesses, Ms Sinéad Reynolds, Ms Brenda McVeigh and Mr. Brendan Bruen. They are all very welcome. Who wishes to kick off?

**Mr. Brendan Bruen:** I will start. I thank the committee for its invitation. I am joined by my colleagues, Mr. Brendan McVeigh and Ms Sinéad Reynolds from the Department of Finance.

International standards in respect of anti-money laundering are set and monitored by the Financial Action Task Force, FATF. FATF is an intergovernmental body with 39 members, including Ireland, and a large number of observers and associate members. Over 200 countries commit to implementing its standards.

EU standards generally reflect those of FATF and are currently set out in the fourth anti-money laundering directive of 2015, as updated by the fifth directive in 2018. Ireland is bound by these directives and implements them through the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. That Act has been amended several times, most recently in 2021.

A politically exposed person, PEP, is defined by FATF as "an individual who is or has been entrusted with a prominent public function". FATF states:

Due to their position and influence, it is recognised that many PEPs are in positions that potentially can be abused for the purpose of committing money laundering (ML) offences and related predicate offences, including corruption and bribery, as well as conducting activity related to terrorist financing.

FATF emphasises that PEP status is intended to apply higher vigilance rather than suggesting that individuals are involved in suspicious activity.

FATF first issued requirements covering foreign PEPs and their family members and close associates in 2003. In 2012 FATF expanded these requirements to domestic PEPs in line with the United Nations Convention against Corruption.

EU requirements for PEPs are now set out in Articles 20 to 23 of the fourth directive, which broadened the application of the EU regime to include domestic PEPs. It came into force in Ireland in 2018. The definition of “politically exposed person” in the directive specifies several categories of PEP, including, for example, Heads of State, members of parliament, members of the governing bodies of political parties, supreme court judges, ambassadors and others. This definition is open: while the categories stated must be included, other persons may also be included on the basis of their holding a prominent public function.

Relevant entities - for example, financial institutions - are then obliged, first, to have in place appropriate procedures to determine whether a customer or the beneficial owner of the customer is a PEP and, second, to apply enhanced due diligence to business relationships with PEPs, including obtaining senior management approval for establishing or continuing business relationships; taking adequate measures to establish the source of wealth and source of funds involved in relationships or transactions; and conducting enhanced ongoing monitoring of those business relationships. These measures also apply to family members or persons known to be close associates of politically exposed persons.

The Central Bank of Ireland publishes guidance on PEPs for financial institutions. This guidance is available on the Central Bank's website. Notably, it provides: Firms should take adequate measures to establish the source of wealth and source of funds which are to be used in the business relationship in order to satisfy themselves that they do not handle the proceeds of corruption or other criminal activity.

The measures which Firms should take to establish a PEP's source of wealth and source of funds will depend on the degree of risk associated with the business relationship. Firms should verify the source of wealth and the source of funds based on reliable and independent data, documents or information.

When determining the source of wealth and source of funds, Firms should, at least consider:

- The activities that have generated the total net worth of the customer ...; and
- The origin and the means of transfer for funds that are involved in the transaction.

In July 2021 the European Commission published a detailed legislative proposal to replace the fourth directive. That proposal includes replacing the existing directive-based system with a combination of directives and regulations, with a “single rulebook” implemented via a regulation which would be directly applicable across the European Union. That rulebook would largely supersede the national provisions I have set out, which are likely to be repealed as part of the transposition. A new European Union authority, the anti-money laundering authority, AMLA, would lead AML regulation across the bloc. The package remains under negotiation and is handled at ECOFIN. Colleagues in the Department of Finance lead on those negotiations and can address questions the committee may have about the broader package. While the package itself is very substantial and will significantly affect how AML regulation is implemented, the specific requirements set out on PEPs in Articles 32 to 36 of the proposed regulation, as published, are broadly similar to those currently in place. AMLA is tasked with issuing guidelines on assessing the levels of risk associated with particular categories of politically exposed persons, their family members or persons known to be close

associates. The regulation also reaffirms that the requirements relating to PEPs and their family members and close associates are of a preventative, not criminal, nature and should not be interpreted as stigmatising PEPs as being involved in criminal activity. Refusing a business relationship with a person simply on the basis of his or her being identified as a PEP would clearly be contrary to the spirit of the regime.

I am conscious that, with the time available, I have only scratched the surface. I am, of course, happy to answer members' queries in more detail.

**Deputy Jim O'Callaghan:** I thank our guests for coming before the committee. In this era of transparency, I should announce at the outset that I, like everyone else on this committee, am a politically exposed person. That might be taken for granted but it is worth saying it. May I ask Mr. Bruen, has the fifth directive been fully transposed into Irish law yet?

**Mr. Brendan Bruen:** "Yes" is the short answer. There are several elements that have different timelines associated with them. The primary transposition was through the 2021 amending Act. A separate statutory instrument in respect of the beneficial ownership trusts was introduced in April 2021. The Act was commenced in April 2021 as well. Then there have been further measures in respect of the Central Bank account registry, which has been put in place since.

**Deputy Jim O'Callaghan:** I think I am correct in saying that the fifth directive really just amends parts of the fourth directive and that the fourth directive sets out the substance of what is required. Is that correct?

**Mr. Brendan Bruen:** That is correct. The fourth directive is the primary instrument on this. That will change with the sixth package, which will replace it.

**Deputy Jim O'Callaghan:** Looking at our primary law, it is in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 that the fourth directive has been transposed into Irish law. That is where most of the legislation is contained.

**Mr. Brendan Bruen:** Yes. It is slightly tricky in that, while the fourth directive replaced the third directive, the third directive was transposed by the 2010 Act and that, in order to transpose the fourth directive, we did not replace the 2010 Act but, rather, amended it. The 2010 Act is therefore the primary legislation on PEPs.

**Deputy Jim O'Callaghan:** In the Irish legislation, we define "politically exposed person" by saying three categories of person are covered: a specified official, a member of the administrative management or supervisory body of a State-owned enterprise and any individual performing prescribed functions. Is that correct? Then we go on to define what a specified official is

Mr. Brendan Bruen: Yes.

**Deputy Jim O'Callaghan:** Are senior civil servants regarded as politically exposed persons?

**Mr. Brendan Bruen:** The definition is somewhat difficult in that regard in that there is provision for guidance to be issued in respect of other functions. Clarification of that has been under discussion. It is important to say that the status of performing a prominent public function does not involve a closed definition. Somebody may be interpreted as holding a public function even though not within those categories. As a matter of practice at present, I understand that senior civil servants, certainly Secretaries General and deputy Secretaries General, would be interpreted as being a prominent public function that would be subject to politically-exposed persons, PEPs, requirements.

**Deputy Jim O'Callaghan:** If you look at the definition that is relevant to that question, the only way they would come under the legislation is if they fitted within the definition of "a member of the administrative management or supervisory body of a State-owned enterprise". As an example, not for any specific reasons, look at something like An Bord Pleanála, would the people in charge or who are members of An Bord Pleanála's board be viewed as PEPs?

**Mr. Brendan Bruen:** I would be reluctant to comment on a specific question on that, but in the reading of the Act, I would---

**Deputy Jim O'Callaghan:** I can understand Mr. Bruen's reticence because, just looking at it, it is difficult to determine who is covered by it. We know that a Member of Parliament is covered by it because it expressly states so, but when it says a "member of the administrative management or supervisory body of a State-owned enterprise", I do not know how that law is being implemented. Is anyone issuing guidelines in respect of it? Who is ultimately responsible for supervising this legislation?

**Mr. Brendan Bruen:** This comes in at a couple of different layers. In terms of what is or what is not a prominent public function, there is provision in the Act for guidance to be issued. I think the intention would be that guidance will be issued on that. I do not think it will change or take anybody out of it, but it will clarify the application in respect of-----

**Deputy Jim O'Callaghan:** Who will issue that guidance?

**Mr. Brendan Bruen:** That will be from the Department of Justice. There is provision within section 37(12) of the Act for the Minister for Justice, in consultation with Minister for Finance, to issue guidance in respect of the scope of prominent public function.

**Deputy Jim O'Callaghan:** This legislation has been here since 2018. I would have thought it is important for financial institutions and for State bodies to be aware of whether the people who are on the boards or are managing them are PEPs. It seems to me that there is no certainty as to whether they are or they are not.

**Mr. Brendan Bruen:** In practice - colleagues in the Department of Finance may have comments on this - individual institutions are expected to have risk-based procedures in place. It is not necessarily a black and white question of whether someone is a PEP and therefore enhanced due diligence should be applied. It is rather a case that if a person is holding a position which is, by its nature, high risk, then there is an obligation on a bank to take appropriate and proportionate steps in response to that. We can become very focused on whether someone falls into a PEP bracket or not. It is more that, for each client relationship across all of money laundering, not just in respect of PEPs, a risk-based approach should be taken. The risk associated with the person should then be identified and further due diligence measures taken, if necessary.

On the guidance on this, provision 37(12) was actually added in the 2021 legislation. We have been conscious that, soon after that legislation was enacted, the sixth package was published. We are conscious of not putting in place something that will not last so that if, as is highly likely, the Irish rule book is replaced by a cross-European rule book, we want to have something in position that is consistent with the direction of travel. It is something we have been conscious of the European developments on. The worst thing we could do would be to wade into definitions, guidance and practices on a firm-by-firm basis for perhaps two or three years before it all changes again on a European level.

**Deputy Jim O'Callaghan:** Ultimately, it is for a financial institution to get its own legal advice to assess whether or not its customers come within the definition of a PEP.

**Mr. Brendan Bruen:** Yes, I would agree. I would also say that it is that broader process of risk evaluation that should happen for all customers. It is not a black and white case of somebody being in one case and having no requirements and in another case having very onerous requirements. A risk-based approach should be taken to what the relationship is and what documentary requirements are necessary. Ms McVeigh may want to come in.

**Ms Brenda McVeigh:** What underpins all asset and liability management, ALM, considerations is the appropriateness for each institution to take its own risk-based approach and decide for itself its own exposure to financial irregularities, if one wanted to call it that. Specifically, the European Commission has said that no member state should be overly prescriptive because, as Mr. Bruen said, goal posts change, and each institution has to be able to set its own risk appetite. Just this morning, in an experts group meeting, the Commission let us all know that the 27 member states have now come back with their own lists, guidelines and views on what a PEP is. The Commission had hoped to do that job earlier as part of the new package and rule book. They had hoped to consolidate lists across member states to provide pan-European guidance on what a PEP is, but it has not done it yet. The Commission told us this morning that it is now in the process of doing that. It has admitted that it has been a very difficult process. Different member states have different views about what a PEP is and

what an associate of a PEP is, but it is there now. The next step will be for the Commission to analyse that and then, under the directives, namely Article 28, I think, endorse it and give its view on what a PEP is, based on the feedback from member states. The Commission hopes to issue a consolidated list - in the context of guidelines - about what a PEP will be by the end of the year. There will be a pan-EU basis for it.

**Deputy Jim O’Callaghan:** Under the directive, a spouse or somebody who in effect is your spouse is covered; a child is covered and the spouse of a child is covered. Has all of that been transposed into Irish law? There is an ability, I think, under the legislation for the Minister to define “immediate family member”. Has that been defined?

**Mr. Brendan Bruen:** I do not believe there has been any specific definition on that.

**Deputy Jim O’Callaghan:** So a statutory instrument could be introduced by the Minister, giving effect to that.

**Mr. Brendan Bruen:** In respect of “immediate family member”, I believe so, I would have to check-----

**Deputy Jim O’Callaghan:** If you look at subsection (11) of the section that contains the definition of PEPs, it says “the Minister may prescribe a class of family member of a politically exposed person, for the purposes of paragraph (g) of the definition of “immediate family member” only if the Minister is satisfied that it would be appropriate for the provisions of this sections to be applied...” No such instrument has been-----

**Ms Brenda McVeigh:** I do not think it would be timely at the moment of the Minister for Justice to do that, because the new package is under negotiation at the moment and there is an anticipation that we will have the new package and the new rule book in place in the next few months. The new package does contain a definition of what family members-----

**Deputy Jim O’Callaghan:** I am not criticising the Minister for Justice, I am just saying that since 2018, no such statutory instrument has been signed by the Minister.

**Mr. Brendan Bruen:** No. I would say that would be expanding the definition “immediate family member”, rather than defining it. It could only add to the provisions in Paragraphs (a)-(f).

**Deputy Jim O’Callaghan:** Looking at the research document produced by the Oireachtas Library and Research Service, I have not had any personal difficulties in terms of being a PEP, but one of the issues raised by some individuals is that their children who are involved in banking arrangements or looking for loans have been questioned as to whether or not they are the child of a PEP. I would have thought, from the perspective of those children, that it would be fairer if there was certainly brought to this, so that people know when they are becoming customers of a bank that they have to fill out a

specific form as to whether or not they are the child of a PEP which, under law, they are required to be categorised as. Would Mr. Bruen agree with that?

**Mr. Brendan Bruen:** I very much take the point that as much clarity in the area as is possible would be desirable. When it comes to family members, there is, necessarily, a different risk categorisation. While there may be a good reason that family members are covered in terms of due diligence, that it is not perhaps on the same automatic basis that it would otherwise be.

**Deputy Jim O'Callaghan:** We do not engage as much with members of the senior Civil Service as the Department would, but we hear stories from politicians. Is it the case that the children of senior civil servants are subjected to the same rules?

**Ms Brenda McVeigh:** We have direct experience of it.

**Mr. Brendan Bruen:** I am contacted on a regular basis to query its application.

**Deputy Jim O'Callaghan:** It is interesting that it obviously operates across the board, it is not just somebody persecuting politicians.

On the obligations of the financial institution in respect of a PEP, they are set out in Article 20-24, I think, of the fourth directive, which may be amended. In effect, they have to have procedures in place so they can identify a PEP, is that correct? Then, they have to have what they refer to as "enhanced ongoing monitoring of their business relationships". What is the purpose here? Is it to try to see whether there is something suspicious in the financial arrangements of a PEP?

**Ms Brenda McVeigh:** It is part of each institution's requirements under risk prevention measures. Yes, it has to continuously review its business relationship. It is not entitled to end the business relationship but it has to keep it under review to establish for itself, on the basis of a risk-based approach, whether that person is an emerging risk to that institution or the financial system generally.

**Deputy Jim O'Callaghan:** What happens if a financial institution sees a highly unusual lodgement of money into the account of a PEP?

**Ms Brenda McVeigh:** It is obliged to check the source of that wealth.

**Mr. Brendan Bruen:** Potentially, it is also obliged to report it as a suspicious transaction.

**Deputy Jim O'Callaghan:** Would it report it to An Garda Síochána?

**Mr. Brendan Bruen:** It would report it to FIU Ireland which is part of An Garda Síochána.

**Deputy Jim O'Callaghan:** Are we any aware of any such reports?



**Mr. Brendan Bruen:** A significant number of reports are made to FIU Ireland each year. I would not be privy to a breakdown of that.

**Deputy Jim O'Callaghan:** Put it this way, is Mr. Bruen aware of any prosecutions under it or that have arisen from it?

**Mr. Brendan Bruen:** In respect of a PEP-----

**Deputy Jim O'Callaghan:** In respect of a complaint made by a financial institution about a PEP.

**Ms Brenda McVeigh:** No, we are not privy to that information.

**Deputy Jim O'Callaghan:** If something unusual is in the account of a person who is a PEP, procedures are in place to report that to FIU and to An Garda Síochána and for that to be investigated.

**Ms Brenda McVeigh:** There is an obligation to do it.

**Mr. Brendan Bruen:** Yes, there is an obligation to it, but the obligation is broader than simply transfers to a PEP. In any circumstance, where a transaction has been identified as suspicious on the risk base, it must be reported.

**Deputy Mairéad Farrell:** It is interesting to hear about this. I used to work in banking and we had to do a course in PEP and anti-money laundering every year, so we could continue working in the bank. It is very important. I know some people have other opinions, but I am one of those people who is in favour of keeping a keen eye on politically exposed persons. It is very important.

I have three questions about how things are dealt with in different ways. Obviously, Bitcoin and other cryptocurrencies provide a kind of anonymised way of making payments. They inhabit a weird space where they are not money, in the sense of being issued by a central authority, but they can be used for making certain transactions and sometime that can also be for illicit purposes. They can also be exchanged into other financial assets. How do we deal with the risk of money laundering when it comes to the likes of cryptocurrencies, specifically regarding PEPs?

**Mr. Brendan Bruen:** That is a finance question.

**Deputy Mairéad Farrell:** They are all finance questions. I do not know anything about the legal side.

**Ms Brenda McVeigh:** Everybody is aware of the alleged higher risk for money laundering in terrorist financing that there is in relation to crypto transfers. A regulation, called the markets in crypto assets, MiCA, regulation, is in trilogues at the moment. It is about to be adopted. It sets out a supervisory regime for the transfer of crypto assets. There is no question about it - we have raised this repeatedly at EU level and we have regular discussions with the bank about it - but it is virtually impossible to

screen adequately for crypto transfers. By its very nature crypto is not supposed to indicate that anything is particularly secretive, but it is meant to indicate that it is confidential. That is the distinction that those who trade in crypto try to make. That means that by its nature it is difficult to regulate. The MiCA regulation will try to bring some regulatory and supervisory framework for those types of transfers. The question of how exactly we can bring some level of transparency to crypto comes up daily in the EU negotiations, although it flies in the face of what crypto is about.

**Deputy Mairéad Farrell:** It is interesting. Many things in finance can be quite opaque but specifically that. It must be fascinating to be involved in that and in trying to figure out how it could be done. Obviously those who engage with cryptocurrency might not find that, but as someone who does not, I think it is very interesting.

Another opaque question I will ask involves a hypothetical scenario. If someone wanted to corrupt the political system or was trying to corrupt me and decided to do a direct transfer to me, it would obviously trigger some suspicion. What if they placed the funds in a shell company owned by a legal trust, of which I, as a politician, was a beneficiary? I understand that trusts are required to register with the Central Register of Beneficial Ownership of Trusts, CRBOT, but if they did not, how would one be able to out?

**Ms Brenda McVeigh:** We have flagged that as a flaw in the system in relation to the beneficial ownership, BO, framework. We have had multiple negotiations and discussions over the past two years with the Commission about trusts and about the fact that, by their very nature, it is difficult to get to the beneficial ownership of trusts. Also in a common law country like Ireland, a trust can be established tomorrow morning in the Dáil. If someone sets up a tea club in the Dáil, that is a trust. Never mind shell companies; it is something as simple as that. To try to understand who is the beneficial owner of that trust is difficult. Anyone who benefits from that tea club is a beneficial owner. Many trusts are established in Ireland, and in common law countries in particular, unknown to the trustees at that, it is a significant fly in the ointment of the BO framework. The Commission has become more sympathetic to our position on that in the past six months of the negotiations under the new package, but it has not been rectified. I am not sure how it can be fixed in a common law country where trusts are so widely used.

**Mr. Brendan Bruen:** It is important to say there are two other elements. The trust and company service providers, the people who manage it on an industrial scale, are subject to their own regulatory obligation, as is the legal profession. Obligations exist about knowing the customer. As Ms McVeigh said, a trust can be set up very easily and almost unintentionally but where it is falling into a pattern, or into the sort of numbers that would be involved in large-scale corruption, money laundering, etc., other people would almost inevitably be involved in those situations. It touches on the crypto question. Sometimes the underlying transactions cannot be regulated but the companies which are

facilitating them can be. That all arises in the area of the commercial asset service provider provisions in the 2021 Act and how we deal with trust and company service providers and with the legal profession.

**Ms Brenda McVeigh:** An issue we have raised repeatedly relates to the section 110s, though not exclusively. With any company, the use of nominee shareholders and nominee directors circumvents transparency of beneficial ownership. Under company law and governance rules, the veil cannot be easily lifted in relation to those individuals, but certainly FATF, and perhaps the EU package, is bringing forward proposals to address that. The section 110s are quite substantial users of nominee arrangements. It is good to be aware of what the problems are but the only way to deal with them is on that pan-EU basis because-----

**Deputy Mairéad Farrell:** Of course.

**Ms Brenda McVeigh:** Therefore, it takes much consensus across Europe to get there, but we are aware of it and we are raising these concerns about fixing the flaws in the framework.

**Deputy Mairéad Farrell:** I have a particular interest in section 110s and I was quite interested to see the review announced in the budget last week. I am interested to see how that will develop. The whole concept of trustees and beneficial owners is that a trustee does not have to be the beneficial owner. The trustee is more an agent. If registering a trustee rather than a beneficial owner, is that something that could be tightened up?

**Ms Brenda McVeigh:** Ms Reynolds might know more about this because she has been directly involved in the discussions on trusts. When the Commission first came forward with proposals for the definition of a beneficial owner, we found that problematic because it deemed the trustee to be the beneficial owner. We had to point this out as it was not very sophisticated in its knowledge of common law systems and how trusts work. It had deemed trustees to be beneficial owners and we had to point out that was not possible. The definition of a beneficial owner is under discussion at the moment in the package. We have managed to get quite a lot of amendments made to the draft package to make how trusts work clearer. That will also include the definition of beneficial owners of trusts. That is being addressed at the moment.

**Ms Sinéad Reynolds:** It has been a long road trying to gain, I suppose, understanding because since the UK left we are the only common law member state left in the EU so we can be seen as being a bit niche and civil law jurisdictions just do not understand what a trust is and how it functions. We have had a lot of discussions with the EU about what a beneficial owner is and that it is not just the beneficiary of a trust but it is also who controls, because control is also a form of ownership. We have been looking at that very closely but in terms of trusts, we have explained what a trustee is. In terms of nominees, one of the current proposals being discussed is that perhaps if it is a nominee who is

acting for a trust, that would be noted in the trust's register. At least we will know how much activity is being carried out by a nominee rather than by a beneficiary or a trustee.

The aim of this new package is to gain clarity on exactly who owns what not just in a trust but across all entities. In terms of trusts, yes, there will be, we hope, a lot more clarity but also practical clarity. It will not be legislation for legislation's sake it will make a difference and get to the bottom of who benefits from what. As Ms McVeigh said, it is very difficult. One has to balance this right under corporate law to use a nominee. We cannot lift that veil so one has to get creative to see how one can get around it. Trusts have been a sticky issue the whole way through this package but it looks likely that we will settle on a practical, enforceable arrangement.

**Deputy Mairéad Farrell:** That is fantastic. I thank the Ms Reynolds. That is very interesting.

**Chairman:** Can I just go back to the beginning on this? I have is no difficulty with the initiatives being taken around anti-money laundering. That is not what I am questioning. I want to understand where all of this stuff comes from. Who established the Financial Action Task Force?

**Ms Brenda McVeigh:** I think it was a G7 initiative.

**Chairman:** G7, was it?

**Ms Brenda McVeigh:** It might have been G10, but I think it was G7.

**Chairman:** Ireland bought into that.

**Ms Brenda McVeigh:** We became a member probably two to three years after. Many other EU member states would like to be a member but cannot be one. It was quite a big deal to get membership.

**Chairman:** What sort of timeframe was that?

**Ms Brenda McVeigh:** It was in the late 1990s.

**Ms Sinéad Reynolds:** I think we joined in 1991. **Ms Brenda McVeigh:** It was in the 1990s anyway.

**Chairman:** Was it 1991?

**Ms Sinéad Reynolds:** It was around that time.

**Chairman:** It was the mid-1990s. Some 200 countries are committed to adopting whatever comes out of that task force.

**Ms Brenda McVeigh:** Yes.

**Chairman:** While the task force is an intergovernmental body made up of 39 members, what qualifies you to be a member? Who is a member? Is the Minister a member? Is it the Minister's nominee a member?

**Ms Brenda McVeigh:** It is the country that is a member. Senior officials tend to heads delegation and members of delegation. Ireland's delegation includes the Department of Finance, the Department of Justice, the Financial Intelligence Unit, FIU, and the Central Bank of Ireland. I think that Revenue was a delegate at one point. I am not sure whether it is now. Those would be-----

**Chairman:** It is the Department of Finance, the Department of Justice-----

**Ms Brenda McVeigh:** The FIU.

**Chairman:** What is that?

**Ms Brenda McVeigh:** The Financial Intelligence Unit in An Garda Síochána.

**Chairman:** Yes.

**Ms Brenda McVeigh:** The Central Bank of Ireland.

**Chairman:** They are all officials. There is no political membership.

**Ms Brenda McVeigh:** No. Although the Minister for Finance attends the spring meetings of the Financial Action Task Force, FATF, in Washington DC.

**Chairman:** That is just a once-off.

**Ms Brenda McVeigh:** There is a ministerial plenary, certainly once a year and maybe twice a year. I think it is once a year. The Minister for Finance attends that. Decisions are taken at ministerial level in relation to FATF. However, the day-to-day-----

**Chairman:** The task force meets and it is made up of the officials Ms McVeigh has just called out.

**Ms Brenda McVeigh:** Yes, in terms of Ireland but some delegations send ministers to FATF.

**Chairman:** Okay. Some attend.

**Ms Brenda McVeigh:** Some

**Chairman:** They discuss the issues of the day and the solutions to problems as it were-----

Ms Brenda McVeigh: Yes.

**Chairman:** and they make recommendations.

**Ms Brenda McVeigh:** Exactly, they make recommendations. They are not a legislative body and they cannot compel any country to adopt the standards but it is highly persuasive because it is considered the global standards setter.

**Chairman:** I understand that.

Ms Brenda McVeigh: Yes.

**Chairman:** Once it makes the recommendations, it is making them to the 39 member states but also to 200 other countries. Anyone else who wants the standard picks that standard.

**Ms Brenda McVeigh:** Yes. **Chairman:** How is it then decided on? **Ms Brenda McVeigh:** It is decided-  
----

**Chairman:** Is a set of recommendations agreed by the task force?

Ms Brenda McVeigh: Yes.

**Chairman:** Who signs off on those? Is there a political sign-off on those?

**Ms Brenda McVeigh:** Yes. There is a plenary twice a year, so FATF will put forward proposals for recommendation at plenary. Then they are decided by the member states there. For instance, in Ireland's case, we have to approach the Minister for Finance twice a year to get a mandate in relation to the FATF proposals.

**Chairman:** In attending sessions twice a year, is that where ministers would accept or reject  
a particular part of a recommendation?

**Ms Brenda McVeigh:** No. As I said, there is also a separate ministerial meeting. We would mostly talk to EU delegations and we know they all get ministerial clearance for anything being proposed at FATF, or certainly we do.

**Chairman:** How does one get that? Does one sit down with the Minister?

Ms Brenda McVeigh: Yes.

**Chairman:** One goes through the recommendations. **Ms Brenda McVeigh:** We usually set it out in a submission for the Minister.

**Chairman:** That is what would happen. The Minister would get that recommendation-----

Ms Brenda McVeigh: Yes.

**Chairman:** -----and he or she would go through it and would then-----

**Ms Brenda McVeigh:** Give us a mandate.

**Chairman:** approve it, or not.

Ms Brenda McVeigh: Yes.

**Chairman:** Was there ever a time that the Minister did not approve one?

**Ms Brenda McVeigh:** Since I joined four years ago, and I am head of delegation to FATF, I cannot think of anything that the Minister has not approved as yet. Most of them are not very controversial measures and it is rare at plenary that I have ever come across a time where there was a lack of consensus. The most recent one has been the issue of Russia and about the blacklist-----

**Chairman:** Yes. We will stick to the politically exposed persons, PEPs.

**Ms Brenda McVeigh:** Okay.

**Chairman:** The recommendations go back to the Minister who would approve them. What goes on at these plenary sessions for ministers?

**Ms Brenda McVeigh:** Again, they are not necessarily for ministers they are for heads of delegation plus the delegates. Some ministers attend depending on the country and who the country sends. Decisions are taken at those in relation to FATF recommendations, which would also include-----

**Chairman:** In relation to what, sorry?

**Ms Brenda McVeigh:** It would be in relation to FATF recommendations or new proposals. A lot of the time what happens at plenary is that a particular country would be getting assessed on its anti-money laundering, AML, framework and members would be asked to decide based on FATF's findings and on peer assessment findings whether or not we all agree that a country has or has not met deficiencies in its framework. A large part of what plenary does is look at a countries' AML framework.

**Chairman:** Has the Minister for Finance, Deputy Donohoe, attended all of those plenary sessions?

**Ms Brenda McVeigh:** No, he has attended the spring meetings in Washington DC of the ministerial plenary, which is a specific meeting. He has attended that. Those are done at the same time as the International Monetary Fund, IMF, and World Bank meetings.

**Chairman:** We are talking about two plenaries a year.

Ms Brenda McVeigh: Yes.

**Chairman:** Is the plenary in Washington DC?

**Ms Brenda McVeigh:** No, it is in Paris. There is one plenary every year to two years in the president's country. The presidency of FATF would change-----

**Chairman:** What I am trying to clarify here is that the two standing plenaries per year are attended occasionally by ministers and, in particular, heads of delegations, such as Ms McVeigh.

Ms Brenda McVeigh: Yes.

**Chairman:** Decisions are taken at those plenaries.

Ms Brenda McVeigh: Yes. **Chairman:** What happens at the Washington DC one?

**Ms Brenda McVeigh:** A large part-----

**Chairman:** Is that a separate one once a year?

**Ms Brenda McVeigh:** It is once a year. What happens at that is that generally the FATF strategy for the next two to five years, or whatever it may be, is set out and ministers are asked to decide on it.

**Chairman:** They are not dealing with the micro end of it but are dealing with more the macro.

**Ms Brenda McVeigh:** Certainly at those meetings, they are dealing with the macro end. They are dealing with the strategy. For instance, at the moment, the USA wants us to look at anti-corruption measures which is something broader than just AML. A decision around that would have been taken, at least in principle, at the last ministerial meeting, which was last April. That will be coming up again for decision at the plenary, based on what the ministers said in relation to the strategy meetings.

**Chairman:** Is that plenary attended by the Minister separate from the two Ms McVeigh described?

**Ms Brenda McVeigh:** Yes. **Chairman:** There are three plenaries.

**Ms Brenda McVeigh:** I think they call it the ministerial meeting. I am just saying that one could call it a plenary-----

**Chairman:** There is a ministerial meeting once a year. **Ms Brenda McVeigh:** Yes, in Washington DC.

**Chairman:** That is generally attended by ministers.

**Ms Brenda McVeigh:** Yes. That is always attended by ministers.

**Chairman:** I am sorry. Is it attended by our Minister?

**Ms Brenda McVeigh:** Yes. Our Minister goes to that. It is at the same time as the IMF and



World Bank meetings.

**Chairman:** Okay. Take me through how we move from there to an EU directive.

**Ms Brenda McVeigh:** As FATF is considered the global standard-setter on AML matters the EU would certainly take account of any recommendations or findings of FATF when it is developing a directive. The directive is always developed in what are called the experts' group meetings and that is where, as I said, draft proposals are put together. There is no question but that FATF is highly persuasive on that. Those proposals, in the same way as any directive is put together, are considered in the experts' group. By the time a final draft package is put together you get into Council working party meetings, so the Council has an involvement at that point before and then you go to trilogues of the Parliament as well and then the directive, whatever the final consensus is, is adopted.

**Chairman:** Okay, so the directive is arrived at in that way. When does it get approved by elected Members of Parliament?

**Ms Brenda McVeigh:** In the trilogues.

**Chairman:** In the trilogues.

**Ms Brenda McVeigh:** Yes. That is where they have their input. They can have input before that of course but they have input then, yes.

**Chairman:** Where is the input before that?

**Ms Brenda McVeigh:** Again, I have been at experts' group meetings where Members of Parliament have turned up.

**Chairman:** Okay. It is at experts' group meetings. Then the Members of Parliament vote on these at some stage.

Ms Brenda McVeigh: Yes.

**Chairman:** Okay. That is fine. I just wanted to get to where we are at with all this stuff. Then there is the legislation, which we will take as a given. These directives are then trans- posed into legislation and that is how we arrived at the PEPs.

Ms Brenda McVeigh: Yes.

**Chairman:** When you are a PEP, then comes the definition Deputy Jim O'Callaghan asked for. The question arose in some of these meetings - do not ask me which layer it came up at - but certain civil servants were excluded from being considered as PEPs. It is in the minutes of those meetings. It was civil servants who made the decision around that. If I wanted to found out how that arose, why it arose

and why they were excluded, where would I get that answer? Are the minutes of all these various plenary sessions and experts' group meetings available, so one can trace back originally how the suggestion originated, how it became a directive and how the content of that directive was decided upon?

**Ms Brenda McVeigh:** Obviously, the experts' group meetings are run by the European Commission and while it certainly produces records of the discussions of those meetings I am not sure whether they are made publicly available. I do not know but I could check and see.

**Chairman:** Will you check?

**Ms Brenda McVeigh:** I will check, yes.

**Chairman:** Are the minutes of these important plenary sessions and of the task force itself available?

**Ms Brenda McVeigh:** Some of the plenary sessions are closed sessions so I do not think those will be available. Some of them are public as journalists sit in on part of those meetings as well. I have to assume the closed sessions would not be available.

**Chairman:** Why are there closed sessions?

**Ms Brenda McVeigh:** Those are FATF's rules. FATF is a body that follows OECD rules. It is a body that is, if you like, hosted by the OECD and the OECD is, I assume, the body that-----

**Chairman:** Why have secret meetings?

**Ms Brenda McVeigh:** As I said, some of these meetings are in closed session.

**Chairman:** Ms McVeigh is just giving me information here.

**Ms Brenda McVeigh:** Yes, I know. The Chairman is asking me the why and I am saying I am not quite sure what the why is.

**Chairman:** I am going through the Ladybird version of all this so I can understand and those who are interested in the topic can understand. It appears to me there is an involvement of elected public representatives, be they ministers or Members of the European Parliament, at a high level but at the level many of these recommendations come from, there is very little political input. By political input I mean that sometimes when you are sitting around the table with officials and politicians you tend to be able to find an area the officials have perhaps overlooked or maybe one the politicians do not understand and out of the conversation comes clarity.

**Ms Brenda McVeigh:** Yes.

**Chairman:** That brings me to my concern. When you have an EU directive being transposed it is in the fog of this House and it gets transposed. Where it all comes from nobody knows, believe it or not, in this House. I will not say no one but there are quite a number of people, including myself, who would like to get back to the origin of this idea. I would like to understand how it arrives at a point where it is being transposed without that much scrutiny in this House.

**Ms Brenda McVeigh:** On that, with the development of a directive you have got 27 member states sitting around trying to reach consensus. If you look back at how a directive is developed, there is always going to be compromise in that. It is not always going to be what is necessarily in Ireland's best interests. There is going to be that when it comes to transposition. The only time transposition comes into play anyway is with a directive and the PEPs will be in a regulation, actually, so there will be no discretion with it. There is flexibility with the transposition of a directive, as I am sure the Chairman knows. There might be something that sets out why a given member state, including Ireland, would transpose in a certain way but as I said, that is a negotiation itself in the development of the directive itself. I can only speak from Ireland's point of view and from my time being involved in this, but there may be something particularly controversial we think Ireland is going to have to get into a big compromise on, like for instance when we were pushing very hard back with the Commission in development of the trusts beneficial ownership framework. We pushed extremely hard at the highest levels of the Commission to get something in place there that would suit Ireland. We certainly would speak to the Minister and set out very clearly for them why we think we need to do this but the Minister takes the decision if we are going to go back into any kind of dispute, let us call it, with other member states or with the Commission on those provisions.

**Chairman:** Okay. Maybe the best thing to do is get to the issues within all of this now that I know it is dealt with in the main by senior civil servants at European level. I would say there is little political input and I am going to find that out with a bit of research.

**Ms Brenda McVeigh:** Okay.

**Chairman:** That is my view. It is not a criticism of Ms McVeigh.

**Ms Brenda McVeigh:** I know; I accept that.

**Chairman:** I am just amazed we have arrived at this point in relation to politically exposed persons. I accept I am a politically-exposed person. It should be that senior civil servants, right down maybe to middle management in the Civil Service and the chief executives of certain agencies and local authorities are politically-exposed persons.

**Ms Brenda McVeigh:** I might point out one thing on that. I was speaking to my colleague about this just before we came in. Ireland is a very small country and because the framework for PEPs also includes associates of PEPs, when the Chairman talks about middle management in the Civil Service,

they are going to be an associate of a PEP. In a small country like this, this is going to be something that affects absolutely everybody.

**Chairman:** That is what I am coming to.

Ms Brenda McVeigh: Yes.

**Chairman:** The question then that is put to me as a member of this committee, by colleagues in the Houses, is whether it is right that the sons, daughters and family members are all treated as having equal status as a PEP. I have had Members of the Houses come to me to say their staff, their children have gone for loans and mortgages in the normal practice of day-to-day life and once it is discovered they are a PEP, they are then put through a different approval process. They feel that is highly invasive to their children's lives and I can understand that. Other Members have come to me to say that in transferring money from a regular account into a current account, the transaction is often held up because the financial institution is trying to get in touch with the PEP. There is a clear question as to where they got the money but it might be part of their salary being transferred to their current account. While they are waiting for that to happen, particularly in these times of financial pressures, their direct debits may be stopped and all sorts of things may happen.

The consequences of the actions taken by civil servants and politicians in regard to the politically exposed person issue trickle down to family members and people who do not even consider themselves associates of a PEP. It is causing an awful lot of difficulty for families. It may be a civil servant whose son or daughter applies for a mortgage and suddenly has to fill out another 20 pages. There is also the grey area, which Deputy Jim O'Callaghan referred to, whereby there is not enough definition of what a PEP is, what the Central Bank should do or how it should be interpreted down the line at the coalface. There are consequences of this for Ireland and, as Ms McVeigh rightly said, this is a small country and we all will be PEPs. It is strangling the ability of ordinary family members going about their lives in a normal, standard way, without feeling they are some sort of criminal or that there is some doubt about their character.

I accept why Ms McVeigh made the point she did - it was made for perfectly legitimate reasons - but we should not drag all those people into this, where they do not want to be. They do not want to be near politics. They have a regular life, and it has been irregularised by virtue of the fact they are impacted on by this type of legislation. It is my concern that, in some way, they should be separate. I am talking about people who have absolutely no worries. They are not concerned about anything and they just want to get on with their life. They probably despise the fact a member of their family is a politician and would like to distance themselves a little bit from it. That is a fact in Irish life. Those family members will then say, "Look at what you got me into here; I have another 20 pages to fill out." Surely at ministerial level or high Civil Service level, there has to be an injection of common sense into the thought process on this before we all get strangled in something unintentionally, but that is what is happening.

**Ms Brenda McVeigh:** Originally, this was a directive but it will become a regulation. In so far as these issues are there, they are coming to the fore now. I have sat in EU meetings where every member state has raised the issue of family members and associates, what constitutes both those things and how far we should go. This issue is not just local to Ireland; all member states are feeling the pain of this. The consensus seems to be that in a balance of interests, family members and associates have to be included. My sense of it, although it is only my sense, is that means that enhanced due diligence, which is what we are talking about here, is going to become more the norm. It will not just be experienced by, for instance, as the Chairman said, potentially the child of a politician. I think it will become more the norm for everybody.

**Chairman:** The message, therefore, is that if we think it is bad now, it is going to get worse.

**Ms Brenda McVeigh:** I think it is possible. I think fingers have been burned.

**Chairman:** Ms McVeigh is at the centre of it now. I am not holding her to account, but we have to be straight with people.

**Ms Brenda McVeigh:** I am trying to be straight. As I said, we are still in the negotiating phase and all member states are feeling this pain. Fingers have been so badly burned, by various money laundering scandals and the collapse of the financial system several years ago, that the risk appetite is very low. I can speak only about financial institutions but this applies across the board and is not just about banks. The risk appetite is now so low, and banks have to take their own decisions in regard to the customers and business relationships they will take on, that they will not take a lot of risk on it.

**Chairman:** My point is that the Department is making these decisions.

**Ms Brenda McVeigh:** No, I am not making these decisions-----

**Chairman:** I refer not to Ms McVeigh but-----

**Ms Brenda McVeigh:** I know, but I am saying it is a pan-European decision.

**Chairman:** That is fine, but just because it is pan-European and just because there is consensus on this issue does not mean it is right.

**Ms Brenda McVeigh:** I am not saying it is right but a directive-----

**Chairman:** Who is arguing that case?

**Ms Brenda McVeigh:** A directive, a regulation or a FATF recommendation, which is highly persuasive, as I keep saying, as is a FATF standard, all are arrived at on the basis of compromise and then consensus. It is never going to suit everybody around the table.

**Chairman:** Who is going to stand up for decency in Irish politics and in normal family life?

**Ms Brenda McVeigh:** I can say that, personally, I have done it and I believe colleagues with me have done it, including those in the Department of Justice. We have absolutely raised all these types of concerns in those negotiations. Again, on a pan-EU basis, we have got to the point of compromise. All member states are feeling this.

**Chairman:** No regulation or legislation will force a vulture fund to come before us as a finance committee to discuss all the issues vulture funds are imposing on Irish people, such as repossessing homes and so on. On the other side of this, there is all the legislation we are discussing, which can be simply imposed in member states without due consideration for the honesty of family members who are caught up in this. I would prefer if the EU directive stated that everyone is in this and outlined how we are going to proceed. I do not wish to be categorised

- I say this to our guest from the Department of Justice - under the Criminal Justice (Money Laundering and Terrorism Financing) (Amendment) Act 2010. It should be taken out of that and imposed directly and rigidly on politicians, but we should be told it is about that. I should not be linked to that legislation. I am not a terrorist and I do not launder money.

I am only outlining what has been said to me by Members of this House. Others are quite afraid to say it for fear it might be interpreted as them having concerns. Some members of this committee are sitting around the table and I am sure the other members are listening to the debate in their rooms, and I can explain why they are listening. They are afraid to say it themselves in case they are misrepresented. Therefore, because of the way this whole saga has been set up, it is back to officials saying they will not accept the consensus and that, perhaps, politicians should be rigidly examined and scrutinised. I accept all that - in fact, I would want it - but I do not believe it should extend to my family members, and there are others who feel the same.

Is a drug dealer a politically exposed person? He or she would have the wherewithal to buy political favouritism.

**Ms Brenda McVeigh:** That clearly depends on who the drug dealer is.

**Chairman:** That is my point. Officials know my son and daughter but they do not know the drug dealer. It is weighted in such a way that makes it very strange for those who come under the legislation or the EU directive to accept it. I do not accept it. I accept the principle of what our guests are trying to do but I do not accept the way this is being addressed. I am asking you as the officials who are central to this within the EU - and I am taking it up politically with the Minister - to look at this or give voice to the concern of honest individuals who are in parliaments everywhere. This is a further indication to those who cynically look at politicians and say they must be up to something because they are being dealt

with under the money laundering and terrorist financing Act. The Department official said earlier that it is not meant to do that. This, however, is the consequence and this is what happens.

I have been a practising politician for a long time. I am annoyed with the EU and the way it is doing this. I am annoyed with our own MEPs because when I put it to them they said that they did not vote for it, when actually they did. They did not even know that they did. The sad thing about it is how all of these different EU directives find their way into Irish legislation without the due diligence of public representatives. I am not blaming the officials but I am just interested in this whole position. I recall a very senior politician taking me to task in this House over what I had said about how politically exposed persons were being treated. He told me I was wrong. In fact, not only was I right, but it has since been compounded by other mistakes that come in our direction from the European Union on this issue. As I said, I will take it up politically. These are the reasons the departmental officials are here - not to hold them to account, but simply for me to get to where this began, how it is all coming into operation and why it is like this.

I saw an article recently from a particular part of the financial sector that was giving its interpretation of what a politically exposed person is and what should be done. If I were to boil it down, I would say that the article said to be careful, to treat all of them with suspicion and, if they are politically exposed persons, to examine them at every quarter and make sure they are okay. When one goes into one's local credit union for a loan, it is not dealt with by the credit committee - it is dealt with by the board. One does not have to fill out one sheet; one must fill out 20 sheets. This is the consequence of the decisions that are being made over there. I want to catch the baddies just as much as the officials who are present do. I want to take the risk out of the financial institutions just as much as they do. I want to see those institutions scrutinised, perhaps a lot more than the officials do. I want to see them put in their place. At the same time, I do not believe that those of us who represent the public should be treated like this. I do not believe that family members should have to bear the consequences of their family member being a politically exposed person, a civil servant or whatever it might be. We have to be careful about these things. I am delighted that the officials are here before the committee.

**Deputy Bernard J. Durkan:** I agree entirely with the Chairman. I was one of the first people in this House to take issue with this directive. Other colleagues at the time said they did not know about this directive. They did not know about it, but it is there. I find it unfair because those who fall into this category, such as politicians and their families and associates, are treated more stringently and aggressively than a person who is not deemed to be politically exposed although he or she may be interested in politics as well. What kind of politics can one be associated with without being accused of being politically exposed? Are there any such politics? I assume the answer is "No".

I presume that the financial institutions, as the Chairman has said, have a lot of control now and by comparison the political institutions do not have as much. As time follows, the political institutions are on a losing game and the financial institutions are gaining. I do not accept that and I will always fight against it, as the Chairman has done. I opposed it from the beginning. There are people who did not

know they were voting in favour of it. It is a weakness of the European Union that legislation can be introduced in this fashion without some discussion beforehand and without some way of seeing if it complies with our Constitution. The basis of our Constitution is that everybody is innocent until proven guilty. In this particular case, however, all of those who are politically exposed are potentially guilty and must prove their innocence. This is in stark variation with our Constitution. I believe this must be dealt with at a much higher level.

I acknowledge that the officials have said that the European courts can deal with this and have dealt with this, and that they have dealt with a lot of other extreme cases also. It would appear that a citizen of this State who happens to be a public representative will be under suspicion no matter what happens - the Chairman has referred to this, quite correctly - and a person who is a relative, a friend or an associate of a public representative is on to something as well. That kind of allegation has often been made around the House, as we know, when one party or another wants to land a slur on somebody else. The matter under discussion today, however, is in the real world. To presume that we are potentially guilty of something is, to my mind, a violation of our rights and a handing over of citizens' rights to financial institutions. I do not need to be encouraged to talk about financial institutions because, like the Chairman, I have engaged with and opposed many of them. Some of them are good to deal with and some of them are not. Some of them are secretive. Some of them ignore public representatives, some of them challenge public representatives, and some of them clearly indicate that they do not give a damn about public representatives. They are their own bosses, and they are quite happy in that position.

**Chairman:** Is there a question, Deputy?

**Deputy Bernard J. Durkan:** I will be happy to hear a response to my outburst. It is not something I oppose lightly. I opposed it from the beginning. Family members opposed it too. They feel that they should not be accused because somebody in a high vaulted tower accuses me, for example. I do not encourage and I do not involve myself in any kind of financial manipulation. If anyone wants to accuse me of that, let them come forward or leave it.

On the question, I accept what the officials are saying with regard to the reasons for it. There are reasons for everything and there are ways and means of dealing with issues. Like the Chairman, I do not happen to agree with the application of this particular rule as it is, just as I did not agree with the GDPR. I opposed that from the beginning on the basis that I was an elected public representative, elected by the people in a way that does not apply in most other EU countries, which is the single transferable vote. This does not require me getting permission from anybody to rise on their behalf or against them. There is a distinct difference in the way governments and people look at this in other countries. In other countries there are people who hold public office who are never elected anywhere. They could be associates of anything. They were never elected anywhere by anybody. They now have the same powers that we have. By "we", I mean elected public representatives. They do not have to admit anything, they do not have to do anything, and they just serve their time. Some of them



get into some funny scrapes from time to time. Do not forget, however, that they were never elected. In the heel of the hunt I would like more of an explanation as to why it is thought that politicians have to be treated in a different way as politically exposed. Lots of other people are politically exposed by virtue of whom they associate with one way or another. Nobody has applied any kind of restriction on their behaviour as has been the case with politicians in this country. I am willing to hear from anybody

**Ms Brenda McVeigh:** I can only repeat what I have said and I do not want to irritate anybody with some of these repetitions and with what my colleague from the Department of Justice has said. There is no insinuation of guilt in respect of being deemed a PEP. It is about preventative measures; that is number one. I feel the pain because I hear this even from colleagues. I have been lucky that I have not had to experience it yet. I have not had to do anything with my bank in quite a while other than day-to-day business, but I do hear from colleagues who are experiencing this pain so I do get it. I also hear from EU colleagues that this is a pain felt everywhere. There has been consensus across the EU that this is necessary to protect the integrity of the financial system and, indeed, the broader economies of member states. The Deputy has inferred several times maybe that directives are reached in a somewhat obscure way but they are not. I have said repeatedly, and I have also said it in relation to FATF. We get mandates from the elected Minister regarding any controversial measures that are going into directives, and we are open to scrutiny by the Parliament here to come in and discuss anything in a draft directive or draft package of any nature. Ultimately, it is elected representatives in the European Parliament who sign off on these directives, who signed off on the previous five AML directives, and who will be involved in the sign-off for the new package and new rule book, which is both directives and regulations. We deal with parliamentarians in Europe who are constantly asking what is this or that. Commissioner McGuinness is very hands-on because with the Commission seat she holds she has a very strong interest in what is being developed in this package. It would not be factual to say that elected representatives are not effectively the sign-off and the ultimate authority as to what goes into a directive at EU level.

**Chairman:** Except that they do not seem to know that.

**Deputy Bernard J. Durkan:** The European Parliament has new powers.

**Ms Brenda McVeigh:** I cannot answer for what they do or do not know, but I can say they get very well briefed. They have their advisers, they have to do the sign-off and they have to decide for themselves what their own due diligence is in signing off on a draft directive. I cannot dictate that to them.

**Chairman:** Can I ask Ms McVeigh about the single rule book?

**Ms Brenda McVeigh:** Yes. **Chairman:** Will that be signed off? **Ms Brenda McVeigh:** Yes.

**Chairman:** What stage is that at?

**Ms Brenda McVeigh:** As I said they hope to get it finished under the current Czech Presidency of the EU, but I think we are getting a bit late in the day for that. It probably will get signed off either during this or the next Presidency, which is the Swedes.

**Chairman:** Is it months of months?

**Ms Brenda McVeigh:** I would say months.

**Chairman:** That rule book must almost be prepared then.

**Ms Brenda McVeigh:** Yes, and it will be in the form of a directive and a regulation. The regulation will take direct effect as the Chairman knows. The directive will then have to be transposed.

**Chairman:** Is it possible to get a copy of that rule book?

Ms Brenda McVeigh: Yes.

**Ms Sinéad Reynolds:** It was published in July 2021, when the package was published.

**Chairman:** It has been amended since. I am talking about the final version of it.

**Ms Brenda McVeigh:** I mean that is the ongoing negotiation. It gets amended all of the time.

**Chairman:** When will the final version be signed off?

**Ms Sinéad Reynolds:** When it is agreed after trilogue stage by MEPs, the Commission and national experts. That is the EU process.

**Chairman:** I have just found that quote from Mr. Bruen: "Refusing a business relationship with a person simply on the basis of them being a PEP is clearly contrary to the spirit of the regime." There are Members of the Dáil who have highlighted that particular aspect of this to me, and have said that when they were approached to invest in a company and went about doing it, there was no doubt created over them except that they were stopped for further scrutiny and, therefore, could not reach the deadlines for investing. Afterwards their colleagues asked them what the story was with their interest and they had to explain how they had just found out they were a politically exposed person. One of the secretaries in Leinster House, and it was not known until it happened to her, rightly told all of her colleagues that they are all politically exposed persons, and she was treated poorly by the bank. I do not think that is in the spirit of this directive, but yet that is what is happening.

**Mr. Brendan Bruen:** I completely understand the point. There is nothing in the directive or the 2010 Act that provides a basis for a bank or another designated person to refuse to do a transaction based on somebody being a PEP. That is very well established.

**Chairman:** Does Mr. Bruen understand what I am saying?

**Mr. Brendan Bruen:** About the practical implication of a delay.

**Chairman:** It delays the legitimate process.

Mr. Brendan Bruen: Yes.

**Chairman:** Then it creates doubt over their character.

**Mr. Brendan Bruen:** The challenge at the coal face, as the Chairman said, is whether standards are being applied properly or due diligence is taking place quickly enough, or the information being required is disproportionate. Those are all live questions that each customer has to deal with.

**Chairman:** Another live question relates to financial institutions that are extremely reluctant to have anything to do with those who are described as PEPs. They would prefer if they did not open an account with them. Maybe I am wrong, but I think Deputy Durkan raised that issue at a previous meeting.

**Ms Brenda McVeigh:** I get what the Chairman is saying. There have been noises. We have heard about that, but we have no evidence of that. I spoke with the Central Bank before I came today, and they are telling me that only one institution so far, which they have not named as we should not know that, has so far had pushback with one customer regarding the enhanced due diligence measures that bank has requested and put in place for that particular customer who, I understand, was a so-called PEP. That is as much as we are hearing. We are hearing of aggravation and irritation that this new regime is in place, but there has not been any significant pushback according to the Central Bank in relation to financial institutions.

**Chairman:** The financial institutions do not want you if you are a PEP. That is a fact.

**Ms Brenda McVeigh:** I am taking the Chairman's word if he is saying that to me. I am simply saying--  
---

**Chairman:** Colleagues around the Houses have come to me because both Deputy Durkan and I have spoken publicly about this. We want to get this right, but the consequence of the decisions to date are such that they create fear regarding the description of a PEP, what people think of PEPs within banks and just with what is going on generally. The banks do not want the scrutiny and they do not want too many of these accounts; they prefer not to have them. That is the reality. That is the consequence of the decisions that have been made. The decisions and the directives are affecting people's lives in a way perhaps that was not intended and, therefore there is an obligation on all of us to take that unintended consequence and to deal with it in whatever way this new single rule book is going to say. It is probably going to take the worst-case scenario and build rules around that rather than acknowledge that not every PEP is a criminal.

**Ms Brenda McVeigh:** The Chairman has kind of hit on it there in a way. The new rule book is about all AML rules. Their basic premise is about taking a risk-based approach to all types of transactions. What is also so entrenched in that framework is KYC, or “know your customer”. It is not something, in terms of what the institutions are doing now, that is specifically focused on politically exposed persons. It is focused on the general anti-money-laundering rules and, unfortunately, those rules have resulted in banks and other institutions having a much lower risk appetite now for fear of any kind of money laundering activity. That is not something they are saying is necessarily just focused on politically exposed persons. It is focused on every customer of those institutions.

**Chairman:** Every customer of an institution is not treated like a politically exposed person.

**Ms Brenda McVeigh:** The Chairman is saying that but I have heard from colleagues who would not necessarily be technically deemed to be politically exposed persons that they are also experiencing the new reality of the anti-money-laundering rules.

**Chairman:** Can Ms McVeigh tell us anything about the UK experience? UK banks are now charging politically exposed persons for the handling of their accounts.

**Ms Brenda McVeigh:** No, I am not aware of that.

**Chairman:** I would like her to check that out.

**Ms Brenda McVeigh:** I will do so.

**Chairman:** UK banks may not be in the EU but facts are facts and they can charge significant amounts for handling the account of a politically exposed person because of the extra scrutiny and regard they have to give to the circumstances around it.

**Ms Sinéad Reynolds:** Is a specific fee being charged because they are politically exposed persons?

**Chairman:** No, it is based on the level of management that they have to apply to an account. Colleagues in the UK told me about this and I asked them to come back to me with further information on it. If it starts happening there, it could very well begin to happen here and we have no control over these things.

**Ms Brenda McVeigh:** We certainly have no control over private institutions like banks in terms of their day-to-day functions but if it is simply on the basis of applying anti-money-laundering rules, it would be a slippery slope for them because those rules are supposed to be applied on a pan-EU basis. Institutions across the EU would be doing the same thing but I am not hearing that anywhere across the EU. We can certainly check it out.

**Chairman:** Look into it and get the information because-----

**Ms Brenda McVeigh:** I accept what the Chairman is saying about the UK-----

**Chairman:** I am trying to approach this in a constructive way, as are Deputy Durkan and other interested parties. Every turn of my analysis of this just throws up more problems and more possibilities for negative consequences for those affected. That is all I am saying. I do not have any more to say on it because I have said enough.

**Deputy Bernard J. Durkan:** I am concerned about lending institutions being not politically exposed but acting politically. That is something that myself and others have referred to in the past. They are strict and ruthless in the way they handle the powers and information they have over individuals. That would be justified on the basis that they need to know what people are doing but nobody knows what the banks are doing. When the financial crash came, nobody knew what they were doing until it dawned on us all and fell on our doorsteps all at the one time. The very fact that they do not seem to be in need of any kind of scrutiny other than to be able to say that politicians are dangerous and could do all kinds of things, so they want to make sure that does not happen. If anybody else does it, the lending institutions have been economic with the application of the rules that are there to protect customers. The conclusion that I come to in that regard is a serious one, which is the fact that customers do not matter anymore. Anything is justified in achieving their results. I am increasingly concerned about the extent to which they are open and willing to discuss matters with public representatives acting on behalf of the public. While some are happy to do so, a minority of institutions refuse to engage. They give no information, have no address, and will facilitate no meetings. They say, "Send us the proposal and we will have a look at it". That is very old fashioned law and it does not apply here yet. The EU should be cautious about allowing those kinds of things to happen because, ultimately, it can turn people against the EU, rightly or wrongly. I have said my piece on this many times before. I do not like secrecy.

**Chairman:** We have come to the end of our exchanges on this. I ask the witnesses to inform the committee whether we can get those minutes, if available, at the various levels they have described. If available, please send the links to us so we can see how detailed the discussions were. Any further information on this new rule book that they can give us would be appreciated. Maybe the Department of Justice could look at how it puts a name on these Bills and take an understanding from what I said earlier in terms of getting all of that legislation relating to politicians and putting it under a reasonable heading. I ask that the Department would keep us informed of any developments in this matter. I thank the witnesses for attending and for the information provided.

The joint committee adjourned at 3.06 p.m. until 1.30 p.m. on Wednesday, 12 October 2022.

## Appendix 5: Terms of Reference

### JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH TERMS OF REFERENCE – STANDING ORDERS 94, 95 AND 96 (as amended) JULY 2020

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

**94.** (1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1); and

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

**Functions of Departmental Select Committees.**

**95.** (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

- (a) the Committee Stage of a Bill,
- (b) Estimates for Public Services, or
- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- i. members of the European Parliament elected from constituencies in Ireland,
- ii. members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- iii. at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and



(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas

**Powers of Select Committees.**

**96.** Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory instrument,  
or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument:  
Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published), for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State, shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).

### Houses of the Oireachtas

Leinster House  
Kildare Street  
Dublin 2  
D02 XR20

[www.oireachtas.ie](http://www.oireachtas.ie)

Tel: +353 (0)1 6183000

Twitter: @OireachtasNews

### Connect with us



### Download our App

