

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

## JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

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*Dé Máirt, 9 Nollaig 2014*

*Tuesday, 9 December 2014*

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The Joint Committee met at 3 p.m.

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### MEMBERS PRESENT:

Deputy Tom Barry,	Senator Michael Comiskey.
Deputy Pat Deering,	
Deputy Martin Ferris,	
Deputy Martin Heydon,	
Deputy Éamon Ó Cuív,	
Deputy Willie Penrose,	
Deputy Thomas Pringle,	

DEPUTY ANDREW DOYLE IN THE CHAIR.

## SCRUTINY OF EU LEGISLATIVE PROPOSALS

*The joint committee met in private session until 3.55 p.m.*

### **Scrutiny of EU Legislative Proposals**

**Chairman:** It is proposed that COM (2014) 670, listed in Schedule A, which proposes a Council regulation fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union vessels in certain non-Union waters and repealing Council Regulation No. 779 of 2014, warrants further scrutiny. Is that agreed? Agreed. Is it agreed to submit the contribution as amended to the relevant personnel in Europe and to forward a copy to the Minister for Agriculture, Food and the Marine? Agreed.

### **Investigations Division: Department of Agriculture, Food and the Marine**

**Chairman:** I remind members and witnesses to turn off their mobile phones.

I welcome Mr. Philip Carroll, assistant secretary; Mr. Pat Flanagan, senior superintending veterinary officer; and Mr. Richard Healy, director of animal health and welfare, from the Department of Agriculture, Food and the Marine. I thank them for appearing before the committee to brief us on the role of the newly established investigations division within the Department. I apologise for the change in the time of the meeting, but the Order of Business in the Dáil had changed, and it has changed again since we notified the witnesses of the rescheduling. The committee has agreed that the meeting will conclude by 5.20 p.m. at the latest and that we will go into private session between 5.20 p.m. and 5.30 p.m. to discuss the contributions of the witnesses.

I draw attention to the fact that witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Mr. Carroll to make his opening statement.

**Mr. Philip Carroll:** I thank the Chairman for giving me this opportunity to outline the role and functions of the new investigations division set up by the Department of Agriculture, Food and the Marine last July. He has already introduced my colleagues, Mr. Richard Healy and Mr. Pat Flanagan.

As the joint committee will be aware, the Department is responsible for the expenditure of substantial amounts of money, both from the national Exchequer and the European Union. In addition, it is responsible for implementing and enforcing a considerable volume of national and EU legislation which is generally aimed at protecting human and animal health. For these reasons, it is not surprising that it deploys a substantial number of general control and inspec-

torate staff members to ensure food safety, animal health and welfare and safeguard the expenditure of public funds. These controls underpin and safeguard public confidence in agrifood production and processing in Ireland and contribute to a very significant export market, worth €10 billion in 2013. Occasionally, the enforcement of these controls leads to further investigations into matters of possible wrongdoing and prosecutions.

The investigation of illegal activity and the prosecution of such activity can be a complex process requiring particular expertise and many organisations have set up specialist units to conduct these investigations. The then Department of Agriculture set up the special investigation unit back in the mid-1980s to provide specialist inspectors within the Department to investigate and deal with serious practices and problems in the use of illegal substances such as hormones, angel dust and so on. Apart from the risk to human health, the abuse of illegal growth promoters was posing a huge risk to the reputation of the agrifood industry and needed to be addressed urgently. I am pleased to say this problem disappeared relatively quickly in the 1990s following a series of convictions. The scope of the unit was subsequently extended to include a wide range of legislation, including legislation relating to the TB and brucellosis eradication schemes, other animal health legislation, animal welfare legislation and legislation relating to animal identification. Its remit was also extended to investigations into potential fraud with regard to national and EU funds.

I mentioned the success of the special investigations unit in addressing the issue of the illegal use of growth promoters. I believe the work of the unit, in encouraging greater compliance with legislation, made a significant contribution to the huge progress we have seen in the past ten years in disease eradication. This is particularly the case with brucellosis which has now been eradicated and BSE which has been more or less eradicated. There has also been very considerable progress in the eradication of bovine TB, the incidence of which has been reduced to a record low level in the past two years. The progress achieved in eradicating these diseases has resulted in very significant savings to the national Exchequer. For example, expenditure on tackling TB and brucellosis which amounted to €76 million in 2002 fell to under €32 million last year.

The world does not stand still and the work of the Department is growing increasingly complex all the time, as was evident in the horsemeat scandal last year. The Department responded to the challenge, as part of an ongoing modernisation of its structures and as part of the wider public service reform process, by reviewing and updating its investigative procedures. Committee members will be aware that the Minister for Agriculture, Food and the Marine, Deputy Simon Coveney, announced in September that, following a review of the governance structure around the conduct of all investigations by the Department, it had been decided that a new investigations division would be established. In making this announcement he formally acknowledged the dedication and commitment of the staff of the Department who carried out investigations, sometimes in very challenging circumstances. He specifically referenced his first-hand experience in the context of the equine DNA investigation which, he said, had been conducted by departmental officers in a highly pressurised environment where their focus and sense of purpose had been highly visible and extremely successful.

The new arrangement brings all of the Department's investigation capabilities, both internal and external, into one division. It is headed by a senior superintending veterinary officer, Mr. Flanagan, supported by a team of investigators, some of whom are core members of the team, with others to be drawn from areas where their expertise will be beneficial in the conduct of particular investigations. The new division reports to an investigations steering group which is

chaired by the assistant secretary responsible for corporate affairs - me for the time being - and will comprise the Chief Veterinary Officer, the assistant secretary with responsibility for direct payments and the heads of the legal services, internal audit and human resources divisions. The group will, in all new cases, determine whether matters should be referred back to the relevant inspection areas of the Department for follow-through, whether an investigation is warranted and, if so, whether it should be conducted by the investigations division or referred to the Garda. Where investigations are being conducted internally, the steering group will oversee their conduct and, in conjunction with the head of the division, determine whether the submission of cases for prosecution is warranted. The new investigations division includes the functions previously undertaken by the special investigations unit.

I stress that the objective of the Department in performing its enforcement and investigative functions is to promote the highest levels of legal compliance to protect the health of consumers and promote and sustain a vibrant agrifood industry in Ireland and protect public funds. This is vital to Ireland's reputation internationally. In altering the inspection capability in the manner outlined we have enhanced our capacity to protect Ireland's international reputation, while also providing for enhanced governance arrangements in respect of when and how investigations are carried out. We now have in place a strong, cohesive, consolidated and effective investigation capability to ensure and protect the reputation of the expanding agrifood industry and public funds.

**Deputy Éamon Ó Cuív:** I thank Mr. Carroll for his presentation. We all agree that there is a need for an investigations unit where there is serious wrongdoing. However, to say the change resulted from a simple reorganisation within the Department is not what some understood. My understanding is that it was a response to some high profile court cases in which the Department's case had not been sustained and where farmers who had maintained their innocence for many years had been vindicated in the courts. Serious issues were raised about the operation of the special investigations unit and these farmers believe they have lost thousands of euro because their credibility was destroyed over a long period. I will not name them because it would be invidious to do so. The Chairman would rule me out of order, even though I would be naming them in their defence. These farmers believe an investigation should be carried out into the operation during the years of the special investigations unit in these cases. Would the Department have any objection to an independent investigation into the operation of the unit prior to the putting in place of the new arrangements? Does Mr. Carroll believe it is important that the issue of how the unit conducted itself be resolved once and for all? If an investigation by an independent person vindicates the SIU, that is in the interest of the Department, and if it does not, we need to know about that. My main issue is not whether we need an SIU. The arrangements in place at present appear to be adequate. My main question is how the SIU operated when it was the SIU, as opposed to the new investigations division, and whether it operated in a fair manner. Have there been cases in which it destroyed the livelihoods of people who, it was then discovered when it came to court, had not been involved in illegalities - the case made by farmers from the beginning?

**Deputy Martin Ferris:** I thank Mr. Carroll for his presentation. Deputy Ó Cuív has outlined many of the concerns relating to investigations carried out by the SIU that ended up before the courts, which cleared and exonerated the farmers involved. Are the members of the SIU that were involved in those cases currently members of the new group? Will they be part of the Department's investigation team? Will there be an investigation into the investigations that were carried out by the SIU where the farmers in question were exonerated by the courts? If not, the Department should reconsider that.

The work that has been done on the eradication of BSE and brucellosis is to be commended, but there is a problem with TB. Since Mr. Carroll mentioned it in his presentation, what areas in the country are most affected by TB at present? I understand that some of those areas are in the Border region, straddling both sides of the Border. What is the level of co-operation with the authorities and the Executive in the Six Counties in pursuing the eradication of TB?

**Deputy Thomas Pringle:** I have one question. Will Mr. Carroll outline what the governance procedures will be for future investigations in terms of protecting the rights of people being investigated, and how that will be managed within the special investigations unit in light of concerns about the previous operation? How can people have their rights protected in new investigations?

**Deputy Willie Penrose:** I thank the witness for their presentation. Undoubtedly, the special investigations unit has the role outlined by Mr. Carroll and it has an important function in that respect. We acknowledge that, particularly in the context of having an important, sustainable and vibrant agriculture industry and, obviously, the public funds involved. Nevertheless, the fact that the witnesses are here and that the presentation states, "We now have in place...", immediately invokes the fact that what was in place previously was not satisfactory. There is an implicit admission in that.

This new dispensation or new investigation group did not happen perchance or, indeed, of the Department's own volition. It was effectively prescribed by the strong admonition of a prominent Circuit Court judge in the course of a high-profile case. Is that not the reason it has reached this point? The Department's response was initially to carry out an internal review. There was a refusal to release that, and then it was released in redacted form. I understand why redaction takes place. Eventually, some form of it emerged. However, simply having an internal review would not inspire confidence. Surely there is a case for a focused external review to ensure that all rights are protected, given that people have rights as well. If that were not the case someone could go in and do everything but people have rights, and they are laid down in the Constitution. They are important legal rights and in the context of the recent Supreme Court, European Court of Justice and so on people who are accused now have the right to have a solicitor present during the course of their investigation. Is it envisaged that that right would be extended to an investigation being carried out by the Department? Surely somebody in that situation is entitled to have legal advice when they have been taken in and not given any opportunity to respond. This investigation must carry with it the same obligations as any investigation. An investigation has now been launched by an Garda Síochána, and it may well be part of this unit as well. As I understand it, the Department may call in an Garda Síochána at various times. Surely the same procedures would be in place. Otherwise, they may be subject to judicial review where there is a failure to meet the threshold. Our citizens are entitled to expect that, and in that regard we are talking about members of the agricultural community.

I know the Department has a number of people involved in it but how will this work in that context, and will the same procedures apply? The Criminal Procedure Act 1967 has laid out a number of things. It has been amended. It is fair to say there is a significant burden on the State but the fact that there is a burden on the State or anybody else does not mean we can circumscribe people's rights. They are entitled to them. They are laid down in the Constitution, which is interpreted by the Supreme Court and, ultimately, by the European Court of Justice.

I am confused as to how this will work. I would like an outline of how it will work. I am a farmer. If I am on the farm and the Department official arrives because he or she has a suspicion, and the suspicion must be grounded on something, what happens after that? What proce-

dures will be adopted along the line? There has been a good deal of disquiet, to put it mildly, among people about this issue. We all acknowledge that some of the work the investigation unit has to do is important but a balance must be struck because the way those investigations are conducted operationally is extremely important. We cannot throw rights out the window, so to speak. If we do that we might as well say that everybody is guilty but that is not the way life works. I would not like to subscribe to anything of that nature. People should have an opportunity to present their case and they are entitled to legal advice in that step because even in a simple matter people are entitled to legal advice.

The impact of what might ultimately emerge can be draconian. People's livelihoods can be washed down the drain, so to speak, as a result of an investigation and therefore every step along the way should be circumscribed with the usual rights attached to any investigation which has a criminal sanction of that severity.

**Deputy Pat Deering:** I welcome the gentlemen. It is an issue I have been following closely for the past 18 months to two years. I am aware of a number of cases, and various concerns have been expressed by farmers in my part of the country. As previous speakers said, nobody would question the idea of having a unit in place that would protect human and animal health. That is essential, but the special investigation unit, SIU, was set up in the 1980s to deal with illegal substances such as hormones, BSE, the horsemeat saga and so on. Those major issues were topical at the time and it was important to deal with them but is the unit in place now just another name for what was in place previously? How many people worked in the old special investigations unit? How many teams were there throughout the country? Were they set up on a regional basis? How many were involved in each team? Will the teams involved previously be involved in the new division? What role will those involved play in the new unit if they are to be involved? If not, where will they be in future? That is a big question. I have received numerous queries from various people who are concerned at the way some of the old units and the personnel involved dealt with individuals, sometimes in a threatening manner. This applied not only to individuals but their families and, in some cases, their children. It was totally uncalled-for. To me the SIU overstepped the mark in several ways.

Deputy Penrose will remember the legal regime. It seems to me now that person is guilty until proven innocent rather than the other way around. I used to think it was the other way around. This is a serious issue. No one questions the need to have a regime in place, but the unit seems to have overstepped the mark previously.

What role will the investigations division have in the determination of single farm payments, if any? The old unit seems to have rather unfairly imposed penalties on individuals and offered them little right of appeal. That is a serious matter. Several questions need to be addressed in respect of the old system before we move on to the new system. I agree fully with the call from Deputy Ó Cuív for a full investigation into the old unit. That is essential to put to bed once and for all whatever issues may have existed. It would wipe the slate clean and allow us to move on in a proper and efficient manner.

**Deputy Tom Barry:** I welcome the witnesses. I am pleased to have this discussion on the functions of the new investigations division. As with the other Deputies here, my concern relates to governance. It is no bad thing to have a concern over governance, because the new division has a chance to right this now.

Most of the cases I have heard about relate to farmers who come to me because they are dissatisfied with the way they were treated in an inspection. They have a list of complaints on

issues in respect of which they believe they could have been dealt with better. It is important that we put a good deal of time and effort into ensuring that inspections are fair, seen to be fair and carried out in an open manner. This applies in general and not only to the investigations division.

One thing hangs over the heads of farmers. The coming of an inspector should not be feared, particularly if a normal farmer is trying to get on with his job and, hopefully, is doing it correctly. However, there is the threat of withholding of the single farm payment, and at this stage the single farm payment represents the farmer's total profit. It is simply not fair. There are no two ways of putting it. We all know the power the inspector has, but the inspector should respect that power.

I am seeing it from the farmer's side and it is worth listening to that. It would be interesting to know the legal bill of the former special investigations unit. What was the success rate of the unit? I am keen to see the metrics. I came across a case involving a piggery one year ago. It involved not only the Department but an environmental agency as well. At the end of the day the case was lost. The only protection afforded to the person was the courts. We are failing if we have to run something right through to the courts and it takes a judge to decide that he is not happy and that common sense has not prevailed. There is an onus on everyone to get this right. What the investigations division is doing must be done - no one doubts that - but it must be done properly.

Some of the personnel involved with whom I have spoken are overburdened. They are trying to get through reviews and so on and simply cannot manage. Their work is being delayed because they have a huge stack of work and simply cannot get through it. I presume the same personnel will be in place in the new regime as were in the old regime.

Sometimes people have to come into a situation all of a sudden. In such situations it would be helpful to have a third party present who can make sure the farmer is represented. People sometimes get carried away and we do not want an unfair situation to arise on either side.

There is still an air of suspicion around the last unit. It had a great deal of work to do but we must not understate that fact that we must work with farmers. I presume the percentage of farmers falling out of kilter is low and the Department has a track record on constant offenders. We now have a chance to get this right because it would be interesting to see how much taxpayers' money was spent before we finally got a judge to deal with this. The aim of this should be to do the job properly and efficiently, without resorting to the courts. Most farmers are reasonable and if they make a mistake and are warned they will try to get on with things. Some farmers will not respond in this way and will require strong action but we are not using the common ground that would allow people to improve. I have thrown my eyes to heaven in some cases where farmers were fined. I have worn a path to the door of the Department from trying to make a case for people who did not seek to create an issue and have been treated unfairly. If this is a brave new era it would be nice to see results.

**Chairman:** We are discussing a division of the Department where previously there was a unit. Perhaps the witnesses could clarify the difference in terms of the chain of responsibility and accountability. Like other areas of the Department, this division has authority over other sectors of farming including processors and suppliers. Does the division work with the Health Service Executive, HSE, Food Safety Authority of Ireland, FSAI, and the environmental health officers, EHOs? The SIU might not be alerted to some breaches through cross-farm compliance by an EHO or a county council vet. How will the division act in such circumstances?

Deputy Martin Ferris asked a question about those who were under investigation by the old SIU. Will they be investigated by the new division or are those cases pending determination? I will allow Mr. Carroll to decide whether he or his colleagues will answer.

**Mr. Philip Carroll:** I might ask my colleagues to help out in some respects as I address the various issues raised. Deputy Ó Cuív acknowledged that the arrangements appear to be adequate and I welcome that. He asked whether there should be a separate investigation into the SIU and that was mentioned by other members. I cannot deal with such a matter but I wonder what the basis for this is. Various cases in the public domain were mentioned and there have been complaints about the conduct of some investigations and inspections. It is natural that people subject to investigations would respond like this because they are suspected of wrongdoing. Inspections may lead to penalties so, again, it is natural that some people respond as they do. There is a protocol for complaints relating to inspections conducted by the former SIU and very, very few have been made - far fewer than are mentioned by Deputies and the media. In the past number of years around one complaint per year has come through the existing protocol arrangements in the Department. They are the figures we have, through the quality management system. What the Deputy has told us about, and what we are aware of in the media, is different from what is addressed directly to the Department. That is the reality and context that we are aware of.

In terms of governance in this new structure, we continue to have the same protocol in existence for complaints which is done through the quality management service and is independent from the investigations division. The protocol feeds back into management and comes through directly from representations made by Deputies to the Minister which is completely separate again. In addition, representations are made to the Secretary General. Now there is another opportunity with a steering group which I chair and is independent of the investigations division. The steering group makes decisions on how investigations and whether investigations are to be conducted. If that involves somebody with a gripe about the former SIU or the current investigation structures then we will deal with it as a complaint. We will determine whether the case needs to be investigated independent of the investigations division. There is an opportunity to do that.

Deputy Ferris asked about the current membership of the SIU and if they will continue to do their work. My answer is "Yes." We have not changed the membership. Please bear in mind that we established this new structure in September. We have been subject to an embargo on recruitment. Therefore, we do not have the capacity right now to expand what we believe is required - an expanding investigations division. Harvest 2020 has a growth potential in the sector of enormous proportions which needs to be protected. Therefore, the SIU needs a heavier resource than it is getting at the moment and we are looking at the matter.

We are also looking at mobility, across the Department, into and out of the unit but first we need to identify people who are suitable for this kind of work. This is difficult work and is not simple work. We hear about complaints against the SIU but nobody hears about the hostility against the SIU. We have had many members against whom false allegations have been made, allegations of assault have been made, some of them have been threatened they will be shot, they have had guns held to their heads and they have been chased down fields with slash hooks. These are the stories that people do not hear about. One does not hear about the SIU members who get Garda protection on their family homes and have telephone surveillance for protection. Nobody hears that side of the situation. We, as a Department, also have a duty of care to our staff. There are things happening that we should also be concerned about. The kind of people



who make those threats are not people we would be comfortable with defending.

**Deputy Martin Ferris:** Mr. Carroll referred to farmers or people who made threats against members of the SIU. Have they been brought before the courts?

**Mr. Philip Carroll:** They have and complaints have been made to the Garda.

**Deputy Martin Ferris:** If that has happened then there is a process available. The Department can use the Garda and courts to address the matter but there is very little process for the other side only for the few farmers who took the case and won.

My main question concerned the investigators involved in the cases where farmers took the case to court and were vindicated. Are they still part of the investigations unit? Have they been investigated by Mr. Carroll's steering group?

**Mr. Philip Carroll:** It is fair for me to put the other side here and the answer to the Deputy's question is "Yes." We have brought many of these matters to the attention of the Garda. Some of the allegations have been withdrawn and other individuals have been prosecuted. As far as the SIU is concerned, the Deputy asked whether an internal investigation was conducted into a particular case. The answer is "Yes", there was. I believe Deputy Penrose mentioned that the Department had not published the report of that investigation. The Minister has indicated in public that he is willing to publish that report. It has gone to the Information Commissioner for a determination because there is a third-party objection to the publication of that report. We are not unwilling to publish the report, but we cannot do so until there is a determination by the Information Commissioner.

**Chairman:** For clarity, was the third party objection made by the named official?

**Mr. Philip Carroll:** No; it is not a departmental official.

**Deputy Martin Ferris:** Mr. Carroll still has not answered my question about people who were involved in investigations. A number of farmers were obliged to go through the courts to be vindicated. Are the people who were involved in those investigations currently members of the new group? Were they investigated individually?

**Mr. Philip Carroll:** All I can say to the Deputy is that the personnel in the investigations division has not changed since last September.

**Deputy Martin Ferris:** They are still at it.

**Mr. Philip Carroll:** Yes.

**Deputy Éamon Ó Cuív:** Can Mr. Carroll indicate how many complaints have been made by the Department to An Garda Síochána against farmers?

A second matter that continues to puzzle me is internal investigations. As far as I am concerned, they satisfy nobody and serve no purpose because the people who believe they have been treated wrongly will ask what an internal investigation would reveal anyway. I must note the practices I saw when, for example, tendering for ferryboats was being done. Outside process auditors were brought in when a complaint I did not think would stand up was made to me about Údarás na Gaeltachta. The Department issued an instruction that an external auditing company be brought in to go through everything, because I believed that were an internal investigation to be carried out, the person concerned would respond by stating that the glove is

going to defend the glove. How many times over the past 20 years has one heard about internal investigations in this State? They do not satisfy anybody, and in lots of cases it was only on foot of an external investigation that one got the truth. While I am not pre-empting what is the truth, my point is this is a bad process. Moreover, it appears to be getting stronger within Departments, because internal investigations also were seen in respect of penalty points, although the only thing the public will accept is an external investigation. I asked a question earlier, and obviously it would not be an issue for the Department to decide, as it would be the Minister who decides on an external investigation. However, I am interested in Mr. Carroll's views on an investigation, once and for all, into those cases in which farmers had serious complaints and the courts vindicated them. Whereas Deputy Penrose stated that the learned judge was not exactly praising the Department, would Mr. Carroll not think it would clear the air considerably if an external investigation into the issue was held? If that vindicated the Department, everyone would then be obliged to accept it.

**Chairman:** In that context, to be helpful, I asked a question about the difference in the structures of protocol and procedure within the division, as opposed to the unit? If a protocol is in place in which cases are taken and lost, what is the case following such an outcome under the new structure as opposed to what was the case previously? Mr. Carroll mentioned the moratorium. Am I correct in stating that from January, Departments will have the liberty to recruit, as long as they stay within their Vote? Has that been agreed yet?

**Mr. Philip Carroll:** I have not seen the letter on that issue yet, but our understanding is that it is as the Chairman has described it.

**Chairman:** I will allow Mr. Carroll to continue. Anybody else with supplementary questions should indicate and I will try to take them. However, I ask Mr. Carroll to deal with the general questions and the supplementary questions.

**Deputy Willie Penrose:** While I may be misinterpreting something, I took verbatim from Mr. Carroll that the same protocol remains in existence for complaints. Is that not frightening, as the protocol that was in existence did not go anywhere? Members must accept what Mr. Carroll has said. There were very few complaints because people knew that one does not complain-----

**Chairman:** To clarify, I believe Mr. Carroll was talking about complaints in the other direction. Am I correct?

**Deputy Willie Penrose:** No; well-----

**Chairman:** I seek clarification in this regard, because this is important.

**Deputy Willie Penrose:** It is.

**Chairman:** Is Mr. Carroll referring to complaints that come before the new unit, as opposed to the previous unit, or to complaints about the new unit?

**Mr. Philip Carroll:** Thus far, since September, we have had no complaints concerning the new investigation division.

**Chairman:** As for the processes Mr. Carroll stated were the same, is he referring to the protocols for the new unit, or is he saying the new unit will investigate in the same way as the old unit?

**Mr. Philip Carroll:** What I said was that we have a protocol in place which predates the current structure. That protocol deals with a process through which complaints are made. In addition to the protocol, there are other avenues through which complaints are made. One is through representations directly to the Minister, one is through representations to the Secretary General, and a third one now is through representations to the steering group. These complaints will be dealt with independently of the investigations that begin.

**Chairman:** It is about the unit. I apologise, as I was not sure. I interpreted that comment as being the other way around.

**Deputy Willie Penrose:** No.

**Deputy Éamon Ó Cuív:** If one mentions that complaint to the Department and to all these fine people, ultimately, they represent the Department that is likely to bring one to court at the end of the investigation. In such a situation, many people will take note that they are being asked to complain to the very people who will bring them to court, because it is not the special investigations unit that brings one to court but the Minister and the Attorney General. Ultimately, the State brings one to court. I recall that in one high-profile case that was thrown out in the courts, people, including the Minister in the previous Government, were approached about it. However, because there was an ongoing investigation, they were fairly powerless to do anything about the matter.

**Chairman:** Does the Minister have a right to review? If a determination is made on a complaint through the steering group, does it then form part of the Department's report back to the Minister annually?

**Mr. Philip Carroll:** That is a process that we have not yet refined completely. At our last steering committee meeting, we decided to have an annual report. At our next steering committee meeting we will determine what will form that annual report. This is a process that commenced in September and we are working through it. In 15 months' time, at the end of 2015, we will have a completed report. This will detail all the information we can provide publicly in respect of investigations, bearing in mind that individuals are being investigated and there is a process. We also will set out issues concerning any complaints that come to us and how they have been processed, as well as the success rates of those complaints.

**Chairman:** In order to get answers to the rest of the questions, and arising from that last statement that this still is an ongoing process, I suggest that the joint committee meet privately to consider recommendations it can make on how that part would be dealt with. In other words, I will not pre-empt it, but we have already heard about independent appeals boards and measures such as that. Perhaps the joint committee will look at it in that context.

**Deputy Willie Penrose:** May I ask the pertinent question? Would anything the joint committee might recommend even be acknowledged within the process?

**Chairman:** To be fair, that perhaps is a question for the Minister. I ask Mr. Carroll to proceed.

**Mr. Philip Carroll:** Deputy Ferris also asked about the level of co-operation with the North. We co-operate with the North through the Garda with the PSNI, where there is co-responsibility for investigations that are being conducted. We also co-operate with the Food Standards Agency, FSA, in Northern Ireland and with the Department of Agriculture and Rural Development in Northern Ireland. This co-operation is ongoing and is a two-way process.

Deputy Pringle asked about governance in the protection of people's rights. People have the same rights and those rights should be protected. I am not aware of circumstances in which they have not been, but again, if that is the case, we must understand that. I am at pains to emphasise that the steering group does stand separate from the investigation committee which it controls.

In the terms of the governance, I will briefly explain the process. Somebody in the Department at head of division or assistant secretary level indicates to me or the steering group that he or she believes there is a justification for conducting an investigation into some matter or other. The investigation steering group considers that, how it should be done, whether it should be done, if we should allocate resources to the investigation, the nature of the investigation and why it warrants a separate investigation. It then decides who does it and the timeframe within which it should be done. There will always be a condition about reporting back and keeping the investigation steering group up-to-date on that.

Since September, in many of the cases we have determined that there is no reason the investigations division should conduct any investigation. We might have believed they should be done as part of the normal inspection process in the Department, and those decisions have been made. In other cases we have agreed to the investigations committee working in co-operation with the Garda, and not necessarily leading on those. In another case we have agreed that it should work in co-operation with the Revenue Commissioners. There is a widespread amount of co-operation across the system, including with EHOs, which one Deputy mentioned, and the FSAI. The Department of Agriculture, Food and the Marine's investigations division does not stand alone. It usually works in co-operation with many other agencies.

On prosecutions, I was asked about success rates. In the past five years, we have had 66 cases for prosecution and so far 44 of those cases were disposed of in the courts. The success rate was 40, or 90%. The remaining cases are still in the court system; I understand there are 21 or 22 cases.

I answered Deputy Penrose's question on refusal. There was no refusal to release the particular report he referenced. Our hope is that the report will be released soon, but it is out of our control. I hope I have explained the procedure. The Deputy asked me how it worked, and I am happy to come back to that if he wishes. We do not throw people's rights out the window. We comply with our legal obligations, as we are required to do.

I do not know whether Deputy Deering suggested that we put a proper name in place to mask continued practice, but we have changed the name. We want to position it within a structure of the Department because the SIU was a unit, as the Chairman mentioned, within a wider division. It is now a division on its own. There is no other function attached to the division. It is solely the investigations division, headed by a senior superintendent veterinary inspector.

Deputy Deering referred to the SIU having a function in regard to a determination on single payments. I presume by that he means allowances. That has been the case where cross-compliance inspections may have been referred in particular circumstances. It is unique but that would happen. That is an EU requirement; there is no getting away from that. We are under that obligation.

Deputy Barry talked more generally about inspections than investigations. I did not come equipped to explain the intricacies of inspections in regard to SPS. Again, our inspections are governed by EU regulations. There are obligations to the effect that we have to establish that

where there is a risk to EU funds we ensure that we remove it, and in some cases people have compliance issues around the single payment, as the Deputy is aware. Typically, they do not go to the investigation group. On occasion they do, but it happens very rarely.

**Chairman:** Deputy Deering has a supplementary question.

**Deputy Pat Deering:** I refer to the single farm payments and cross-compliance. Why would a member of a team from the SIU deal with a cross-compliance issue when there are inspectors to do so?

**Mr. Pat Flanagan:** The usual thing is it does not start out that way. The investigation starts from a different point, and in the course of that some issue is identified which is to be cross-reported. An issue does not start as a cross-compliance inspection, rather, it starts at the local office level. From the investigations division point of view, an investigation which started at a different point can lead to issues being identified in the course of that investigation which are relevant for cross-compliance reporting.

**Mr. Philip Carroll:** The focus of our work is to determine whether issues like that should be dealt with by an investigation group. We made some determinations on that quite recently. Issues came forward where there was a preference for an investigation to be conducted. We took a view, and will continue to do so, that one would need to have fairly exceptional circumstances for the investigations division to become involved in a single payment inspection.

**Chairman:** I thank the witnesses. During Mr. Carroll's statement he commented on people from the SIU being subjected to threatening behaviour. Rather than the impression going out from there that that was all between farmers, it was obvious where some of it came from. The two most high-profile investigations the SIU has successfully investigated for the betterment of the reputation of the agricultural industry are the pork dioxin and horsemeat scandals. I understand the pork dioxin matter was an inadvertent calamity as a result of a chain of events which had a consequence.

In regards to the horsemeat scandal, there was always a feeling that criminal elements were involved. I would like to make sure that people do not leave here with the impression that it is only because of a very hostile relationship between farmers that problems arise. There may well be other elements in society which cause members of staff of the Department to need Garda protection and have their phones monitored. It might be no harm for Mr. Carroll to clarify that.

**Mr. Philip Carroll:** Unquestionably, what the Chairman said is true. When we consider the number of investigations carried out annually, in the grand scheme of things very few involve difficulties. As I said, over the past five years we have had 66 cases for prosecution, which is not a large number. In the context of the work of the investigations division, on average there are, I understand, 130 or 140 separate investigations. Many of them do not go beyond the point of a warning for somebody who has perhaps inadvertently done something wrong.

There is no imputation on farmers generally. They are generally completely compliant with all of the legislation they have an obligation to be compliant with. There might be 140 cases a year, and over five years only 66 went to prosecution. We have a huge compliance level. I do not know how one defines it in percentage terms but it is over 99%. There is no imputation there. I felt it was important to call out the fact that this is a difficult unit to identify required skillsets for because one is looking for people with a legal understanding and a capacity to investigate, record information and to present that information in a form that is amenable to

prosecution. It is hard to get such a skillset. I also wanted to bring to the committee's attention the fact that this is difficult for them to do as well and, therefore, how difficult it is for us to man that team. That was the only context in which I was making that point.

**Deputy Pat Deering:** In view of what Mr. Carroll outlined in the past few minutes, is there an argument to be made for two different parts of his team - the heavy duty team for dealing with serious issues and the "B" team for dealing with lower grade issues?

**Mr. Philip Carroll:** Typically, we would deal with what Deputy Deering describes as the lower grade issues if they are within the embrace of our legislative obligations. Those heavy duty cases always involve gardaí. Either they would be led by gardaí under their legislation and powers or by us under our powers but with their support.

**Deputy Pat Deering:** From the information I am getting back, the problem is the attitude of the individuals from the investigations division who are dealing with the heavy duty cases. The problem seems to be that they apply the same criteria to dealing with lower grade cases.

**Mr. Pat Flanagan:** That system is already in place. The lower grade cases are often dealt with by staff in the local office. Many of these are dealt with locally and often a warning is sufficient to deal with them.

**Deputy Pat Deering:** That is not always the case.

**Mr. Pat Flanagan:** In respect of the local staff?

**Deputy Pat Deering:** With regard to the lower grade cases.

**Mr. Pat Flanagan:** What frequently happens is that if there is some element where the local staff have a concern in respect of the case, they may refer it up to our unit at that stage. In other words, a matter arises locally, is often assessed and initially dealt with locally and may then move on depending on what is found at that stage. There is that kind of two-tier structure.

**Deputy Thomas Pringle:** I have a supplementary. Mr. Flanagan is talking about the local cases that may arise locally and be investigated by the local office. Are they part of the 140 cases per year that are investigated?

**Mr. Pat Flanagan:** No.

**Deputy Thomas Pringle:** If a farmer is investigated by this investigations unit, are they entitled to legal representation at the point when the investigation commences? Are they made aware of that?

**Mr. Pat Flanagan:** Yes, if they wish. It is up to them if they want to have a solicitor present. If they wish to consult a solicitor beforehand, they are entitled to do so.

**Deputy Thomas Pringle:** Are they made aware of that?

**Chairman:** Is that made clear to them from the outset?

**Mr. Pat Flanagan:** After routine inspections, no.

*(Interruptions).*

**Chairman:** Through the Chair. Deputy Penrose indicated before Deputy Ferris. Deputy Pringle is not finished.

**Deputy Thomas Pringle:** When are people made aware that they are entitled to representation if they come under the special investigations unit?

**Mr. Pat Flanagan:** If they indicate that they want to consult a solicitor or-----

**Deputy Thomas Pringle:** Are they made aware that they are entitled to it? So the investigations unit does not actually inform people of their rights.

**Chairman:** We are coming to a key point here and I am anxious that we need time to discuss it.

**Deputy Willie Penrose:** I made that first submission. It is now mandatory. When is the investigations unit going to prepare a page indicating to people what their rights are at the very beginning? There would then be no ambiguity. I said their rights were circumscribed and I did not use that word lightly. How many of those who have been investigated have been advised that they are entitled to legal representation from the off, rather than when the game is over, the statement is taken and their name has been signed at the bottom? Will the committee make a recommendation that in these investigations people be informed from the beginning of their entitlements and rights when they enter a Garda station?

**Deputy Martin Ferris:** The problem concerns unannounced inspections. In such cases, there is no application for a warrant and the investigation unit has significant powers. The process has been rubber-stamped by the Government. Most farmers want to comply with the regulations. However, let us take the example of a small farmer in the west with financial problems and living on his own who is subject to an unannounced inspection. This creates a bad relationship between local inspectors and the farmer. On top of this, as Deputy Willie Penrose said, people are not informed if they are entitled to legal advice or representation by the IFA or the ICMSA during an inspection. A little support could do a lot in these cases.

**Chairman:** I draw a distinction between inspections carried out by the investigations division and normal departmental inspections. The farmers' charter is being redrafted. The committee can look at this as part of its recommendations in this matter. As members pointed out, people are not advised of inspections. However, it should also be remembered that 140 cases a year are involved, of which 66 have gone to court. Do these cases only involve farmers or do they include non-farming investigations?

**Mr. Philip Carroll:** They are all investigations conducted by the investigations unit.

**Chairman:** Do they include minor and major investigations of other areas within the Department's responsibilities? Will the Department give us a detailed breakdown of the investigations involved? The annual report will be-----

**Deputy Thomas Pringle:** It is 13 months away.

**Chairman:** The committee will be making recommendations. As this is a work in progress, the committee has a job to do, too. It will make recommendations which will be as constructive as possible. They will seek to ensure Ireland's reputation as a food producer is kept to the highest standard and that investigations, a necessary part of standard controls, are seen as being conducted fairly without prejudice.

INVESTIGATIONS DIVISION: DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE

I thank Mr. Philip Carroll, Mr. Pat Flanagan and Mr. Richard Healy for attending. I hope they appreciate that we want to work with the Department to ensure protocols and procedures are in place for an investigations unit that will enhance Ireland's reputation and have farmers' trust.

The joint committee went into private session at 5.05 p.m. and adjourned at 5.20 p.m. until 2 p.m. on Tuesday, 16 December 2014.