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Bill Digest

Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020

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Abstract

The Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020 proposes to give further effect to Directive EU 2017/1371 ('the PIF Directive') on fraud against the EU's financial interests. It provides for an offence of fraud against the EU's financial interests, and an offence of misappropriation. It also provides for other related matters such as extraterritorial jurisdiction for these new offences, and attribution of criminal liability to bodies corporate.

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Legal Disclaimer

Executive Summary

- The *Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020* [the Bill] provides for the transposition of the remaining elements of Directive (EU) 2017/1371 of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law [the PIF Directive], beyond what has already been transposed by the *Criminal Justice (Corruption Offences) Act 2018*.
- The PIF Directive aims to create a stronger and more harmonised system to fight crime affecting the EU budget. It provides for common rules on sanctions and limitation periods in respect of certain criminal offences relating to fraud and other similar offences against the EU's financial interests.
- A RIA was carried out on the Bill by the Department of Justice and Equality in January 2020. This explored two policy options and concluded that introducing primary legislation was the preferred option.
- The Bill creates a new offence of fraud affecting the financial interests of the European Union. This offence is defined in Article 3(2) of the PIF Directive. A person found guilty of this offence is liable on conviction on indictment to a fine or a term of imprisonment not exceeding 5 years, or both.
- The Bill also creates a new offence of misappropriation. This offence is defined in Article 4(3) of the PIF Directive. Misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests. A person found guilty of this offence is liable on conviction on indictment to a fine or a term of imprisonment not exceeding 5 years, or both.
- The Bill provides for liability for offences by a body corporate and for extra-territorial jurisdiction in relation to the offences provided for under the Bill.
- The Bill also provides for the amendment of the *Criminal Justice Act 1994* to add the offences of "fraud affecting the financial interests of the European Union" and "misappropriation" to the list of offences considered "extended confiscation offences", for the purposes of seeking a confiscation order pursuant to s.8F of the *Criminal Justice Act 1994*.[1]

[1] Section 8F of the *Criminal Justice Act 1994* was inserted by reg.5 of the *European Union (Freezing and Confiscation of Instrumentalities and Proceeds of Crime) Regulations 2017* [S.I. No. 540 of 2017].

Introduction

The EU has limited competence in the area of criminal law, and it is a matter largely left to individual Member States. The Treaty on the Functioning of the European Union [the TFEU], as amended by the Lisbon Treaty, now sets out the scope of the EU's limited competence in the area, found in Article 83 of the TFEU. The Article establishes that the EU may, by way of directive, establish minimum rules relating to "particularly serious crime with a cross-border dimension". Article 325 of the TFEU also commits Member States to effective protection of the Union's financial interests.[2] It is within this context that Directive EU 2017/1371 was passed, and to which the *Criminal Justice (Theft and Fraud Offences) (Amendment) Bill 2020* now seeks to give effect.

Part 6 of the *Criminal Justice (Theft and Fraud Offences) Act 2001* provides for various offences that damage the financial interests of the EU. This was enacted to give effect to the 1995 *Convention on the Protection of the European Communities' Financial Interests*, which has now been replaced by Directive EU 2017/1371, commonly known as 'the PIF Directive'.[3] The PIF Directive provides for certain minimum rules that Member States must enact to punish fraud against the Union's financial interests, and improve the prosecution and sanctioning of crimes against the EU budget. The PIF Directive provides for common definitions and penalties for several offences including fraud, and other fraud-related crimes, such as active and passive corruption, the misappropriation of funds, and money laundering.

Some aspects of the PIF Directive have already been transposed into Irish law via the *Criminal Justice (Corruption Offences) Act 2018*, which replaced some provisions of Part 6 of the 2001 Act.[4] The Bill proposes to transpose the remaining aspects of the PIF Directive by amending the 2001 Act in the appropriate manner. The transposition deadline for the PIF Directive was 6 July 2019.

Policy background: The PIF Directive

The PIF Directive is designed to combat what is perceived as increasing threats to the EU's financial interests. The EU'S Anti-Fraud Office, OLAF, estimates damage to the EU's budget from fraud at more than €500 million per year.[5] Other sources are more grave in their estimates – the House of Lords EU Committee (2013) argued that the Commission's estimate of the volume of

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[2] Article 325 was originally touted as the primary legal basis for the PIF Directive. However, the Legal Service of the Council issued an opinion on the issue, arguing that Art. 325 does not allow mandating the adoption of criminal measures. They therefore suggested that Article 83(2) be used instead. This position was adopted. As a result of this, the PIF Directive falls within the scope of Protocols 21 and 22, allowing Ireland, the United Kingdom and Denmark to opt out. However, Ireland has decided to opt in to the PIF Directive. Denmark and the UK have opted out.

[3] The name is an acronym of the French *'protection des intérêts financiers'*. Text of the PIF Directive is available here.

[4] The L&RS Bill Digest of the *Criminal Justice (Corruption Offences) Bill* is available here.

[5] Eucrim, 'The Directive on the Fight against Fraud to the Union's Financial Interests by means of Criminal Law'.

fraud against the EU budget (€404m) is "only a glimpse" of the real level, which it estimated at around €5 billion, including €1bn in losses linked to VAT fraud.[6]

The EU and the Member States share responsibility for the protection of the EU's financial interests, and jointly combat fraud and corruption. Member State authorities manage approximately 74% of EU expenditure and collect levies and taxes owed to the EU.[7] The Commission and the Governments in the Member States therefore must work together to combat fraud against the EU's financial interests.

How the EU is funded

The EU's sources of income include contributions from member countries, import duties on products from outside the EU and fines imposed when businesses fail to comply with EU rules. The EU countries agree on the size of the budget and how it is to be financed several years in advance.

The EU budget is funded chiefly from the EU's 'own resources'. Three categories of own resources finance the budget:

1. Traditional own resources (mainly customs duties) that Member States collect on behalf of the EU, retaining 20% of relevant amounts as collection costs;
2. An own resource based on value added tax (VAT) for which Member States' contributions are based on a complex calculation that implies the statistical harmonisation of their VAT bases with various corrections and caps, and the application of a uniform call rate; and
3. A GNI-based own resource, through which Member States transfer to the EU budget a share of their annual GNI (slightly over 0.51% in 2017), which is set each year in the context of the annual budgetary procedure.

Source: European Commission, *How the EU is funded*

In order to ensure effective enforcement and protection of these interests, the PIF Directive harmonises various aspects of the law applicable in this area, including in relation to:

- the definition of offences;
- sanctions applicable; and
- time limitations of criminal offences affecting the Union's financial interests.

Such offences include fraud, corruption, money laundering and misappropriation.

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[6] House of Lords, Select EU Committee, *The Fight Against Fraud on the EU's Finances* (2013) para. 102. The Committee further suggests that "…the vast bulk of fraud against the EU's budget is never brought to the Commission's attention, and probably never sees the light of day."

[7] The EU derives a large proportion of its income from its so-called "own resources" This includes levies and duties on goods coming from outside the EU, as well as a proportion of Member States' VAT revenue. See further Europa.eu, 'How the EU is funded'.

The PIF Directive defines the EU's financial interests as "all revenues, expenditure and assets covered by, acquired through, or due to:

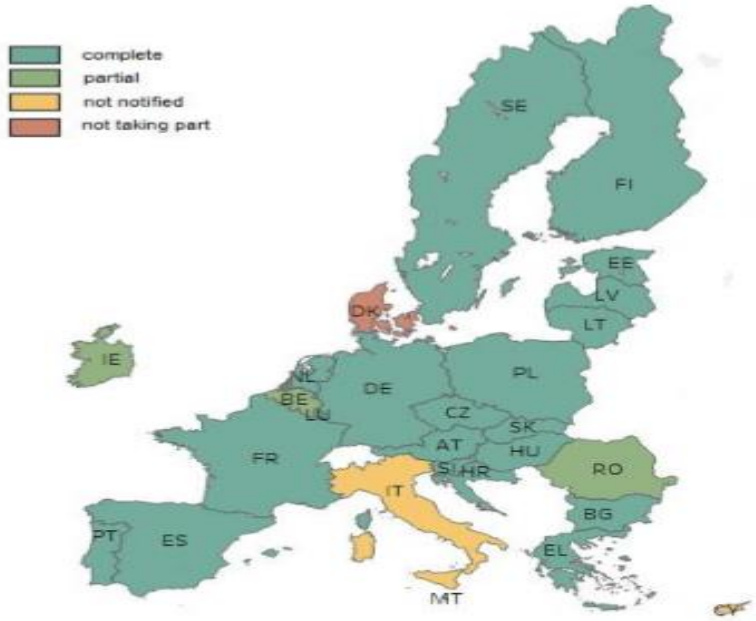
(i) the Union budget;
(ii) (ii) the budgets of the Union institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them."[8]

However, the PIF Directive only applies in respect of offences against the common VAT system where the total damage to the EU's financial interests is at least €10 million.

The PIF Directive provides that all Member States must take "all necessary measures" to ensure that fraud affecting the Union's financial interests is punishable by way of the criminal law. The PIF Directive prescribes a list of different kinds of conduct that must be covered by the criminal law of the individual Member State. The list covers active and passive fraud, as well as the misuse of funds, and misappropriation. Minimum penalties are prescribed for natural and legal persons, and limitation periods are established. The PIF Directive also provides for an obligation on Member States, the Commission, the agencies and the Court of Auditors to cooperate with one another.

The European Commission have noted that as of June 2019, 18 Member States have communicated complete transposition, four partial transposition, and four had not communicated any transposition measures.[9]

Figure 1: Transposition of the PIF Directive – state of play (June 2019)



Source: European Commission (2019)

[8] Article 2 of the PIF Directive.

[9] European Commission, *31st Annual Report on the protection of the European Union's financial interests — Fight against fraud – 2019* (September 2020). Available at https://ec.europa.eu/anti-fraud/sites/antifraud/files/pif_report_2019_en.pdf.

The European Public Prosecutor's Office

The PIF Directive also forms part of the legal foundations of the new European Public Prosecutors Office. The Regulation establishing the European Public Prosecutor's Office (EPPO) was adopted on 12 October 2017 and entered into force on 20 November 2017, though the Office has yet to commence operations. The PIF Directive provides for the core criminal offences which the EPPO will prosecute. The role of the EPPO will be to investigate and prosecute fraud against the EU budget and other crimes against the EU's financial interests, namely those offences provided for under the PIF Directive. Previously only national authorities could investigate and prosecute these types of offences and could not act beyond their borders.[10]

The European Public Prosecutor's Office is currently being set up, with the aim of becoming operational at the end of 2020. The European Public Prosecutor's Office will have its seat in Luxembourg. The European Public Prosecutor's Office will operate as a single office across all participating EU countries and will combine European and national law enforcement efforts in a unified approach.

Ireland has opted out of participation in the EPPO, Ireland's opt-out right for matters relating to freedom, security and justice under Protocol 21. It was reported that the Irish Government has concerns about the compatibility of the EPPO process with the Irish legal system.[11] In particular, there were concerns about compatibility with Irish constitutional protections on due process, and the admissibility of evidence.[12] The EPPO would also have the power to "evoke" (take-over) a case from the national prosecuting authority.[13] While Ireland has opted out for the time being, it can join the EPPO at any time.

Regulatory Impact Analysis

A Regulatory Impact Analysis [RIA] of the Bill was carried out by the Department of Justice and Equality on 17 January 2020.[14] The RIA considered two policy options:

1. Do nothing.
2. Introduce primary legislation to transpose the EU Directive.

The RIA notes that the potential impact of doing nothing would include, "costs to the State from the possible imposition of fines and potential reputation damage."[15] By contrast, the RIA notes that

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[10] European Commission, European Public Prosecutor's Office.

[11] The Irish Times, 'European public prosecutor's office set up, but Ireland opts out' (June 8, 2017).

[12] *Ibid*.

[13] It has been suggested that this particular concern would be alleviated somewhat by the fact that the delegated prosecutor on a particular case would be overseen by a member of the permanent chamber from the same country from where the offence originated. Law Society Gazette, *Under the Radar* (4 October 2019).

[14] This is available at www.justice.ie/en/JELR/Criminal_Justice_(Theft_and_Fraud_Offences)(Amendment)_Bill_2020-Regulatory_Impact_Analysis.pdf/Files/Criminal_Justice_(Theft_and_Fraud_Offences)(Amendment)_Bill_2020-Regulatory_Impact_Analysis.pdf.

[15] *Ibid*.

introducing primary legislation would have no direct costs and would result in "minor indirect costs associated with preparing legislation and possible enforcement costs."[16] In relation to the benefits of transposition of the PIF Directive, the RIA highlights that:

> "The Commission had estimated a positive financial impact at EU level of €477.5 million as a result of the Directive. It is not possible to quantify what portion of that would result from Ireland's transposition of the instrument."[17]

For these reasons the RIA notes that the second option of introducing legislation is the preferred policy option.

[16] *Ibid*.

[17] *Ibid*.

Table of provisions

Section	Title	Effect
1.	Definition	This section provides that "Principal Act" means the *Criminal Justice (Theft and Fraud Offences) Act 2001*, where it appears in the Bill.
2.	Interpretation (Part 6)	This section substitutes s.40 of the Principal Act. It amends the various definitions of relevant terms under that section to accord with the definitions provided for in the Directive, pursuant to the overall goal of the Directive – to harmonise the applicable law across Member States. In particular, the section provides that 'fraud affecting the financial interests of the European Union' and 'misappropriation', both of which are offences under this Bill, have the same meaning as set out in the Directive.
3.	Fraud affecting financial interests of European Union	This section substitutes s.42 of the Principal Act. It provides for an offence of "fraud affecting the financial interests of the European Union". This is defined in Article 3(2) of the Directive and can include a reasonably broad range of conduct including; presentation of false or incomplete documents, withholding of information, or the misapplication of funds or benefits granted.
4.	Misappropriation	This section inserts a new s.42A into the Principal Act. It provides for an offence of misappropriation. It provides that a person guilty of such an offence be liable to a fine or 5 years imprisonment, or both. Misappropriation is defined in Article 4(3) of the Directive:

		"For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests." This offence can be characterised more fully as misappropriation of public funds contrary to the EU's financial interests.
5.	Liability for offences by body corporate, etc. (Part 6)	This section inserts a new s.42B into the Principal Act. The new section provides a means by which criminal liability can be attributed to corporate bodies, adopting what is known as a "failure to prevent" model. This model allows criminal liability to be imputed to the company where the company has failed to exercise proper control over an agent of the company, and the offence committed by the agent is attributable to the failure to exercise such control.
6.	Amendment of section 45 of Principal Act	This section substitutes s.45(1) of the Principal Act, which relates to extraterritorial jurisdiction for offences against the EU budget. Extraterritorial jurisdiction refers to the circumstances under which offences committed outside the State can be prosecuted within the State. The proposed new section limits extraterritorial jurisdiction for offences contained in this Bill to circumstances in which an Irish national committed an offence, incited or attempted the commission of an offence, or aided and abetted in the commission of an offence.

7.	Amendment of section 58 of Principal Act	Section 7 amends s.58(1) of the Principal Act. Section 58(1) provides for the attribution of criminal liability to bodies corporate for offences under the Act generally. The amendment limits the application of the section, in order to reflect the separate model for attributing liability to bodies corporate provided for offences in this Bill (see section 5).
8.	Amendment of Principal Act - Schedule	This section inserts a new Schedule 1A into the Principal Act. Schedule 1A includes the full text of the Directive EU 2017/1371, to which this legislation seeks to give effect.
9.	Amendment of Criminal Justice Act 1994	This section proposes to insert two new subparagraphs to Paragraph 10 of Part 2 of Schedule 1A of the *Criminal Justice Act 1994*. As amended this proposes to provide that offences under the new sections 42 and 42A of the 2001 Act, as amended by this legislation, will be subject to extended confiscation orders. That is, the proceeds of a crime committed under these sections may be confiscated. The Explanatory Memorandum to the Bill states that "Article 10 of the Directive requires measures be put in place, in accordance with Directive 2014/42/EU, to enable freezing and confiscation of instrumentalities and proceeds from the criminal offences in the Directive."
10.	Repeals	Section 10 repeals certain provisions of the 2001 Act. These repeals are largely to reflect the fact that the Directive has replaced the 1995 Convention as the applicable law in the area.

11.	Short title, collective citation and commencement	This section provides for the short title of the Bill, and provides that it and the 2001 Act may be cited together. It further provides that the Act will come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Source: L&RS Analysis of the Bill

Principal Provisions

Offence of fraud against the EU's financial interests

Section 3 substitutes s.42 of the Principal Act. The revised section provides for an offence of fraud against the financial interests of the EU. The section provides that any person who ***intentionally*** commits fraud against the EU's financial interests is liable on conviction on indictment to a term of imprisonment of up to 5 years or a fine, or both.[18] The definition of "fraud affecting the financial interests of the European Union" is that provided for in Article 3(2) of the PIF Directive.

Article 3(2) provides that:

> "For the purposes of this Directive, the following shall be regarded as fraud affecting the Union's financial interests:
>
> (a) in respect of non-procurement-related expenditure, any act or omission relating to:
>
> (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
>
> (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
>
> (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted;
>
> (b) in respect of procurement-related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
>
> (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
>
> (ii) non-disclosure of information in violation of a specific obligation, with the same effect; or
>
> (iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;
>
> (c) in respect of revenue other than revenue arising from VAT own resources referred to in point (d), any act or omission relating to:

[18] The section provides that the fraud must be committed intentionally. The criminal law ordinarily provides that a person can be convicted of an offence if he or she acted intentionally *or* recklessly (and in some cases negligently). While the section therefore appears to limit somewhat the applicable *mens rea*, fraud arguably necessarily implies some degree of intentionality. Existing fraud offences under the 2001 Act provide that the act or omission involved have been "dishonest". See section 6 of the 2001 Act.

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;

(ii) non-disclosure of information in violation of a specific obligation, with the same effect; or

(iii) misapplication of a legally obtained benefit, with the same effect;

(d) in respect of revenue arising from VAT own resources, any act or omission committed in cross-border fraudulent schemes in relation to:

(i) the use or presentation of false, incorrect or incomplete VAT-related statements or documents, which has as an effect the diminution of the resources of the Union budget;

(ii) non-disclosure of VAT-related information in violation of a specific obligation, with the same effect; or

(iii) the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-payment or wrongful creation of rights to VAT refunds."

Section 3(2) proposes to exclude from the scope of the offence, acts or omissions to which Article 3(2)(d) of the PIF Directive applies, where the damage caused to the EU budget is less than €10 million. Article 3(2)(d) refers to fraud relating to VAT affecting the EU's own resources.

Offence of misappropriation

Section 4 provides for an offence of misappropriation. It provides that a person guilty of such an offence be liable to a fine or 5 years imprisonment, or both. Misappropriation is defined in Article 4(3) of the PIF Directive:

> "For the purposes of this Directive, 'misappropriation' means the action of a public official who is directly or indirectly entrusted with the management of funds or assets to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the Union's financial interests."

This offence can therefore be characterised more fully as misappropriation of public funds contrary to the EU's financial interests.

This new specific duty will arise in addition to the suite of obligations already falling on public officials disbursing public funds under public procurement law. Public procurement law refers to the rules and regulations governing the expenditure of funds by public bodies. Typical examples of public procurement include a tender for office equipment for a State body or a tender to build a new hospital. Public procurement law acts to ensure that no preferential treatment is given to particular parties when a public body is granting a contract, and that the contract entered into

reflects the best economic interests of the taxpayer.[19] Public procurement law is already substantially governed by EU law.[20]

While public procurement law works to prevent the expenditure of public funds in a manner contemplated by the offence, the provision of an explicit criminal offence may also act as a deterrent.

Attributing criminal liability to bodies corporate

Section 5 inserts a new section 42B into the Principal Act. The new section provides a means by which criminal liability can be attributed to corporate bodies, adopting what is known as a "failure to prevent" model.

As legal persons, corporations can commit a wide variety of legal offences. However, it can be difficult to apply traditional criminal law principles, such as *mens rea* or intent,[21] to non-human actors. That is, how do we determine whether a corporation *"intended"* a particular outcome, or was *"reckless"* as to whether it occurred?

Traditionally, the courts have looked to a "controlling mind" theory; i.e. they have sought to identify the "mind" of the company as the most senior managers in the company. Using this approach, if the most senior officers of the company could be said to have intended the criminal conduct, this intent could then be attributed to the company.[22]

This approach is very narrow in scope, and has been criticised as effectively allowing a company to avoid criminal liability by ensuring that offences are committed by sufficiently junior officers in the company.[23] Both the courts and the legislature have therefore sought to create alternative approaches to identifying corporate criminal liability. Notably, this includes an "organisational" theory of corporate criminal liability, which provides that liability may be attributed to a company where there are culpable failures or shortcomings in its structures and/or decision-making processes.[24]

The section proposes another model of attributing criminal liability, namely a "failure to prevent" model. The text of the section uses very similar language to section 9 of the *Criminal Justice (Offences Relating to Information Systems) Act 2017*. This model allows criminal liability to be imputed to the company where the company has failed to exercise proper control over an agent of

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[19] The primary policy objectives of procurement law have been described as: "pursuing and achieving value for money, the optimisation of public resources, the elimination of corruption and barriers to trade and accordingly ensuring accountability, non-discrimination, objectivity and transparency." Browne & McGovern, *Procurement Law in Ireland* (Round Hall, 2018) p. 10.

[20] *Ibid.* Chapter 1.

[21] *Mens rea* (guilty mind) is an important principle of criminal law, providing that a person should generally only be convicted of an offence if they intended its commission, or were reckless as to whether it was committed.

[22] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153.

[23] Charleton, McDermott and Bolger, *Criminal Law* (Butterworths, 1999) p. 906.

[24] This model forms the basis of safety, health and welfare at work offences under the *Safety, Health and Welfare at Work Act 2005*.

the company, and the offence committed by the agent is attributable to the failure to exercise such control.

It has been noted, in relation to the 2017 Act, that the "clear aim" of the provision "is to drive corporate bodies to ensure that they have mechanisms in place to ensure that their management prevent employees and subsidiaries committing offences under the Act."[25]

There are three elements of the offence proposed in section 5:

A corporate body will be guilty of an offence under sections 42, 42A, of corruption or money laundering where;

- the offence is committed for the benefit of a corporate body;
- by a director, manager, secretary, employee, agent or subsidiary of the corporate body; and
- its commission is attributable to a failure to exercise the requisite supervision or control over that employee, agent or subsidiary by certain office holders within the corporate body.

This is further subject to a "due diligence" defence in subsection (2). Due diligence defences are a common feature of corporate offences and are generally provided in respect of strict liability offences. They allow a defendant to avoid conviction where he or she can show that he or she took "all reasonable steps" or followed a generally safe and robust system.

Section 7 of the Bill provides that the failure to prevent model is confined to offences under Part 6 and does not apply to theft and fraud offences generally. The attribution of corporate criminal liability for other offences under the 2001 Act will continue to be governed by s.58 of the 2001 Act, which provides for a "consent, connivance and neglect" model. For discussion of models for attributing corporate criminal liability more generally, see the Law Reform Commission's *Report on Regulatory Powers and Corporate Offences*.[26]

Extraterritorial jurisdiction

Section 6 substitutes s.45(1) of the Principal Act, which relates to extraterritorial jurisdiction for offences against the EU budget. Extraterritorial jurisdiction refers to the circumstances under which offences committed outside the State can be prosecuted within the State. As it currently stands, s.45(1) of the Act provides for three circumstances under which an offence against the EU's financial interests committed outside the State can be prosecuted within the State. They are if;

a) the benefit of the fraud or offence is obtained, or a pecuniary advantage is derived from it, by a person within the State, or

b) a person within the State knowingly assists or induces the commission of the fraud or offence, or

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[25] Law Reform Commission, *Report on Regulatory Powers and Corporate Offences* (LRC 119 – 2018) p. 384. Available at https://www.lawreform.ie/news/report-on-regulatory-powers-and-corporate-offences.839.html.

[26] LRC 119 – 2018.

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

This is reasonably broad, and arguably includes a mixture of approaches to extraterritorial jurisdiction. That is, it provides that jurisdiction is engaged both where the offending outside the State has an effect on matters within the State ('the Effects Doctrine') and where the offending involves an Irish national ('the Nationality Principle').[27] The proposed new section adopts a simpler, and arguably narrower approach. It limits extraterritorial jurisdiction for offences against the EU's financial interests and for misappropriation to circumstances in which an Irish national committed an offence, incited or attempted the commission of an offence, or aided and abetted in the commission of an offence. It reads:

> "An Irish citizen who does an act in a place outside the State that constitutes an offence under the law of the place where it was done and, if done in the State, would constitute an offence under section 42 or 42A, or would constitute an offence of inciting, aiding and abetting, or attempting the commission of such an offence, shall be guilty of an offence."

Repeals

Section 10 repeals certain provisions of the 2001 Act.

Section 41 of the 2001 Act provides that the 1995 Convention have the force of law in this jurisdiction. Having regard to the Convention's replacement with the new PIF Directive, this section is repealed in its entirety.

Section 46(4) restricts the application of s.38 of the *Extradition Act 1965*, which provides:

> "Where any citizen of Ireland does any act outside the State which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of Ireland he shall be guilty of the like offence and be liable on conviction to the like punishment as if the act were done within the State."

The application of that section is at present restricted insofar as s.46(4) of the 2001 Act provides that no prosecution be taken under the 1965 Act, where the offence is already prosecuted under section 45. Section 45 provides for the prosecution of offences against the EU budget committed outside the State. The section appears to protect against a double jeopardy scenario, under which a person is prosecuted twice for the same offence.

Section 47 of the 2001 Act is also repealed. Section 47 provides for extradition in relation to offences under the 1995 Convention. With the replacement of the Convention, this is now no longer relevantrepealed.

Schedules 2 through 9 of the 2001 Act are also repealed. These Schedules contain the English and Irish text of the 1995 Convention and various associated Protocols.

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[27] For discussion of different approaches to providing for extraterritorial jurisdiction, see Walsh, *Walsh on Criminal Procedure* (2nd edn. Round Hall, 2016) Chapter 3, Section C.

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