

Media pluralism

22. Could you update us on the latest governmental initiatives related to media freedom and pluralism?

The Competition and Consumer Protection Act 2014 requires that the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media assess the effect that a proposed media merger would have on plurality of media in the State, the Minister will then make a determination based on the assessment's findings. The Minister's determination in each case is published on www.gov.ie. In recognition of the long term challenges facing the media sector, the Programme for Government provided for the establishment of the Future of Media Commission to consider the future of print, broadcast, and online media in a platform agnostic fashion. The Commission recently concluded a public consultation to which a number of stakeholders in the print sector have made submissions. The Commission is currently in the process of engaging with key stakeholders in a series of thematic dialogues.

The Competition and Consumer Protection Act 2014 obliges the Broadcasting Authority of Ireland (BAI) to produce an Ownership and Control Report every 3 years which describes the ownership and control arrangements for media businesses in the States including any changes since the previous report and analyses the effects of any such changes on plurality of media in the State. In November 2020, the Broadcasting Authority of Ireland (BAI) launched an online, searchable database, www.mediaownership.ie, which provides information about the ownership and shareholders of media companies operating in Ireland.

The Broadcasting Act, 2009 provides that 7% of net television licence fee receipts are paid to the Broadcasting Fund which supports both the Sound and Vision (S&V) and Archiving Schemes. On 27 January 2021 the BAI announced the launch of a new open funding round under its Sound & Vision 4 Scheme with funding of up to €5.5m being made available. In addition, the BAI has funding of €1.4m available specifically for high-quality programmes relating to Irish culture, heritage and experience that may also help to address challenges being faced by the live music sector.

On 11 February 2021, the BAI announced funding of €646,000 through its Sectoral Learning and Development, and Sponsorship programmes for 2021. This funding supports a range of industry networks including: Women in film and television Ireland (promoting gender diversity in the audiovisual sector); Learning Waves (the training organisation for commercial radio broadcasters); Screen Producers Ireland; the Writers Guild of Ireland; and the National Union of Journalists.

In addition, the Government has put in place a range of supports for all businesses impacted by the COVID-19 pandemic, which are available to the media sector. Significant Government expenditure has also been incurred on advertising in 2020 across all media sectors, particularly in the context of communications in relation to the COVID-19 health restrictions which has provided a boost in advertising revenues for the sector.

26. Could you elaborate on the framework of the media ownership and transparency in Ireland, especially in the context of the ongoing transposition of the revised AVMSD? Could you update us on your initiatives aimed at increasing the transparency in the media sector?

The answer provided for question 33 of the Rule of Law Report 2021 detailed the rules governing transparency of media ownership and public availability of media ownership information as follows:

Broadcasters in the State must be licenced by the Broadcasting Authority of Ireland (BAI). Section 25 of the Broadcasting Act 2009, obliges the Broadcasting Authority of Ireland to ensure the provision of open and pluralistic broadcasting services. In this context the BAI operate an Ownership and Control Policy. The BAI use this policy when considering licence applications. In line with the Ownership and Control Policy, the BAI has established a searchable reference database, www.mediaownership.ie, containing the ownership information for Irish-owned media businesses.

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27. Could you elaborate on the impact of the COVID-19 pandemic on the media sector, on journalists and freedom of expression in Ireland? What were the measures applied to address the impact of the COVID-19 pandemic in the media sector?

See answer to question 22 above which describes supports made available to the media sector to address the impact of the Covid-19 pandemic.

Q# Question 21 Can you provide us with an overview of the legal framework and supervision of the political parties' funding?

The Electoral Act 1997 (as amended) provides the statutory framework for dealing with political financing and sets out the regulatory regime covering a wide range of issues such as the funding of political parties; the reimbursement of election expenses; the establishment of election expenditure limits; the disclosure of election expenditure; the setting of limits on permissible donations; the prohibition of certain donations; the disclosure of donations and the registration of third parties who accept donations given for political purposes which exceed €100.

The Act also provides for the independent supervision of this regime by the Standards in Public Office Commission who have published a number of guidelines to inform election candidates, members of the Houses of the Oireachtas, members of the European Parliament, political parties, corporate donors and third parties of their obligations under the Act.

The principal objectives of the Electoral Act 1997 is to ensure that there is openness and accountability in the relationships that exist between election candidates, elected members and political parties and those who would support them, whether by way of financial assistance or otherwise. The Act also seeks to achieve equity in the electoral process by limiting expenditure at elections and by providing a system whereby candidates at elections can recoup election expenses subject to certain criteria being met.

State funding of political parties

Under Part III of the Electoral Act 1997 (as amended), in order to qualify for Exchequer funding, a political party must be: -

- registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992 as a party organised in the State to contest a Dáil election; and
- the total first preference votes obtained by candidates whose candidatures were authenticated by the party at the last preceding general election expressed as a percentage of total first preference votes obtained by all candidates at that election was not less than two per cent.

Payments made to qualified political parties are comprised of: -

- a fixed payment of €126,974 to be made to each qualified Party in each period of 12 months; plus

- an annual sum to be shared among qualified political Parties. The sum shared amongst the qualified political parties in 2019 amounted to €4,948,201 (this is the latest year for which published data is available).

Payments in respect of the annual sum to be shared are calculated on the basis of the pro rata share of first preference votes obtained by an individual qualified party at the previous general election. Section 17(4B) of the Act provides that payments to qualified parties will be reduced by 50% unless at least 30% of the candidates of the political party at the last general election were women and at least 30% were men. This provision remains in place for seven years from when it first took effect, i.e. at the general election held on 26 February 2016 . Payments to qualified parties at the general election held next after the expiration of those seven years will also be reduced by 50% unless at least 40% of their candidates are women and at least 40% are men.

All Exchequer funding received by qualified political parties must only be spent as provided for in section 18 of the Act. In effect, it must be used for “the general conduct and management of the party's affairs and the lawful pursuit by it of any of its objectives”. More specifically, the Act specifies that the funding may be applied to any or all of the following: -

- the general administration of the party;
- research, education and training;
- policy formulation;
- the co-ordination of the activities of the branches and members of the party;
- promotion of participation of women; and
- promotion of participation of young people.

The Act prohibits the use of Exchequer provided funding to recoup election or referendum expenses. The Standards in Public Office Commission requires the party's appropriate officers to state whether the funding was used for election or referendum purposes.

Under the Act, no payments can be made to a qualified political party after 1 January in each year unless and until: -

- that party has furnished to the Standards in Public Office Commission its annual statement of accounts and a copy of the accompanying auditor's report, both of which are required under section 87 of the Act; and
- the Standards in Public Office Commission has notified the Minister for Public Expenditure and Reform that it is satisfied that the relevant annual statement of accounts complies with the provisions of Part IX, and the guidelines published under section 89, of the Act.

In addition, no payments can be made to a qualified political party after 30 April in each year unless and until: -

- that party has furnished to the Standards in Public Office Commission a Statement of Expenditure of Exchequer Funding and an accompanying statutory Auditors' Report as well as its donation statement and statutory declaration (in respect of the preceding calendar year); and
- the Standards in Public Office Commission has furnished a copy of these statements to the Minister for Public Expenditure and Reform and has certified that they have been completed in accordance with the relevant provisions of the Act and the associated guidelines published by the Commission.

Payments are made quarterly in arrears by the Minister for Finance with the approval of the Minister for Public Expenditure and Reform. The documents submitted to the Standards in Public Office Commission are laid before the House of the Oireachtas and are also made available for public inspection.

Political donations

Under the Electoral Act 1997, donations given for political purposes are permissible, subject to the provisions set out in Part IV and Part VI of the Act respectively. Important features to note under the Act include relatively low donation thresholds, a prohibition on foreign donations and restrictions on the amounts that may be received from corporate donors. In broad terms, the Act's provisions relate to candidates standing for election, election agents, serving members of the Oireachtas, serving members of the European Parliament, political parties, accounting units of political parties and third parties who accept donations given for political purposes.

Where a monetary donation in excess of €100 is received, an account must be opened and maintained in a financial institution in the State and the donation and any subsequent monetary donations (irrespective of value) must be lodged to that account. The regime provides for the submission to the Standards in Public Office Commission of a number of statutory statements and supporting documents by the deadlines prescribed in the Act (for example, donation statements by elected members must be made by a date no later than 31 January in each year while donation statements for political parties are required by a date no later than 31 March in each year).

Under Parts IV and VI of the Act 1997, the following limits apply in respect of political donations: -

- anonymous donations exceeding €100 cannot be accepted in any calendar year;
- €200 is the maximum cash donation that may be accepted in any calendar year;

- €200 is the maximum donation that may be accepted in any calendar year from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Standards in Public Office Commission and a statement, on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor, is furnished with the donation to the donee;
- €200 is the maximum aggregate donation that a company, trade union, society or building society can give before reporting it in annual returns made under the Companies Act 1963, or to the Registrar of Friendly Societies or the report of a building society (under the Building Societies Act 1989);
- €1,000 is the maximum donation that may be accepted by an election candidate, election agent, serving member of the Oireachtas, serving member of the European Parliament from an individual or a registered corporate donor in any calendar year. All donations received by such persons exceeding €600 in a calendar year must be disclosed on a donation statement;
- €1,500 is the reporting threshold/maximum aggregate amount in any calendar year that a donor can give to multiple candidates of the same political party or to one or more party members and the political party itself before the donor is required to submit a donation statement; and
- €2,500 is the maximum donation that may be accepted by a political party, accounting unit of a political party, or a third party from an individual or a registered corporate donor in any calendar year. All donations received by a political party exceeding €1,500 in a calendar year must be disclosed on a donation statement.

In addition to the donation thresholds, donations, of any value, are prohibited and may not be accepted: -

- from an individual, other than an Irish citizen, who resides outside the island of Ireland; nor
- from a body corporate or an unincorporated body of persons which does not keep an office in the island of Ireland from which at least one of its principal activities is directed.

Donation statements must be furnished to the Standards in Public Office Commission not later than 31 January in every year in respect of each person who, in the preceding year, was a member of the Oireachtas or a member of the European Parliament, disclosing all donations received for political purposes in the preceding year which exceeded €600. A similar requirement applies to political parties in respect of the making of donation statements; the threshold for political parties applies to donations exceeding €1,500 in the preceding year while the deadline for submission to the Standards in Public Office Commission is 31 March in each year.

Complementary to this requirement, the Act provides that not later than the fifty-sixth day after the polling day at a Dáil, Seanad or European Parliament election, each candidate who was not elected at such election shall furnish to the Standards in Public Office Commission a donation statement, disclosing all donations received for political purposes in relation to the election which exceeded €600.

All donation statements must be accompanied by a statutory declaration made by the person by whom the statement is furnished confirming that, to the best of the person's knowledge and belief, the donation statement is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the statement.

Under the Act, a third party means any individual or group, other than a registered political party or election candidate, who or which accepts, in a particular calendar year, a donation for political purposes exceeding the value of €100. A third party must, on receipt of a donation exceeding the value of €100, and before incurring any expenses for political purposes, or any further such expenses, furnish to the Standards in Public Office Commission: –

- the name and address of the third party and the name and address of the person responsible for its organisation, management or financial affairs;
- a statement of the nature, purpose and estimated amount of donations to, and proposed expenses of, the third party during the year; and
- an indication of any connection the third party may have with any political party or candidate at an election or referendum or otherwise.

Where a monetary donation in excess of €100 is received by a third party it must open and maintain an account in a financial institution in the State and lodge the donation and any subsequent monetary donations to the account. Third parties are not required to publish details of actual donations received nor of actual expenses incurred nor are they required to make donation statements.

Question 28 Have you conducted an assessment as regards the impact of the Electoral Acts on access to funding for NGOs? Is there any plan in this regard?

A number of civil society groups have raised issues with the definition of “political purposes” as provided for in section 22(2)(aa) of the Electoral Act 1997 (as amended). These organisations are of the view that the definition is so broad that it may bring a wide range of non-governmental organisations within the scope of the Act despite the fact that their activities may not be related to any electoral or referendum campaign and that this can adversely impact the means by which they legitimately raise funds to run their normal day-to-day operations.

Civil society groups have indicated that they have no difficulties in relation to the application of the Act to third parties when advocating a particular position during election and referendum campaigns and these organisations had done so in the past. Nevertheless, they also argue that the provisions of the Act should not apply to third parties outside of electoral or referendum campaigns.

Separately, the Standards in Public Office Commission, which is responsible for overseeing the implementation of the Act, has itself raised issues over the years in its annual reports about the wide ranging nature of the definition for “political purposes” and its potential impact on the ordinary affairs of civil society organisations. In its Annual Report for 2018, the Standards Commission recommended that “An electoral commission should be established, and a comprehensive review of the Electoral Acts should take place.”. Similar recommendations have been re-iterated in their Annual Report for 2019.

Against this background, the Minister of Housing, Local Government and Heritage has recently published the General Scheme of an Electoral Reform Bill which aims to establish an independent, statutory Electoral Commission, modernise the electoral registration process, regulate online political advertising during electoral periods and introduce amendments to the Electoral Acts which will better facilitate the holding of elections during public health restrictions. Pre-legislative scrutiny of the General Scheme is now being advanced through Ireland’s parliamentary committee system. It is anticipated that the Electoral Reform Bill will be drafted and published before the summer with the Bill to progress through the Houses of the Oireachtas in the autumn in order to meet the commitment in the Programme for Government to have the Electoral Commission established before the end of 2021.

Once established, the Electoral Commission will have a number of initial statutory functions with additional responsibilities targeted to migrate over on a phased basis. One of these later functions will be responsibility for the political funding and donations regime as provided for in the Electoral Act 1997. The Programme for Government commits the Electoral Commission to undertake a number of items of research such as the use of posters at elections / referendums as well as an expansion of postal voting provisions.

While no detailed assessment has yet been undertaken on the issues raised by civil society, in advance of any migration of the political funding regime, it is proposed that a comprehensive review of the Electoral Act 1997 will be carried out by the Electoral Commission with a view to making recommendations to address, among other matters, the concerns raised by civil society and a further commitment in the Programme for Government to review our current electoral laws and the conduct of politics in Ireland, to ensure that donations and resources from non-citizens outside the State are not being utilised to influence our elections and political process.

It is considered that the proposed approach would deliver an objective, clear and proportionate outcome for all affected parties with regard to the entirety of the inter-related provisions in the Electoral Act 1997.