



Rialtas na hÉireann
Government of Ireland

FIRST REPORT OF THE INTERDEPARTMENTAL GROUP ON SECURITY OF IRELAND'S ELECTORAL PROCESS AND DISINFORMATION

Prepared by the Department of the Taoiseach

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1. Introduction

There are risks to any electoral process, some which impinge directly on the operation of elections, such as tampering with the register of electors or ballot-stuffing, and some which operate indirectly by seeking to influence voter opinions such as unlawful or disproportionate funding of campaigns and advertising or disinformation via various communications media.

In December 2017, following consideration of the Online Advertising and Social Media (Transparency) Bill 2017 (put forward by Deputy James Lawless)¹, the Government decided to establish an interdepartmental group to consider these issues, and in particular the substantive issues arising from recent experiences in other democratic countries with regard to the use of social media by external, anonymous or hidden third parties.

The group, coordinated by the Department of the Taoiseach, includes representatives from the Department of Housing, Planning and Local Government, the Department of Communications, Climate Action and Environment, the Department of Foreign Affairs and Trade, the Department of Justice and Equality, the Department of Business, Enterprise and Innovation, the Department of Education and Skills, the Department of Defence, An Garda Síochána, and the Defence Forces.

This Report looks at issues concerning the security of the electoral process. *Section 2* provides a brief survey of experiences in other states and the measures proposed at EU Level to tackle the substantive issues. Prompted by a rising concern over the spread of disinformation online and recent international experience of interference in political processes, *Section 3* of the assessment takes into account risks that apply across the totality of the electoral process. Direct and indirect risks have been considered and *Section 3* also addresses various information and advertising media separately.

While, the assessment finds that risks to the electoral process in Ireland are relatively low, taking into account the mitigating factors already in place, a more substantial risk is posed by the spread of disinformation online and the risk of cyber-attacks on the electoral system. This is also in line with EU findings and recent international experience. The assessment identifies proposals to ensure appropriate protection against such risks.

In full consideration of the mitigation factors and gaps identified, *Section 4* (Recommendations and Next Steps), details a number of proposals to address these gaps and offer a way forward on a more cohesive and coordinated approach to safeguarding of the electoral process from disinformation and security risks. It also gives an outline of immediate next steps as a priority short-term measure.

¹ Deputy James Lawless' Bill is currently at second stage (<https://www.oireachtas.ie/en/bills/bill/2017/150>).

Given the complexity of the issues, the rapid pace at which technologies and communications channels tend to evolve, and the international context of these issues, policy will have to be kept under review and evolve as appropriate.

These matters touch on very fundamental elements of our democracy, freedom of expression and the discernment of the will of the people, who in the words of the Constitution “in final appeal” [...] “decide all questions of national policy”. Therefore any policy must be developed in open consultation with interested parties, Civil Society Organisations, academics, and the media so that all viewpoints are considered and that the solutions adopted enjoy wide democratic endorsement.

2. International Experience of Election Campaigns - Overview

At the outset the group looked at experiences in other jurisdictions concerning electoral processes and disinformation. A significant number of recent election campaigns across Europe and elsewhere have been characterised by substantive reports of apparent deliberate attempts to manipulate outcomes using a variety of different means. In certain jurisdictions, official investigations into such alleged activities remain ongoing.

Common concerns in other jurisdictions include:

- Large numbers of citizens now get their news from social media platforms which has clear implications for the generation and potential impact of disinformation and how it is rapidly disseminated. Efforts to influence mainstream political discourse on, for example, migration and high profile social / political issues in this manner have been evident (eg. Digital ads being used for disinformation and to foster division of electorates).
- Concerns about disinformation attacks/interference against electoral processes throughout the EU have been apparent from 2016 campaigns onward and also internationally, most notably during the 2016 Presidential election in the United States) - including concerns relating to cyber espionage affecting political parties and manipulation of outcomes.
- Exfiltration of data to intentionally influence and damage political campaigns as well as exploitation of (personal) data also in electoral contexts.
- Mainstream linear broadcasting of disinformation - to purposely promote certain biased political views.
- Placement of significant amounts of online advertising with little or no transparency as to the sourcing or targeting of same.
- Use of bots to disseminate disinformation.
- Practices such as:
 - Astroturfing: The attempt to create an impression of widespread grassroots support for a policy, individual, or product, where little such support exists.²
 - Kompromat: Compromising information collected for use in blackmailing, discrediting, or manipulating someone, typically for political purposes³
 - Phishing: The fraudulent practice of sending emails purporting to be from reputable companies in order to induce individuals to reveal personal information, such as passwords and credit card numbers.⁴
- Widespread use of fake/anonymous social media accounts.

² <https://www.theguardian.com/commentisfree/2012/feb/08/what-is-astroturfing>

³ <https://en.oxforddictionaries.com/definition/kompromat>

⁴ <https://en.oxforddictionaries.com/definition/phishing>

Common actions in other jurisdictions include:

- In some cases, fact-checking systems for elections have been introduced. Where voting is mostly paper-based, sustained misinformation campaigns by outside state, non-state and private sector actors are viewed as having sought not so much to directly tamper with voting tallies but rather to spread disinformation and enable pursuit of other related activities such as cyber-espionage and/or cyber-attacks against political parties' websites and databases.
- In jurisdictions with electronic voting systems, for example in the United States, electoral authorities are taking steps to back up voter data bases, regularly patch cyber-security lesions and monitor suspicious activity. In some cases, national and regional election infrastructures are being added to lists of critical sectors that are vital to national security.
- Some jurisdictions have enacted or are in the process of enacting legislative measures to implement sanctions against outside entities and individuals identified as having engaged in electoral interference and/or related cyber-attacks. For instance, under legislation passed and signed into law last summer, the US Treasury sanctioned Russian cyber actors for interference with the 2016 U.S. Elections and other malicious cyber-attacks.
- Other legislative measures, for example in Canada, have sought to improve various aspects of the administration of elections and of political financing / (third party) election advertising by non-citizens, foreign political parties and /or foreign governments or their agents. Direct counter-measures against disinformation and obligations upon social networks to remove illegal content (e.g., hate speech and incitement to illegal activities) are also being introduced / strengthened in some jurisdictions. For example, last year Germany passed an Act to Improve Law Enforcement in Social Media (NetzDG).
- Across almost all jurisdictions, particular importance has been attached to the principles of freedom of expression and freedom of the media.
- In one jurisdiction, Greece, a register has been created on which online media companies are asked to enrol, with an incentive of access to State funding via advertisements. The register supports transparency through requiring the companies concerned to provide detailed information, including number of employees, ownership, addresses etc.
- In addition, some EU Member States are exploring possible support systems to assist with the training of new young digital journalists, to encourage them to start their own businesses and to promote enhanced investigative journalism. Programmes to bring journalists into schools to help with education against disinformation and to help the integration of ethnic minorities into society are also being implemented in some jurisdictions. Countries implementing such measures include Lithuania and Greece.
- Several EU Member States are also taking preventive action against potential future outside (foreign) electoral interference and propaganda by establishing national government agencies / inter-departmental task forces and through formal consultations between leaders of political parties. Such initiatives are being implemented in countries including Sweden and Denmark.
- In line with the EU Network and Information Security Directive, certain EU Member States have taken steps to protect critical infrastructure and digital services from cyber-attacks and computer network failure. In particular, the UK has recently enforced new measures in this regard.
- Some EU Member States, for example France, are seeking to capitalise on artificial intelligence and related tools to facilitate higher levels of collective public awareness through education and

training programmes and information-sharing, monitoring and early-warning systems, as well as ongoing exchanges and lesson-sharing at EU level and beyond.

EU Developments

A 'Joint Framework on countering hybrid threats – a European Union response' was adopted in April 2016. This was aimed at strengthening the resilience of the EU and its Member States and addressed potential strategic and critical sectors, including combatting disinformation. The Framework established a 'Friends of the Presidency' group comprising of experts from Member States, which had prepared a hybrid risk survey to identify key vulnerabilities.

An EU Hybrid Fusion Cell (HFC) exists within the EU Intelligence and Situation Centre of the External Action Service. It provides a single focus for the analysis of external aspects of hybrid threats. The HFC receives, analyses and shares classified and open source information from different stakeholders within the European Union External Action Service (EEAS), the Commission and Member States (MS) specifically relating to indicators and warnings concerning hybrid threats. Its purpose is to assist the EU and Member States to analyse relevant incidents and inform the EU's strategic decision-making processes. In particular, it aims to enhance awareness and input to security risk assessment processes supporting policy-making at national and EU levels.

It should also be noted that the European Parliament recently voted to pass a package of electoral reforms but that implementation will be a matter for the Council and for national parliaments.⁵

European Commission

The Commission commenced a multistrand stakeholder engagement process in November 2017 which involved a public consultation, engagement with Member States, and the establishment of an *Independent High Level group on Fake News and Online Disinformation*.

The High level group published its report in March 2018, and made a series of recommendations for short-medium term and longer term actions by the Commission, Member States, Civil Society Organisations, Online Platforms and News Media Organisations. These recommendations are based around the five areas which the group identified, including Transparency; Media and Information Literacy; Empowerment of Users and Journalists; Diversity and Sustainability of the Media Ecosystem, and Process and Evaluation.

The High Level Group's report, along with the results of the other engagement processes, informed the Commission's Communication "Tackling Online Disinformation: A European Approach".

The Communication sets out a number of measures which the Commission is proposing to take to address the subject of disinformation at an EU level. These measures include:

- A common **Code of Practice** for disinformation as a self-regulation tool developed and followed by online platforms, to ensure transparency and accountability of content, and protect users from disinformation.
- An independent **European Network of fact-checkers** to act as trusted flaggers of disinformation, supported by a **secure online platform** facilitating access to reliable EU wide data.
- **Support for quality journalism** across Member States to foster a pluralistic media environment.
- **Improving media literacy** through support for educational initiatives and targeted awareness raising campaigns.

⁵ <https://www.politico.eu/article/meps-spitzenkandidat-electoral-reform-back-modest-changes/>

In June 2018 the Commission convened a multi-stakeholder forum for an efficient cooperation among relevant stakeholders, including online platforms, the advertising industry and major advertisers. The forum's first output should be to publish the Code of Practice by July 2018.

By December 2018, the Commission will report on progress made and the report will examine the need for further action to ensure the continuous monitoring and evaluation of the outlined actions.

3. Risk Assessment Summary

Disinformation

While there are many means through which disinformation can be disseminated, the concept of disinformation is, in principle, common to all.

Disinformation has been defined as “ ... *Verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm comprises threats to democratic political and policy-making processes as well as public goods such as the protection of EU citizens' health, the environment or security. Disinformation does not include reporting errors, satire and parody, or clearly identified partisan news and commentary.*”⁶ The interdepartmental group adopted this definition for its work.

The brief survey of experiences in other states in *Section 2* indicates that disinformation can be disseminated via various channels including traditional linear broadcasters, print media, online social media and other online channels. The risks of disinformation differ from country to country and from medium to medium, as do factors which mitigate its impact.

One of the primary concerns identified in the previous section relates to the potential effect that the widespread use of social media can have in accentuating any concerted programme of disinformation, be that by simple force of numbers of fake accounts or the use of systems like ‘bots’. The *Transparent Referendum Initiative (TRI)*⁷ survey found that during the recent referendum on the 8th Amendment a sample of political ads on Facebook found 317 different groups were identified as paying for advertising, with 21 of these untraceable. TRI found ads from untraceable groups were used to mislead voters, discredit political figures and groups, mimic official or neutral information sources, gather voter data and share disturbing images.

This is a relatively new phenomenon, and because of its international basis and the fact that it is largely driven by individual users, there are legal and practical challenges in identifying effective measures by which States might intervene. Furthermore, social media provide a legitimate and valuable space for political discussion and debate; any State intervention must have due regard to the individuals rights to freedom of speech and freedom of access to information. Also, the extent to which this is a risk is heavily dependent on the social and political context, including such factors as to how well informed electorates might be, and measures that both civil society and the owners of the platforms themselves take.

⁶ Source: European Commission Communication “Tackling Online Disinformation: A European Approach”, 26 April 2018]

⁷ The Transparent Referendum Initiative is a volunteer-led, civic initiative and is not in receipt of any external funding

It is widely acknowledged that a key mitigation factor for disinformation is media literacy. The Open Society Institute 2018 Media Literacy Index places Ireland 6th out of 35 European states for levels of media literacy. The highest scoring countries tend to have high education performance (reading literacy levels in particular), high levels of media freedom and high levels of trust in society.⁸ Ireland performs highly across all these areas. In particular, Ireland is well recognised internationally for reading and literacy skills – Ireland’s 2015 OECD Pisa score for reading literacy is 3rd amongst 35 OECD countries.⁹ In addition, the recently published PIRLS (Progress in International Reading Literacy Study) showed that Ireland’s primary school children are best in Europe and OECD countries for reading skills.¹⁰ The study also included an assessment of online reading skills and digital literacy where Irish students also performed very highly.¹¹ Any risks posed by disinformation are mitigated by our internationally recognised high levels of media literacy, indicating that Ireland is well equipped to deal with the negative effects arising from disinformation and false political advertising.

Reuters institute Digital News Report¹² (June 2018) found that that Irish Consumers are more trusting of “most news” (71%) than the EU average (62%), rising to 78% trust in news specifically chosen, but has low trust in social media (28%). It also reported that the main sources of news for Irish Consumers are television (56%), social media (53%), radio (45% - the highest rate of listenership of countries surveyed) and online newspapers (44%).

The survey also found that 57% are concerned about ‘fake news’, similar to other countries, and see it as the Government’s responsibility to address disinformation as well as journalists and media companies doing more in this area. In Ireland, only 28% of those surveyed said they understood the role of algorithmic targeting and spread of disinformation. The survey reveals that most people do not understand standard media practices and have limited understanding of how news appears in their social media feeds.

Fact-checking is another approach to combating disinformation that can contribute to building trust, accountability and transparency in online news sources. It is by and large a digital movement¹³ fuelled in growth by the rise of algorithmic news curation.¹⁴ In traditional media, this is mitigated by journalistic principles and ethical standards. It is a soft, non-regulatory approach mostly operated by non-governmental and civil society organisations. Online platforms have been notably active in this space recently, i.e. Facebook and the Journal.ie partnered to identify disinformation in advance of the May 2018 Referendum.¹⁵ Platforms have also taken other measures, including those to remove fake accounts and to prohibit certain types of advertising on their platform.

⁸ The Media Literacy Index assesses the potential resilience to the spread of fake news in 35 European countries by scoring and ranking them across various indicators for media freedom, quality of education, interpersonal trust and e-participation. It is prepared by the European Policy Initiative of the Open Society Institute (OSI), Sofia. (http://osi.bg/downloads/File/2018/MediaLiteracyIndex2018_publishENG.pdf)

⁹ <http://www.erc.ie/wp-content/uploads/2016/12/PISA-2015-ERC-Press-Release-2.pdf>

¹⁰ Department of Education and Skills Press Release on PIRLS <https://www.education.ie/en/Press-Events/Press-Releases/2017-Press-Releases/PR17-12-05.html>

¹¹ Full report on Ireland’s performance in PIRLS is available here http://www.erc.ie/wp-content/uploads/2017/12/PIRLS-2016_initial-report-IRL.pdf

¹² Reuters institute Digital News Report 2018 (Ireland) (and the Institute for Future Media & journalism article dated 14th June 2018 reporting on same). Survey of 37 countries.

¹³ <https://www.poynter.org/news/theres-been-explosion-international-fact-checkers-they-face-big-challenges>

¹⁴ EU Commission JRC Technical Report, ‘The Digital Transformation of News Media and the rise of disinformation and fake news’, pp. 48-49.

¹⁵ <https://www.siliconrepublic.com/companies/facebook-and-the-journal-team-up-on-fact-checking-project>

The Referendum Commission can also be considered a mitigation factor to disinformation. While its effect is limited solely to referendum processes, it is, nevertheless, an independent body which provides factual and impartial information to the public about referendums.

The absence of an Electoral Commission with a complete oversight role is of concern. The Joint Oireachtas Committee on Environment, Culture and the Gaeltacht, in its report on the Consultation on the Proposed Electoral Commission published January 2016¹⁶, identified the need to establish an Electoral Commission with key functions including:

- The Register of Political Parties;
- The operational role of the Franchise Section of the Department of the Environment, Community and Local Government;
- A policy development and advisory role;
- The regulation of political funding and election expenditure currently carried out by Standards in Public Office Commission (“SIPO”) at the national level;
- A support and advisory role to local authorities in their regulation of political funding and election expenditure at a local level; and
- The functions of Referendum Commissions (with the independence of the referendum information campaign a key consideration in the assignment of functions as discussed in Section 2 of this report) (full list of functions in Appendix 3).

It should be noted that the Committee did not consider the effect of bots and disinformation and their Report presumably predates recent cyber interferences in electoral systems.

While there are risks to the various media sectors, outlined in this Report, there is a culture of journalism in Ireland with a tradition of high standards which is reflected in the published content across various media as well as normative provisions such as the NUJ code of ethics, the Press Council of Ireland Code of Practice, the Broadcasting Act, and Broadcasting Authority of Ireland codes. There is also a high degree of political neutrality relative to other countries. This robust culture contributes to well-informed public debate which is a strong counterbalance to disinformation.

In addition, constitutional and statutory protections for the right to privacy and the right to a good name, including defamation law, while not free of criticism from journalists in terms of the restrictions they can place on reporting, do inhibit grossly defamatory attacks on disinformation.

As referenced earlier, the EU Commission is bringing forward a number of measures to tackle disinformation online, including an EU-wide Code of Practice on Disinformation, support of an independent network of fact-checkers, media literacy initiatives and tools to promote quality journalism.

When considering these matters it must of course be borne in mind that rights to freedom of expression are fundamental to a democracy and are protected in the Constitution, the European Convention on Human Rights and EU Charter of Fundamental Rights.

As well as issues relating to fundamental rights, the internet presents challenges to traditional approaches to regulation, due both to its global nature and to the prevalence of content generated by very large numbers of users. Most of these relate to the fact that different countries can have vastly

¹⁶ In 2015, the Department of the Environment, Community and Local Government published a Consultation Paper on the Establishment of an Electoral Commission in Ireland. The then Minister for the Environment, Community and Local Government requested the Committee to examine the paper, to consider undertaking a consultation process on it, and to report back to the Minister with its views on the planned legislation. The 2016 report forms the outcome of the Committee’s response.

different definitions and approaches to what they deem to be illegal or harmful. Harmful content can be particularly difficult to define. As a result, in order to be effective, any regulatory action must have regard to transnational factors and EU competencies in the area.

The E-Commerce Directive provides the legal framework which allows online platforms to operate within the European Union. This Directive includes a limited liability regime i.e. a platform is not required to exercise editorial control over content posted by users, and is required only to consider whether such content breaches its own terms of service or the laws of the EU country in which it is primarily established.

As a result of these difficulties, and the legal framework which exists at a European level, the European Commission and Member States have adopted a multistakeholder approach to dealing with online content, including online disinformation. A similar multistakeholder approach will be required in advancing solutions, including legislative solutions, such as the *Online Advertising and Social Media (Transparency) Bill 2017* by Deputy James Lawless T.D.

a. ELECTORAL PROCESS RISK ASSESSMENT

i. Register of Electors – Risk Level **LOW**

Risks

- No one centralised body responsible for electoral process. Current responsibilities are:
 - The Department of Housing, Planning and Local Government (Franchise Section) is responsible, under the Minister, for policy issues relating to the electoral system, drafting of legislation and preparation of guidelines and provision of other supports to election officials.
 - Local Authorities are responsible for maintaining the register of electors, running local elections, regulation of political funding and election spending at local level.
 - Returning officers act independently running Dáil, European and Presidential elections and referendums.
 - The Standards in Public Office Commission has regulatory responsibilities for political funding and election spending.
 - Clerk of the Dáil acts as the Registrar of Political Parties.
 - Statutory bodies are established for specific purposes, such as Constituency Commission or Referendum Commission.
- Person entitled to be on the register but not on the register.
- Potential over registration
- Applications for registration containing false or misleading information.
- Register manipulation, including hacking.

Mitigation Factors

- Electoral Act 1992 - Key provisions set out in *Appendix 1 Table 1*.
- House-to-house and other local enquiries carried out by registration authorities. First registration is by way of printed registration (RFA) forms completed manually.
- Draft register published on 1 November each year and is made available for examination at post offices, public libraries, Garda stations, courthouses and local authority offices up to 25 November. Public invited to check the draft register during this consultation period.

- Claims for the addition or deletion of names ruled on by the county registrar. The claims process takes place between 25 November and 23 December each year. Ruling made in public and any person may attend and give evidence. Appeal may also be made to the circuit court.
- Any person may inspect the register, draft register or edited register during working hours at the offices of the registration authority or the county registrar and at public libraries, post offices and Garda stations.

Identified Gaps

- Absence of a centralised body with overall responsibility for the entire electoral process.
- While improvements could be made to the register of electors and how it is compiled, no significant gaps have been identified that might be particularly susceptible to adverse influence from outside of the State.
- There is no single register of electors but a separate register of electors for each of the thirty-one registration authorities. Any proposal to introduce a single register of electors will likely retain the role of registration authorities given their expertise, local knowledge and practical experience in the register compilation process.
- The register of electors, in its current form, cannot provide for a possible extension of the franchise to Irish citizens resident outside the State and would need to be modernised to cater for any such change should voting rights be extended in the future. In this context, the Government has, in principle, approved the holding of a referendum to amend the Constitution to extend the franchise at presidential elections to include Irish citizens resident outside the State. The proposed referendum is to be held indicatively on the date of the local and European elections in late May 2019.

ii. Polling and Counting of Votes – Risk Level **LOW**

Risks

- Interference with ballot box
- Personation of voters at polling stations
- Uncontrolled issuing of ballot papers
- Manipulation of the count
- Breakdown in communications between local count centres and the national count centre at a referendum.

Mitigation Factors

- *Polling takes place in open Stations with a Presiding Officer, Polling Clerks and Personation Agents*
- *The counting of votes takes place in a public, open, secure and transparent manner with Garda presence and also in the presence of election candidates, their agents and deputy agents, members of the public, the media as well as possible independent election observers.*
- Electoral Act 1992 – *Key provisions set out in Appendix 1 Table 2.* The Act provides for the general conduct of elections and a broad range of electoral offences to support compliance with all aspects of election administration.
- Communications issued to Returning Officers on specific matters relevant to an election/referendum that is underway.
- Detailed memorandum for the guidance of Returning Officers issued in advance of each election /referendum
- Detailed manual for Presiding Officers issued in advance of each election / referendum.

- A recount of ballot papers may take place if errors have been noted and/or if election candidates request a recount where the margins are narrow.

iii. Funding – Risk Level *MEDIUM*

Risks

- Disproportionate direct funding of election/referendum campaign. The amount of money being spent could potentially have a significant influence on the outcome of referendum campaigns.
- Individuals or organisations within the State with access to significant financial resources may deploy such resources to indirectly support a particular outcome in a referendum/election campaign. The amount of money spent could potentially have a significant influence on the outcome of elections or referendum campaigns in the State.
- The deployment of financial resources by foreign sources on advertising either within or outside of the State could potentially have a significant influence on the outcome of elections or referendum campaigns in the State.
- The acceptance of prohibited donations by election candidates, serving politicians, political parties and third parties could potentially undermine the donations regime, raise concerns in relation to the transparency of political funding in the State and, ultimately, give rise to adverse effects on the integrity of our democratic system.

Mitigation Factors

- Electoral Act 1997 – *Key provisions set out in Appendix 1 Table 3*. The Act provides the statutory framework for dealing with political donations 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.
- Standards in Public Office (SIPO) – SIPO is an independent body established under the Standards in Public Office Act 2001 whose functions include supervising the disclosure of interest and compliance with tax clearance requirements in respect of the holders of public office, overseeing the disclosure of political donations and election expenditure, monitoring the expenditure of State funding received by political parties and providing for the registration of lobbying. Their responsibilities and powers are set out in four key legislative instruments, vis-à-vis, the Ethics in Public Office Acts, the Electoral Act 1997, the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014 and the Regulation of lobbying Act 2015.
- Ethics in Public Office Act 1995 as amended by the Standards in Public Office Act 2001
- Regulation of Lobbying Act 2015 – provides transparency around lobbying of Elected Parties.

Identified Gaps

- No spending limits in Seanad elections or at referendums.
- No restriction on persons or organisations in the State from deploying their own financial resources to support a particular outcome at an election or during a referendum campaign.
- SIPO's role is limited, in the context of elections, to oversight of funding disclosure and does not have the wider powers of the Electoral Commission.

- No restriction on foreign-based persons or organisations from deploying their own financial resources either within or outside of the State to support a particular outcome at an election or during a referendum campaign in the State.
- Technical and legal complexities arise in accurately identifying foreign donations and/or efforts to manipulate the political funding regime. These complexities create significant challenges for the design and implementation of effective regulation in this area, having particular regard to the extra-territorial nature of such donations and/or foreign influence.

b. TRADITIONAL PRINT AND BROADCASTING RISK ASSESSMENT

i. Print - Risk Level *LOW*

Risks

- As with all media, the risk of the spread of disinformation and the use of deliberate bias are present in print media.
- A specific risk exists in respect of political advertising, which is not subject to the Advertising Standard Authority of Ireland's self-regulatory code.
- Publications from outside the State are not subject to the Press Council's self-regulatory code.
- Potential deterioration of standards of content caused by financial difficulties, i.e. declining advertising revenue.
- As a result of financial pressures, further consolidation among media businesses is possible, which presents its own risks in respect of the exertion of ownership control on editorial decision making.

Mitigation Factors

- Robust culture of good journalistic standards
- Politically neutral press relative to other countries.
- The Code of Practice of the Press Council of Ireland and the activities of the Office of the Press Ombudsman which operate a complaints handling service in respect of print and certain online titles available in Ireland
- National Union of Journalists (NUJ) – code of conduct for journalists
- Media Literacy Network, Education in schools and existing media literacy skills of citizens
- Media Merger regime – assessment of impact of consolidation on plurality
- BAI Ownership and Control Report (to be published Q4 2018)
- Alternative trusted media sources (e.g. broadcasting)
- Defamation Law/Privacy Law etc., deters untruths which are defamatory or invasive of privacy.

ii. Linear Broadcasting (Traditional Television & Radio) - Risk Level *LOW*

Risks

- As with all media, the risk of the spread of disinformation and the use of deliberate bias are present in linear broadcasting.
- A specific risk exists in respect of linear television broadcasters who are not established in the State and are therefore not subject to regulation by the Broadcasting Authority of Ireland and

its codes and guidelines including the prohibition of political advertising. This risk may increase when the UK leaves the EU.

- The financial position of broadcasters (i.e. declining advertising revenue) gives rise to a risk in relation to their future capacity to provide high quality news and current affairs.
- As a result of financial pressures, further consolidation among media businesses is possible, which presents its own risks in respect of the exertion of ownership control on editorial decision making.

Mitigation Factors

- Robust culture of good journalistic standards
- Under the Broadcasting Act 2009, the BAI has a robust system of regulation in place for linear broadcasters (radio and television) established in Ireland. This however does not extend to the online space (see Section C below).
- Political advertising is prohibited under the Authority's General Commercial Communications Code
- Media Literacy Network, Education in schools and existing media literacy skills of citizens
- NUJ – code of conduct for journalists
- Media Merger regime – assessment of impact of consolidation on plurality
- BAI Ownership and Control Report (to be published Q4 2018)
- BAI review of its Ownership Control Policy and an introduction of a plurality policy
- Alternative trusted media sources (i.e. print)
- Support for Public Service Broadcasters and Broadcasting Funds from Television Licence Fee.
- Defamation Law/Privacy Law etc. deters untruths which are defamatory or invasive of privacy.

Identified Gaps

- Financial stability of Public Service Broadcasting which impacts on the provision of news and current affairs from an Irish perspective.

C. ONLINE PLATFORMS – RISK ASSESSMENT (LEVEL HIGH)

i) On-line Platforms - can be described as website, web application or digital application (including a social network or search engine)

Risks

- Lack of transparency of advertising – true source of sponsorship and targeting of intended audiences.
- No limit to volume of advertising or spend on same
- The speed at which disinformation can be spread and accessed online means that online platforms present a particular risk in relation to disinformation and deliberate bias.
- Online manipulation (including bots)
- Lack of editorial control

Mitigation Factors

- Digital media literacy awareness/education initiatives

- Industry initiatives, e.g. Facebook pilot advertising transparency tool, changes to the Twitter API in January 2018.¹⁷
- Fact checking initiatives, i.e. Facebook and the Journal.ie partnership to identify fake news¹⁸

Identified Gaps

- Not subject to direct regulation and absence of transparency of sourcing and targeting of advertising
- Opportunity to improve knowledge and information at wider societal level about sources, techniques and potential negative impact of disinformation
- Unclear capacity to respond directly to any active disinformation campaign against Ireland / Irish interests

ii) Micro-targeting

Web and social media-based hidden or non-transparent advertising and/or disinformation that is directed at particular voter segments so as to influence the outcome of (close) electoral contests

Risks

- Influencing Outcomes unlawfully or in a concealed manner
- Misuse of the Electoral Register

Mitigation Factors

- Industry initiatives around transparency
- Data Protection law requires data processors to have consent from data subjects for processing their data. It also compels any entity holding personal data to take a range of specific measures to protect that data, including data security measures likely to have the effect of reducing the risk to the electoral process by increasing the resilience of the IT systems used by entities holding relevant information.
- Digital media literacy awareness / education initiatives

Identified Gaps

- Regulation of (political) advertising in this media – lack of transparency as to origin and targeting
- Opaqueness in privacy and consent controls

d. CYBER SECURITY – RISK ASSESSMENT (LEVEL MEDIUM)

Risks

- Destabilisation Events (eg DDOS, Website defacement) - There are an extremely broad range of actions that could potentially be undertaken to attempt to undermine the electoral process or call into question the outcome, such as the Distributed Denial of Service (or DDoS) Attacks on

¹⁷ <https://www.irishtimes.com/business/technology/new-facebook-feature-explained-1.3464713>

¹⁸ <https://www.siliconrepublic.com/companies/facebook-and-the-journal-team-up-on-fact-checking-project>

websites used by entities engaged in the electoral process (including media, political parties or campaign groups), or the defacement of websites owned by any of those same entities.

- Manipulation of the Electoral Register - any illicit or unauthorised amendment of the register, including the removal of valid voters from the list, or the insertion of fraudulent or non-existent entries, to sway the outcome of an election in a given constituency, or undermine public confidence in the electoral process or the outcome thereof.
- Data Exfiltration - This would include the theft of information from the IT systems of Government or any entity involved in the political process, and its subsequent release. This could also include the possibility of data being stolen from political parties or individuals personal IT systems, as occurred in the United States.

Mitigation Factors

- The work of the National Cyber Security Centre (NCSC) particularly around security Government IT systems and data. While not directly involved in the electoral process or in the compilation of the Electoral Register, they would advise of any outside interference with the system.
- Development of measures under the new National Cyber Security Strategy
- Transposition of EU Network and Information Security Directive
- Measures being taken in response to the entry into force of the General Data Protection Regulation.
- NCSC interaction with various international cybersecurity bodies, including the gathering of threat intelligence and the sharing of best practice.

Identified Gaps

- Education
- Targeted advice to entities involved in the electoral process, including politicians and political parties, in respect of the security of their own personal IT systems.

4. Recommendations & Next Steps

Overall, the assessment finds that risks to the electoral process in Ireland are relatively low, taking into account the mitigation factors already in place. It is recognised, however, that the spread of disinformation online and the risk of cyber-attacks on the electoral system pose more substantial risks and that this is in line with EU findings and recent international experience.

The assessment identifies proposals to ensure appropriate protection against identified risks.

The following proposals, are put forward for consideration. Any actions arising from such proposals will require widespread support from both political and civic society:

1. Expedite the establishment of an Electoral Commission as outlined in the Programme for Partnership Government (*Department of Housing, Planning and Local Government*)

- The establishment of an independent Electoral Commission has been recognised as a key commitment on political reform in the Programme for Partnership Government 2016 and was endorsed by the Citizen’s Assembly in its deliberations on *the Manner in Which Referenda Are Held* in January 2018.
- The *Report of the Joint Committee on the Consultation on the Proposed Electoral Commission 2016* recommended that the proposed Commission have a largely oversight role, with a remit to develop and lead an effective electoral reform agenda and bring central oversight and cohesion to policy in this area and specific functions in relation to the monitoring of spending and the use of advertising during, and in the lead up to, election and referendum campaigns (*full details in Appendix 3*). A Regulatory Impact Assessment is currently being advanced within the Department.

2. Advance the modernisation of the voter registration process (*Department of Housing, Planning and Local Government*)

- The Fifth Report of the Convention on the Constitution recommended that citizens outside the State, including citizens resident in Northern Ireland, should have the right to vote at presidential elections and that a referendum be held to put this to the people. In this context, the Government determined that work should commence on modernisation of the voter registration process to effect improvements in the registration of voters, which would also facilitate the registration of voters’ resident outside the State in the event of an extension of the franchise being approved by the people in a referendum.
- Work on scoping potential improvements to the electoral registration process, including proposals such as online registration, is now underway. This work is looking at, among other things, proposals made by the Joint Committee on Environment, Culture and the Gaeltacht in its report of the consultation on the proposed Electoral Commission in 2016. It should also be borne in mind that modernisation could increase risk by making the process easier to manipulate.
- The process being planned includes a significant consultation element to include all relevant stakeholders – including the political system, the public and registration authorities. It is expected that public consultation will commence later this year.

3. Regulate transparency of online political advertising (*Department of Business, Enterprise and Innovation; Department of Communication, Climate Action and Environment, Department of Housing, Planning and Local Government*)

- Engagement with stakeholders (political parties, industry organisations, academia, civil society and NGOs) to develop understanding of the evolving risks to the electoral process and wider disinformation and develop proposals for regulation.

4. Reform of legislative provisions concerning the funding of election and referendum campaigns (*Department of Housing, Planning and Local Government*)

To include:

- consideration of spending limits for Seanad elections and Referendums;
- an examination of the scope to amend the Electoral Act 1997 to introduce specific transparency requirements for spending on advertising and promotion during campaigns;
- proposals to review the donations regime in the Electoral Act 1997 in order to examine the potential to strengthen provisions in relation to the prohibition on foreign donations.

5. Support the EU Commission's work in tackling online disinformation (*joint-led approach by a number of Departments*)

The Commission has proposed a number of measures to ensure a multi-faceted, European wide approach to tackling disinformation including:

- A common **Code of Practice** for disinformation as a self-regulation tool developed and followed by online platforms, to ensure transparency and accountability of content, and protect users from disinformation (by July 2018).
- An independent **European Network of fact-checkers** to act as trusted flaggers of disinformation, supported by a **secure online platform** facilitating access to reliable EU wide data.
- **Support for quality journalism** across Member States to foster a pluralistic media environment.
- **Improving media literacy** through support for educational initiatives and targeted awareness raising campaigns.

The Commission proposes to review progress on these actions by year end (Dec 2018) and Ireland will support the Commission's work in this regard.

6. Continue to advance national level media literacy initiatives (*Broadcasting Authority of Ireland, Department of Education and Skills*)

Proposals to maintain and improve our high levels of media literacy, and ensure Irish people are empowered to understand and identify credible information online include:

- Developing and advancing education initiatives to ensure media literacy forms part of the curriculum at primary and post-primary levels and also at third level
- Continuing to implement and support ongoing development of the BAI Media Literacy Policy

7. Enhance cyber security measures around the electoral process including the possibility of the NCSC providing advice to political parties (*Department of Communication, Climate Action and Environment; Department of Housing, Planning and Local Government*)

- The National Cyber Security Centre (NCSC) to engage with the Department of Housing, Planning and Local Government to ensure appropriate safeguarding of the electronic aspects of the electoral register.
- The NCSC should also be consulted and invited to provide an appropriate level of input in respect of scoping work for the modernisation of the voting registration process (under 1 above).
- Improve awareness of cybersecurity across Government, industry organisations, academia, civil society organisations etc.
- It is recommended the NCSC offer political parties and politicians advice in relation to their own and their party's cyber security. It would of course be a matter for the individual politicians and parties as to whether they wish to receive such advice and what they might wish to do on foot of such advice.

Next steps

In light of the pressing nature of these issues, the following next steps are suggested:

- Expedite the establishment of an Electoral Commission (no.1 above) and
- Regulate transparency of online political advertising (no.3 above)

These matters to be considered, in the first instance, by way of an Open Policy Forum involving political parties, industry organisations, academia, civil society and NGOs in addition to formal engagement with the Oireachtas.

Appendix 1. Ireland's Electoral Process

Inclusion on Register of Electors

In order to be able to vote at an election or referendum, a person's name must be entered on the register of electors for the locality in which the elector ordinarily resides. Registration authorities (city, county and city and county councils) are required by law to prepare and publish a register of electors every year. The register comes into force on 15 February and is used at each election and referendum held in the succeeding 12 months. Any person wishing to correct their details on the register may do so by completing form RFA 1, which is available from registration authorities or to download from www.checktheregister.ie. While every adult resident is entitled to be registered, a person's citizenship then determines the elections at which a person may vote.

- Irish Citizens may vote at every election and referendum;
- British Citizens may vote at Dail, European and local elections;
- Other EU Citizens may vote at European and local elections;
- Non-EU Citizens may vote at local elections only.

Postal Voting

Postal voting is provided for in electoral law in respect of certain categories of person who are entered in the register of electors:

- whole-time members of the Defence Forces;
- members of the Garda Síochána (police force);
- Irish diplomats serving abroad and their spouses or civil partners;
- electors living at home who are unable to go to a polling station to vote because of a physical illness or physical disability;
- electors whose occupation, service or employment makes it likely that they will be unable to vote in person at their local polling station on polling day and full-time students registered at their home who are living elsewhere while attending an educational institution in the State;
- certain election staff employed at the poll outside the constituency where they reside; and
- electors who because of the circumstances of their detention in a prison pursuant to an order of the court are likely to be unable to go in person on polling day to vote.

Special Voting

Special voting is provided for in electoral law in respect of electors with a physical illness or physical disability living in hospitals, nursing homes or similar institutions who wish to vote at these locations. In order to qualify, an elector's physical illness or physical disability must be likely to continue for the duration of the register and prevent him/her from going to a polling station to vote. Electors on the

special voters list vote at the hospital, nursing home etc. where they are residing by marking a ballot paper delivered to them by a special presiding officer accompanied by a Garda.

Voters with Disabilities

Special arrangements are in place to assist electors with certain disabilities to exercise their voting rights:

- voting at an alternative polling station if a person's local station is inaccessible;
- postal voting by electors living at home who cannot go to the polling station due to a physical disability or illness;
- special voting facilities provided in hospitals, nursing homes or similar institutions for residents who cannot go to the polling station due to a physical disability or illness;
- assistance in voting at the polling station by a companion or by the presiding officer for people with a visual impairment, physical disability or literacy difficulty;
- the use of photographs and party political emblems on ballot papers to assist visually impaired people and people with literacy difficulties; and
- the display of a large print copy of the ballot paper in polling stations to further assist visually impaired people and people with literacy difficulties.

Supplement to the Register

Provision is also made in electoral law for inclusion in the supplement to the register. If a person is not included in the register of electors currently in force but considers that he or she qualifies for registration - for example if they have come of age to register or if they have changed address - the person may apply for entry in the supplement to the register which is open year round subject to certain practical limits in the weeks before a polling day. A person who is not on the register may apply for inclusion on the supplement to the register up to 15 days before polling day (not including Sundays, Good Friday or Public Holidays) in order to vote at that particular election or referendum. An applicant for inclusion in the supplement must apply directly to his or her registration authority.

Supplement to Postal and Special Voters lists

Electors who are eligible for, but not already included in, the postal or special voters list, may apply for entry in the relevant supplement to these lists which are published prior to each election and referendum.

The latest date for receipt of supplement applications by registration authorities before a poll is two days after the date of dissolution of the Dáil in the case of a general election and two days after the polling day order is made in the case of a Dáil bye-election. In the case of a Presidential, European or local election or a Referendum an application must be received by the registration authority at least 22 days before polling day (not including Sundays, Good Friday or Public Holidays) in order to be considered for that election or referendum. However, as in the case of ordinary supplement to the register, an application for inclusion in the postal and special voters supplement can be made at any time once the elector is eligible for entry on the supplement.

Polling and Counting of Votes

The poll

Polling places are appointed by city, county and city and county councils. The returning officer provides polling stations at each polling place. Schools or public buildings are normally used. The returning officer is responsible for the organisation of the poll, printing of ballot papers and counting of votes in

each constituency. The returning officer must send a polling information card to each voter informing the voter of his or her number on the register of electors and the polling station at which he or she may vote. It is an offence to interfere with a polling card or to use a polling card at a polling station which is not addressed to the person presenting it. The returning officer also makes the necessary arrangements for voting by postal and special voters.

At each polling station the poll is taken by a presiding officer assisted by a poll clerk. Each candidate may be represented at a polling station by a personation agent who assists in the prevention of electoral offences.

Voting

On polling day, the elector applies for a ballot paper in the polling station by stating his or her name and address. The elector may be required to produce evidence of identity and, if they fail to do so, will not be permitted to vote.

The following documents are acceptable for identification purposes:

- a passport;
- a driving licence;
- an employee identity card containing a photograph;
- a student identity card issued by an educational institution and containing a photograph;
- a travel document containing name and photograph;
- a Bank or Savings or Credit Union book containing address in constituency or local electoral area;
- a Public Services Card;

OR

the following items, accompanied by a further document which establishes the address of the holder in the constituency or local electoral area -

- a cheque book;
- a cheque card;
- a credit card;
- a birth certificate;
- a marriage certificate.

Where the presiding officer is satisfied as to the elector's identity, a ballot paper is stamped with an official mark and handed to the elector. The elector votes in secret in a voting compartment. Persons with a visual impairment, a physical disability or literacy difficulties may be assisted by the presiding officer or by a companion. The presiding officer may order the arrest of any person suspected of committing an electoral offence.

The Count

All Elections:

All ballot boxes are taken to a central counting place for each constituency. The count takes place in a public, open, secure and transparent manner with Garda presence and also in the presence of election candidates, their agents and deputy agents, members of the Oireachtas, representatives from political parties, bodies approved by a Referendum Commission at a referendum, members of the public, the media as well as possible independent election observers.

The count commences at 9:00 a.m. on the day after polling day. Before the commencement of the count, the postal voters ballot boxes are opened in the presence of the agents of election candidates; ballot boxes contain both postal and special voting documents. At the commencement of the count, all ballot boxes are opened in the presence of the agents of election candidates and the number of ballot papers checked against returns furnished by the presiding officers. The local returning officer then mixes together the whole of the ballot papers from all ballot boxes (invalid papers being rejected) and thereafter the ballot papers are counted and sorted into parcels in accordance with the vote recorded on them. Spot checks are carried out on parcels of ballot papers to ensure that the accuracy of the count is maintained.

Referendums:

The votes are counted in the individual Dáil constituencies at a designated count centre. Specifically, in the context of a Constitutional referendum, the votes for and against the proposal are counted and the result is reported by the local returning officer immediately upon completion in the constituency to the Referendum Returning Officer at the national count centre. The result is sent on a prescribed form either by email or by fax. The form is checked by the Referendum Returning Officer and confirmed with the local returning officer. After verification with the local returning officers, the results for each constituency are made public at the national count centre and may also be announced at the local count centre.

At any time during the count at a referendum, an agent appointed by a member of the Oireachtas may require a local returning officer to recount the votes recorded on all the ballot papers or in a parcel of ballot papers. Separately, a local returning officer may also, at his/her discretion, order a recount if he/she is not satisfied as to the accuracy of the count. Lastly, the Referendum Returning Officer may direct any or all local returning officers to re-examine and recount all the ballot papers in a constituency or constituencies as the case may be.

Based on the local returning officers' reports from each constituency and when all have been received and checked, the Referendum Returning Officer will announce the result of the referendum. The reports from the local returning officers are collected at the end of the count and delivered by members of the Defence Forces to the Referendum Returning Officer. The Referendum Returning Officer will draw up a provisional referendum certificate stating the results of the voting and indicating whether or not the proposal has been approved. The provisional certificate is published in *Iris Oifigiúil*. Within 7 days after formal publication, any presidential elector may apply to the High Court for leave to present a petition questioning the provisional certificate. If no petition is presented, the certificate becomes final and, if it shows that the majority of the votes cast were in favour of the proposal, the relevant Bill will be signed by the President and the Constitution will be amended accordingly.

Recount

A returning officer may recount all or any of the papers at any stage of a count. A candidate or the election agent of a candidate is entitled to ask for a recount of the papers dealt with at a particular

count or to ask for one complete recount of all the parcels of ballot papers. When recounting, the order of the papers must not be disturbed. If a significant error is discovered, the papers must be counted afresh from the point at which the error occurred.

Results

When the count is completed, the returning officer declares the results of the election, endorses the names of the elected members on the writ issued to him or her by the Clerk of the Dáil and returns the writ.

Table 1.

Electoral Act 1992 – Register of Electors – Key Provisions		
Mitigation Factors	Part II	Second Schedule
Prohibition of duplicate entries on the register.	Section 11(1)	
Power to make house-to-house enquiries and to require documentary evidence.		Rule 5
Publication of draft register for public consultation, i.e. 1 November each year.		Rule 5
Draft register for relevant registration area sent to Minister, County Registrars, postmasters, TDs, senators, MEPs and councillors.		Rule 6
Deadline for claims to correct the draft register, i.e. 25 November each year.		Rule 7
Publication of list of claims, i.e. 30 November each year		Rule 7
Consideration and adjudication of claims or corrections by County Registrar.		Rules 8 & 9
Right to object to a claim or correction.		Rule 11
Corrections to draft register, i.e. decision by 23 December each year.		Rules 10 & 12
Right of appeal against claim or correction.	Section 21	
Publication of register, i.e. 1 February each year.		Rule 13
Register for relevant registration area sent to Minister, County Registrars, postmasters, TDs, senators, MEPs and councillors.		Rule 13
Provision of copies of the register for relevant register area, free of charge, to presidential candidates, Dáil candidates, European candidates, local authority candidates or to their agents.		Rule 14
Supplement to the register requires the applicant to sign the form in the presence of a member of the Garda Síochána or in the presence of an official from the relevant registration authority.		Rule 14A
Availability of register for inspection in the offices of the registration authority, the offices of the county registrar, post offices, garda stations, health centres and such other places as may be specified by the registration authorities.		Rule 25
Offences – (a) Provision of false or misleading information, (b) uses the register for any purpose other than for electoral or other statutory purpose and (c) wilfully destroys or mutilates a copy of the register or draft register when available for public inspection.	Section 133	

Table 2.

Electoral Act 1992 – Taking the poll and the counting of votes – Key Provisions¹⁹	
Mitigation Factors	Section
Appointment of returning officers to be county registrars, county sheriffs and city sheriffs.	30
Duties of returning officers.	31, 76 & 84
Voting by post	65
Presence of election agents, deputy agents, election candidates, members of the Garda Síochána at the issue of postal ballots and the opening of postal votes.	67 & 113
Opening and sealing of postal ballot boxes.	69, 72 & 73
Voting by special voters.	79, 80, 81 & 81
Duties of special presiding officers.	83
Official mark on ballot papers.	89
Security of ballot boxes.	90, 91 & 97
Ballot paper checks.	101
Measures to address personation.	104 & 105
Powers to maintain public order at polling stations.	106
Powers to address the obstruction of the poll at polling stations.	107
Damage to polling stations.	108
Destruction of ballot boxes or ballot papers.	109
Procedures to be followed at close of poll.	110
Requirement to produce identification if requested.	111
Attendance at the counting of the vote.	113
Opening of the ballot boxes, mixing of the ballot papers and the counting of the vote.	114, 115, 116 & 117, 119, 120, 121, 122, 123 & 124
Provision for a recount.	125
Declaration and notice of result	126 & 127
Retention, inspection and disposal of election documents.	129, 130 & 131
Offences and penalties	Part XXII

¹⁹ The provisions set out apply in respect of Dáil elections; analogous provisions are provided for in the Presidential Elections Acts, Referendum Acts and European Parliament Elections Acts.

Table 3.

Electoral Act 1997 –Key Provisions²⁰	
Mitigation Factors	Section
Requirement to provide Exchequer Expenditure Statements by political parties.	20
Reimbursement of election expenses of candidates and Statements of Election Expenses.	21
Limitation on anonymous donations, i.e. greater than €100.	23 & 47
Donation thresholds.	23A & 48A
Limitation on donations from Corporate Donors.	23AA & 48AA
Donations by intermediaries.	23AB & 48AB
Opening of political donation accounts, i.e. on acceptance of a donation greater than €100.	23B & 48B
Registration of third parties.	23C & 48C
Registration of Corporate Donors.	23D
Making of Donation Statements.	24 & 48
Prohibited donations.	24A & 48A
Reporting requirements on companies, trade unions and other corporate entities making donations.	26
Limitation of election expenses.	32, 33 & 53
Requirement to provide Statements of Election Expenses.	36 & 56
Offences and penalties.	4A, 25 & 61
Annual Statements of Accounts by political parties.	84, 85, 86, 87, 88 and 90

²⁰ The political donations regime applies in respect of Dáil, Seanad, Presidential and European Parliament elections; expenditure thresholds do not apply in respect of Seanad elections; analogous provisions are provided for in the Local Elections (Disclosure of Donations and Expenditure) Acts in respect of local government elections.

Appendix 2. Funding of Elections/Referendums

Political Donations

The Electoral Act 1997 (as amended) introduced a new system for controlling and limiting election expenditure by political parties and candidates. Since the commencement of the Act, parties and candidates must account for all that they spend on an election, including expenditure on advertising, promoting the party, opposing other candidates and soliciting votes. The election period starts on the date of the dissolution of the Dáil and runs to polling day, including both dates.

The 1997 Act sets down limits so that candidates are only allowed to spend a certain amount on elections. The maximum that a candidate can spend on a Dáil election is €45,200 per candidate in a five-seat constituency, €37,650 per candidate in a four-seat constituency and €30,150 per candidate in a three-seat constituency.

The 1997 Act also created a system of reimbursement of election expenses. If a candidate received at least one-quarter of the quota of votes for the constituency in which he or she ran, he or she may apply for a reimbursement of up to €8,700 of his or her election expenses.

Spending at Referendums

There are no spending limits at referendums. However, the Referendum Act 1998 provides for the establishment of a Referendum Commission and it is provided with public funding to carry out its statutory responsibilities. There is no publicly-funded Government information campaign for referendums and the Government is not entitled to spend public money for the purpose of promoting a campaign for a particular outcome.

Enforcement

Role of the Standards in Public Office Commission

The Standards in Public Office Commission is an independent body which has a supervisory role under the: -

- Ethics in Public Office Act 1995 as amended by the Standards in Public Office Act 2001, (the Ethics Acts).
- Electoral Act 1997, as amended, (the Electoral Acts)
- Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014, (the Parliamentary Activities Allowance Act)
- Regulation of Lobbying Act 2015.

The Commission produces various guidelines and codes of conduct to support compliance with the requirements set out in the above Acts. In relation to the Electoral Acts specifically, the Commission has published guidelines for political parties on the preparation of their Annual Accounts, guidelines on Dáil, Seanad and European Parliament elections, guidelines for political parties, TDs, Senators and MEPs on political donations and prohibited donations. It also maintains the registers of political parties, corporate donors and third parties and publishes donation statements and political party accounts. The Commission also performs a wide range of functions under the other aforementioned Acts.

Appendix 3. Electoral Commission

Following publication of a consultation paper on the establishment of an Electoral Commission in Ireland by Department of the Environment, Community and Local Government in 2015, the Joint Committee on Environment, Culture and the Gaeltacht conducted a public consultation process on the establishment of an Electoral Commission (January 2016).

The Report of the above Committee summarises the evidence received and heard, highlighting key issues, policies and contains recommendations regarding the establishment of an Electoral Commission, including functions that can be assigned to it, independence, membership and accountability mechanisms; and the establishment process.

The report also outlines voter turnout and voter education as matters in need of attention and the Committee recommended the development and implementation of policy on voter facilitation measures and the development and implementation of innovation ways to enhance vote reduction and engagement be assigned as functions to the Electoral commission.

The report proposes the following functions of an Electoral Commission:

- The Register of Political Parties;
- The operational role of the Franchise Section of the Department of the Environment, Community and Local Government;
- A policy development and advisory role which is deeper and broader than the policy role currently undertaken by the Franchise Section of the Department of the Environment, Community and Local Government.
- The regulation of political funding and election expenditure currently carried out by Standards in Public Office Commission (“SIPO”) at the national level;
- A support and advisory role to local authorities in their regulation of political funding and election expenditure at a local level;
- The functions of Referendum Commissions (with the independence of the referendum information campaign a key consideration in the assignment of functions as discussed in Section 2 of this report);
- The functions of the Department of the Environment, Community and Local Government in providing the secretariat to the Constituency Commission and the Local Electoral Area Boundary Committees.

The Committee felt that the Electoral Commission should take on a broader policy development role to address gaps in electoral policy planning and development. As such, it could be assigned the following statutory duties:

- To conduct independent research on electoral policy which will inform Government and Parliament in their consideration of reform to electoral law and which will inform the public;
- To develop and implement policy on voter facilitation measures (including removing obstacles to registration) and to make recommendations on any legislative change needed for this purpose;
- To develop and implement innovative ways to enhance voter education; and engagement;
- To collate and publish timely results of elections.

To strengthen the input of expert policy analysis into the development of electoral policy, the legislation could assign to the Electoral Commission:

- The right to be consulted by Government on all proposals concerning electoral law and the right to make recommendations in response;
- The duty to report annually on proposals for reform of electoral law;
- The power to trial proposed reforms (within constitutional and legislative limits and without risking any compromise of the election or referendum process); and
- Other powers of oversight and reform with regards to the Electoral register and organising elections (outlined below).

Functions not to be transferred:

- Certain aspects of policy – legislative development and support for the Minister – would remain with the Department of Housing, Planning and Local Government;

Work is ongoing in the Department of Housing, Planning and Local Government in preparing, in the first instance, a Regulatory Impact Analysis for the Bill, which is expected to be completed in the autumn 2018. In this context, the Report of the Joint Committee on the Consultation on the Proposed Electoral Commission 2016 is informing the implementation of the commitment in A Programme for a Partnership Government on establishing an Electoral Commission and the preparation of an Electoral Commission Bill to give effect to that commitment.

Responsibility for Electoral Register

Many submissions and witnesses identified the electoral register as in urgent need of reform in order to overcome the problems associated with inaccuracies and incompleteness.

The Committee is of the view that oversight and responsibility for reform of the electoral register should be assigned to an Electoral Commission, requiring it to investigate and make recommendations on how best practice can be adopted universally and improvements implemented (including legislative change), whilst leaving the operational aspects to local authorities in the medium term and (perhaps) the long term.

It is felt that this approach may be optimal in combining the operational strengths of the present system, including the knowledge and experience of the current registration authorities, with the expertise, co-ordinating skills and authority of a body specifically charged with reforming the electoral register.

Appendix 4. **Traditional Print and Broadcast Media, On-Demand and Video Sharing Platform Services**

The Broadcasting Act 2009 and S.I.'s 25/2010 and 247/2012 give effect in Irish law to the provisions of EU law which apply to the regulation of Audio-visual Media Services Directive (2010/13/EU) and the EU's Audio-visual Media Services Directive (AVMSD), sets the minimum standards for audio-visual media services, both traditional TV broadcasts and on-demand services in the EU.

Two types of Audio-visual Media Services are covered by the current Directive – linear (or traditional television) and non-linear (or on-demand services such as the RTÉ Player, Apple's iTunes store etc). The current Directive does not provide for any further regulation of online services or internet companies, although Video Sharing Platform Services (such as YouTube for example) will be regulated to a limited extent in the revised Directive which is currently being negotiated. Further details in respect of this are provided in the section on Video Sharing Platform Services below.

The AVMS Directive sets the minimum standards for audio-visual commercial communications i.e. “images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity.” There is no provision for regulation of political advertising or communication.

The Directive also provides that the Country of Origin principle applies to the provision of audio visual media services. This means that a provider must only be regulated in its country of establishment, and is then free to provide its services in all Member States.

In May 2016 the Commission published its proposal to review the Directive, and this is being debated at Trilogue at present. Political agreement on this file was reached in April 2017 and it has been indicated that a final text will be agreed early in Q4 2018. Following this anticipated agreement, Member States will have two years to transpose the provisions of the revised Directive into national law.

Linear Service Providers (traditional TV/Radio)

The Broadcasting Act 2009 (the Act) established the Broadcasting Authority of Ireland as the independent regulator of the Broadcasting (linear) sector in Ireland. S 41 (3) of the Act provides that a broadcaster shall not broadcast an advertisement that is directed towards a political end, though under S 41 (5) party political broadcasts are permitted, as are advertisements broadcast at the request of the Referendum Commission (S 41(6)).

Section 42(1) of the Act provides that the BAI shall prepare, and revise as required, codes governing standards and practice to be observed by broadcasters. Of specific relevance are the General Commercial Communications Code which gives effect to the prohibition in the Broadcasting Act of political advertising, and the Code of Fairness, Objectivity and Impartiality which applies to the news and current affairs content of broadcasters. Rule 27 of the Code of Fairness, Objectivity and Impartiality provides that broadcasters will comply with additional guidance issued from the BAI in respect of the coverage of referenda. The latest version of these codes were published by the BAI on

13 March 2018. The Codes include reference to the need for broadcasters to ensure that on-air references to social media are accurate, fair, objective and impartial.

It should be noted that the Codes do not apply to broadcasters that are established in another member state. In practice, this refers to channels licensed in Britain that are broadcast in Ireland.

Certain providers based in the UK voluntarily adhere to the moratorium in respect of coverage before a referendum but they and other channels are not obliged to do so. As these services are licensed by OFCOM, who have similar robust broadcasting codes in place, the possible impact of this vulnerability at present is low.

As the AVMSD provides the basic framework for the cross-border regulation of media within the EU, and the UK is leaving the EU, the risk from linear services may increase in future if an alternative and similar regulatory regime is not agreed between the EU and UK.

Non-Linear Service Providers (On-demand)

Non-linear services are regulated by means of co-regulation by the On-Demand Audiovisual Services Group (ODAS). This group was established by S.I. No 258 of 2010, and its secretariat is provided by the Irish Business and Employers' Confederation (IBEC).

While membership of ODAS is voluntary, the terms of its code apply to all non-linear services made available in Ireland. While the code is operated by ODAS, any revisions to this code must be approved by the Broadcasting Authority of Ireland and if a complainant is unsatisfied with the resolution of a dispute under the code they may bring their complaint to the Authority. These provisions reflect the co-regulatory approach to the regulation of non-linear service providers. The code provides that only the basic requirements set down in the AVMSD apply to on-demand service providers. This means that the additional requirements in regard to news and current affairs and the prohibition of political advertising do not apply to non-linear service providers in Ireland.

While Ireland's current approach to the regulation of non-linear service providers is co-regulation, the review of the AVMSD which is currently underway will likely require a shift in that approach. One of the core objectives of the Commission's review is that linear and non-linear service providers will be subject to the same level of regulation by Member States.

Video Sharing Platform Services (VSPS).

The revision to the AVMS will for the first time require Member States to ensure that VSPS (YouTube for example) that are established in their territory have certain measures in place to ensure that users, but especially minors, are protected from accessing harmful content online.

Similar content rules which apply to commercial communications on linear or non-linear services will also apply to audio-visual commercial communications which are under the control of the VSPS (pre-roll advertisements on YouTube for example). These rules will prohibit for example the advertising of tobacco or tobacco related products. No prohibition will exist at EU level for political advertising.

The AVMS only applies to audio-visual content, and not how that content may be matched or targeted at a group of individuals.

Any provisions in the revised Audio-visual Media Services Directive (AVMS) will apply to the audio-visual content and not how that may or may not be matched to or targeted at a group of individuals.

These new rules will for the most part require VSPS to allow users to flag content which they believe breaches the rules of the Directive, and that the VSPS will then take steps to remove that content if they are in agreement with the user who flagged the content.

In practice, for the larger VSPS, the AVMS itself will have little effect, although this will depend on the final outcome of the negotiations. These companies already operate on the basis of terms and conditions of service. If a user feels that content breaches those terms and conditions, they can “flag” that to the service provider who will then review the material and take appropriate action. These are referred to as the “notice and take down” procedures, and these procedures have been the subject of a separate Commission recommendation in respect of illegal content.

That recommendation is likely to have a far greater impact than the AVMS rules, which for the most part reflect in legislation what VSPS – at least the larger ones - already have in place.

Print Media

Regulation of the print media in Ireland is overseen by the Press Council and Press Ombudsman on a self-regulatory basis. In addition, the Minister for Communications, Climate Action and Environment has responsibility for certain aspects of media policy within Government, specifically in relation to media mergers. This involves the assessment of the potential impact on the plurality of media in the State of a proposed merger between two media businesses and ultimately a decision by the Minister as to whether the merger is in the public interest.

Print media organisations face the same financial risks being experienced by the broadcasting media sector – and similar potential consequences to the standards of analysis and comment on news and current affairs including the electoral process apply.

A key difference between the Print and Broadcasting sectors is that print media are free to editorialise i.e. a newspaper may support or oppose an outcome of a referendum for example. However, they are subject to the Code of Practice of the Press Council of Ireland, which is a voluntary regulatory body of which the vast majority of Irish print media are members.

Press Council of Ireland

The Press Council of Ireland operates in tandem with the Office of the Press Ombudsman to ensure that standards are upheld in the print media sector in Ireland.

The Office of the Press Ombudsman receives complaints from members of the public and seeks to resolve them by conciliation or mediation to the satisfaction of everyone concerned. Where conciliation or mediation is not possible, the Press Ombudsman will make a decision on the complaint based on the Code of Practice.

The Press Council of Ireland is responsible for the oversight of the professional principles embodied in the Code of Practice, and with upholding the freedom of the press. It operates with the support and cooperation of member publications and journalists. It decides on appeals from decisions of the Press Ombudsman and on complaints referred to it directly by the Press Ombudsman. It is independent of both government and media.

Limitations to the Code of Practice

Complaints cannot be considered regarding publications which are not members of the press Council of Ireland, Broadcasting or advertising.

Appendix 5. Cyber Security

Cyber-attacks can occur against any infrastructure that is on a connected network. The Irish electoral system is largely based on a paper based system, but elements of the electoral system are at risk, such as the electoral register.

EU Initiatives relating to Cyber Security

The EU has taken a series of broad measures with regard to Cyber Security, including the adoption of a number of Cyber Security Strategies and the publication of a recent Cyber Security Package (September 2017). There have also been two specific legislative measures published in draft, one of which, the Network and Information Security Directive (Directive (EU) 2016/1148) was adopted in 2016. The other measure, the 'Cyber Security Act' was published in September 2017 and remains under discussion in the Council.

Because of the cross cutting and dynamic nature of Cyber Security, the Council has established a Horizontal Working Party (HWP) on Cyber Security, which collates all of the issues relating to Cyber Security from across the various different meeting formations. This provides a forum for the discussion of cyber related matters from diverse parts of the Council, including Justice and Home Affairs, Political and Security Committee and Telecoms.

The EU has established a high level group to coordinate cyber security matters under Article 11 of the Network and Information Security Directive, called the Cooperation Group. The primary roles of this group are to support and facilitate strategic cooperation and the exchange of information among Member States. As part of this, the group has been asked by the European Parliament to examine the resilience of the electoral process across Europe, and to produce a report outlining the types of challenges that emerge in this space and those measures that might be taken to mitigate them. The Group has established a workstream on this matter, which has met on a number of occasions already and will produce a report shortly.

Appendix 6. General Data Protection Regulation (GDPR)

Data Protection

The key legislative frameworks in Ireland for the protection of personal data are:

- the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679);
- the “Law Enforcement Directive” (Directive (EU) 2016/680) which has been transposed into Irish law by way of the Data Protection Act 2018;
- the Data Protection Acts 1988 and 2003;
- the Data Protection Act 2018;
- the 2011 “e-Privacy Regulations” (S.I. No. 336 of 2011).

The General Data Protection Regulation (GDPR) has general application to the processing of personal data in the EU, setting out more extensive obligations on data controllers and processors, and providing strengthened protections for data subjects.

The GDPR is directly applicable as law in all EU Member States. It was transposed into Irish law and certain matters were given further effect in the Data Protection Act 2018. The GDPR applies by default to the majority of personal data processing. Further rules on certain issues (for example the reasons for, and extent to which, data subject rights may be restricted) are set out in the Data Protection Act 2018.

In some instances, depending on the nature and circumstances of the personal data processing, the type of personal data being processed, or when the data protection issue occurred, the GDPR will not apply and instead another legal framework concerning the regulation of the processing of personal data may apply. For example, if the processing of personal data is carried out the prevention, investigation, detection or prosecution of a criminal offence or the execution of criminal penalties then the Law Enforcement Directive will apply – it has been transposed into Irish law by the Data Protection Act 2018.

The processing of personal data in the context of certain electronic communications (including, amongst other things, unsolicited electronic communications made by phone, e-mail, and SMS) is subject to the general laws set out in the GDPR and the specific laws set out in the e-Privacy Regulations.

The GDPR

The GDPR sets out additional and more clearly defined rights for individuals whose personal data is collected and processed by organisations. The GDPR also imposes corresponding and greatly increased obligations on organisations that collect this data.

Personal data is any information that can identify an individual person. This includes a name, an ID number, location data (for example, location data collected by a mobile phone) or a postal address, online browsing history, images or anything relating to the physical, physiological, genetic, mental, economic, cultural or social identity of a person.

The GDPR is based on the core principles of data protection which exist under the current law. These principles require organisations and businesses to:

- collect no more data than is necessary from an individual for the purpose for which it will be used;
- obtain personal data fairly from the individual by giving them notice of the collection and its specific purpose;
- retain the data for no longer than is necessary for that specified purpose;

- to keep data safe and secure; and
- provide an individual with a copy of his or her personal data if they request it.

Under the GDPR individuals have the significantly strengthened rights to:

- obtain details about how their data is processed by an organisation or business;
- obtain copies of personal data that an organisation holds on them;
- have incorrect or incomplete data corrected;
- have their data erased by an organisation, where, for example, the organisation has no legitimate reason for retaining the data;
- obtain their data from an organisation and to have that data transmitted to another organisation (Data Portability);
- object to the processing of their data by an organisation in certain circumstances;
- not to be subject to (with some exceptions) automated decision making, including profiling.

Organisations and businesses collecting and processing personal data will be required to meet a very high standard in how they collect, use and protect data. Organisations must always be fully transparent to individuals about how they are using and safeguarding personal data, including by providing this information in easily accessible, concise, easy to understand and clear language.

The Data Protection Commission

Under the GDPR and the Data Protection Acts the Data Protection Commissioner is responsible for monitoring the application of the GDPR in order to protect the rights and freedoms of individuals with regard to the processing of their data.

The tasks of the Data Protection Commission include handling complaints lodged by data subjects, promoting public awareness of the rules, risks, safeguards and rights in relation to data processing and co-operating with other EU data protection authorities.

For organisations and businesses who breach the law, the Data Protection Commission has been given more robust powers to impose very substantial sanctions, including the power to impose substantial fines. The GDPR also permits individuals to seek compensation through the courts for breaches of their data privacy rights, including in circumstances where no material damage or financial loss has been suffered.

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