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# The independence of media regulatory authorities in Europe

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Tarik Jusić, Beata Klimkiewicz, Carles Llorens, Krisztina Rozgonyi,  
Sara Svensson, Tanja Kerševan Smokvina, Gijs van Til**



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## 8. IE – Ireland

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### 8.1. Introduction

In the latest research on the Irish media landscape, the broadcast media market has been described as mature and competitive, and characterised by a relatively small population sharing a language with much larger markets (UK and US).<sup>269</sup> The public service broadcaster RTÉ is the main TV broadcaster, operating four national channels (RTÉ One, RTÉ2, RTÉ News Now and RTÉjr), followed by the national commercial broadcaster Virgin Media Ireland, operating Virgin One, Virgin Two, and Virgin Three. There is also the public service broadcaster TG4, providing an Irish-language channel. There are four pay TV operators, led by Sky and Virgin, and nearly two-thirds of Irish TV households pay a monthly subscription for TV.<sup>270</sup> Around a third of Irish households subscribe to monthly subscription Video on Demand services such as Netflix.<sup>271</sup> There are currently 34 commercial radio stations and 22 community stations in Ireland. RTÉ is the leading radio broadcaster, with four national stations (RTÉ Radio 1, RTÉ 2FM, Raidió na Gaeltachta, and RTÉ lyric fm). Communicorp operates the two national commercial radio stations (Today FM and Newstalk). The leading Irish newspaper is the *Irish Independent*, while TheJournal.ie is the most popular news website, followed by RTÉ online (rte.ie), and the *Irish Independent* online (independent.ie).<sup>272</sup> Two international non-governmental

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<sup>269</sup> Mediatique, “A report on market structure, dynamics and developments in Irish media” (Broadcasting Authority of Ireland, 2017), p. 2, [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/04/180410-Mediatique-Report.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/180410-Mediatique-Report.pdf). See also Robert Kenny and Robin Foster, “Ownership and control of media businesses in Ireland, 2015-17” in Broadcasting Authority of Ireland, *Report on Ownership and Control of Media Businesses in Ireland 2015-2017*, Annex 1, 30 January 2019, <https://www.dccae.gov.ie/en-ie/communications/publications/Pages/BAI-Report-on-Ownership-and-Control-of-Media-Businesses-2015-2017.aspx>; and RTÉ, “The Media Landscape in Ireland: An Overview” (RTÉ, 2017), <https://static.rasset.ie/documents/about/2017/10/the-media-landscape-in-ireland.pdf>.

<sup>270</sup> Mediatique, “A report on market structure, dynamics and developments in Irish media” (Broadcasting Authority of Ireland, 2017), p. 2, [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/04/180410-Mediatique-Report.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/180410-Mediatique-Report.pdf).

<sup>271</sup> Mediatique, “A report on market structure, dynamics and developments in Irish media” (Broadcasting Authority of Ireland, 2017), p. 2, [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2018/04/180410-Mediatique-Report.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2018/04/180410-Mediatique-Report.pdf).

<sup>272</sup> Culloty E., Cunningham K., Suiter J. and McNamara J. (2018), *Reuters Institute Digital News Report 2018 (Ireland)* (Dublin City University & Broadcasting Authority of Ireland), p. 8,



organisations, Reporters Without Borders and Freedom House, rank Ireland in the top 20 of their global media freedom indices, but also note the “highly concentrated nature of media ownership in Ireland continues to pose a major threat to press freedom”.<sup>273</sup>

The main legislation on broadcasting and on-demand audiovisual media comprises the Broadcasting Act 2009,<sup>274</sup> the European Communities (Audiovisual Media Services) Regulations 2010,<sup>275</sup> and the European Communities (Audiovisual Media Services) (Amendment) Regulations 2012.<sup>276</sup> In early March 2019, the Irish government launched a public consultation on the implementation of the revised 2018 AVMS Directive, and indicated primary legislation will be required for its implementation.<sup>277</sup>

## 8.2. Broadcasting Authority of Ireland

The national regulatory authority for audiovisual media services in Ireland is the Broadcasting Authority of Ireland (BAI), which was established in 2009, and replaced the previous Broadcasting Commission of Ireland and the Broadcasting Complaints Commission. The BAI sits in Dublin, and consists of an Authority, a Contract Awards Committee, and a Compliance Committee. The functions of the BAI include licensing radio and television services, reviewing performance and public funding of public service broadcasters, awarding funding under the Broadcasting Funding Scheme, and ensuring compliance of broadcasters with broadcasting codes and rules.<sup>278</sup> The BAI has a limited role in relation to on-demand audiovisual media services. Under the European Communities (Audiovisual Media Services) Regulations 2010,<sup>279</sup> the BAI is required to develop, in co-operation with providers of on-demand audiovisual media services, the

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[https://fujomedia.eu/wp-content/uploads/2018/06/DNR\\_Final\\_Web-3.pdf](https://fujomedia.eu/wp-content/uploads/2018/06/DNR_Final_Web-3.pdf).

<sup>273</sup> See Reporters Without Borders, “Ireland”, <https://rsf.org/en/Ireland>; Freedom House, “Freedom of the Press 2017” (2017), p. 27, [https://freedomhouse.org/sites/default/files/FOTP\\_2017\\_booklet\\_FINAL\\_April28.pdf](https://freedomhouse.org/sites/default/files/FOTP_2017_booklet_FINAL_April28.pdf); and Freedom House, “Ireland”, <https://freedomhouse.org/report/freedom-press/2016/ireland>. See also, Roddy Flynn, “Monitoring Media Pluralism in Europe - Country Report: Ireland” (Centre for Media Pluralism and Media Freedom, 2018),

[http://cadmus.eui.eu/bitstream/handle/1814/61144/2018\\_Ireland.pdf?sequence=3&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/61144/2018_Ireland.pdf?sequence=3&isAllowed=y).

<sup>274</sup> Broadcasting Act 2009, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>.

<sup>275</sup> European Communities (Audiovisual Media Services) Regulations 2010, S.I. No. 258/2010,

<http://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>.

<sup>276</sup> European Communities (Audiovisual Media Services) (Amendment) Regulations 2012, S.I. No. 247/2012,

<http://www.irishstatutebook.ie/eli/2012/si/247/made/en/print>.

<sup>277</sup> Department of Communications, Climate Action & Environment, Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive - Explanatory Note, 1 March 2019, p. 2,

<https://www.dccae.gov.ie/en->

<ie/communications/consultations/Documents/86/consultations/Consultation%20Explanatory%20Note.pdf>.

<sup>278</sup> Broadcasting Act 2009, section 26. See Broadcasting Authority of Ireland, ‘About Us’,

<https://www.bai.ie/en/about-us/>.

<sup>279</sup> See European Communities (Audiovisual Media Services) Regulations 2010, S.I. No. 258/2010,

<http://www.irishstatutebook.ie/eli/2010/si/258/made/en/print>.



Code of Conduct on On-Demand Audiovisual Media Services.<sup>280</sup> The current Code provides that complaints over certain violations of the Code may be made to the self-regulatory Advertising Standards Authority for Ireland (ASAI),<sup>281</sup> and requires on-demand audiovisual media service providers to put in place complaint-handling procedures. The BAI accepts appeals against resolutions of complaints with regard to certain breaches of the Code.<sup>282</sup>

## 8.2.1. Legal distinctiveness and functional independence

The Broadcasting Act 2009 contains a number of provisions seeking to ensure the BAI is legally distinct from government, and functionally independent of government and any other body. First, section 7 establishes the BAI as a distinct statutory "body corporate", with its own power to sue, acquire, hold and dispose of land and other property, and with its own seal.<sup>283</sup> Second, section 31 sets out the BAI's statutory powers, including that the BAI has "all the powers necessary, incidental or conducive to [its] functions".<sup>284</sup> In a stand-alone provision, section 24 provides that, "[s]ubject to this Act, the Authority and each statutory committee shall be independent in the performance of their functions".<sup>285</sup> Further, each member of the Authority and the Committees is under a statutory obligation to "represent the public interest in respect of broadcasting matters".<sup>286</sup>

## 8.2.2. Impartial and transparent exercise of powers

In relation to ensuring that the BAI exercises its powers impartially and transparently, a number of rules and measures are relevant. First, section 22 of the Broadcasting Act 2009 contains rules on any conflicts of interest for BAI staff, and under section 23, the BAI is required to adopt a code of conduct on interests and ethical behaviour for staff. As such, the BAI has adopted its Code of Business Conduct to ensure that "all persons having dealings with the BAI are dealt with on a fair and equitable basis",<sup>287</sup> and also sets out the BAI's Anti-Bribery Policy.<sup>288</sup> BAI staff is also subject to legislation on ethics,<sup>289</sup> anti-

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<sup>280</sup> Code of Conduct On-Demand Audiovisual Media Services, <http://www.bai.ie/en/download/128548>.

<sup>281</sup> Advertising Standards Authority for Ireland, <https://www.asai.ie>.

<sup>282</sup> Code of Conduct On-Demand Audiovisual Media Services, Part 3, section 7, <http://www.bai.ie/en/download/128548>.

<sup>283</sup> Broadcasting Act 2009, section 7(1).

<sup>284</sup> Broadcasting Act 2009, section 31.

<sup>285</sup> Broadcasting Act 2009, section 24.

<sup>286</sup> Broadcasting Act 2009, section 9(2).

<sup>287</sup> BAI, Code of Business Conduct, 2018, [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2013/11/2018\\_CodeBusinessConduct\\_vFinal\\_SH.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2013/11/2018_CodeBusinessConduct_vFinal_SH.pdf).

<sup>288</sup> BAI, Code of Business Conduct, 2018, p. 11, [https://www.bai.ie/en/media/sites/2/dlm\\_uploads/2013/11/2018\\_CodeBusinessConduct\\_vFinal\\_SH.pdf](https://www.bai.ie/en/media/sites/2/dlm_uploads/2013/11/2018_CodeBusinessConduct_vFinal_SH.pdf).

<sup>289</sup> Ethics in Public Office Act 1995, <http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/html>; and Standards in Public Office Act 2001, <http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/html>.



corruption,<sup>290</sup> lobbying,<sup>291</sup> and whistle-blowers.<sup>292</sup> The BAI has a Policy on Whistleblowing,<sup>293</sup> and publishes a Protected Disclosure Annual Report detailing any whistle-blower disclosures.<sup>294</sup> The Standards in Public Office Commission also maintains a searchable online register of lobbying activities, detailing any registered lobbying of public officials, including the BAI's Designated Public Official.<sup>295</sup> Section 30 also provides that the Minister for Communications "shall not issue a communication in respect of the performance of the functions of the Authority, in respect of individual undertakings or persons", or "in respect of the performance of the functions of the Contract Awards Committee or the Compliance Committee".

In terms of transparency, the BAI publishes agendas and minutes of meetings, decisions on the award of licences, decisions on complaints, annual reports, financial accounts, corporate policy and reports, and purchase reports.<sup>296</sup> The BAI is also subject to the Freedom of Information Act 2014, and required to have a Publication Scheme, in order to make as much information as possible available to the public.<sup>297</sup> The BAI also publishes a log of FOI requests it receives, the information sought and decisions made by the BAI.<sup>298</sup>

### 8.2.3. Competences, powers and accountability

The competences and powers of the BAI are specifically enumerated in various provisions of the Broadcasting Act 2009, including: section 25 setting out the BAI's objectives; sections 26-27 setting out the functions of the BAI and its committees; section 31 setting out the BAI's powers; and section 32 setting out the duties of the BAI and its committees.<sup>299</sup> Further, the BAI's competences in relation to broadcast licensing are set out in Part 6 of the Broadcasting Act 2009, where, for example, the Authority, on the recommendation of the Contract Awards Committee, enters into "television programme service contracts" for the provision of television programme services; and in relation to the Broadcasting Fund in Part 10. The BAI also has a role in media merges, and its

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<sup>290</sup> Criminal Justice (Corruption Offences) Act 2018, section 17(9), <http://www.irishstatutebook.ie/eli/2018/act/9/enacted/en/>.

<sup>291</sup> Regulation of Lobbying Act 2015, <http://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/html>.

<sup>292</sup> Protected Disclosures Act 2014, <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html>.

<sup>293</sup> Broadcasting Authority of Ireland, "BAI Policy on Whistle-blowing", <http://www.bai.ie/en/download/129356/>.

<sup>294</sup> Broadcasting Authority of Ireland, "Protected Disclosure Annual Report", 26 June 2018, <http://www.bai.ie/en/download/132984>.

<sup>295</sup> Standards in Public Office Commission, "Register of Lobbying", <https://www.lobbying.ie>.

<sup>296</sup> See Broadcasting Act 2009, sections 38 and 45. The BAI also publishes documents in the Irish language (*Gaeilge*), and is subject to the Official Languages Act 2003: it is required to provide certain services in the Irish language. See <http://www.irishstatutebook.ie/eli/2003/act/32/enacted/en/html>.

<sup>297</sup> Freedom of Information Act 2014, <http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>. See Ronan Ó Fathaigh, "New Freedom of Information Law", IRIS 2015/25, <https://merlin.obs.coe.int/iris/2015/1/article25.en.html>.

<sup>298</sup> Broadcasting Authority of Ireland, "FOI Disclosure Log", <https://www.bai.ie/en/foi-disclosure-log>.

<sup>299</sup> See Broadcasting Act 2009, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.



competences in relation to media mergers are set out in Part 4 of the Competition and Consumer Protection Act 2014.<sup>300</sup>

In terms of accountability, there are a number of relevant provisions in the Broadcasting Act 2009 and the FOI Act 2014. Under section 45 of the Broadcasting Act, the Compliance Committee must publish its decisions, and the reasons. Under section 38, the BAI is required to submit annual reports to the Minister, and the Minister must lay each annual report before parliament, making it available to be read. The BAI also has an archive of all annual reports on its website.<sup>301</sup> Further, under the FOI Act, the BAI is required to publish minutes of meetings, and the BAI has an archive of all minutes on its website.<sup>302</sup>

There are also various requirements under the Broadcasting Act for the BAI to undertake public consultations, such as under section 44, where the BAI is required to publish a draft of broadcasting codes and rules, and must have regard to any submission made. The BAI is also required, with the consent of the Minister for Communications and the Minister for Finance, to publish three-year estimates of income and expenditure.<sup>303</sup> The BAI's annual reports contain the BAI's annual financial statements, and include Comptroller and Auditor General (the public audit body) reports on financial audits of the BAI, which is required under section 37 of the Broadcasting Act.<sup>304</sup> These reports are also publicly accessible on the BAI's website.<sup>305</sup>

## 8.2.4. Adequate financial and human resources

The BAI's main source of income is a levy imposed on broadcasters under section 33 of the Broadcasting Act 2009, and the basis for calculating this levy is detailed in the Broadcasting Act 2009 (Section 33) Levy Order 2010.<sup>306</sup> The BAI publishes a Levy Calculation Table, setting out the BAI's estimated cost for year. The BAI also publishes its actual costs for the year, which were EUR 44 million in 2017.<sup>307</sup>

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<sup>300</sup> Competition and Consumer Protection Act 2014, Part 4, <http://www.irishstatutebook.ie/eli/2014/act/29/enacted/en/print.html>. See Ronan Ó Fathaigh, 'New Law on Media Mergers', IRIS 2015-2/23, <https://merlin.obs.coe.int/iris/2015/2/article23.en.html>.

<sup>301</sup> Broadcasting Authority of Ireland, "Publications", <https://www.bai.ie/en/news-and-information/publications>.

<sup>302</sup> Broadcasting Authority of Ireland, "Publications", <https://www.bai.ie/en/news-and-information/publications>.

<sup>303</sup> Broadcasting Act 2009, 37(7), <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.

<sup>304</sup> Broadcasting Act 2009, 37, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>. See also Office of the Comptroller and Auditor General, <https://www.audit.gov.ie/en/about-us/the-comptroller-and-auditor-general>.

<sup>305</sup> See, e.g., BAI, "Annual Report 2017", 22 November 2018, p. 85 (Report of the Comptroller and Auditor General), <http://www.bai.ie/en/download/133414>.

<sup>306</sup> Broadcasting Act 2009 (section 33) Levy Order 2010, S.I. No. 7/2010, <http://www.irishstatutebook.ie/eli/2010/si/7/made/en/print>.

<sup>307</sup> BAI, Levy Calculation Table, <http://www.bai.ie/en/download/133359>.





On the question of whether the BAI's budget has been sufficiently stable over time, in its latest annual report, it stated that "[t]here is no material uncertainty regarding the Broadcasting Authority of Ireland's ability to meet its liabilities as they fall due."<sup>308</sup> Further, on whether the BAI requested ad-hoc financial contributions from the state, in its annual report, the BAI reported that, "[i]n 2016, pursuant to section 35 of the Broadcasting Act 2009, the Authority obtained sanction for a loan facility of EUR 1 million with the National Treasury Management Agency, in order to allow the Authority to manage its cash-flow requirements arising as a result of differences in the timing of receipt of levy income", with ... " EUR 500,000 drawn down in December 2017 [and] ... repaid to the National Treasury Management Agency in January 2018".<sup>309</sup>

Section 13 of the Broadcasting Act 2009 concerns staffing of the BAI. It provides that the BAI "shall, as well as appointing the chief executive, appoint such and so many other persons to be members of the staff of the Authority as the Authority from time to time thinks proper, subject to the prior consent of the Minister [for Communications] and the Minister for Finance."<sup>310</sup> In its latest annual report, the BAI disclosed that it had 35 full-time staff.<sup>311</sup> It should be noted that the BAI's Chief Executive stated in the annual report that "[i]t would be remiss of me not to mention the on-going resource challenges where the BAI continues to operate with less staff than our predecessor the BCI, which had many less responsibilities."<sup>312</sup> Similarly, in its 2016 annual report, the BAI stated that "[s]taffing and resourcing for the BAI continues to be a challenge ... the BAI notes that its staff numbers remain low in the context of its additional statutory responsibilities following the introduction of the Broadcasting Act 2009."<sup>313</sup> The previous Broadcasting Commission of Ireland had 42 staff in 2008,<sup>314</sup> while the Competition and Consumer Protection Commission currently has 90 staff;<sup>315</sup> and the Data Protection Commission has 135 staff.<sup>316</sup>

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<sup>308</sup> BAI, "Annual Report 2017", November 2018, p. 71, <http://www.bai.ie/en/download/133414>.

<sup>309</sup> BAI, "Annual Report 2017", 22 November 2018, p. 78, <http://www.bai.ie/en/download/133414>.

<sup>310</sup> Broadcasting Act 2009, section 15(1), <http://www.irishstatutebook.ie/eli/2010/si/7/made/en/print>. See also, Laura Slattery, "Broadcasting Authority calls for additional resources" *The Irish Times*, 26 September 2016, <https://www.irishtimes.com/business/media-and-marketing/broadcasting-authority-calls-for-additional-resources-1.2804857>.

<sup>311</sup> BAI, "Annual Report 2017", 22 November 2018, p. 48, <http://www.bai.ie/en/download/133414>.

<sup>312</sup> BAI, "Annual Report 2017", 22 November 2018, p. 7, <http://www.bai.ie/en/download/133414>.

<sup>313</sup> BAI, "Annual Report 2016", p. 48, 14 November 2017, <http://www.bai.ie/en/download/132450/>.

<sup>314</sup> BAI, "Annual Report and Accounts 2008", 30 September 2009, p. 8, <http://www.bai.ie/en/download/129188/>.

<sup>315</sup> Competition and Consumer Protection Commission, "Annual Report 2017", 30 August 2018, p. 38, <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/08/Annual-Report-2017-1.pdf>.

<sup>316</sup> Data Protection Commission, "Annual Report 25 May 2017 - 31 December 2018", 28 February 2019, p. 7, <https://www.dataprotection.ie/sites/default/files/uploads/2019-03/DPC%20Annual%20Report%2025%20May%20-%2031%20December%202018.pdf>.



## 8.2.5. Adequate enforcement powers

Part 5 of the Broadcasting Act 2009 sets out the enforcement powers of the BAI, which include, in exceptional circumstances, termination or suspension of a broadcaster's broadcasting contract, or the imposition of financial sanctions. The BAI may also issue Compliance Notices and Warning Notices, and under section 50 and 53, the Compliance Committee may initiate a statutory investigation where there is apparent non-compliance by a broadcaster. On the recommendation of the Compliance Committee that there has been a serious or repeated failure of a broadcaster to comply with certain Broadcasting Act provisions, the Authority may apply to the High Court for a determination that there has been such a breach, and indicate the sanction (unless the broadcaster requests that the Authority deal with the matter). In 2012, the BAI issued a EUR 200 000 fine on RTÉ over a programme that included wrongful allegations against a priest.<sup>317</sup> The BAI also publishes a Compliance and Enforcement Policy, which sets out the BAI's approach to dealing with compliance and enforcement.<sup>318</sup>

## 8.2.6. Appointment and dismissal procedures

Section 8 of the Broadcasting Act 2009 sets out the detailed rules for appointment of the BAI's Authority, Contract Awards and Compliance Committees. The Authority must be comprised of nine members. Five members are appointed by the government on the nomination of the Minister for Communications, and four members are appointed by the government on the nomination of the same Minister, but having regard to the advice of a parliamentary committee. Under section 11, the government, on the nomination of the Minister, appoints the chairperson of the Authority, Contract Awards Committee and Compliance Committee.<sup>319</sup> Section 9 provides that a person "shall not be appointed" unless they have experience of, or shown capacity in, specific areas which are listed. The Minister is also under an obligation to provide a statement to the parliamentary committee indicating the relevant experience and expertise of nominated BAI members.<sup>320</sup>

Section 10 of the Broadcasting Act 2009 contains the rules on the removal of members of the Authority or committees. It sets out when a member shall cease to be a member, and in what circumstances a member may be removed by the government, and "only if, resolutions are passed by each House of the Oireachtas (Parliament) calling for his or her removal". Section 10 also has provisions on filling "the casual vacancy" arising from a member ceasing to be a member, or when removed. In relation to safeguards for

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<sup>317</sup> See Damien McCallig, "Public Service Broadcaster Sanctioned", IRIS 2012-7/27, <http://merlin.obs.coe.int/iris/2012/7/article27.en.html>.

<sup>318</sup> BAI, Compliance and Enforcement Policy, November 2014, <http://www.bai.ie/en/download/128465>.

<sup>319</sup> See, e.g., Department of Communications, Climate Action and Environment, "Minister White nominates BAI Chair and Board Members", 2 December 2014, <https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Minister-White-nominates-BAI-Chair-and-Board-Members.aspx>.

<sup>320</sup> Broadcasting Act 2009, section 8(2)(b), <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.



situations where members have yet to be appointed, section 13(10) provides that "[t]he Authority or a statutory committee may act notwithstanding one or more vacancies among its members".

## 8.2.7. Appeal mechanisms

The Broadcasting Act 2009 contains a number of provisions providing for appeal mechanisms to the High Court. These include, under section 51, where a decision to terminate or suspend a broadcasting contract by the BAI may be appealed by the holder of the contract to the High Court;<sup>321</sup> and, under section 55, where a broadcaster may appeal to the High Court against a statement of findings for a serious or repeated failure by a broadcaster to comply with certain provisions of the Act, or a financial sanction imposed against the broadcaster under the Act, which stand during an appeal.<sup>322</sup>

## 8.3. Conclusion

A recent expert report on media pluralism examined the "Independence and effectiveness of the Media Authority", and found that "this indicator achieved a low risk level (15%)".<sup>323</sup> Flynn commented that "[a]lthough there is a high level of political involvement in appointing the main media authority – the Broadcasting Authority of Ireland – it operates within clearly defined legal structures, and consistently acts in a manner which is both transparent and which appears to be independent from political and/or commercial interference".<sup>324</sup>

The Broadcasting Act 2009 can be viewed as broadly in line with Article 30 of the 2018 AVMS Directive; however, two short points may be made. First, presently the government appoints half of the BAI members per its own choice, whereas a procedure involving the Public Appointments Service may add to the BAI's independence (in addition to having separate Contract Awards and Compliance Committees). For instance, under the Data Protection Act 2018, members of the Data Protection Commission are appointed by government "on the recommendation of the Public Appointments Service" (a statutory body for civil service recruitment), following an "open selection competition held by the Service for that purpose".<sup>325</sup> Second, it should be noted that the BAI has continued to flag staffing and resourcing issues in its annual reports, which does raise a question under the Article 30 requirement of "adequate financial and human resources". Finally, given the

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<sup>321</sup> Broadcasting Act 2009, section 51(4), <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.

<sup>322</sup> Broadcasting Act 2009, section 55(5), <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/print>.

<sup>323</sup> Roderick Flynn, "Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey - Country Report", Ireland (Centre for Media Pluralism and Media Freedom, 2018), p. 8, <http://cadmus.eui.eu/handle/1814/61144>.

<sup>324</sup> Ibid.

<sup>325</sup> Data Protection Act 2018, section 15, <http://www.irishstatutebook.ie/eli/2018/act/7/enacted/en/print>.



current limited role of the BAI in relation to on-demand audiovisual media services, and in particular in relation to enforcement powers, its powers may not be adequate to implement and supervise the requirements of the AVMS Directive regarding this group of services.