

Standing and operational space of non-governmental organisations (NGOs) in contributing to respecting and promoting fundamental rights in EU Member States

Ireland 2017

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1 Regulatory environment for the work of non-governmental organisations

Title of legislation and reference	Topic (please make reference to categories A-F see guidelines)	Effect on civil society (positive or negative) Please include reference to source of information
<p>1. Section 13 of the Charities Act 2009¹ establishing the Charities Regulatory Authority (established on 16 October 2014).²</p> <p>Part 4 of the Charities Act 2009.³ (Commenced 5 September 2016)</p>	<p>The legislation relates to category D: Addressing the financing of organised crime or terrorism; taxation; charitable status.</p>	<p>Negative on the promotion of fundamental rights but also positive in the administration and compliance of charities.</p> <p>It has been reported that, up to 2012, 73.3 % of non-governmental organisations (NGOs) in Ireland are registered as having charitable status and governed by the Charities Act 2009.⁴ Little information is available on the precise configuration of the remaining 26.7 %, although at the time of publication of a report by the NGO umbrella organisation, The Wheel, a further 4.3 % indicated that they were in the process of registering as a charity. The report also noted that 5.4 % of not-for-profit organisations in Ireland listed their main activities</p>

¹ Section 13 of the Charities Act 2009, available at: <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print.html>.

² S.I. No. 457/2014 - Establishment of Charities Regulatory Authority by order (Commencement) Order 2014. Available at: www.irishstatutebook.ie/eli/2014/si/457/made/en/print?q=SI+charities.

³ Charities Act 2009, Part IV. Available at: <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print.html>.

⁴ The Wheel / Crow Horwath (2014), *A Portrait of Ireland's Non-Profit Sector*, p. 7. Available at: <https://www.wheel.ie/sites/default/files/Portrait%20of%20the%20Non-Profit%20Sector%202014%20UpdateJun2014.pdf>.

		<p>as Civil Rights and Advocacy. Information on the number of these groups with charitable or non-charitable status is unavailable.⁵</p> <p>NGOs, voluntary or community organisations who do not have charitable status are not subject to regulation under the Charities Act. However, they are also precluded from applying for charitable tax exemption on funds received. According to Revenue, the absence of profit motivation does not automatically make a charity entitled to charitable tax exemption. Organisations whose state purpose is as a not-for-profit will be governed under legislation governing the actions of incorporated or unincorporated bodies.</p> <p>Under Irish law, an organisation that operates a registered charity must be constituted and operated exclusively for charitable purposes. In addition, it is a basic principle of charity law that an organisation's objectives must be expressed in precise rather than broad or vague terms. This identifies as clearly as possible a recognised charitable purpose.⁶ Organisations not registered for charitable purposes are not so constrained.</p> <p>Specific tax exemptions available</p>
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⁵ *Ibid*, p. 9.

⁶ Revenue, Irish Tax and Customs, 'Frequently asked Questions – Charities', Available at: <http://www.revenue.ie/en/business/faqs-charities.html#section7>.

		<p>to charitable organisations include exemptions from:</p> <ul style="list-style-type: none"> • Income Tax – Sections 207 and 208, Taxes Consolidation Act, 1997. • Corporation Tax (in the case of companies) – Sections 76 and 78, Taxes Consolidation Act, 1997. • Capital Gains Tax – Section 609, Taxes Consolidation Act, 1997. • Deposit Interest Retention Tax (DIRT) – Section 266, Taxes Consolidation Act, 1997. • Capital Acquisitions Tax – Sections 17, 22 and 76 of the Capital Acquisitions Taxes Consolidation Act, 2003. • Stamp Duty – Section 82, Stamp Duties Consolidation Act, 1999. • Dividend Withholding Tax – Chapter 8A, Part 6, Taxes Consolidation Act, 1997. <p>The Charities Regulatory Authority was created to secure compliance by charities with their legal obligations and also to encourage better administration of charities. It is considered best practice for charities to abide by the provisions of the act.</p> <p>Part 4 gives investigative and protective powers to the Charities Regulator. This includes the capability to impose sanctions if a charity breaches certain obligations such as the requirement to keep proper accounts or to submit its annual</p>
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		<p>report.</p> <p>Negative outcomes:</p> <p>It has been noted that the advancement or promotion of human rights is not listed as a 'charitable purpose' for the purposes of the act. In December 2015, following a review of the operation of the act, an Oireachtas (parliamentary) Sub Committee recommended that the act be amended to include "the advancement of human rights" in its list of charitable purposes as noted in Section 3 of the Act.⁷ The act has yet to be amended.</p>
2. Regulation of Lobbying Act 2015 ⁸	The legislation relates to category E: Transparency in the legislative process, in particular concerning lobbying (regarding the duties imposed on civil society organisations proportionate to the aim of the legislation and to the	Positive. Registration imposes a light administrative burden. However, the legislation enables NGOs and other stakeholders to register and record lobbying activity in a transparent manner, accessible to the public. The purpose of the act is to provide for a publicly accessible web-based register of lobbying to make information available to the public on the identity of those communicating with designated public officials on specific policy, legislative matters or prospective decisions. The act also specifically provides for: the Standards in Public Office Commission (SIPOC) to be the

⁷ Houses of the Oireachtas, 'Justice Sub-Committee launches Report on review of the Charities Act 2009', 10 December. Available at: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2015/name-30965-en.html>.

⁸ The Regulation of Lobbying Act 2015. Available at: <http://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/print.html>.

	capacity of organisations) .	regulator of lobbying; obligations on lobbyists to register and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients; a code of conduct on the carrying out of lobbying activities; the introduction of a 'cooling-off' period during which lobbying activity may not be carried out by some former officials.
3.Companies Act 2014 ⁹ (commenced on 1 June 2015)	The legislation relates primarily to category C:Freedom of association (including issues of access to funding, accounting and auditing rules, rules on the establishment and dissolution of associations or other requirements that civil society organisations must satisfy to perform their tasks), and category D: addressing	Positive, with some additional administrative burden. It is estimated that almost three quarters of charities in Ireland are companies limited by guarantee, without a share capital (CLGs). Most of the remainder of charities are established as charitable trusts or unincorporated associations and the 2014 Act does not apply to such companies. The act provides for the following changes to the operation of CLGs: <ul style="list-style-type: none"> • Compliance statement – where both the balance sheet is greater than € 12.5 million and turnover is greater than € 25 million, a CLGs will be required to include a compliance statement in the company's report of directors (part of the CLG's financial statements) confirming that the directors have: (1) Drawn up a compliance policy

⁹ Companies Act 2014. Available at:
<http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/print.html>.

	<p>the financing of organised crime or terrorism; taxation; charitable status.</p>	<p>statement as to compliance by the company with company law and tax law; (2) Put in place appropriate arrangements or structures designed to secure material compliance with that law; (3) Conducted a review, during the financial year of those arrangements and structures.</p> <ul style="list-style-type: none"> • Number of members of CLG – reduction in the number of required members of a CLG from seven to one. • Name of CLG – a CLG will be required to end its name with 'Company Limited by Guarantee' or 'CLG'. • Articles of Association – table C (which currently sets out model articles for a CLG) will no longer exist. Instead, certain default provisions under the 2014 Act will apply to the internal administration of a CLG, save to the extent that a company's articles of association provide otherwise. Existing memorandum and articles of association will continue to apply. However, certain provisions will be deemed to be 'struck-out' by virtue of having been superseded by the 2014 Act. It is considered that interpreting this document could prove cumbersome. • Audit Exemption – CLGs will be entitled to avail of an audit exemption under the 2014 Act if they fall within the group company or small company exemption, although one
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		<p>member can object and insist that statutory auditors are appointed. The availability of this audit exemption to CLGs will not change the condition imposed by the Revenue Commissioners (re CHY charities) that the accounts must be audited where the annual income exceeds € 100,000.</p> <ul style="list-style-type: none"> • Fiduciary Duties of Directors – the 2014 Act, codifies for the first time in Irish law the fiduciary duties of directors of an Irish company (section 228).
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2 EU Member State government funding for non-governmental organisations – trends and developments 2011-2016

2.1 Overall amount of government funding

Figures relating to overall funding from government sources of NGOs, or community and voluntary organisations are not readily available. According to information published,¹⁰ funding for community and voluntary organisations fell significantly in the period 2008–2014, down 41 %. It was noted that in the same period, government spending fell by 7.1 %, the benchmark figure against which all other programmes may be measured. During this time, voluntary social housing fell 50 %, local community development 43 %, youth organisations 44 %, sports grants 60 %, drugs prevention 37 %, the Family Support Agency 32 %, rural disadvantage 100 %, urban disadvantage (RAPID) 80 %, probation services (mainly delivered by voluntary and community groups) 35 % and funding of migrant organisations 65 %. It was also noted that the process of reducing the voluntary and community sector was gradual. Front line services were reduced with interns or job activation staff often taking their place.

¹⁰ Institute of Social Science in the 21st Century, *The Changing Landscape of Local and Community Development in Ireland: Policy and Practice*, Conference Proceedings, 21 October 2015, University College Cork. Available at: <https://www.ucc.ie/en/media/research/iss21/TheChangingLandscapeofLocalandCommunityDevelopmentinIrelandPolicyandPractice.pdf>.

Temporary contract staff were not renewed, salaries were frozen or reduced. Charges were made for services, while staff and volunteers were redeployed to fundraising to take more money out of ever more financially-depleted communities. In his report, the estimated total employment in the voluntary and community sector in Ireland will have fallen from 53,000 at the benchmark year of austerity, 2008, to 36,000 by the end of 2015, down about 31 %.

The period 2011 to 2016 was a very challenging one for the public finances in Ireland. It is estimated by the Wheel (an umbrella organisation for charities in Ireland) that 60 % of the funding for the Irish community and voluntary sector comes from the public purse. During the period, many organisations in receipt of statutory funding saw their allocations cut, with many organisations reporting budget reductions of between 10 % and 20 % over the period. There were however organisations that saw their funding remain largely unchanged, while in still other cases entire programmes were terminated (such as the Community Development Programme). So, the situation is very mixed. In recent years, public funding has stabilised with budgets generally beginning to see small rises in certain sectors.

2.2 Distribution of government funding

It is difficult to reach conclusions about the distribution of funding between these headings, as the state generally does not provide funding for anything other than service provision. The SSNO or Scheme to Support National Organisations (see below), has been maintained year on year and this has been a very welcome development to the sector as it is one of the few schemes that supports advocacy activity by charities. There is some evidence that increasing use is being made of binding service level agreements by state agencies which specifically preclude the use of state funds for advocacy purposes, and this is a trend that will need to be monitored to ensure the continuing ability of civil society organisations and NGOs to advocate as appropriate.

Scheme to Support National Organisations in the Community and Voluntary Sector

On 13 June 2016, the Minister for the Environment, Community and Local Government, announced funding of € 16.409 million over the coming three years to 70 national community and voluntary organisations (a full list of recipients is available on the website).¹¹ Funding to national community and voluntary organisations under this scheme is to cover core costs such

¹¹ Pobal, Minister Coveney announces €16.4m for the Community & Voluntary sector, 13 June 2016, available at: <https://www.pobal.ie/News/Pages/Minister-Coveney-announces-%e2%82%ac16-4m-for-the-Community--Voluntary-sector.aspx>

as staff, administration and ongoing running expenses. The organisations included operate in the health, disability, homelessness, children and young persons, older persons, equality and social inclusion sectors, amongst others.

2.3 Restrictions (or other changes) on NGO funding from other sources

As noted above, the period 2011 to 2016 was a challenge for public finances – it was also a challenge for fundraising from the public, which many organisations report dropped significantly over the period. Additionally, there have been two significant negative developments in Ireland: The Atlantic Philanthropies¹² and The One Foundation¹³ – two very large private philanthropic donors – have ceased grant-making activities (they were fixed time frame funds) and this has had a big impact on the non-statutory funds that are now available to the sector. There have been a number of scandals relating to poor governance practice in certain charities that have dented public confidence in the NGO sector and resulted in a negative impact on donations from the public. All in all, the NGO sector faces a very challenging time on the funding front in the five-year period ahead.

3 Access to the decision-making process for non-governmental organisations working on fundamental rights

Title of legislation/policy	Reference	Short summary (max 500 characters)
Convention on the Constitution 2013-2014	https://www.constitution.ie/Convention.aspx	The Convention on the Constitution was a forum of 99 randomly chosen representatives from Irish society and parliamentarians from the island of Ireland, with an independent

¹² Irish Examiner, 'Irish Assets Dwindle as Chuck Feeney Fund Nears End', 19 August 2016. Available at: <http://www.irishexaminer.com/business/irish-assets-dwindle-aschuckfeeneys-fund-nears-end-416712.html>.

¹³ Irish Times, Ireland's Charity Crisis, 29 August 2015. Available at: <http://www.irishtimes.com/news/social-affairs/ireland-s-charity-crisis-1.2332501>.

		<p>chairman. It was established to consider and make recommendations on nine separate topics relating to Irish constitutional reform. During deliberations, NGOs were invited to make submissions and, in some cases, appear at the convention to brief members on issues under consideration. The outcome of the deliberations led to the holding of two constitutional referenda in May 2015 – Provision for Marriage Equality for Same Sex Couples (passed) and Lowering the Age Limit for Presidential Candidates (defeated).</p>
<p>Joint Oireachtas Sub-Committee on Human Rights relative to Justice and Equality Matters</p>	<p>http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-27376-en.html</p>	<p>The committee met for the first time on 25 March 2015 and initially focussed its work on the following topics in the coming months:</p> <ul style="list-style-type: none"> • To review the 2009 Charities Act with regard to its omission of human rights organisations to apply for charitable status; • To investigate the introduction

		<p>of a regularisation scheme for undocumented migrants;</p> <ul style="list-style-type: none"> • To examine the ratification by Ireland of international human rights treaties; • To support public bodies to prepare for their 'positive duty' obligation to ensure a regard for promoting equality and human rights. <p>The committee opened space for a number of NGOs to brief members on issues being considered by the committee. However, the committee met only a small number of times prior to the dissolution of the 31st Dáil (parliament) in February 2016 and has not been re-established since the election of the 32nd Dáil in March 2016.</p>
Open Government Partnership	See: https://www.opengovpartnership.org/country/ireland	In May 2013, Ireland signalled its intention to participate in the OGP and became a full member in 2014 with the submission of the

	<p>See also:</p> <p>Department of Public Expenditure and Reform, 2016, Available at: http://opac.oireachtas.ie/AWData/Library3/PerDocLaid211116_122622.pdf</p>	<p>first action plan.</p> <p>To facilitate the inclusion of civil society, three public meetings of a network of civil society and other interests were held during the summer of 2013.</p> <p>In November 2016, a second draft National Action Plan was published by the Department of Public Expenditure and Reform. The plan was drafted following a call for public engagement through a series of public consultation measures between August and September 2016. These measures included specifically,</p> <p>1 Initial Consultation</p> <p>A national communication campaign, which included two Facebook campaigns, one targeting young people aged between 18 and 25 years and another targeting citizens around the country with an interest in politics and community. Other interested parties were contacted by email and telephone. Additional methods used to promote and raise awareness of the</p>
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		<p>consultation included a dedicated web page as well as press and radio advertisements. A phone line was available for citizens to ask questions and to make submissions.</p> <p>2 Online Portal.</p> <p>An online portal was set up to allow for consultation by written submission. The portal was located at www.ogpireland.ie.</p> <p>3. Civic Forums</p> <p>Two civic forums were held in September 2016. To obtain further input and insight from civil society. These were held on Wednesday 14 September 2016 in Kilkenny and on Tuesday 27 September 2016 in Dublin. The forums were attended by 15 and 23 participants respectively.</p> <p>The government has also committed to establishing an Implementation Review Forum intended to allow people to see how their contributions to the draft plan are reflected in implementing the commitments in this</p>
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		<p>plan. The first Implementation Review Forum is scheduled to take place in April 2017.</p>
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4 Further information

In 2012, a company that had created a database of information about Irish non-profits closed due to lack of funding. The Irish Non-profits Knowledge Exchange (INKEEx) was a repository for regulatory and voluntarily disclosed information, and the only centralised hub for such data of its kind in Ireland. The organisation collected data from NGOs and charities throughout Ireland, publishing its data to improve transparency and disclosure in the sector.

Data collected included information on funding in the sector, including salaries and expenditure. The company also sought to identify trends within the sector. A report using information obtained from INKEEx was commissioned by The Wheel, a representative organisation for the charity sector, and published in partnership with Crowe Horwath, a leading accountancy and advisory firm in Ireland. The report details information and trends spanning 2009–2012.¹⁴

Thanks to the INKEEx project we know that in 2009 there were at least 11,700 organisations employing over 100,000 people, involving over 560,000 volunteers in their work, and managing turnover of € 5.75 billion.¹⁵

¹⁴ The Wheel / Crow Horwath, 2014, *A Portrait of Ireland's Non-Profit Sector*. Available at: https://www.wheel.ie/sites/default/files/Portrait%20of%20the%20Non-Profit%20Sector%202014_%20UpdateJun2014.pdf.

¹⁵ *Ibid.*