

**DECISION OF THE MINISTER FOR COMMUNICATIONS, ENERGY & NATURAL RESOURCES  
REGARDING  
THE REQUEST FROM IRISH TV FOR DESIGNATION UNDER SECTION 130(1)(a)(iv),  
BROADCASTING ACT 2009**

**1. Request for designation**

On 4<sup>th</sup> March 2016, Irish TV submitted a request to the Minister for Communications, Energy & Natural Resources for designation of the Irish TV television service under section 130(1)(a)(iv) of the Broadcasting Act 2009<sup>1</sup>.

**2. Consideration of the request**

As part of my consideration of the Irish TV request, I have considered the following matters:

- (i) The nature of the proposed service

In order to be designated under section 130(1)(a)(iv), in the first instance, a service is required to be a *television service*. Having examined the relevant provisions of the Act and the Content Provision Contract dated the 15<sup>th</sup> day of September 2014 entered into by Irish TV with the Broadcasting Authority of Ireland under section 71(4) of the Act, I am satisfied that the service that I have been requested to designate is a *television service*.

- (ii) Determining the character of the television service

*Objective Criteria*

It is clear from section 130(1)(a)(iv) of the Act that a television service may only be designated by the Minister if it has *the character of a public service*. The term “public service” is not defined in the Act. In order to determine whether a television service has *the character of a public service*, objective criteria must be applied.

In considering the precise nature of such criteria, I have examined the report provided to my Department by Perspective Consultants which proposes a framework for this purpose. The framework proposes a test comprising the following four criteria: range and variety; contribution to democratic and public engagement; support for local production and investment in local talent; and overall contribution.

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<sup>1</sup> Section 130 (1)(a)(iv) of the Broadcasting Act 2009 provides that a national television multiplex established by, maintained and operated by RTÉ under section 114(1)(i) of that Act shall provide for the broadcasting by digital means of such other television services, having the character of a public service, as may be designated by the Minister for Communications, Energy and Natural Resources by order.

I consider that the approach taken by Perspective is appropriate and comprehensive and that the proposed criteria provide a reasonable and fair basis on which to make a determination in this matter.

#### *Application of the criteria*

In applying the above criteria, I have focussed on the Irish TV Content Provision Contract and submissions made by Irish TV in support of its application. The following comprises the outcome of my application of each of the four criteria in regard to the information provided in the Contract:

##### *a. Range and variety*

In terms of range and variety, the Contract commits to the provision of programming that includes news, sport, business, agriculture, music and entertainment.

Furthermore, I note that Irish TV has provided a commitment to 'broadcasting a wide and varied programme schedule' and that Irish language cultural events and festivals will feature prominently throughout the schedule.

The 'County Matters' series will provide a diverse range of local content, which will be of interest to a cross-section of the television-viewing population. I have also noted Irish TV's intention to integrate its news service with the 'County Matters' series.

Based on the proposed range and variety of genres and topics, I consider that the proposed television service meets this criterion.

##### *b. Contribution to democratic and public engagement*

In this context, the Contract commits to the provision of local, regional and international news and current affairs.

I have noted the commitments Irish TV has provided in respect of News & Current Affairs and to providing coverage of local authority meetings, as well as local, national and European elections. In addition, I note that Irish TV continues to provide coverage of proceedings in the European Parliament.

In terms of promoting public engagement, I have also taken into account Irish TV's commitment to provide over 100 hours of live coverage of local and national events in 2016.

I consider that the commitments given will add to the existing high quality coverage of news, current and social affairs enjoyed by the Irish viewing public, will enhance diversity and pluralism, and will contribute to democratic and public engagement.

*c. Support for local production and investment in local talent*

The Contract commits to meeting the EU thresholds of 50% European originated programming and 10% independent production.

In terms of provenance, the Contract states that Irish TV's content is to be produced by in-house productions and by independent production companies. I note that Irish TV considers original, local production to be at the heart of its output with production crews appointed in each county and that '90% of Irish TV programmes are produced by independent production companies in Ireland'.

In terms of support for local talent, I note that Irish TV's strategy will help develop and sustain local independent production and employment. Furthermore, that Irish TV has invested significantly in content creation to date, to the benefit of the independent sector. Irish TV has also indicated that its existing level of local content will not be reduced or replaced.

Based on the above, I consider that the proposed television service meets the requirements of this element of the test.

*d. Overall contribution*

On the basis of the analysis undertaken in Elements 1, 2 and 3 above, the introduction of the Irish TV television service will increase diversity and plurality in the Irish broadcasting ecosystem and, in particular, add a new perspective and voice on issues of Irish interest.

I consider that the local and community nature of much of the programming offered will provide additional value and diversity of content, providing a platform for local stories and voices as well as support for the independent production sector.

In meeting the commitments outlined above, I consider that Irish TV will make a positive contribution to the Saorview platform by increasing the variety and diversity of programming available. On this basis, I consider that the proposed service meet this criterion.

*Conclusion*

Having applied the above criteria to the Irish TV Content Provision Contract and submissions made by Irish TV in support of its application, I have concluded that the proposed Irish TV service is a television service having the character of a public service.

### (iii) Consideration of Designation

In considering whether to designate the service, I have had regard to the relevant Irish and EU legislation, i.e. the Broadcasting Act 2009 and the Audio Visual Media Services Directive<sup>2</sup>, both in terms of the wording of the active provisions and the intent of the relevant instruments and enactments.

In relation to the Audio Visual Media Services Directive, I have been guided in particular by Recital 10 of the Directive which refers, *inter alia*, to the need to respect the basic principles of the internal market, such as free competition and equal treatment, in order to ensure transparency and predictability in markets for audiovisual media services, and to achieve low barriers to entry.

In regard to the Broadcasting Act 2009, the primary objective of Part 8 of the Act was to enable Analogue Switch Off and the establishment of the Digital Terrestrial Television system. A fundamental element of this objective was, and remains, securing the provision of an enhanced terrestrial broadcasting system for the Irish public, with an increased range of 'free to air' services on the public service multiplexes, supplemented by a potentially large number of 'pay TV' services on commercial multiplexes.

I consider that a decision to designate the Irish TV television service under section 130(1)(a)(iv) is consistent with the above-mentioned principles of the AVMS Directive, and supports the achievement of the primary objective of Part 8 of the Broadcasting Act 2009.

### **3. Minister's Decision**

Based on the above considerations, I have decided that it is appropriate to designate the Irish TV television service under section 130(1)(a)(iv) of the Broadcasting Act 2009 and, in accordance with the provisions of that section, I have signed the attached order making the designation.

In the interest of ensuring that the Irish TV television service continues to have the character of a public service, this Decision shall be subject to review where, in the view of the Minister, there has been a significant change to the character of the channel.

**Denis Naughten, TD**  
**Minister for Communications, Climate Change & Natural Resources**

**23 June 2016**

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<sup>2</sup> DIRECTIVE 2010/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.