

## **RTÉ and the European and Local Elections June 2024**

On 30 April 2024, Coimisiún na Meán, published updated guidance for Rule 27 of its *Code of Fairness, Objectivity and Impartiality in News and Current Affairs* which applies to election coverage.

This update to Rule 27 follows a consultation period with broadcasters and political parties. The full Guidelines can be accessed at the Commission’s website – [www.cnam.ie](http://www.cnam.ie)

In Section 4.2 of this update, the Commission states that information on the approach being adopted by a broadcaster to the election should be available to interested parties, including election interests, upon request.

The RTÉ Election Steering Group has decided to outline the factors guiding our approach in advance of the elections and the commencement date for Rule 27 on 07 May next.

### **Legal and Regulatory Framework**

The Commission’s updated guidance for Rule 27 affirms that a proportional approach to the allocation of airtime in election coverage is appropriate, and that broadcasters may reasonably have regard to “contextual factors” such as –

- Current elected representation
- First preference votes in a prior election
- Candidates campaigning on aligned election issues who are not members of a political party
- The number of candidates being fielded
- A diversity of political perspectives
- Current support as evident from opinion polls

The Commission acknowledges the approach to the allocation of airtime may vary depending on the type of election, the resources available to the broadcaster, the target audience, the type of programming and the particular kind of election programme (general coverage, candidate debates, etc).

The updated guidance says that broadcasters have a duty to protect audiences from content that is harmful, or which may pose legal or liability issues to the broadcaster, and broadcasters should manage these risks by pre-recorded interviews or by declining to air views that they believe may pose such risks.

The Commission also acknowledges that “*decisions in respect of editorial coverage of an election rest solely with broadcasters.*”

Past electoral record has been one of the key metrics in guiding RTÉ's election coverage of parties, groups, and candidates over many years and this is reflected in the contextual factors set out by the Commission.

This is an objective and impartial metric and has been endorsed in decisions of the High Court and the then regulator, the Broadcasting Authority of Ireland.

This document takes account of the updated Rule 27 guidance and sets out, in broad terms, RTÉ's approach to coverage of the European and Local Elections 2024.

Elections are dynamic competitive events, and it is understandable that candidates and parties are keen to gain airtime to outline and promote their views.

While RTÉ provides extensive election coverage across television, radio and online, the courts and the regulator have also acknowledged that in an election it is not possible, nor is there any requirement, to provide airtime to every candidate, or to include every candidate where the broadcaster hosts a candidate or leaders' debate.

When RTÉ hosts a formal candidate or leaders' debate, practical issues such as available programme time, studio capacity and the requirement to devise and produce a meaningful and informed debate, inevitably places limitations on the number of participants.

For these reasons, the courts and the regulator have previously acknowledged a broadcaster may devise criteria in respect of the selection of participants for such a debate.

In this regard, RTÉ draws attention to the following –

1. In ***Tom Kivlehan Vs RTÉ*** a case in which the Green Party challenged RTÉ's decision not to include them in a leaders' debate in advance of the General Election in 2016, Ms Justice Marie Baker noted:

*“it cannot be said that any individual party has a constitutional right to participate in the TV debate.”*

*“the plurality of candidates and parties has led to the requirement in the current campaign for RTÉ to adopt a formula that will inevitably exclude the leaders of certain parties having regard to the number of parties engaged in the election.”*

*“ The criteria adopted by RTÉ have been made known to all relevant parties....”*

Ms Justice Baker also noted it *“was not in question”* that RTÉ was entitled to draw up criteria for participation.

2. In ***Ben Gilroy Vs RTÉ*** in 2019, in dismissing Mr Gilroy’s challenge as an independent candidate in the European elections not to include him in a live television debate, Mr Justice Senan Allen noted:

*“It seems to me that the selection of participants in the debate by reference to performance in previous elections is sensible and is likely to be some measure of audience interest in the participants.”*

3. In the BAI Compliance Committee decisions (***C5192 and C5253***) arising from a complaint brought by a candidate who was not included in the *Prime Time* or *The Week in Politics* broadcasts for the Midland North West constituency in the 2019 European elections, the Committee rejected the complaint and made a number of points, including the following:

- The broadcaster has editorial freedom to choose who participates on a programme
- There is no requirement for broadcasters to include all candidates in a broadcast, further, equal allocation of airtime is not necessary to achieve fairness
- The Committee did not consider that the exclusion of particular candidates rendered the broadcasts unfair or partial
- The principle of fairness requires that the approach adopted by broadcasters should be transparent
- The criteria drawn up by the broadcaster was based on past electoral performance and the Committee noted that the broadcaster provided clear rationale for the approach
- The Committee was of the view that the criteria adopted when choosing participants in the programmes was carefully considered and applied in a manner which was equitable and fair.

## **2024 Elections**

At the outset of this election cycle it is important that all parties and candidates are aware of the legal and regulatory principles that inform RTÉ’s approach to our coverage.

For the purposes of the European and Local Elections 2024, the RTÉ Election Steering Group will again have regard to past electoral record, as an important impartial and objective metric guiding our overall coverage.

There will be one formal strand of European constituency candidate debate on RTÉ One television, but our overall coverage will also include news reports, studio based programmes with panels, reports, etc.

The obligation to be ‘fair to all interests’ does not mean that every view has to be covered, but rather, that a wide range of views are given to the audience across our coverage. Fairness will be achieved across the totality of coverage on television, radio and online.

In this regard, RTÉ also draws attention to decision C5527 of the then BAI Compliance Committee which rejected a complaint concerning the 2021 Dublin Bay South bye-election and, in considering a range of election programmes provided, noted that *“the broadcaster planned its approach to achieving fairness in its bye-election coverage across television and radio together and this approach was set out in writing prior to the bye-election and circulated to the candidates and made available on the broadcaster’s website.”*

### **Constituency Candidate Debates**

For the European Elections 2024, RTÉ will host one strand of constituency debates: each featuring 8 candidates in a live television studio setting.

#### ***RTÉ One***

*Upfront with Katie Hannon/ Prime Time* will host 3 European Constituency debates, with a format of 8 candidates as follows:

*Upfront 20 May* **Midlands North West**

*Prime Time 30 May* **South**

*Prime Time 04 June* **Dublin**

#### **Candidate Participation:**

Taking account of past decisions of the courts, the BAI Compliance Committee, the updated guidance for Rule 27, electoral support, and the fact that more than 20 candidates are contesting each of the three European constituencies, the RTÉ Steering Group has adopted criteria comparable to those used in 2019 but with an additional impartial and objective criterion to decide participation where more than 8 candidates may qualify.

#### **Debate Criteria:**

A: If the candidate is currently an elected MEP, TD, Senator, or Councillor (subject to E below)

B: If the candidate didn’t get elected but achieved 5% or more of the vote in their constituency in the most recent European/Local/ General/Seanad Election.

C: If the party for which the candidate is standing won at least one seat in the last European Election, at least two seats in the last General Election or at least 5 seats in the last Local Elections or achieved 5% of the national vote in any of those elections.

D: In circumstances where there are remaining places after places arising from A, B and C have been determined, allocation shall be decided on the basis of the party with the greatest current number of elected TDs, Senators, and Councillors.

E: Notwithstanding the above, a party cannot have two representatives in the same debate. Where a party has more than one candidate who qualifies for a debate, it will be for the party to nominate the candidate who will participate in the debate.

Further details on times and arrangements for the 3 debates above will issue in due course and qualifying candidates will be notified and invited to participate by the programme teams.

The above criteria apply only to determining participation on the 3 television constituency debates hosted by *Upfront/Prime Time* on RTÉ One.

### **Overall Coverage**

Parties and candidates should note that participation in the above debates does not mean that participation is automatically guaranteed in other programmes and election coverage. While our coverage will have regard to electoral support, RTÉ is also obliged to have regard to providing a diverse range of views.

This will mean that some parties with significant support will not feature on every broadcast, but they will have a fair share of coverage over the course of the election on both television and radio.

For the purposes of the 2024 elections, our overall coverage across television, radio and online will have regard to the “contextual factors” set out by the Commission and referenced above.

While weight will be given to electoral record in guiding coverage, RTÉ draws attention to Section 4.3 of the Commission’s updated guidance on the requirement to reflect a diverse range of views and opinions.

In regard to giving weight to past electoral record, this refers to share of the First Preference Vote in the European and Local Elections 2019 and the General Election 2020.

With 74 candidates contesting the European elections, it will not be possible to provide airtime, either live or pre-recorded, to every candidate in every constituency, and RTÉ's decisions on participants will reflect the approach outlined above.

### **Namechecking**

Over the course of the election period, other non-election news and current affairs coverage will continue. In situations where a politician is being interviewed in a non-election context, we request any politician to refrain from using this as an opportunity to namecheck a candidate(s). This is unfair to other candidates.

Where this happens in a 'live' studio context, RTÉ will remind the audience that we requested politicians to refrain from namechecking candidates and we will reference that other candidates are contesting the same constituency.

### **Summary**

As outlined above, RTÉ's approach to the European/Local elections 2024 takes account of past court and regulatory decisions and the updated guidance for Rule 27 published by Coimisiún na Meán on 30 April 2024.

Fairness between parties and candidates will be achieved across the totality of RTÉ's coverage providing the audience with a diverse range of views.

RTÉ also draws attention to the Commission's updated guidance in respect of elections being dynamic events and that broadcasters should "*give active consideration to their approach to coverage over the duration of the election campaign period and amend this approach if they consider it necessary and appropriate to do so to ensure fairness, objectivity and impartiality.*"

**RTÉ Election Steering Group  
May 2024**