

Assessment of the Sector Classification of Universities in Ireland under ESA 2010

Central Statistics Office

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1. Introduction

This document has been prepared in response to Action 19 of the 2017 EDP dialogue visit to Ireland “*The Irish statistical authorities will reflect on whether Irish universities should be considered private or public and inform Eurostat.*” It reviews the sector classification in the Irish National Accounts of universities governed by the Universities Act, 1997, assessing the control of the universities under the criteria of ESA 2010 and updating the market test for recent years. It also provides background to the previous classification of these institutions under ESA 95.

2. Background

Publicly funded higher education in Ireland is provided mainly by the seven universities governed by the Universities Act, 1997 and 14 Institutes of Technology (IOTs). The IOTs are classified as government bodies in S.1311 (central government). There are also private operators in the higher education sector in Ireland, some of which receive a minority of their funding from the State.

The classification of the universities in Ireland has been reviewed a number of times over the past 10-15 years through Eurostat questionnaires and national classification reviews. This has included a detailed assessment of their governance and decision-making arrangements as set out in the Universities Act, 1997. The seven universities covered by the Act are:

- University College Dublin
- University College Cork
- National University of Ireland, Galway
- National University of Ireland, Maynooth
- University of Limerick
- Trinity College Dublin
- Dublin City University.

Up to 2013 the universities had been classified as Non Profit Institutions Serving Households (S.15), i.e. as privately controlled non-market bodies. In 2013 CSO reclassified the universities as market producers in S.11 (Non-Financial Corporations) following discussions with Eurostat at, and post, the 2012 EDP dialogue visit. This classification was based on the treatment of both academic fees and the purchase by government of specific research services (as opposed to block grants for research) as sales of the universities. At that time the data analysed by CSO showed that the universities were covering more than 50% of their operating costs through these sales and this pattern could be observed to be increasing in the more recent years. The question of control was not reviewed at this time. At the time of the transition to ESA 2010 in 2014, due to their recent assessment as market entities, which had included an element of looking ahead to the future change in standard, there was no further review of the classification of the universities undertaken.

At the EDP Dialogue Visit in January 2017¹, Eurostat and the CSO revisited the assessment of the control of universities in order to determine whether universities should be considered a part of the public sector. The principal piece of legislation under consideration is the Universities Act, 1997 which sets out the relationship between the universities and government, specifically the Department of Education and Skills, the Departments of Finance and Public Expenditure and Reform and the Higher Education Authority (HEA), referred to as “*An tÚdarás*” in the Act. In addition more recent developments including the Code of Governance for Irish Universities, the National Strategy for Higher Education to 2030 and general public sector pay legislation is considered. The findings of the CSO review of the control of the universities, with reference to these documents, are presented in the following sections.

¹ <http://ec.europa.eu/eurostat/documents/1015035/8054610/Final-Findings-EDP-dialogue-visit-IE-23-24-Jan-2017.pdf>

3. Classification of Universities

3.1 Definition of the General Government sector in National Accounts

ESA 2010 (paragraph 2.111) and the Manual on Government Deficit and Debt (MGDD 2016 paragraph 1.2.1.1) defines the general government sector as “*all institutional units which are non-market producers whose output is intended for individual and collective consumption, and are financed by compulsory payments made by units belonging to other sectors, and institutional units principally engaged in the redistribution of national income and wealth, which is an activity mainly carried out by government*”.

The types of entity comprising the general government sector include “*non-market public producers, i.e. corporations and quasi-corporations controlled by government if their output is mainly non-market*”. The general government sector excludes “*market public producers*”. The manual sets out three steps in the classification process of an entity to the government sector.

- **Is the entity an institutional unit?**

If the answer to this question is yes, then the classification process moves on to the subsequent steps.

If the answer is no, the unit is classified to the same sector as the unit which controls it.

- **Is the entity controlled by government?**

If the answer to this is yes, then the classification process moves on to the next step.

If the answer is no, the entity is private and is classified as a corporation or private non-profit entity.

- **Is the entity a non-market institutional unit?**

If the answer to this is yes, then the entity is classified to the general government sector.

If the answer is no, then it is classified as a publicly controlled market producer and classified to the financial/non-financial corporations sector depending on its type of activity.

The following sections examine the information available in relation to the universities governed by the Universities Act, 1997 and describe the factors contributing to the decision at each stage of the classification process.

3.2 The institutional unit test

ESA 2010 (paragraph 2.12) and MGDD 2016 (paragraph 1.2.2.4) defines an institutional unit as an economic entity which has “*decision-making autonomy and either keeps a complete set of accounts, or is able to compile a complete set of accounts*”.

Criteria for an institutional unit ESA 2010 (par. 2.12) MGDD 2016 (par. 1.2.2.5)	Assessment of universities Universities Act, 1997
(a) The unit is entitled to own goods or assets in its own right: it will be able to exchange the ownership of goods and assets in transactions with other institutional units	This right is established in the Universities Act, 1997 (hereafter “the Act”).Section 13 of the Act establishes the functions of the university, including (subsection 2(e)) that a university “ <i>shall maintain, manage and administer, and may dispose of and invest, the property, money, assets and rights of the university</i> ”.

Criteria for an institutional unit ESA 2010 (par. 2.12) MGDD 2016 (par. 1.2.2.5)	Assessment of universities Universities Act, 1997
(b) The unit is able to take economic decisions and engage in economic activities for which it is responsible and accountable at law	<p>There is clear evidence in the Act of the ability of the universities to take economic decisions.</p> <p>Section 9 (4) specifies that a university “<i>shall be a body corporate with perpetual succession and an official seal and have power to sue and may be sued in its corporate name and to acquire, hold and dispose of land or any other property</i>”.</p> <p>Section 13 (2.c) provides that a university “<i>may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university</i>”</p> <p>Section 40 (1) states that “<i>A university may determine and charge fees of such amounts for student registration, courses, lectures, examinations, exhibitions or any other event, service or publication held or provided at or by, or produced by, the university.</i>”</p> <p>Section 42 states that a university “<i>may sell or otherwise dispose of any land the property of the university</i>”.</p>
(c) The unit is able to incur liabilities on its own behalf, to take on other obligations or further commitments and to enter into contracts	<p>Section 38 of the Act allows universities to “<i>borrow money by means of bank overdraft or otherwise</i>” and to “<i>guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons</i>”.</p> <p>Section 13 (2.g) states that a university “<i>may purchase or otherwise acquire, hold and dispose of land or other property</i>”.</p>
(d) The unit is able to draw up a complete set of accounts, comprised of accounting records covering all its transactions carried out during the accounting period, as well as a balance sheet of assets and liabilities.	<p>Section 39 of the Act provides that universities must keep “<i>all proper and usual accounts and records of all income received or expenditure incurred</i>” and such accounts must be submitted annually to the Comptroller and Auditor General for audit.”</p>

Apart from these considerations the universities can be seen to exercise considerable autonomy in their academic functions through the operation of an Academic Council whose function it is to design and put in place structures for the academic programme of the university. The role of the Academic Council is discussed further in Section 3.3.

3.3 The control test

ESA 2010 para 20.18 defines control as “*the ability to determine the general policy or programme*” of a unit. A set of indicators of control are provided in ESA 2010 para 20.309. In summary these indicators are as follows:

- (a) Rights to appoint, veto or remove a majority of officers, board of directors etc.;
- (b) Rights to appoint, veto or remove key personnel;
- (c) Rights to appoint, veto or remove a majority of appointments to key committees;
- (d) Ownership of the majority voting interest;
- (e) Rights under special shares and options (e.g. golden share);
- (f) Right to control via contractual arrangements – usually refers to exclusive use by public sector of goods and services produced by an entity;
- (g) Rights to control from agreements/permission to borrow;
- (h) Control via excessive regulation; and
- (i) Other – such as public sector approval for important decisions such as the development or abandonment of activities.

MGDD 2016 states that the indicators (a), (c) or (d) are each sufficient in themselves to determine government control. Where these are inconclusive the remaining criteria must be considered. It may be the case that a number of criteria taken together indicate control or that one single criterion, if of sufficient importance, can indicate control. The governance of the universities is considered below in reference to the control criteria.

Establishment and Functions of a Governing Authority

Under the Universities Act, 1997 and the Code of Governance of Irish Universities 2012, all universities are required to have a governing authority that is responsible for the management of the university.

The Universities Act, 1997 Section 15 (1) provides that “... *each university shall have a governing authority established in accordance with this Act which shall be known by whatever name the governing authority decides*” and (Section 15(2)) “*Subject to this Act, the functions of a university shall be performed by or on the directions of its governing authority.*” Section 25 (1) states “... *a university may, in accordance with procedures specified in a statute or regulation, appoint such and so many persons to be its employees as it thinks appropriate, having regard to...the efficient use of its available resources, the requirements of accountability for the use of moneys provided to it by the Oireachtas and the policy relating to pay and conditions in the Public Service as determined from time to time by the Government?*”

Section 1.2.2 of the Code of Governance of Irish Universities 2012 specifies that “*The governing authority determines the financial constraints within which the Academic Council operates and reviews decisions of that authority in accordance with Section 27 (1) of the 1997 Act.*”

Composition of the Governing Authority

A governing authority must contain between 20 and 40 members. Section 16 of the Act specifies who the members should be and how they are elected. Each authority *must* include

- (a) The chief officer and other senior officers of the university
- (b) Between 2 and 6 representatives of academic staff having the status of Professor or Associate Professor, elected by their peers
- (c) Between 3 and 5 representatives of other academic staff, elected by their peers
- (d) Between 1 and 3 members of non-academic staff, elected by their peers
- (e) Between 2 and 3 elected officers of the Students Union
- (f) 1 post graduate student elected by their peers

- (g) At least 1 person and not more than four persons selected by a subcommittee of the governing authority from nominations by employers' organisations, trade unions etc.
- (h) Not more than 4 nominees of the Minister for Education

Governing authorities *may* also include the following

- (a) 4 persons appointed by the governing authority representing cultural and artistic interests
- (b) 4 members elected by graduates.

The governing authorities of individual universities also contain certain other members specified in the Act including members nominated by Local Authorities and the National University of Ireland.

Significant roles in the University

The role of the Chief Officer is detailed in the University Act 1997 section 24 (1) *“A governing authority shall, in accordance with procedures specified in a statute, appoint in a whole-time capacity a person to be chief officer of its university, who shall be called the President or Provost or by such other title as the governing authority determines, and the person so appointed shall be the accounting officer for the university.”*

More details of the role are set out in the Fourth Schedule to the Act:

“1. The chief officer of a university shall, subject to this Act, manage and direct the university in its academic, administrative, financial, personnel and other activities and for those purposes has such powers as are necessary or expedient.

2. In performing his or her functions the chief officer shall be subject to such policies as may be determined from time to time by the governing authority and shall be answerable to the governing authority for the efficient and effective management of the university and for the due performance of his or her functions.”

and

“7. Unless he or she otherwise resigns, retires or is removed from office, a chief officer shall hold office for a period of 10 years...”

The Act provides for the establishment by the governing authority of an Academic Council (Section 27), comprising mainly academic staff with provision also for student participation:

(1) Each university shall have an academic council which shall, subject to the financial constraints determined by the governing authority and to review by that authority, control the academic affairs of the university, including the curriculum of, and instruction and education provided by, the university.

(2) Without limiting the generality of subsection (1), the functions of the academic council shall include, within those constraints and consistent with the functions of the university and those applying to its academic council immediately before the commencement of this Part—

“(a) to design and develop programmes of study,

(b) to establish structures to implement those programmes,

(c) to make recommendations on programmes for the development of research,

(d) to make recommendations relating to the selection, admission, retention and exclusion of students generally,

(e) to propose the form and contents of statutes to be made relating to the academic affairs of the university, including the conduct of examinations, the determination of examination results, the procedures for appeals by students relating to the results of such examinations and the evaluation of academic progress,

(f) to make recommendations for the awarding of fellowships, scholarships, bursaries, prizes or other awards,

- (g) to make general arrangements for tutorial or other academic counselling,
- (h) to perform any other functions, not in conflict with this Act, which may be delegated to it by the governing authority, and
- (i) to implement any statutes and regulations made by the governing authority relating to any of the matters referred to in this subsection.”

Can the Governing Authority be dismissed?

Under Section 20 of the Act, if the Minister for Education and Science is of the opinion that the functions of a university are being performed in a manner which *prima facie* constitutes a breach of the laws, statutes or ordinances applicable to the university, he may request the ‘Visitor’ to inquire into the matter. The Visitor is a Judge of the High Court, or a retired Judge of the High Court or the Supreme Court appointed by the Minister, following consultation with the President of the High Court, under Section 19 (1) of the Act. If the Minister, after considering the Visitor’s report, is still of the opinion that the functions of the university or its governing authority are being performed in breach of the law the Minister, under Section 21 of the Act, will inform the chief officer and give him or her a copy of the Visitor’s report. If, after a further 14 days and, after considering the observations, if any, of the chief officer and of the governing authority on the report, the Minister is still of the same view and considers that the governing body should be suspended and the Visitor concurs, the Minister may recommend the disbandment of the governing authority to the Government.

In the event that the Government, acting on the Minister’s recommendation, suspend the governing authority by an order under Section 21 (3) of the Act, the Visitor shall “*appoint such person or body of persons as the Visitor thinks fit to perform the functions of the governing authority and that person or body shall perform those functions until the commencement of the first meeting of the governing authority after the appointment of its members in pursuance of subsection (6).*” Within 12 months of suspension, the Visitor must determine the composition of a new governing body after consultation with appropriate persons within the university. The Minister is not involved in this process but must be informed of the new membership.

Other considerations relevant to the assessment of control

The Universities have autonomy to borrow in their own name with some consultation with the HEA, the Dept of Finance and Dept of Public Expenditure and Reform. Section 38 of the Act states that:

(1) A university may borrow money by means of bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons.

(2) Borrowing, guaranteeing and underwriting under subsection (1) shall be in accordance with a framework which shall be agreed from time to time between the universities and An tÚdarás, following consultation by An tÚdarás with the Minister for Public Expenditure and Reform² and the Minister for Finance.

A borrowing framework is in place between the universities and the HEA under the Code of Governance of Irish Universities, 2012, Appendix 1C. This framework allows for the universities to enter into a borrowing arrangement without consultation with the HEA if the borrowing is either for “*short-term activities by way of overdraft or otherwise within existing arrangements and practices established by the university*” or for long-term capital funding, provided the funded activities are in line with the objectives of the university. The existence of the framework is seen by the HEA as a part of the mechanism to ensure that any State funding provided is properly accounted for and for good governance procedures to be adopted. The State does not guarantee any borrowings from financial institutions by the universities – as confirmed in writing by the HEA on 19 December 2017. The framework confines the borrowing of the universities to

² DPER added by the Minister and Secretaries (Amendment) Act 2011 section 84.

a level whereby the total cost of repayment in any year does not exceed 4% of the income of a university. In this context income is defined as “*comprising recurrent State grant, student fees and sundry income – and research income as reported in the University’s funding statements. Income derived from self-funded ancillary operations is excluded from this definition of annual income for the purposes of calculating the borrowing limit as are the related borrowings*”.

Universities have freedom to determine student enrolment in both undergraduate and post graduate courses and the proportion of EU/non-EU students. They can set their own fees, in consultation with the HEA. They are generally autonomous to decide on curriculum, what courses they have available and to design and develop programmes as described above under the role of the Academic Council.

The Universities Act 1997, Section 40 specifies that:

(1) A university may determine and charge fees of such amounts for student registration, courses, lectures, examinations, exhibitions or any other event, service or publication held or provided at or by, or produced by, the university.

(2) An tÚdarás may review with the universities the fees charged or proposed to be charged by the universities for student registration and courses, and for lectures and examinations relating to those courses.

Section 25 (subsections 4 and 5) of the Act makes the remuneration of staff of the universities subject to the approval of government:

4) Subject to subsection (5), there shall be paid by a university to the employees of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance.

(5) (a) A university may depart from levels of remuneration, fees, allowances and expenses approved under subsection (4) where the governing authority is satisfied that it is necessary to meet the objects of the university, but may do so only in accordance with a framework which shall be agreed between the universities and An tÚdarás.

Since the introduction of the Financial Emergency Measures in the Public Interest Act, 2009 and subsequent legislation on public service pay (FEMPI) the universities are further required to comply with Government policy on salary scales and general remuneration. Although the Code of Governance for Irish Universities sets out a framework, as referenced in the Act, for departure from public sector pay constraints in limited circumstances where required by the specialised needs of the university, the circumstances in which this can be applied are limited and are subject to agreement by the HEA.

Since the publication of the National Strategy for Higher Education to 2030 and its adoption as government policy there have been moves towards a more co-ordinated higher education system in Ireland with increased governance and reporting mechanisms put in place for all higher education institutions, including the universities, as proposed by the HEA in a report to the Minister in 2013. However it must be noted that the universities sector were represented on the high level group which developed the national strategy and that initiatives being undertaken, for example, through the recently developed performance framework are couched in terms of “*performance compacts*” between government and the universities. Therefore the autonomy of the universities as established by the existing legislation (the Universities Act, 1997) appears to be maintained under the new strategy.

3.4 The market/non-market test

Qualitative criteria

Before assessing the market nature of the universities under the quantitative criterion the qualitative criteria of ESA 2010 paragraphs 20.19 to 20.28 must be considered. The universities have already been assessed as qualifying as institutional units in section 3.1. It can also be seen that their services are sold to non-government units, specifically households in the domestic economy and also to the rest of the world due to the presence of international students. In addition there are sales of research services to industry reported in the accounts of the universities. Finally, the higher education sector in Ireland includes private colleges with whom the publicly funded universities are in competition for students. Some of these colleges (e.g. the National College of Ireland and the Royal College of Surgeons in Ireland) are “*qualifying institutions*” for the third level free fees scheme administered by the State, while others are not.

Quantitative market/non-market test

The results of the quantitative market / non-market test for the years ending 30/09/2013 to 30/09/2016 are presented in the attached Excel file.

In previous market tests the CSO had estimated that 10% of research funding by government could be classified as sales. In the current calculation we have requested a split of research funding from the State into grant/purchases by the reporting institutions with the intention that only those amounts reported as purchases of contract research would be included in the current market test calculation. As the universities were unable to provide this breakdown no research income has been included as sales in the current calculation – it may be possible to update this in the future.

All fee income whether paid by households or by the State on behalf of households is treated as sales. This has been the case since the reclassification of the universities as market producers in 2013 with the portion paid by the State under the Free Fees Initiative³ recorded as D.632 (social transfers in kind) in the government accounts. Free Fees are paid on a per-capita basis and are linked directly to individual students, as eligible individual students may be entitled to full fees or half fees. The students on behalf of whom the Free Fee Claim is submitted are eligible students who comply with the terms of the Free Fees Initiative – Criteria for Determining Eligibility⁴ issued by the Department of Education and Skills. The President of each Higher Education Institution confirms this fact in writing on submitting their claim form annually.

Other State grants to the universities are not classified as sales. These take the form of grants which are classified by the CSO as either D3 (subsidies) or D92 (investment grants), as previously confirmed to Eurostat. The majority of grants are not ring-fenced and the universities can manage their budget accordingly. The HEA have confirmed to the CSO that of the €483m in recurrent grant funding paid to the universities in 2016, €237m was in the form of non ring-fenced grants in aid, €223m was the allocation under the Free Fees Initiative, and €23m was funding ring-fenced for specific purposes including literacy support, Irish language supports, e-journals, performance related funding and discipline specific grants. The figures supplied by the HEA do not correspond exactly to those from the audited accounts due to a different reporting basis. However it is clear that only a very small proportion of grant funding to the universities is allocated to specific functions by the HEA.

Ancillary income included in sales refers to income from e.g. sports facilities, other student facilities, conference and catering activities.

³ <http://hea.ie/funding-governance-performance/funding/student-finance/course-fees/>

⁴ <http://hea.ie/funding-governance-performance/funding/student-finance/course-fees/#criteria-for-determining-eligibility>

Production costs are as detailed in the tables, with any unclassified expenditure excluded from their calculation.

The results of this calculation show that all seven universities have covered more than 50% of their production costs by sales over the period under consideration and that this trend can be seen to increase over the period for all but one institution (in the latest year). Detailed calculations for each university are shown in the Appendix.

4. Conclusion

The Universities Act, 1997 sets out the governance arrangements for individual universities. Its provisions around the legal status of the universities, their ability to take economic decisions and to make decisions about their courses of study and academic programme appear sufficient to classify the universities as institutional units.

The Act ensures that the universities operate with a high degree of autonomy in the exercise of their functions. There is not majority government influence in the governing authority and decisions around programmes of study, award of bursaries etc. are in the remit of the academic council, appointed by the governing authority and comprising academic staff and student representatives.

However ultimately it lies within the power of the Minister to dismiss the governing authority on specified grounds. The Visitor, while not under the direct supervision of the Minister, is eligible for this role in their capacity as a member or retired member of the judiciary (which forms part of the general government sector). Also, section 21 makes it clear that it is the recommendation of the Minister (in agreement with the Visitor) and the decision of government that enables the suspension of the governing authority. This can be seen as evidence of ultimate control by government. However these powers can be exercised only in circumstances where it is the view of the Minister that the university is in breach of statute. These powers cannot be applied arbitrarily.

More recent developments such as the application of FEMPI legislation to the universities strengthen the case for seeing the universities as under public control. The development and implementation of the National Strategy for Higher Education to 2030 formalises further the relationship between universities and the HEA. However given the role of the universities in developing the strategy and the apparently voluntary nature of the co-operation of the universities with the strategy to date, the level of control being exerted does not appear sufficient to undermine the autonomy of the universities. Should legislative change, or sanctions for non-compliance with the strategy, be put in place by government this assessment would need to be reviewed.

The qualitative and quantitative market criteria having been examined by the CSO with reference to up to date data we remain satisfied of the market nature of these bodies.

It is our assessment that the seven universities governed by the Universities Act, 1997 be classified as publicly controlled market producers in S.11. The questionnaire on government controlled entities classified outside the general government sector due on 31 December 2017 reflected this decision.

Central Statistics Office

12 January 2018

Links to relevant documents

Document	URL
Universities Act, 1997	http://www.irishstatutebook.ie/eli/1997/act/24/enacted/en/html
Code of Governance for Irish Universities	http://hea.ie/assets/uploads/2017/05/Governance-of-Irish-Universities-2012.pdf
National Strategy for Higher Education to 2030	https://www.education.ie/en/Publications/Policy-Reports/National-Strategy-for-Higher-Education-2030.pdf
Report to the Minister for Education and Skills on system reconfiguration, inter-institutional collaboration and system governance in Irish higher education, 2013	https://www.education.ie/en/Publications/Policy-Reports/HEA-Report-to-the-Minister-for-Education-and-Skills-on-Irish-higher-education.pdf
Letter from Minister for Education and Skills to Higher Education Authority, 13 July 2013	https://www.education.ie/en/The-Education-System/Higher-Education/Minister-s-letter-to-the-HEA.pdf
Higher Education System Performance Framework 2014-2016	https://www.education.ie/en/The-Education-System/Higher-Education/HEA-Higher-Education-System-performance-Framework-2014-2016.pdf